

# Setting a Path for a More Equitable Commonwealth



REPORTS *from*

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The Commission to Examine  
Racial Inequity in Virginia Law

*and*

The Commission to Examine  
Racial and Economic Inequity  
in Virginia Law

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*January 6, 2022*



# From Virginia's law books:

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## CHAPTER 59

*An Act to provide that no child shall be required to attend integrated schools.*

[H 5]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. Notwithstanding any other provision of law, no child shall be required to enroll in or attend any school wherein both white and colored children are enrolled.

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CHAPTER 60

INTERIM REPORT *from*

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## The Commission to Examine Racial Inequity in Virginia Law

NOVEMBER 15, 2019



## EXECUTIVE SUMMARY

On June 4, 2019, the Honorable Ralph S. Northam, Governor of the Commonwealth of Virginia, issued Executive Order 32 (“E.O. 32”) establishing the Commission to Examine Racial Inequity in Virginia Law (the “Commission”). In E.O. 32, Governor Northam declared that the purpose of the Commission was to “review the Virginia *Acts of Assembly* (“*Acts*”), *Code of Virginia* (“*Code*”), and administrative regulations with the goal of identifying and making recommendations to address laws that were intended to or could have the effect of promoting or enabling racial discrimination or inequity.”<sup>1</sup> Governor Northam further directed that the Commission work “to identify the vestiges of inequity and inequality in Virginia’s laws, laying the groundwork for the redefining of the Commonwealth in the 21st century as a state committed to the success and equitable treatment of every citizen.”<sup>2</sup>

White and nonwhite Virginians face starkly disparate outcomes in health, educational attainment, financial stability, and access to justice. Any assessment of these disparities must take into account Virginia’s haunting legacy of coordinated, intentional, and official acts of forced segregation and overt racism.

Since the post-Civil War era, the Commonwealth struggled to find its identity as a modern state. Instead of embracing its nonwhite citizens and communities, state and local governments of the Commonwealth devoted considerable energy and resources to the entrenchment and enforcement of segregation, the deprivation of due process, and the denial of full rights of citizenship and civic participation for black, Native American, and other nonwhite Virginians. The cumulative impact of these legislative acts of racism and discrimination was to deny these Virginians full opportunities to gain employment, own property, participate in a democratic society, receive high quality health care, or have equitable access to education. These efforts are documented in the Commonwealth’s *Acts of Assembly*, which chronicles the laws enacted and resolutions during each General Assembly session.<sup>3</sup>

The Commission’s review of these *Acts* found several plainly racist and discriminatory provisions. As specified in this report, the Commission recommends the General Assembly and Governor Northam repeal a number of them. The Commission’s repeal recommendations are limited to those *Acts* that are racist or discriminatory on their face, or those *Acts* which appear neutral but which, when read in historical context, demonstrate their discriminatory intent.

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<sup>1</sup> Virginia Executive Order Number 32 (June 4, 2019).

<sup>2</sup> *Ibid.*

<sup>3</sup> The *Acts of Assembly* are the complete written legislative record of the General Assembly. They include matters that are codified in the *Code of Virginia*, as well as those that remain uncoded. Uncoded laws have the same force and effect as codified laws.



Though most of these pieces of legislation are outdated and have no legal effect, they remain enshrined in law. The Commission believes that such vestiges of Virginia's segregationist past should no longer have official status. The Commission also notes that there have been several previous *Acts* on other topics codified in the *Code of Virginia* that have since been declared unconstitutional or otherwise invalidated. Without repeal, these provisions could be revived with a change of law or interpretation by a different leadership or court. The Commission recommends that they, too, be repealed.

A primary goal of the Commission is to review past legislative actions and consider their current impact. One example is the racist views of Dr. Walter A. Plecker. Dr. Plecker is widely regarded as a white supremacist and former Registrar of the Bureau of Vital Statistics at the Virginia Department of Health during the early 20<sup>th</sup> century. Descriptions of race in the *Acts of Assembly* are almost completely binary, comprising two races called "White" and "Colored." Native Americans are referenced in appropriations and in mentions of "Indian Schools" and reservations as they relate to local government. However, a lack of any mention of a race other than "White" or "Colored" reflects a greater trend in Virginia during the 1920s that the Commission found was espoused by Dr. Plecker, who successfully advocated for passage of the Act to Preserve Racial Integrity, describing all citizens as either white or colored, and forbidding any intermarriage or mixing of the races.<sup>4</sup> As part of that effort, Dr. Plecker declared that all Virginian Native Americans had been "mongrelized" by intermarriage with African Americans, and therefore no longer existed as a separate race.<sup>5</sup>

Identifying and repealing this racist language is only the first step. The Commission appreciates that its work is slated to continue after the 2020 legislative session, so it can further analyze and make recommendations relating to language that, while not explicitly racist or discriminatory, has had the demonstrated effect of "promoting or enabling racial discrimination or inequity."<sup>6</sup>

In the view of the Commission, the work must serve dual purposes: it must purge Virginia's legislative record of invidious laws and enactments, while also avoiding the unintended consequence of historical sanitization. To move forward while acknowledging Virginia's mistakes, Virginians must never lose sight of the harm caused by failing to recognize the inherent value in one another as people.

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<sup>4</sup> See attached exhibit 1.

<sup>5</sup> See attached exhibit 2.

<sup>6</sup> Virginia Executive Order Number 32 (June 4, 2019).



## INVESTIGATIVE PROCESS

On September 4, 2019, Governor Northam appointed the following members of the Commission:

- Andrew Block of Charlottesville, Director, State and Local Government Policy Clinic at University of Virginia School of Law;
- Henry L. Chambers, Jr. of Henrico, Professor of Law, University of Richmond School of Law;
- Jill Hanken of Richmond, Health Attorney, Virginia Poverty Law Center;
- The Honorable Mike Herring of Richmond, Partner, McGuire Woods and Former Commonwealth's Attorney, City of Richmond;
- Cynthia Hudson of Richmond, Chief Deputy Attorney General of Virginia;
- Carla Jackson of Chesterfield, Assistant Commissioner for Legal Affairs, Virginia Department of Motor Vehicles;
- The Honorable Birdie Hairston Jamison of Richmond, Retired Judge, General District Court of the City of Richmond;
- The Honorable Jerrauld Jones of Norfolk, Chief Judge, Circuit Court of City of Norfolk;
- Leslie Chambers Mehta of Chesterfield, Chief of Staff and Counsel to the CEO, Richmond Metropolitan Transportation Authority.

Given the significant scope of work outlined by E.O. 32, the Commission determined that its work should proceed in phases. As an initial task, and with considerable research assistance from law students from the University of Richmond School of Law, law students from the University of Virginia School of Law, students from Virginia Commonwealth University, and staff from the Office of the Governor, the Commission reviewed *Acts of Assembly* from 1900 to 1960.

The Commission focused primarily on three periods of the 20<sup>th</sup> Century. First, the period of 1900 to 1910, representing the era in which most states in the former Confederacy adopted new Constitutions that disenfranchised African Americans, and passed laws that reversed and overturned whatever gains and progress had been made during and following Reconstruction. Second, the period from 1918 through the 1920s, representing the second rise of the Ku Klux Klan and other white supremacist organizations. Third, the period from the mid- and late-1950s, representing Virginia's reaction to federally-mandated school desegregation following the Supreme Court decision in *Brown vs. Board of Education of Topeka*.



In conducting a review of these *Acts*, the students and staff highlighted *Acts* that contained either explicitly racist or discriminatory language or evidenced, either on its face or in historical context, a clear discriminatory intent.

The Commission met four times following the appointment of members and worked between meetings to review the *Acts of Assembly* highlighted by students and staff. Please note that the review of the *Acts* as described above is not to be considered exhaustive. A large proportion of the *Acts* exist in paper form only, and it is not possible to search electronically for key words that might quickly disclose a racial content. Further, subject matter content does not always reveal the inclusion of a racial component or context absent additional information, which is no longer apparent, or not within modern common knowledge. Clever legislative drafting can often conceal the actual goal of any piece of legislation. There remain many volumes of the *Acts* that have not been reviewed, and assuredly, additional measures can be found by more complete review of those that have been studied for the first time.

The Commission hereby submits its interim report, which recommends legislative action to be taken during the upcoming General Assembly Session, and outlines suggested next steps for the Commission to Examine Racial Inequity in Virginia Law.



## RECOMMENDATIONS REGARDING *ACTS OF ASSEMBLY*

The following sections detail, by category, the *Acts* reviewed by the Commission, and the specific recommendations for legislative action. Each section also provides a general overview of those *Acts* by issue area.

### VOTING

Among all the laws reviewed by the Commission, these *Acts* authorized payment of poll taxes to keep black Virginians from voting<sup>7</sup> and required that election officials maintain separate lists of registered voters by race<sup>8</sup> (even directing the use of different colors of paper to do so),<sup>9</sup> and limited voting in certain circumstances to freeholders (the owner of a piece of land or property).

Accordingly, the Commission recommends the following chapters of the *Virginia Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1903	346	Implementation of the State poll-tax. <sup>10</sup>
1908	130	An act to provide a list of all persons who have paid their State poll-taxes.
1950	216	Amend and re-enact an act providing for the registration and re-registration of persons qualified to vote in the calendar year of 1951 poll-taxes.
1950	224	Amend and re-enact a section of the code relating to voter registration; adding in the words “loose leaf binders.”

<sup>7</sup> For a description of the goals and impact of polls taxes see [http://edu.lva.virginia.gov/online\\_classroom/shaping\\_the\\_constitution/doc/poll\\_tax](http://edu.lva.virginia.gov/online_classroom/shaping_the_constitution/doc/poll_tax).

<sup>8</sup> See attached exhibit 3, 1904 Warren County Poll books.

<sup>9</sup> The *Acts* also limited voting in certain circumstances to freeholders, defined as owners of property. While freeholders likely referred only to white landowners at one time, the term still exists in the *Code of Virginia* in at least 31 statutes and applies in a race-neutral manner. See, for example, *Virginia Code* §25.1-229. Condemnation proceedings - jurors must be freeholders; §28.2-1311 & §28.2-1411. Actions regarding Wetlands; §8.01-346 – jury lists include freeholder status; §62.1-118 – waterways/ports; §33.2-706,713,604 – highways, tolls.

<sup>10</sup> See attached exhibit 4.

## CONFEDERATE PENSIONS AND MEMORIALS

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The Commission reviewed *Acts of Assembly* dated between 1901 and 1920 concerning Confederate pensions. Beginning in 1901, those who supported the Confederacy, including former confederate soldiers, their spouses, their widows (including funeral expenses), and matrons in Confederate hospitals, received state-funded reparations after the war. The Commonwealth of Virginia also funded the construction of the Robert E. Lee statue for “the sum of ten thousand dollars, or so much thereof as may be necessary to carry out the provision of a statue”<sup>11</sup> and set aside funds for “the sons and daughters of Confederate veterans in their efforts to erect a monument to the memory of the Confederate soldiers.”<sup>12</sup> By 1920, the Commonwealth of Virginia also began using taxpayer funds to provide financial support to the Confederate Museum at Richmond

Examples of other state-funded assistance to those who supported the Confederacy included the following: “any woman who served as a matron in a Confederate hospital for a period of twelve months during the war between the States, shall be allowed the sum of forty dollars per annum;”<sup>13</sup> a total of \$12,000 “[f]or [the] care of needy Confederate women in accordance with provisions of the Act;”<sup>14</sup> and \$6,000 “[f]or providing for incidental personal expenses of Confederate Veterans, a monthly allowance of \$2.00 to each inmate of the R.E. Lee Camp Soldiers Home at Richmond;”<sup>15</sup> and a total of \$2,000 “[f]or relief of needy Confederate Veterans afflicted with contagious diseases or cancer.”<sup>16</sup>

The Commission also reviewed *Acts* concerning Confederate statues and the Confederacy more generally. The Commission understands the sensitive nature of this topic both in terms of its complexity and its historical legacy, and seeks to be appropriately mindful of the history of this era while also acknowledging the state’s role in funding Confederate memorials, monuments, and public benefits.

In addition, the Commission is well aware that there is pending litigation related to issues involving Confederate memorials. Recent pronouncements from public officials have also indicated that legislation will be introduced regarding these matters in the next legislative session.

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<sup>11</sup> 1906 *Acts of Assembly*, Chapter 79.

<sup>12</sup> 1906 *Acts of Assembly*, Chapter 90.

<sup>13</sup> 1908 *Acts of Assembly*, Chapter 178.

<sup>14</sup> 1920 *Acts of Assembly*, Chapter 144.

<sup>15</sup> 1920 *Acts of Assembly*, Chapter 144.

<sup>16</sup> 1920 *Acts of Assembly*, Chapter 144.

Therefore, given the gravity of the issue and the desire to produce a timely interim report, the Commission will not make interim recommendations on this topic at this time. The Commission will continue its careful and deliberate review of the *Acts* concerning the Confederacy and will await orderly judicial or legislative actions.

## EDUCATION

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The Commission reviewed a large number of *Acts* related to education. This was a deeply troubling read. While some of the *Acts* reflected the explicitly racist language and segregationist policies of their time, establishing, for example, race-based “industrial schools” for youth in the juvenile justice system,<sup>17</sup> other *Acts* provided evidence of the calculated legislative strategies of the Massive Resistance<sup>18</sup> era to reject *Brown v Board of Education*’s mandate for public school desegregation.

What is clear is that Virginia’s policymakers engaged in deliberate and coordinated legislative strategies both to deny equal educational opportunities to black students and preserve white students’ ability to attend white-only schools. The sterile and sometimes race-neutral language of these acts does not mask the racist and discriminatory sentiments behind them.

The extra legislative session of 1956, in particular, was an extremely important part of the overall Massive Resistance effort. The *Acts* from that session reveal the interrelated and coordinated policies that, in sum, had the desired outcome of preserving school segregation.

For example, the 1956 Special Session gave Virginia the authority to intervene to shut down schools if federal authorities appeared to force integration; to take over school systems if voluntary or forced integration took place, and to create instead a segregated school system; to create an exception for compulsory education laws if children did not want to attend integrated schools; to create a voucher system to allow youth not wanting to attend integrated schools to attend private schools; and to accelerate the creation of new, private schools, by both the creation of “education grants” ridding these new private schools of the building code requirements that normally applied to educational institutions.

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<sup>17</sup> See, for example, Chapter 262 from the 1954 session establishing Bon Air and Beaumont for white students, and Hanover, for black youth.

<sup>18</sup> “Massive Resistance in Virginia refers to coordinated efforts to prevent federally-mandated public school desegregation. Localities, assisted by the General Assembly, in some cases even closed public school systems entirely, while providing tuition assistance grants to families, thus permitting student attendance at publically-funded “private” schools established specifically for that purpose.



Accordingly, the Commission recommends the following chapters of the Virginia *Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1901	123	Incorporation of Sweet Briar on terms limiting enrollment to whites in accordance with terms of a will.
1901-1902	238	Establishes by incorporation a particular colored only high school – Southwest Academy in Pulaski County.
1901-1902	335	Establishes by incorporation school for colored youth – Northern Neck Industrial Academy.
1901-1902	401	Continues and changes name of VA Normal and “Collegiate” Institute to VA Normal and “Industrial” Institute – for colored students.
1903	212	Authorizes New London Academy in Bedford and Campbell Counties for advanced white students.
1903	268	Specifies management structure for State Female Normal School for training white female teachers – now Longwood University.
1903	312	Management, financial and other provisions for Hampton Normal and Agriculture Institute for colored students (now Hampton University) and what is now Virginia Tech (for whites).
1903	332	More management provisions for Virginia Normal and Industrial Institute – for colored students.
1903	509	Establishes the legal, management and administrative structure and funding scheme for the early Virginia free public school system, with proviso that schools for colored and white shall be separate.
1903	528	Continues and provides further for management of State Female Normal School for whites (Longwood predecessor).
1908	42	Requires establishment of white and colored “sub districts” within school divisions.
1908	161	Requires school censuses with counts of races kept separately.
1908	170	Authorizes Lexington to accept a transfer of a private academy, so long as the use would be for education of white children only.
1908	284	University of Virginia tuition cap for white students.
1908	400	Allows attendance at public schools in districts one does not reside in but where one is a taxpayer, upon conditions – must be and remain segregated by race.
1910	206	Establishes a public school for Negro males at the Negro Reformatory in Hanover.

1912	321	Reiterates requirement that free public schools be segregated.
1914	170	Transfers operation of the Virginia Home and Industrial School in Chesterfield, a facility for “vicious and incorrigible white girls” to state control.
1918	351	Transfers the Laurel Industrial School for delinquent white boys, in Henrico County, to state control.
1920	70	Children may attend school in an adjoining locality to their own, when logical or close, but may not teach both races in the same schools. <sup>19</sup>
1920	75	The Industrial Home School for Wayward Colored Girls, in Hanover County, transferred to state control.
1920	144	University of Virginia tuition cap for white students.
1920	344	Transfers the Virginia Manual Labor School in Hanover County for delinquent colored boys from the Negro Reformatory Association of Virginia to state control.
1950	23	Changes the name of the Virginia Industrial School for Colored Girls, formerly the Industrial Home School for Wayward Colored Girls, to the Janie Porter Barrett School for Girls.
1950	569	Authorizes medical and nursing school scholarships restricted for use by Negroes to attend Negro professional schools and whites to attend white professional schools.
1954	262	Renames segregated reform schools to Bon Air School for Girls (white), Beaumont School for Boys (white), and the Hanover School for Boys (colored).
1956	39	Prohibiting the state, due to emergency circumstances, to refuse to accredit any private school due to the failure of the building in which the school exists to otherwise meet state regulations and building codes.
1956	58	Authorizing and requiring funds from localities to pay for educational “grants” to allow children objecting to attendance at an integrated school to attend private schools, and authorizing/requiring local school systems to provide transportation to those children requesting such grants (likely the first example of school vouchers). This chapter further provided that the state reimburse local governments for these costs.
1956	59	Creating an exception for compulsory school attendance for children who would otherwise be obligated to attend an integrated school. <sup>20</sup>
1956	68	Divesting localities of authority over local schools when local officials voluntarily integrated their schools.

<sup>19</sup> See exhibit number 5.

<sup>20</sup> See exhibit number 6.

1956	69	Giving state authority to close, as an “emergency,” any local system not operating an efficient system, defined as a school system that was segregated.
1956	70	Freezing student enrollment unless authorized for change by state-operated Pupil Placement Board.
1958	41	Authority of Governor to seize control and close schools when federal authority asserted.
1958	319	The Governor’s authority to seize control of or close any school that falls under federal or military authority and to reopen when he deems appropriate.
1959	1	Enabled Massive Resistance by permitting students to attend public schools outside their home school district upon verification of no “adequate” public school in home district, or general objection to attending home district school (emergency legislation).
1959	3	Enabled Massive Resistance by funding private school tuition grants to be issued locally or by the state.
1959	32	Enabled Massive Resistance by authorizing closure of public schools upon federal intervention to enforce desegregation.
1959	50	Enabled Massive Resistance by permitting teachers to repay state scholarships by teaching in private schools.
1959	53	Enabled Massive Resistance by providing for local and state funding of “scholarships” (rather than “grants”) for students to attend private schools and public schools outside their home school districts.
1959	71	Restored initial pupil placement decisions to local school authorities, but enabled Massive Resistance by establishing right of appeal of local decisions to state-level authorities.
1959	80	Enabled Massive Resistance by allowing use of “any existing building” as a private school, subject only to state-level fire marshal approval (i.e., negated need to comply with building code requirements, zoning regulations, etc.).
1959	81	Enabled Massive Resistance by capping amount of tuition charged by local school districts for students attending from other public school districts.
1960	191	Enabled Massive Resistance by allowing an offset against local tax liability for donations to private schools.
1960	448	Directly enabled Massive Resistance by allowing local funding of “scholarships” to attend private schools or to attend a public school in a district other than the student’s home school district.
1960	531	Directly enabled Massive Resistance by ensuring a level of county funding to town school districts, likely to ensure sufficient funding available for private school grants/scholarships.



## BUDGET AND FINANCE

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The Commission reviewed several *Acts of Assembly* from 1903, 1910, 1914-1920, and 1956-1958 related to budget and finance issues. The *Acts* included numerous instances of appropriations that reflected the Commonwealth's historical support for explicit racial segregation, such as appropriations for the Virginia School for the Colored Deaf and Blind, the Industrial Home School for Wayward Colored Girls, and the Virginia Manual Labor School for Colored Boys. Various institutions, including the University of Virginia in the 1920 *Acts*, were provided funding with the explicit proviso that they serve only white students. In addition, the Commonwealth's Budget for 1956-1958 included an explicit refusal to fund integrated school systems, in one case "declar[ing], find[ing] and establish[ing] as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city or town of the Commonwealth constitutes a clear and present danger affecting and endangering the health and welfare of the children and citizens residing in such county, city or town."<sup>21</sup>

The *Acts* also included appropriations that supported the legacy of the Confederacy, including resources for Confederate soldiers, their widows, and their families, and appropriations to support the memorialization of the legacy of the Confederacy, such as funds dedicated to support a Confederate museum and a monument to Stonewall Jackson.

A candid recognition of the role that discrimination and racism played in the reviewed *Acts*, and the continuing effect those appropriations may have is essential to their understanding. However, the Commission notes that future action is complicated. An official repeal of the many *Acts* might seem superfluous, given that the appropriations are long spent and many of those appropriations were provided for institutions that no longer exist. However, the legacy of many of the appropriations remains in other ways.

For example, the *Acts* include support for institutions that still exist (e.g., University of Virginia), support for monuments that may still exist (Confederate monuments), and support for buildings that still stand (the Home for Needy Confederate Women and R. E. Lee Camp Confederate Soldiers' Home that are now part of the Virginia Museum of Fine Arts).<sup>22</sup> The support the Commonwealth provided for these institutions, monuments, and buildings ought to be formally acknowledged, recognizing that traces of that former intent cannot be disaggregated from those institutions, monuments, and buildings.

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<sup>21</sup> See 1956 *Acts of Assembly*, Chapter 71 (Extra Session).

<sup>22</sup> For more about the Virginia Museum of Fine Arts buildings, see <https://www.vmfa.museum/about/grounds-history/>.

Ultimately, the nature of state budgets dictate that they expire at the end of the budget year. Any budget that was passed has already, in effect, expired. For that reason, the Commission decided to focus the bulk of its recommendations on racist laws that did not expire by operation of law.

## HEALTH

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The Commission reviewed *Acts* related to “Health” from 1914 to 1920. The 1914 and 1916 *Acts* primarily govern Virginia’s mental health institutions, referred to as “colonies for the feeble-minded” or “hospitals for the insane,” and segregation of those institutions. According to the Virginia Department of Behavioral Health: “From its founding until the passage of the Civil Rights Act of 1964, Central State Hospital served and treated only African-American Mentally Ill, Mentally Retarded, Geriatric, and Criminally Insane from the entire state of Virginia. In 1967, the Hospital opened its doors to accept patients regardless of race or national origin and only from the Central Virginia area.”<sup>23</sup>

As such, the 1914 and 1916 *Acts* specifically require a separate building and separate governance for “feeble minded colored persons” on the Dinwiddie County campus of Central State Hospital. The 1920 law expands the Central State Colony for “colored feeble-minded” to also serve “colored epileptics” and specifically prohibits commitment of white people to Central State Hospital and commitment of colored people to other facilities.<sup>24</sup> The 1920 *Act* also specifically requires formal documentation of the color of any person committed to a facility as “insane, epileptic, feeble-minded, or inebriate.”<sup>25</sup>

Following this pattern of segregation, the 1918 *Act of Assembly* addresses special taxes that would, in part, be utilized to prevent and eradicate tuberculosis. The State Board of Health is directed and required to “provide separate sanatoria for white people and colored people.” While state-mandated segregation has ended, vestiges of discrimination undoubtedly still exist in both access to care and health outcomes.

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<sup>23</sup> <http://www.csh.dbhds.virginia.gov/about.html>.

<sup>24</sup> 1920 *Acts of Assembly*, Chapter 262.

<sup>25</sup> 1920 *Acts of Assembly*, Chapter 262.

Accordingly, the Commission recommends the following chapters of the Virginia *Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1914	346	Establishes Central State Colony for the “feeble-minded” in Dinwiddie County (colored persons).
1916	207	Amend and re-enact an act to establish the Central State Colony for the “feeble-minded” in Dinwiddie County (colored persons).
1918	384	The Board shall provide separate sanatoria for white people and colored people. <sup>26</sup>
1920	262	Insane, epileptic, feeble-minded and inebriate (colored v. white).

## TRANSPORTATION

The Commonwealth went to great lengths to maintain rigid lines of separation between “white and colored” travelers. The years 1902 and 1906 marked particularly troubling chapters in Virginia’s legacy of racial discrimination. Indeed, some enactments mandated enforcement of racial separation, under threat of criminal prosecution, and afforded conductors and operators virtually unlimited police powers to remove or race test passengers. No legitimate public purpose is served by the preservation of these invidious *Acts*.

Accordingly, the Commission recommends the following chapters of the Virginia *Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1901	454	Require Richmond and Petersburg Electric Railway Company to provide separate accommodations by race for passengers.
1901	463	Permit the Cumberland Valley Railroad Company to use curtains for partitions to separate passengers by race. <sup>27</sup>
1901	554	Authorize electric railroad or railways in the City of Alexandria and from the City to the County of Fairfax to provide separate accommodations by race for passengers.
1906	91	Require a separation of white and colored passengers on cars operated by electricity.
1959	49	Permit school boards to provide transportation to children attending nonsectarian private schools.

<sup>26</sup> See exhibit number 7.

<sup>27</sup> See exhibit number 8.



## HOUSING

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During the late 19th and early 20th centuries, Virginia legislators and policymakers took deliberate actions to establish segregated housing for white and black people. The entrenched, segregated housing patterns created by the law at that time created persistent and pervasive historical racial discrimination. The Commission examined four specific legislative sections addressing housing. Each of the sections contained clearly-stated legislative language intended to create and maintain segregated districts for the residence of “white and colored” families.

These legislative mandates ensured a physical and psychological separation of the races that was intended to perpetuate the hate-filled vestiges of slavery. The devastating long-term social, economic, and political impact of legalized segregation in Virginia continues to plague people of color today.

Accordingly, the Commission recommends the following chapters of the *Virginia Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1901	300	Separate accommodation of white and colored passengers in steamboats.
1912	157	Designation of segregation districts for residence. <sup>28</sup>
1916	51	Re-enact section 11, entitled an act to provide designation of segregation districts for residence.

## CRIMINAL

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Virginia discriminated against its poor citizens as well as its citizens of color. In some instances, the *Acts* identified the target population as “poor” or “colored.” In others, the language was facially race-neutral but *de facto* anti-black, certainly in its implementation. In all instances, the consequence was the deprivation of due process and the infliction of cruel and unusual punishment. This was an injustice of monumental proportions, and there is no legitimate reason to preserve the legislation.

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<sup>28</sup> See exhibit number 9.

Accordingly, the Commission recommends the following chapters of the Virginia *Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1908	134	City Charter of Petersburg - Prevents persons (vagrants, beggars etc.) from entering the city with no ostensible means of support.
1908	157	City Charter - Prevents persons (vagrants, beggars etc.) from entering the city with no ostensible means of support.
1908	270	Amend and re-enact section 3932 of the Code in relation to chain gangs; in reference to counties and municipal-corporation established chain gangs. Allows chain gang service for being a vagrant; allows chain gangs to be leased or hired from one locality to another (captive work force).
1908	284	Sets salaries and expenses for employees, including those with races in their titles.
1908	285	City Charter - Prevents persons (beggars, vagrants, drunkards, mendicants) from entering the city with no ostensible means of support.
1908	286	City Charter - Prevents persons (street beggars, drunkards, transients, vagrants) from entering the city with no ostensible means of support.
1908	287	Chain gangs for Caroline County - Convicts who cannot pay for upkeep must work on roads.
1908	302	Permits chain gangs to be used in the Town of Narrows in Giles County for violations of town ordinances.
1908	324	Allows the establishment of a chain gang in a certain county.
1908	Index	References to “Negro” reformatory school and association.
1916	35	If any minor charged with any crime, or with being a vagrant, or disorderly person is convicted they shall be committed to the custody and control of the Negro Reformatory Association of Virginia (Section 5).
1916	45	Requires sheriffs and sergeants to keep a record of persons confined to jails; information includes name, color, age, physical condition, term in jail and whether or not person is a confirmed drunkard or drug habitué.
1918	180	Authorize and empower the boards of supervisors and city councils of any two or more counties or a county and a city to establish a home or poor farm for the care and maintenance of the poor. White and colored residents must be housed in separate buildings so as not to interfere with each other. <sup>29</sup>
1920	344	Allow state to assume control of the Negro Reformatory Association of Virginia in Hanover County, placing the facility in the state system, because it had sought state assistance and was likely to seek more state assistance.

<sup>29</sup> See exhibit number 10.

## MATTERS OF GENERAL APPLICATION

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Members of the Commission reviewed an assortment of provisions in the *Acts* from 1903, 1904, 1908, 1910, 1912, 1916, 1918, 1920, 1950, 1952, 1954, 1956, 1958, and 1960 that were cataloged under the heading “Matters of General Application.” While some of these *Acts* were later declared unconstitutional or invalidated by the Civil Rights acts of 1964, these laws of Virginia show the Commonwealth’s historical commitment to racial segregation, including in public facilities and common carriers;<sup>30</sup> on public documents, such as deeds, marriage licenses, and divorce complaints;<sup>31</sup> with the State Registrar who was granted authority to alter birth certificates based on his determination of the person’s “true race;”<sup>32</sup> and the establishment of the “one drop rule.”<sup>33</sup>

Additionally, during the height of the Civil Rights movement, Virginia enacted laws “to promote interracial harmony and tranquility” by quelling activities that promoted or challenged segregation and integration laws.<sup>34</sup> At a time of increased white racial violence against those challenging segregation, it was an overt and hostile action to require persons, groups, and organizations promoting desegregation to register with the Clerk of the State Corporation Commission. This registration included registrant’s names and addresses and would have been considered a public record. In a state that appropriated funds to support an explicitly all white military company,<sup>35</sup> laws that evince such deep concerns about integration and segregation do not represent growth in the Commonwealth’s collective consciousness regarding matters of race. Rather they reveal the clear underpinnings of discrimination and racial inequity in Virginia law.

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<sup>30</sup> See 1901 *Acts of Assembly*, Chapter 198 (Extra Session) (segregated accommodations on Richmond Passenger and Power Co. lines); 1904 *Acts of Assembly*, Chapter 609 (Extra Session) (segregation in motor and common carriers).

1910 *Acts of Assembly*, Chapter 264 (segregated playgrounds); 1916 *Acts of Assembly*, Chapter 315 (former Methodist Episcopal church land use for burial for whites only); and 1920 *Acts of Assembly*, Chapter 295 (segregation in businesses).

<sup>31</sup> See 1910 *Acts of Assembly*, Chapter 28 (“white” or “colored” listed on a marriage license); 1918 *Acts of Assembly*, Chapter 220 (race on divorce complaint); 1918 *Acts of Assembly*, Chapter 388 (citations for the sale of alcohol recorded name and color of every person shipping); 1920 *Acts of Assembly*, Chapter 40 (assessors to note whether owner is white or colored); and 1920 *Acts of Assembly*, Chapter 109 (deed records to note if grantee is white or colored).

<sup>32</sup> See 1950 *Acts of Assembly*, Chapter 313.

<sup>33</sup> See 1954 *Acts of Assembly*, Chapter 702.

<sup>34</sup> See 1956 *Acts of the Assembly* Chapter 32 (Extra Session). See also 1960 *Acts of the Assembly* Article 11 that authorized the government to use “all available means and every power” to quell “Activities Tending to Cause Racial Conflict or Violence.” See also 1956 *Acts of the Assembly* Chapter 37 (Extra Session) that authorized the Legislative Committee to investigate groups involved in racial activities; looking specifically at tax matters.

<sup>35</sup> See 1904 *Acts of the Assembly* Chapter 605 (Extra Session) regarding the appropriation for a white military company in Smithfield.

As previously detailed, many of these *Acts* reveal the pervasive and continuing nature of the Commonwealth's furtherance of the legacy of the "Lost Cause" of the Confederacy, including appropriations and tax relief for Confederate veterans, "needy confederate women," their families, and inmates, in addition to more overt memorialization through the construction of Confederate monuments, and the establishment of two Confederate holidays.<sup>36</sup>

Some of these laws, as one Commissioner noted, are "facially benign but functionally malignant." Such examples are the varying laws that require one to be a freeholder to enjoy certain rights or exercise certain responsibility. While it is plausible to limit decisions regarding property disputes to landowners, there were likely very few African-American landowners in Virginia in 1908, or certainly far fewer than white landowners. So, to prescribe that a person be a freeholder to decide or participate in matters affecting all residents of the city or county, such as making decisions about the repair of roads<sup>37</sup> or being eligible to serve in a political position,<sup>38</sup> had a disparate racial impact and likely caused political disenfranchisement, including for poor white people. However, as discussed elsewhere, the Commission does not recommend repeal of *Acts* solely on the basis of the use of the word freeholder, as the term and concept survive in today's *Code of Virginia* in various ways that indicate a non-racial basis.

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<sup>36</sup> See 1904 *Acts of Assembly*, Chapter 605 (Extra Session) (appropriation for white military company in Smithfield); 1904 *Acts of Assembly*, Chapter 609 (Extra Session) (reduced rates for inmates of Confederate or state homes); See also 1956 *Acts of Assembly*, Chapter 16 (Extra Session) (tax exempt status for Confederate organizations); and 1958 *Acts of Assembly*, Chapter 167 (creation of Lee Jackson Day and Confederate Memorial Day).

<sup>37</sup> See 1908 *Acts of Assembly*, Chapter 62 (cost to build or change road decided by 3 out of 5 nominated "discreet freeholders"); 1908 *Acts of Assembly*, Chapter 74 (must be a freeholder to decide on the work or repair of roads in Smyth County); 1908 *Acts of Assembly*, Chapter 79 (must be a freeholder to decide on the digging of ditches); and 1908 *Acts of Assembly*, Chapter 382 (must be a freeholder to vote to change the location of roads); See also 1908 *Acts of Assembly*, Chapter 387 (to be eligible for councilman).

<sup>38</sup> See 1908 *Acts of Assembly*, Chapter 279 (to be selected, superintendent must be freeholder); 1908 *Acts of Assembly*, Chapter 382 (must be a freeholder to be on Spotsylvania commission); and 1908 *Acts of Assembly*, Chapter 387 (must be a freeholder to be eligible for councilman).

Accordingly, the Commission recommends the following chapters of the Virginia *Acts of Assembly* for repeal:

YEAR	CHAPTER	DESCRIPTION
1901	198	Require the Richmond Passenger and Power Company to provide separate accommodations for the white and colored passengers.
1901	580	Incorporation of the Negro Agricultural and Industrial Society of Virginia.
1904	605	Authorize the town of Smithfield to make an annual appropriation to the white military company.
1904	609	Separation by race on all trains, cars, coaches of railroads or railways – statewide law of railroad conduct and standards.
1908	74	Amend and re-enact chapter 184 an act to provide for maintenance on the public roads and bridges in the County of Smyth.
1910	28	Applications for marriage licenses must include race (white or colored). <sup>39</sup>
1910	264	Provide for public playgrounds in certain cities and towns, segregated by race.
1912	309	Require the inspection and supervision of the State board of charities and corrections of persons of corporations placing children in family homes (color determination).
1916	206	Road commissioners in Tazewell County must be “public-spirited, intelligent,” and qualified voters.
1916	315	Authorize the sale of Cypress church and lot in Surry County.
1918	217	Provide a new charter for the City of Clifton Forge and repeal all other acts in conflict (metes and bounds property description includes races of owners of lots).
1918	220	Require clerks of courts to make report to the state registrar of vital statistics of all divorces, granted and pending, including race.
1920	40	Real estate assessments must include race of owners.
1920	109	Clerks of court must prepare annual list of deeds recorded each year, including races of grantees.
1920	295	State Corporation Commission given power to establish segregated waiting rooms at all stations, wharves and landings.
1924	371	Act to Preserve Racial Integrity. <sup>40</sup>

<sup>39</sup> See exhibit number 11.

<sup>40</sup> See exhibit number 1.



1950	313	Disputes over racial designations on birth certificates.
1952	317	Prohibition of integration within fraternal beneficial associations (insurance providers in that time).
1954	702	Amend and reenact the Code, relating to the definition of colored persons and Indians, so as to change the definition of tribal Indians. <sup>41</sup>
1956	32 (Extra Session)	An act to promote interracial harmony and tranquility and to that end to declare it to be a public policy of the state that the right of all people to be secure from interracial tension; require registration of persons and organizations engaged in promoting or opposing legislation on behalf of a race, or advocating racial integration or segregation; require the furnishing of certain information in connection therewith; to impose penalties for violations.
1956	37 (Extra Session)	An act to create a legislative committee of the House and Senate to investigate and hold hearings relative to the activities of corporations, associations, organizations, and other groups that encourage and promote litigation relating to racial activities.
1960	Article 11	Legislation making it difficult for organizations like the National Association for the Advancement of Colored People and the American Civil Liberties Union to operate in Virginia by creating registration, filing and disclosure hurdles.
1960	501	Prescribing the method of creation, activation, and the powers and duties of Redevelopment and Urban Renewal Authorities in certain counties.

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<sup>41</sup> See exhibit number 12.

## RECOMMENDATIONS FOR FUTURE ACTIVITIES OF THE COMMISSION

In E.O. 32, Governor Northam stated that the purpose of the Commission is to review not only the *Virginia Acts of Assembly*, but also to review the *Code of Virginia* and Virginia administrative regulations for racial discrimination or inequity. He asked the Commission to include in its interim report recommendations for future work of the Commission, including “a proposed framework for the continuation of the Commission’s work”<sup>42</sup> beyond this interim point.

The Commission heartily embraces the opportunity for its work to continue. While the Commission believes in the importance of openly identifying and ridding Virginia session laws of the historic vestiges of Virginia’s segregationist past, the Commission does not believe this work alone is sufficient to address the objectives Governor Northam laid out in E.O. 32. In addition to reviewing the *Acts*, the Commission submits that it should undertake the review of the current *Code of Virginia* and Virginia Administrative Code as contemplated by E.O. 32, not only for those laws that are explicitly discriminatory, but also those that are either race-neutral descendants of explicitly racist legislative ancestors, or that, in practice, have the effect of perpetuating discrimination and racial inequities. In pursuing this course of actions the Commission recognizes that Virginia policymakers did not make their racist and segregationist legal scheme readily apparent. Subsequent legislation, judicial intervention, and even constitutional amendments have not altogether eliminated the intended effect of these laws.

Comparing the rates of home ownership, educational achievement, negative health outcomes, criminal justice involvement, and professional and financial stability for nonwhite and white Virginians makes it painfully clear that Virginia is a long way from true racial equity. While examining and potentially recommending changes to those Virginia laws and regulations that have the effect of perpetuating these disparities will not immediately create equality in both practice and policy in the Commonwealth, the Commission believes it is a critically important first step.

The Commission understands that undertaking this review will be time-consuming and will require outside support. Specifically, the Commission will need the help of academics, state agency personnel with access to critical data, attorneys and advocates, and, perhaps most importantly, community members across the Commonwealth who have the lived experience, both past and present, to help the Commission better understand the unequal and disparate racial impact of the Commonwealth’s law and policies. The Commission also recognizes that continuing to meet in Richmond might limit the

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<sup>42</sup> Virginia Executive Order Number 32 (June 4, 2019).

Commission's ability to hear from many interested community members and that, going forward, it will likely need to hold public meetings in communities across Virginia.

Consistent with Governor Northam's original charge to the Commission, "to identify the vestiges of inequity and inequality in Virginia's laws, laying the groundwork for the redefining of the Commonwealth in the 21st century as a state committed to the success and equitable treatment of every citizen," the Commission readily takes up its charge to continue its work over the upcoming year.

## ACKNOWLEDGEMENTS

*The Commission would like to acknowledge the following individuals for their expertise and support:*

Dr. Ed Ayers for further educating the Commission on the history of Civil War Reconstruction and Jim Crow law, especially in the areas of education, housing, voting, and marriage law.

Ms. Adele Johnson, Executive Director of the Black History Museum of Virginia, for hosting a meeting of the Commission and for sharing the Museum's collection with the Commission.

Mr. Mike Strom, Virginia State Archivist and Mr. Roger Christman, Senior State Governors' Records Archivist, both of the Library of Virginia, for sharing information about and providing access to records in the Government Record Services Division and the Library's archival holdings.

Student Researchers at Virginia Commonwealth University, the University of Richmond School of Law and the University of Virginia School of Law as well as Governors Fellows from Summer 2019, who conducted extensive research on the Virginia Acts of Assembly.

The Black History Museum of Virginia, Division of Legislative Services, and the Library of Virginia for sharing their collections of primary source material.

Mr. Nathan Dowdy, Special Assistant to the Secretary of Finance for his administrative assistance.

Hon. Jay W. DeBoer, Special Assistant to the Governor, Ms. Jessica R. Killeen, Deputy Counsel to the Governor, and Ms. Grace T. Kelly, Policy Assistant and Confidential Assistant to Counsel for providing staff support to the Commission.

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.

## **EXHIBIT 1**







1. Every employee of the State government or of any department thereof, who is required to be on duty seven days in each calendar week, shall on and after the passage of this act be relieved from duty, without any reduction in pay, and without any requirements that the time so allowed shall subsequently be made up, at least two Sundays in each calendar month. The heads of the various departments are hereby authorized to take such steps as may be necessary to put this act into effect.

CHAP. 371.—An ACT to preserve racial integrity.

[S B 219]

Approved March 20, 1924.

1. Be it enacted by the general assembly of Virginia, That the State registrar of vital statistics may, as soon as practicable after the taking effect of this act, prepare a form whereon the racial composition of any individual, as Caucasian, Negro, Mongolian, American Indian, Asiatic Indian, Malay, or any mixture thereof, or any other non-Caucasic strains, and if there be any mixture, then, the racial composition of the parents and other ancestors, in so far as ascertainable, so as to show in what generation such mixture occurred, may be certified by such individual, which form shall be known as a registration certificate. The State registrar may supply to each local registrar a sufficient number of such forms for the purpose of this act; each local registrar may, personally or by deputy, as soon as possible after receiving said forms, have made thereon in duplicate a certificate of the racial composition, as aforesaid, of each person resident in his district, who so desires, born before June 14, 1912, which certificate shall be made over the signature of said person, or in the case of children under fourteen years of age, over the signature of a parent, guardian, or other person standing in loco parentis. One of said certificates for each person thus registering in every district shall be forwarded to the State registrar for his files; the other shall be kept on file by the local registrar.

Every local registrar may, as soon as practicable, have such registration certificate made by or for each person in his district who so desires, born before June 14, 1912, for whom he has not on file a registration certificate, or a birth certificate.

2. It shall be a felony for any person wilfully or knowingly to make a registration certificate false as to color or race. The wilful making of a false registration or birth certificate shall be punished by confinement in the penitentiary for one year.

3. For each registration certificate properly made and returned to the State registrar, the local registrar returning the same shall be entitled to a fee of twenty-five cents, to be paid by the registrant. Application for registration and for transcript may be made direct to the State registrar, who may retain the fee for expenses of his office.

4. No marriage license shall be granted until the clerk or deputy clerk has reasonable assurance that the statements as to color of both man and woman are correct.

If there is reasonable cause to disbelieve that applicants are of pure white race, when that fact is stated, the clerk or deputy clerk shall with-

hold the granting of the license until satisfactory proof is produced that both applicants are "white persons" as provided for in this act.

The clerk or deputy clerk shall use the same care to assure himself that both applicants are colored, when that fact is claimed.

5. It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this act, the term "white person" shall apply only to the person who has no trace whatsoever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons. All laws heretofore passed and now in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this act.

6. For carrying out the purposes of this act and to provide the necessary clerical assistance, postage and other expenses of the State registrar of vital statistics, twenty per cent of the fees received by local registrars under this act shall be paid to the State bureau of vital statistics, which may be expended by the said bureau for the purposes of this act.

7. All acts or parts of acts inconsistent with this act are, to the extent of such inconsistency, hereby repealed.

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CHAP. 372.—AN ACT to amend and re-enact section 46 of the Code of Virginia, which is in chapter 7 of said Code relating to church property, benevolent associations and objects. [S B 322]

Approved March 20, 1924.

1. Be it enacted by the general assembly of Virginia, That section forty-six of the Code of Virginia, be amended and re-enacted so as to read as follows:

Section 46. Proceeding by trustees for similar purposes.—The trustees of such congregation, or church or religious denomination, or society or branch or division thereof, in whom is vested the legal title to such land held for any of the purposes mentioned in section thirty-eight, may file their petition in the circuit court of the county or the circuit or corporation court of the city wherein the land, or the greater part thereof held by them as trustees, lies, or before the judge of said court in vacation asking leave to sell, encumber, or exchange the said land, or a part thereof; and upon evidence being produced before the court, or the judge thereof in vacation, that it is the wish of said congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof having jurisdiction in the premises, to sell, exchange, or encumber the said property, the court, or the judge thereof in vacation, shall make such order as may be proper, providing for the sale of such land, or a part, or that the same may be exchanged or encumbered, and in case of sale, for the proper investment of the proceeds. When any such religious congregation has become extinct or has ceased to occupy said property as a place of worship, so that it may be regarded as abandoned property, the petition may be prescribed either by the surviving trustee or trustees,

## **EXHIBIT 2**



# VIRGINIA

# HEALTH BULLETIN

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Vol. XVI.

MARCH, 1924.

Extra No. 1.

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## Instructions to Local Registrars and Other Agents In Administration of the Law

### TO PRESERVE RACIAL INTEGRITY

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This law permits applicants either to register directly with the Bureau of Vital Statistics or with a local registrar or other authorized agent of the Bureau.

The local registrar may collect a fee of twenty-five cents for each person registering, of which he or she retains twenty cents and sends five cents with the application to the Bureau of Vital Statistics. Do not send stamps.

It is preferable that local registrars confine their efforts at first to their own territory, but if neighboring registrars do not push this registration, permission is given to other registrars after three months after the law goes into effect, to solicit and accept this form of registration outside of their own bounds. Special registrars or agents of the Bureau may be appointed for this special work if needed.

Great care must be used in seeing that the card is carefully written, and names, dates and addresses be given in full, using writing fluid or fountain pen ink. Ordinary school inks will fade.

The local registrar must sign as witness to the applicant's signature, thus indicating that he has used reasonable care to assure himself that the color and the date of birth are correct.

Though not required, the registration is of greater value if signed also by the doctor who was present at the birth, especially if the card is expected to be submitted as proof of age. Married women should give both their full maiden name and name of husband.

As color is the most important feature of this form of registration, the local registrar must be sure that there is no trace of colored blood in anyone offering to register as a white person.

The penalty for wilfully making a false claim as to color is one year in the penitentiary.

Equal care must henceforth be used also in stating the color of the parents of children registered at birth under the 1912 law.

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Entered as second class matter July 28, 1908, at the Postoffice at Richmond, Va., under the Act of July 16, 1894.





COMMONWEALTH OF VIRGINIA  
BUREAU OF VITAL STATISTICS  
STATE BOARD OF HEALTH  
RICHMOND

ENNION G. WILLIAMS, M. D.,  
COMMISSIONER  
W. A. PLECKER, M. D.,  
REGISTRAR OF VITAL STATISTICS

June 10, 1924.

To the Clerks  
of Virginia.

Gentlemen:

The 1924 legislature passed the Racial Integrity Act, Page 534 Acts of 1924, effective June 16th.

The essential feature of this law is the definition of a white person as one "who has no trace whatsoever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons."

Upon the Clerks is placed the responsibility of enforcing this law when granting marriage licenses, to be sure that no license is granted for the marriage of a white person and one with the slightest trace of colored blood other than that of an American Indian.

Physicians and others who report births are likewise responsible for learning and recording the correct color of parents.

The new marriage license forms provide a space in left upper corner for attaching the seal required by a recent Act of 1924, Page 398, effective June 16th. To avoid waste of old forms these may be used till the supply is exhausted, by attaching the seal to the back or elsewhere.

We desire to make the following requests overlooked by a few, which will greatly aid us in our work:

1. In reporting marriages please give date of minister's return, column 4.
2. Please give full mailing addresses of husband and wife, including street address in cities, even when in other states.
3. Please use care to have wife's maiden surname when given, and that of her father the same.
4. Please conform with Section 5074 of the Code when marriage licenses have not been returned, and note the requirement of Section 5096 as to reporting marriages ( and divorces) to the Bureau of Vital Statistics on or before March 1st. Inform our Bureau of all marriage licenses returned after the report has gone off, that our records may be completed.

Yours very truly,

W. A. Plecker, M. D.,  
STATE REGISTRAR.

WAP.



# EUGENICS

in relation to

## The New Family

and the law on

## Racial Integrity

Including a paper read before the  
American Public Health Association

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*Second Edition*

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Issued by the

BUREAU OF VITAL STATISTICS  
STATE BOARD OF HEALTH  
RICHMOND, VA.

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1924





COMMONWEALTH OF VIRGINIA  
BUREAU OF VITAL STATISTICS  
STATE BOARD OF HEALTH

ENNION G. WILLIAMS, M. D.,  
COMMISSIONER  
W. A. PLECKER, M. D.,  
REGISTRAR OF VITAL STATISTICS

RICHMOND

May 9, 1925.

Hon. A. T. Shields,  
Rockbridge County Clerk's Office,  
Lexington, Virginia.

Dear Sir:

In reply to your letter of May 4th, which came during my absence from the office, I beg to advise that the matter in reference to an appeal in the Atha Sorrells case was left to the Attorney General and the lawyer, Mr. Shewmake, employed by the Anglo Saxon Clubs. After going over carefully the evidence, in view of the fact that nothing new could be introduced, they decided that it was unwise to appeal the case as the only evidence upon which we absolutely relied, that of our records was set aside by Judge Holt, and we would not care to take the risk of having the Supreme Court render a similar decision. Our hope is to drift along until the next legislature, and have them pass a bill preventing the marriage of the Indians with the whites. In my judgement there are no native Indians in Virginia unmixed with negro blood.

As to the Robinson, Hartless, and Tyree people, I think if you will get their pedigree, and trace it up in their old birth records, you will be pretty apt to find that part of them, if not all of them, will be recorded as colored. In more recent years, however, especially since the decision in 1876, a considerable proportion of them, just as in the cases you mentioned, have been married as white. I do not know how you can avoid it, as we would not care to have another case tested in Court. It would really be better if they would accept it, to enter them as Indians, and we can have the whole Indian outfit handled at one time by the legislature. They seem to be satisfied to be called Indian.

I am telling you this, however, as a matter of confidence, as we would not care to arouse opposition in advance. It looks now very much as if a considerable portion of the Rockbridge tribe has gotten away from us, and that we will find it a hard matter to properly classify them in the future. Judge Holt's unfortunate decision has greatly emboldened them. In Amherst County, however, we are still able to hold them in place.

I would suggest that you confer with our Mr. V. W. Davis, of Fairfield, who seems familiar with the facts. He wrote us a letter which might be considered confidential, and I would not care to quote from it, but you can talk to him yourself.

Very truly yours,

STATE REGISTRAR.

WAP/P



SURNAMES, BY COUNTIES AND CITIES, OF MIXED NEGROID VIRGINIA  
FAMILIES STRIVING TO PASS AS "INDIAN" OR WHITE.

- Albemarle: Moon, Powell, Kidd, Pumphrey.
- Amherst: Adcock (Adcox), Beverly (this family is now trying to evade the situation by adopting the name of Burch or Birch, which was the name of the white mother of the present adult generation), Branham, Duff, Floyd, Hamilton, Hartless, Hicks, Johns, Lawless, Nuckles (Knuckles), Painter, Ramsey, Redcross, Roberts, Southards (Suthards, Southerds, Southers), Sorrells, Terry, Tyree, Willis, Clark, Cash, Wood.
- (Migrants to Alleghany and Campbell)
- \* Bedford: McVey, Maxey, Branham, Burley. (See Amherst County)
- \* Buena Vista:
- \* Rockbridge: Cash, Clark, Coleman, Duff, Floyd, Hartless, Hicks, Mason, Mayse (Mays), Painters, Pultz, Ramsey, Southerds (Southers, Southards, Suthards), Sorrells, Terry, Tyree, Wood, Johns.
- (Migrants to Augusta)
- Charles City: Collins, Dennis, Bradby, Howell, Langston, Stewart, Wynn, Adkins.
- King William: Collins, Dennis, Bradby, Howell, Langston, Stewart, Wynn, Custalow (Custaloe), Dungee, Holmes, Miles, Page, Allmond, Adams, Hawkes, Spurlock, Doggett.
- New Kent: Collins, Bradby, Stewart, Wynn, Adkins, Langston.
- Henrico and Richmond City: See Charles City, New Kent, and King William.
- Caroline: Byrd, Fortune, Nelson. (See Essex)
- Essex and King and Queen: Nelson, Fortune, Byrd, Cooper, Tate, Hammond, Brooks, Boughton, Prince, Mitchell, Robinson.
- Elizabeth City & Newport News: Stewart (descendants of Charles City families).
- Halifax: Epps (Eppes), Stewart (Stuart), Coleman, Johnson, Martin, Talley, Sheppard (Shepard), Young.
- Norfolk County & Portsmouth: Sawyer, Bass, Weaver, Locklear (Locklair), King, Bright, Porter, Ingram.
- Westmoreland: Sorrells, Worlds (or Worrell), Atwells, Gutridge, Oliff.
- Greene: Shifflett, Shiflet.
- Prince William: Tyson, Segar. (See Fauquier)
- Fauquier: Hoffman (Huffman), Riley, Colvin, Phillips. (See Prince William)
- Lancaster: Dorsey (Dawson).
- Washington: Beverly, Barlow, Thomas, Hughes, Lethcoe, Worley.
- Roanoke County: Beverly. (See Washington)
- Lee and Smyth: Collins, Gibson (Gipson), Moore, Goins, Ramsey, Delph, Bunch, Freeman, Wise, Barlow, Bolden (Bolin), Mullins, Hawkins. - Chiefly Tennessee "Melungeons."
- Scott: Dingus. (See Lee County)
- Russell: Keith, Castell, Stillwell, Meade, Proffitt. (See Lee & Tazewell)
- Tazewell: Hamed, Duncan. (See Russell)
- Wise: See Lee, Smyth, Scott, and Russell Counties.
- \* Arthurs, Burley, Cooper and Lawhorn.

## **EXHIBIT 3**



Permanent Roll ←

Roll of \* White Voters

Registered at Waterlick Precinct

Fork Magisterial District

Warren County, Virginia



Roll of Colored Voters

Registered at South Precinct

Town of Front Royal Magisterial District

Warren County, Virginia

Since January 1, 1904.

*Made up from old Books May 1850, Landon & Jackson, Register*

\*White or Colored



To be used for the Transfer of a voter registered since January 1, 1904, under the general law. Voters registered since January 1, 1904, must be transferred to list of voters registered since that date.

**CERTIFICATE OF REGISTRATION SINCE JANUARY 1, 1904**

Virginia: County of Norfolk  
The undersigned Registrar for Bentonsville Precinct,  
in South River Magisterial District, in the said County  
hereby certifies that the person herein named is duly registered on the list of voters registered since Jan. 1, 1904, in said pre-  
cinct, in said Magisterial District, as follows: viz: Date of Registration October 1, 1919,  
Color Colored No. 2 Name Butler James S.  
Date of Birth Dec. 23/1898 Age 20 years, Occupation Laborer  
Place of Residence Simeton Length of Residence in State 20 years,  
County 20 Precinct 20; if naturalized, Date of Papers  
Issued by \_\_\_\_\_ Court of \_\_\_\_\_, and is  
registered as\* not exempt from payment of poll tax as a prerequisite to the right to vote. This certificate is given to  
enable the person named to change his place of voting to Front Royal Precinct, in  
Front Royal Ward, of the City of Norfolk  
District, of the County of \_\_\_\_\_  
and that his name ~~has~~ been erased from the registration books of the precinct first above named.  
Date this March 31, 1939  
C. B. Pindell  
Registrar.

\*Note.—IF NOT exempt, insert the word "not" in this blank.

## **EXHIBIT 4**

shall conform to section twelve hundred and forty-four of the Code of Virginia of eighteen hundred and eighty-seven.

3. If a majority of the votes cast at said election shall be against the dispensary law, this act shall then be and become effective, but so far as providing for said election this act shall be in force from its passage.

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CHAP. 345.—An ACT to amend and re-enact sections 22, 23, and 24, and to repeal sections 27, 28, 29, 30, and 31 of the Code of Virginia.

Approved December 5, 1903.

1. Be it enacted by the general assembly of Virginia, That sections twenty-two, twenty-three, and twenty-four of the Code of Virginia be amended and re-enacted so as to read as follows:

§ 22. Assessors to report their proceedings.—They shall make a report of their proceedings, under their hands, and file the same within five days thereafter in the office of the clerk of the circuit court of the county wherein the land is situated.

§ 23. How appeals taken.—Within ten days after the same is filed, either party may file with the clerk a written notice stating that he appeals from the assessment to the circuit court.

§ 24. Order of court on report.—If no such notice be filed, the circuit court shall, at the first term thereafter, confirm the report, make a reasonable allowance to the freeholders for their services, and order payment to be made of the amount so assessed, of such allowance, of the officers' fees, and of what the witnesses may be entitled to for their attendance.

2. Be it further enacted, That sections twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one of the Code of Virginia be, and the same are hereby, repealed.

3. This act shall be in force from and after February first, nineteen hundred and four.

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CHAP. 346.—An ACT to repeal sections 63 and 66, and to amend and re-enact sections 62, 64, 65, 67, 68, 69, 72, 73, 74, 75, 78, 79, 80, and 85, as amended by act approved May 26, 1903, of chapter 8 of the Code of Virginia.

Approved December 8, 1903.

1. Be it enacted by the general assembly of Virginia, That sections sixty-three and sixty-six of chapter eight of the Code of Virginia, be, and the same are hereby, repealed; and that sections sixty-two, sixty-four, sixty-five, sixty-seven, sixty-eight, sixty-nine, seventy-two, seventy-three, seventy-four, seventy-five, seventy-eight, seventy-nine, eighty, and eighty-five, of chapter eight, as amended by act approved May twenty-sixth, nineteen hundred and three, of the Code of Virginia, be amended and re-enacted so as to read as follows:

§ 62. Qualification of voters; disqualifications.—Every male citizen of the United States twenty-one years old, who has been a resident of the State two years, of the county, city, or town one year, and of the precinct in which he offers to vote thirty days next preceding the election, and who has been duly registered and has paid his State poll-tax as required by law, and is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote for members of the general assembly and all officers elected by the people, but the removal from one precinct to another in the same county, city, or town shall not deprive any person of his right to vote in the precinct from which he has moved until the expiration of thirty days from such removal: provided, that the following persons shall be excluded from registering and voting: Idiots, insane persons, and paupers, persons who prior to the adoption of the Constitution were disqualified from voting by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of the Constitution, either within or without this State, of treason or of any felony, bribery, petit larceny, obtaining money or other property under false pretences, embezzlement, forgery, or perjury; persons who while citizens of this State, after the adoption of the Constitution, have fought a duel with a deadly weapon or sent or accepted a challenge to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel: provided, also, that no officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to the right of suffrage in the State, or in any county, city, or town thereof, by reason of his being stationed therein, nor shall any inmate of any charitable institution or a student in any institution of learning be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution.

§ 64. There shall be in each county and city an electoral board, composed of three members, who shall be appointed by the circuit court of the county or the corporation court of the city, or the judge of the court in vacation. The first appointment of said board shall be made during the month of February, nineteen hundred and four, when one member of the board shall be appointed for a term of one year, one for a term of two years, and one for a term of three years. During the month of February in each year thereafter, as the terms of the members of the board shall respectively expire, their successors shall be appointed for the full term of three years. Any vacancy occurring in any board shall be filled by the same authority for the unexpired term. The term of the electoral boards appointed under this act shall commence on the first of March next succeeding their appointment. The members of said board shall qualify before the first of March next succeeding their appointment by taking and subscribing the oaths required to be taken by county and city officers.

Each electoral board shall appoint the judges, clerks, and registrars of election for its city or county, including the towns therein, and in appointing judges of election, representation, as far as possible, shall be given to each of the two political parties which, at the general election

next preceding their appointment, cast the highest and next highest number of votes.

No person, nor the deputy of any person, holding any office or post of profit or emolument under the United States government, or who is in the employment of such government, or holding any elective office of profit or trust in the State, or in any county, city, or town thereof, shall be appointed a member of the electoral board or a registrar or judge of election.

§ 65. Chairman and secretary.—The said board shall elect one of their number chairman and another secretary.

§ 67. Appointment of registrars.—It shall be the duty of the electoral board of each city and county, prior to the first day of April, nineteen hundred and four, and every alternate year thereafter, to appoint a registrar for each election district of their respective counties and cities, who shall be a discreet citizen and resident of the election district in and for which he is appointed, and who shall hold office for the term of two years from the first day of May following his appointment and until his successor is duly appointed and qualified. In the city of Richmond it shall be lawful for each registrar to appoint a clerk and to administer to him the same oaths as those taken by the registrar. The said electoral boards shall, from time to time, fill any vacancy that may occur in the office of registrar.

§ 68. Meetings of boards; quorum; record of proceedings.—The electoral board of each city and county shall convene in regular session at such time in the month of March of each year as the board may prescribe, and at any other time upon the call of any member of the board, but at any special meeting the board shall have the same powers as at a regular meeting. At any session two members shall constitute a quorum. The secretary of each electoral board shall keep, in a book to be provided for that purpose, an accurate account of all the proceedings of the board, including all appointments and removals of judges, clerks, and registrars, which shall be open to the inspection of any one who desires to examine the same at any time.

§ 69. Board to fill vacancy in office of registrar; may remove registrars, judges, and clerks.—The said electoral board shall have the power, and it shall be their duty, after the first of March, nineteen hundred and four, to declare vacant, and to proceed to fill the office of any registrar in their respective cities, counties, and towns who fail to qualify and deliver to the clerk of the board his official oath in the usual form within thirty days after he has been notified of his appointment, which notification shall be promptly given by the clerk. The board shall also have power, after the first of March, nineteen hundred and four, to remove from office any and every judge of election, registrar, or clerk, upon notice, who fails to discharge the duties of his office according to law.

§ 72. When judges of circuit court to fill vacancies in board.—If any of the members of the electoral board for any county or city shall fail to qualify within the time prescribed by this chapter, it shall be the duty of the judge of the circuit court of each county, or corporation court of the city, to fill vacancies either in term or vacation.

§ 73. Who to be registered.—Each registrar shall, after the first day



of January, nineteen hundred and four, register every male citizen of the United States, of his election district, who shall apply to be registered at the time and in the manner required by law, who shall be twenty-one years of age at the next election, who has been a resident of the State two years, of the county, city, or town one year, and of the precinct in which he offers to register thirty days next preceding the election, who, at least six months prior to the election, has paid to the proper officer all State poll-taxes assessed or assessable against him under this or the former Constitution for three years next preceding that in which he offers to register, or if he come of age at such time that no poll-tax shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll-tax assessable against him, and unless physically unable to do so, shall make application to the registrar in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registrar, stating therein his name, age, date, and place of birth, residence, and occupation at the time and for the two years next preceding, and whether he has previously voted; and if so, the State, county, and precinct in which he voted last; and shall answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the registrar, which questions and answers thereto shall be reduced to writing, certified by the said registrar, and preserved as a part of the official records: provided, that the following persons shall be excluded from registering idiots, insane persons, and paupers and persons who prior to the adoption of the Constitution were disqualified from voting by conviction of crime, either within or without the State, and whose disabilities shall not have been removed; persons convicted after the adoption of the Constitution within or without the State, of treason, or any felony, bribery, petit larceny, obtaining money or property under false pretences, embezzlement, forgery, or perjury; persons who while citizens of this State, after the adoption of the Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such duel within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel, unless the disabilities incurred thereby have been removed. If any person claiming to be a naturalized citizen of the United States shall not be able to establish the date of his papers, or the court in which they were issued, by reason of his having lost the same, or for other cause, then his oath or affirmation that he has been duly naturalized shall be accepted and shall entitle him to register. It shall be the duty of the registrar to furnish a suitable and convenient place, with necessary table, chair, paper, and ink or pencil to be used by persons desiring to register in writing their applications for registration, the cost of the same to be paid out of the county or city treasury. It shall also be the duty of the registrar to preserve the written application of all persons who are registered, or who are denied registration by him, for at least one year after such application is presented, said written application to be filed and kept with the registration books and preserved as a part of the official records. If a person is refused registration, he shall be at once notified of such refusal.

§ 74. Secretary of Commonwealth to prepare and distribute books for

registration.—The secretary of the Commonwealth shall cause to be prepared suitable books for the registration of voters, and forward them to the county clerks and to the clerks of the corporation or hustings courts of the cities, to be by them distributed to the registrars of their respective election districts. The books shall be so arranged as to admit of the alphabetical classification of those registered, and shall be ruled in parallel columns, in which shall be entered the number, name of voter, the fact that he is sworn, his age, occupation, the place of residence at time of registration, the length of time of his residence in the county or city, and, if in a city, stating the name of the street and number of house in which he resides, provided the same be numbered; the time of his residence in the State, and if naturalized, the date of his papers and the court by which issued, if known, and if registered as a voter, exempt from payment of poll tax under section twenty-two of the Constitution. The list of voters, white and colored, shall be kept and arranged in separate books.

§ 75. Registration oath.—Before a registrar shall register the name of any person as a voter he shall be satisfied of his qualification as hereinbefore prescribed, and every person applying for registration shall, before he is registered, take and subscribe the following oath: “I, \_\_\_\_\_, do solemnly swear (or affirm) that I am entitled to register under the Constitution and laws of this State, and that I am not disqualified from exercising the right of suffrage by the Constitution of Virginia,” which oath, so subscribed, shall be filed with the registrar and preserved with the books of registration.

§ 78. When voters registered; duties of registrars; their pay.—Each registrar shall, annually, on the third Tuesday in May, at his voting place, proceed to register the names of all qualified voters within his election district not previously registered in the said district in accordance with the provisions of this chapter, who shall apply to be registered, commencing at sunrise and closing at sunset, and shall complete such registration on the third Tuesday in May. Thirty days previous to the November elections the registrar shall sit one day for the purpose of amending and correcting the list, at which time any qualified voter applying and not previously registered may be added. He shall give notice of the time and place of all registrations for at least ten days before each sitting by posting written or printed notices thereof at ten or more public places in his election district. The registrar shall, at any time previous to the regular days of registration, register any voter entitled to vote at the next succeeding election who may apply to him to be registered; and he shall receive as compensation ten cents for the name so registered on days other than the regular days of registration, the same to be paid out of the county or city treasury. It shall be the duty of the registrar, within five days after each sitting, to have posted at three or more public places in his election district written or printed lists of the names of all persons so admitted to registration, and also have like lists posted on the day of election at the place of voting in his election district.

§ 79. Clerks to furnish registrars with names of voters who have been convicted of certain offences; their names and the names of persons who have died to be struck from books.—The county clerk, and the clerk

of each hustings or corporation court shall, at each registration, deliver to each registrar in his county or city a list of all voters who have been convicted of any of the offenses enumerated in section twenty-three of the Constitution since the last registration. It shall be the duty of the registrar to correct his list in accordance with the list thus furnished, and he shall strike from the list of voters the name of any person so convicted upon the production before him of a certificate of the clerk of a court of competent jurisdiction that such person has been so convicted since December first, eighteen hundred and seventy-six, in such court, or has been so convicted by a mayor, police justice or justice of the peace in the county or corporation wherein is held the court to which the said clerk belongs, unless said person shall produce a pardon from the governor, or a certificate from the keeper of rolls that his disabilities have been removed by the general assembly. It shall also be the duty of the registrar to strike from the list of voters the names of all persons who are proven before him to have died. If any voter whose name has been so stricken off shall appear at any election and offer to vote upon satisfactory proof that he has not changed his residence since his registration, his name shall be restored to the registration books by the judges of election and he shall be permitted to vote if qualified in other respects.

§ 80. Voter changing his residence may change his registration.—Whenever a registered voter changes his place of residence from one election district to another in the same county or city it shall be lawful for him to apply for, in person or in writing, and it shall be the duty of the registrar of his former election district, at any time up to and including the regular days of registration, to furnish a certificate that he was duly registered and that his name has, since his removal, been erased from the registration books of said election district, which shall be sufficient evidence to entitle him to be registered in the election district to which he has removed, on its appearing to the satisfaction of the registrar that he has resided prior to the next election in such district for thirty days, and the name of every such person shall be entered at any time up to and including the regular days of registration by the registrar on the registration books of the election precinct to which the voter has removed; and whenever a registered voter changes his place of residence from one county or city to another county or city it shall be lawful for him to apply to the registrar of his former election district at any time up to and including the regular days of registration, in person or in writing, to furnish a certificate that he was duly registered and that his name since his change of residence and removal has been erased from the registration books of said election district, which certificate shall be delivered to the registrar of the election district in which he resides and offers to be registered in the county or city to which he has removed, and will entitle him to be registered in said district on its appearing, to the satisfaction of said registrar, that he has resided, or will have resided prior to the next election in the county or city to which he has removed, for one year; and the name of every such person shall be entered at any time up to and including the regular days of registration by the registrar on the election books of the election district in which said person resides; and no voter who has been heretofore registered at any election

district in this State shall be entitled to be registered in any other election district unless he shall deliver to the registrar of the district in which he offers to be registered said certificate, which shall be kept on file by said registrar.

§ 85. Registrar to be a conservator of the peace.—Every registrar shall preserve order at and in the vicinity of the place of registration; and to enable him to do so, he shall be clothed with all the powers of a conservator of the peace while engaged in the duties imposed by law; may exclude from the place of registration all persons whose presence he deems unnecessary, and may appoint special constables, not exceeding three in number, in each magisterial district or ward, and may summon the bystanders or other persons in the vicinity to assist whenever, in his judgment, it shall be necessary to preserve order.

2. This act shall be in force from its passage.

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CHAP. 347.—An ACT to amend and re-enact chapter 24 of acts of assembly, session 1889-'90, entitled "an act authorizing the auditor of public accounts to issue duplicate warrants," approved January 24, 1890.

Approved December 8, 1903.

1. Be it enacted by the general assembly of Virginia, That chapter twenty-four, acts of assembly, session eighteen hundred and eighty-nine-'ninety, entitled "an act authorizing the auditor of public accounts to issue duplicate warrants," approved January twenty-four, eighteen hundred and ninety, be amended and re-enacted so as to read as follows:

Upon satisfactory proof being presented to the auditor of public accounts, or to the second auditor, that any warrant drawn by either of such auditors or his predecessors upon the treasurer of the Commonwealth has been lost or destroyed before having been paid, it shall be lawful for said auditor who issued or from whose office was issued the original warrant, to issue a duplicate therefor upon a bond being executed, with such security as shall be approved by him, payable to the Commonwealth, in the penalty of double the amount of such warrant, and conditioned to save harmless the Commonwealth from any loss occasioned by the issuing of such duplicate warrants: provided, that each duplicate warrant so issued shall show upon its face that it is a duplicate, and that no duplicate shall be issued within ninety days of the issuing of said original warrant.

2. This act shall be in force from its passage.

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CHAP. 348.—An ACT to amend and re-enact chapter 880, acts of assembly, session 1897-'98, entitled "an act to provide for the appointment of special prosecuting attorneys in proper cases," approved March 3, 1898.

Approved December 8, 1903.

1. Be it enacted by the general assembly of Virginia, That chapter eight hundred and eighty, acts of assembly, session eighteen hundred and

## **EXHIBIT 5**

persons, firm or corporation shall have first procured from the auditor of public accounts a certificate of registration, which certificate shall contain such rules and regulations concerning the sale of nursery stock as the board of crop pest commissioners may prescribe and be approved and countersigned by the State entomologist, who shall have full power, and is hereby authorized and required to cancel and withdraw any certificate upon satisfactory evidence that any of the rules and regulations governing the sale of nursery stock within this State have been violated by the holder of the same. The auditor of public accounts shall not issue any certificate of registration except upon the payment of the sum of ten dollars for each nurseryman or dealer, and one dollar additional for each agent of such nurseryman or dealer, and shall forward all certificates to the State entomologist for his approval before allowing the same to the party making application therefor, and all such certificates as may be granted shall expire and become null and void one year from date of issue thereof, and any person, persons, firm or corporation, either for himself or as agent for another, shall sell, offer for sale, deliver, or give away any plants or parts of plants commonly known as nursery stock without having in his possession a certificate of registration as herein provided for, or without exhibiting a copy of the same to each and every person to whom he shall sell, or offer to sell, deliver, or give away any such plants, or parts of plants, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty (\$20.00) dollars nor more than one hundred (\$100.00) dollars for each such offense.

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CHAP. 70.—An ACT to amend section 719 of the Code of Virginia. [H B 43]

Approved February 21, 1920.

1. Be it enacted by the general assembly of Virginia, That section seven hundred and nineteen of the Code of Virginia be amended and re-enacted so as to read as follows:

Sec. 719. Who admitted to public schools; provision for children of adjoining district; separate schools for white and colored.—The public free schools shall be free to all persons between the ages of seven and twenty years residing within the school district and persons six years of age may be admitted to primary grades and persons under six years of age to such kindergartens as may be established by local school authorities and operated as a part of the public school system, but such kindergartens shall not be entitled to participate in the State school fund, but shall be supported by the local authorities at their option. But whenever a school is so situated in one district that it is, with the approval of the division superintendent, attended by children of another district, the board of the district other than that in which the school is located shall, in the absence of agreement or when no agreement can be reached, pay for each child to the district in which the school is located the cost of education per pupil enrolled, to be determined by the division superintendent of schools, with

right of appeal by any person interested, or either of the district school boards, either with reference to the propriety of the said attendance by children of another district or the cost of education as aforesaid, within ninety days; that said appeal to be made in writing to the school trustee electoral board of the county in which the school is located; and the State board of education shall have power and it shall be its duty to make regulations whereby the children of one district may attend school in an adjoining district, out of the county or an adjoining city; provided, that white and colored persons shall not be taught in the same school, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency.

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CHAP. 71.—An ACT to amend and re-enact section 5276 of the Code of Virginia.  
[H B 54]

Approved February 21, 1920.

1. Be it enacted by the general assembly of Virginia, That section fifty-two hundred and seventy-six of the Code of Virginia be amended and re-enacted so as to read as follows:

Sec. 5276. When and how benefits of will may be renounced and the effect thereof.—When any provision for a husband or a wife is made in the consort's will, the survivor may, within one year from the time of the admission of the will to probate, renounce such provision. Such renunciation shall be made either in person before the court in which the will is recorded, or by writing recorded in such court, or the clerk's office thereof, upon such acknowledgement or proof as would authorize a writing to be admitted to record under chapter two hundred and eleven. If such renunciation be made, or if no provision for the surviving husband or wife be made in the will of the decedent, the surviving consort shall, if the decedent left surviving issue of the marriage which was dissolved by the death of the consort or surviving issue of a former marriage, have one-third of the surplus of the decedent's personal estate mentioned in section fifty-two hundred and seventy-three; or if no such issue survive, the surviving consort shall have one-half of the aforesaid surplus; otherwise, the surviving consort shall have no more of the said surplus than is given him or her by the will.

2. An emergency existing, this act shall be in force from its passage.

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CHAP. 72.—An ACT to amend section 703 of the Code of Virginia, and to repeal sections 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717 and 718 of the Code of Virginia.  
[H B 57]

Approved February 21, 1920.

1. Be it enacted by the general assembly of Virginia, That section seven hundred and three of the Code of Virginia be amended and re-enacted so as to read as follows:



## **EXHIBIT 6**

CHAPTER 59

*An Act to provide that no child shall be required to attend integrated schools.*

[H 5]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. Notwithstanding any other provision of law, no child shall be required to enroll in or attend any school wherein both white and colored children are enrolled.
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## **EXHIBIT 7**

**CHAP. 383.**—An ACT to repeal an act entitled an act to authorize and empower the board of supervisors of Warren county to erect toll gates, and to demand and collect tolls on the macadamized roads and bridges across the Shenandoah river or either branch thereof, of the county of Warren, and to provide how such tolls are to be expended, approved February 24, 1916. [S B 388]

Approved March 16, 1918.

Be it enacted by the general assembly of Virginia, That an act entitled an act to authorize and empower the board of supervisors of Warren county to erect toll gates and to demand and collect tolls on the macadamized roads and bridges across the Shenandoah river or either branch thereof, of the county of Warren, and to provide how such tolls are to be expended, approved February twenty-fourth, nineteen hundred and sixteen, be, and the same is hereby, repealed; and on and after the passage of this act it shall be unlawful for the board of supervisors of said county to collect or demand tolls on the macadamized roads or bridges in said county of Warren.

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**CHAP. 384.**—An ACT to raise revenue for the support of the government and to appropriate money for the construction of roads and projects comprised in "the State highway system," and to provide for an additional fund for the maintenance of public free schools of primary and grammar grades, from the first to the seventh, inclusive, and to provide for the prevention and eradication of tuberculosis among the people of this State, and to extend the work of the State board of health. [S B 100]

Approved March 16, 1918.

1. Be it enacted by the general assembly of Virginia, That the special taxes prescribed by this act be, and they hereby, are imposed and shall be levied upon the property hereinafter specified, and that the funds arising from such levies be applied as follows: three-eighths to the construction or reconstruction of the roads and projects comprised in the State highway system, four-eighths to the maintenance of the public free schools of the primary and grammar grades from the first to the seventh grades, inclusive; and one-eighth for the prevention and eradication of tuberculosis among the people of this State, such taxes to be levied and collected on the various classes of property in this State as follows:

2. On all of the tracts of lands and lots and improvements thereon, not exempt from taxation, including rents and rents charge, and including the real estate of public service corporations, there shall be a tax of eight cents on every hundred dollars of the assessed value thereof.

3. On all tangible personal property, as described in section six, schedule B, of an act entitled an act to raise revenue for the support of the government and public free schools, and to pay the interest on the public debt, and to provide a special tax for pensions as authorized by section one hundred and eighty-nine of the Constitution, approved April sixteenth, nineteen hundred and three, as amended, and upon all other tangible property, includ-



ing the rolling stock of corporations operating railroads by steam, and all tangible personal property of public service corporations, there shall be a tax of eight cents on every hundred dollars of the assessed value thereof.

4. Upon all bonds (except bonds of the United States and of the State of Virginia), notes and other evidences of debt, including bonds of States other than Virginia, bonds of counties, cities and towns located outside of the State of Virginia; bonds of railroad and canal companies and other corporations, bonds of individuals and all demands and claims however evidenced, whether secured by mortgage, deed of trust, judgment or otherwise, or not so secured, there shall be a tax of eight cents on every hundred dollars of the assessed value thereof; and upon the capital of persons, firms and corporations employed in a trade or business not otherwise taxed, upon the value of the principal of personal estate and credits, other than tangible property and money, under the control of a court, receiver or commissioner in pursuance of an order, judgment or decree of any court or in the hands or under the control of the executor, administrator, trustee, agent or other fiduciary, and upon the principal or personal estate and credits, other than money, deposited to the credit of any suit and not in the hands of a receiver or other fiduciary, there shall be a tax of eight cents on every hundred dollars of the assessed value thereof, and upon the shares of stock of corporations or joint stock companies, except such corporations and joint stock companies all of whose capital is taxed by this State or which pay a franchise tax in this State, there shall be a tax of eight cents on every hundred dollars of the assessed value thereof.

5. Upon the shares of stock of each bank, banking association, trust or security company there shall be a tax of eight cents upon every hundred dollars of the actual value thereof as determined by the provisions of section seventeen of an act entitled an act to raise revenue for the support of the government and public free schools, and to pay the interest on the public debt, and to provide a special tax for pensions as authorized by section one hundred and eighty-nine of the Constitution, approved April sixteenth, nineteen hundred and three, as amended.

6. The taxes provided for by this act shall be in addition to any other taxes upon the property upon which these taxes are imposed which are now or may hereafter be provided for by any statutes or acts of the general assembly.

7. The taxes provided for by this act shall be collected in the same manner as other taxes upon the said property for State purposes are collected, and shall be paid into the State treasury. Three-eighths thereof shall compose and constitute a special fund to be known as the State highway system construction fund, and shall be applied to the construction of the roads and projects comprising the State highway system, as created and established by an act of the general assembly of Virginia approved January thirty-first, nineteen hundred and eighteen, and to no other purpose. Warrants for the expenditures of the State highway construction fund

shall be issued by the auditor of public accounts upon certificates of the State highway commissioner that the parties in whose favor such warrants are proposed to be drawn are entitled thereto and shall be paid by the State treasurer out of the moneys constituting the said State highway system construction fund. Four-eighths thereof shall compose and constitute a special fund to be applied to the maintenace of the public free schools of the primary and grammar grades, from the first to the seventh grades, inclusive, to secure longer school terms and increased compensation for teachers of such schools, for the equal benefit of all the people of the State, to be apportioned on the basis of school population, the number of children between the ages of seven and twenty years in each school district to be the basis of such apportionment; one-eighth thereof shall compose and constitute a special fund, to be known as the tuberculosis fund, which the auditor of public accounts shall segregate each year in each city and county, respectively, and keep the same separate and subject to the orders of the said State board of health, which may draw out such funds for the purposes of this act upon such forms as the said board and the said auditor may prescribe.

8. The said board, so far as available funds will allow, shall make no charge to patients for treatment, accommodation or board, and shall supply suitable clothing to patients, who because of poverty lack the same.

The funds raised hereunder for tuberculosis from each county or city, as the case may be, shall be primarily charged with the care of the patients from such county or city respectively, but any excess of funds from any county or city may be used by the board for patients from other counties or cities, preferring first patients from nearby counties or cities.

When and after the said State board has exhausted the funds available for patients from any county or city, the board of supervisors of such county or the council of such city may supplement the funds available to said State board of health for the patients from such county or city.

9. In the event that any county or city may have established and be maintaining its own public sanatorium for the treatment of its tuberculosis citizens and shall desire to have the benefit of the provisions of this act in connection therewith, such county or city may by a proper resolution of its board of supervisors or council, as the case may be, turn over such sanatorium to the State board of health, to be by it conducted and supported as a State sanatorium under the provisions of this act; provided, the said State board shall deem such sanatorium suitable for such purposes; and provided, further, the said State board shall approve as reasonable the terms and conditions upon which such sanatorium is offered for its use.

10. The State board of health is hereby authorized, empowered and directed, supplemental to the duties and powers now given it by law, and as soon as the funds raised by this act are available, to provide enlarged and additional State sanatoria, to be located

in this State, as the said board may determine, for the care, treatment and instruction of persons, being citizens of this State, having tuberculosis. The board shall provide separate sanatoria for white people and colored people.

11. The board shall prescribe and promulgate reasonable and proper rules and regulations for the reception of patients into such sanatoria under the provisions of this act, but shall prefer indigent patients from the respective counties and cities from which the necessary funds therefor are raised hereunder.

The said State board of health may also provide accommodations and treatment, and make reasonable charges therefor at not more than cost, for tuberculosis patients desiring to avail themselves of such facilities.

12. The provisions of this act shall apply to the assessment and collection of the taxes herein provided for for the year nineteen hundred and eighteen and thereafter until otherwise provided.

13. Any surplus to the credit of any fund created by this act which may exist at the end of any fiscal year shall not lapse or revert to the general treasury of the State, but may be used during the next ensuing year for the purpose for which said fund was collected and appropriated, provided that any such surplus remaining to the credit of the tuberculosis fund may be used by the State board of health, in its discretion, either for tuberculosis work or for any other health work that said board may properly do in discharge of the duties imposed upon it by law.

14. The sum of ten thousand dollars from the tuberculosis fund shall be set aside for the use of the State board of health in extending general work and educational propaganda, including the employment of additional doctors and nurses, and field maintenance and other necessary activities in promoting this feature of tuberculosis prevention and control.

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CHAP. 385.—AN ACT to provide for the payment out of the State treasury of the attorneys for the Commonwealth of the counties and cities of the State, certain fees in felony and misdemeanor cases, and to fix the maximum amount that the attorneys for the Commonwealth of the respective counties and cities of the State shall be paid in fees out of the State treasury, and to fix for them and to provide for the taxing and payment of certain fees in scire facias and other proceedings upon forfeited recognizances, and to amend and re-enact an act entitled an act to amend and re-enact section 3528 of the Code of Virginia, as heretofore amended, approved March 22, 1916, and to repeal all other acts and parts of acts in conflict with this act. [S B 248]

Approved March 16, 1918.

1. Be it enacted by the general assembly of Virginia, That an act of the general assembly of Virginia, entitled an act to amend and re-enact section thirty-five hundred and twenty-eight of the Code of Virginia, as heretofore amended, which act was approved March twenty-second, nineteen hundred and sixteen, be amended and re-enacted so as to read as follows:

Sec. 3528. The attorney for the Commonwealth shall be paid





## **EXHIBIT 8**

than fifteen feet of water at low tide, unless the same be more than two miles from shore, nor shall any natural oyster rock, bed, or shoal, or any bottom within one-half mile of any such rock, bed, or shoal be assigned, nor shall any bottom occupied previous to such application by a pound net or other fishing device, and not abandoned for such purpose, be assigned.

5. The compensation to inspectors and surveyors for their services in making and surveying such assignments shall be as fixed by the board of fisheries. Where there is uncertainty as to the district or county in which the bottom applied for lies, or if it lie in more than one county or district, the assignment shall be made and the rent collected by such inspector or inspectors as may be designated by the board for that purpose, and likewise as to the surveyor who makes the survey; and in such case the plat of survey shall be recorded in the clerk's office of such county or counties as may be designated by the board.

6. The occupant of any bottom assigned under the provisions of this act shall have the right to plant oysters or shells thereon, and to catch and take up the same therefrom at any time and in any manner he may deem best: provided, no dredging shall be done except during the day-time.

7. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, so far as the same would affect the operation of this act.

8. This act shall be in force from its passage.

---

CHAP. 463.—An ACT to permit the Cumberland Valley Railroad Company to use curtains for partitions to separate white and colored passengers on the nine miles of railroad owned and operated by said company in the State of Virginia.

Approved April 2, 1902.

1. Be it enacted by the general assembly of Virginia, That on the nine miles of railroad owned and operated by the Cumberland Valley Railroad Company, in Virginia, said company may provide separate cars for white and colored passengers by erecting curtains in its passenger cars instead of wooden partitions.

2. This act shall be in force from its passage.

---

CHAP. 464.—An ACT to incorporate the town of Nicholasville, in the county of Scott.

Approved April 2, 1902.

1. Be it enacted by the general assembly of Virginia, That the town of Nicholasville, in the county of Scott, be, and the same is hereby, made a town corporate by the name of Nicholasville, and by that name may sue

## **EXHIBIT 9**

drinks in said town, also the selling or giving of any intoxicating liquor to any minor; also the selling or giving of cigarettes to any minor under sixteen years of age, without the consent in writing of his or her parent or guardian, and for any violation of any such ordinance there may be imposed by said council such fines and penalties as the said council may prescribe, the fine not to exceed one hundred dollars and imprisonment not to exceed six months.

24. That the said town shall have the right to establish, or cause to be established, gas and electric works for the use of the said town.

25. That all registrations of voters and elections held in the said town shall be as provided by the constitution and laws of this State.

26. That all acts and parts of acts concerning the town of Blacksburg, in the county of Montgomery, or the lands and lots therein, which are in conflict with or contrary to the provisions of this act, shall be, and the same are hereby, repealed.

---

CHAP. 157.—An ACT to provide for designation by cities and towns of segregation districts for residence of white and colored persons; for the adoption of this act by such cities and towns, and for penalties for the violation of its terms.

Approved March 12, 1912.

Whereas, the preservation of the public morals, public health and public order, in the cities and towns of this commonwealth is endangered by the residence of white and colored people in close proximity to one another; therefore,

1. Be it enacted by the general assembly of Virginia, That in the cities and towns of this commonwealth where this act shall be adopted in accordance with the provisions of section eleven hereof, the entire area within the respective corporate limits thereof shall, by ordinance, adopted by the council of each such city or town, be divided into districts, the boundaries whereof shall be plainly designated in such ordinance and which shall be known as "segregation districts."

2. That no such district shall comprise less than the entire property fronting on any street or alley, and lying between any two adjacent streets or alleys, or between any street and an alley next adjacent thereto.

3. That the council of each such city or town shall provide for, and have prepared, within six months after such council shall have adopted the provisions of this act, a map showing the boundaries of all such segregation districts, and showing the number of white persons and colored persons residing within such segregation district, on a date to be designated in such ordinance of adoption, but which shall be within sixty days of the



passage of such ordinance; and such map shall designate as a white district each district wherein there are, on the date so designated, more residents of the white race than there are residents of the colored race, and shall designate as a colored district each district so defined, in which there are on the said date as many or more residents of the colored race, as there are residents of the white race.

4. That after twelve months from the passage of the ordinances adopting the provisions of this act, it shall be unlawful for any colored person, not then residing in a district so defined and designated as a white district, or who is not a member of a family then therein residing, to move into and occupy as a residence any building or portion thereof in such white district, and it shall be unlawful, after the expiration of said period of twelve months from the passage of the ordinance adopting the provisions of this act, for any white person not then residing in a district so defined and designated as a colored district, or who is not a member of a family then therein residing, to move into and occupy as a residence any building, or portion thereof, in such colored district.

5. That any person occupying any room as a sleeping place in any district, whether as a dependent, boarder or lodger, shall be classed as a resident of such district, unless it appear that such occupation was merely transitory and that such person had another fixed place of abode.

6. That the said map shall be certified by the clerk of the council of such city or town, and shall be at all times kept open to inspection by the public in the office of such clerk, and that any person considering that such map has not been prepared in accordance with the provisions of this act, and who is in any wise prejudiced thereby, shall, within sixty days from the completion thereof, or within eight months from the adoption of the provisions of this act by such city or town, notify the clerk of said council in writing of the particulars of the error claimed to have occurred in the preparation of such map, and such person may thereafter within thirty days after giving such notice move the corporation court of such city, or if there be no such court, the circuit court of the county wherein such city or town is situate, or the judge of such court in vacation, to correct the error complained of, and the said court or the judge thereof in vacation, shall investigate the facts in the premises, and order such corrections of such map as may be necessary to make the same conform to the provisions of this act.

7. That the map so prepared and certified and corrected shall be prima facie evidence of the boundaries and racial designation of such districts.

8. That any person who, after the expiration of twelve months from the passage of the ordinance of adoption, shall reside in any such district, contrary to the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall

be fined for the first week of such prohibited residence not less than five nor more than fifty dollars, and for each succeeding day of such residence the sum of two dollars.

9. That nothing herein contained shall preclude persons of either race employed as servants by persons of the other race from residing upon the premises of which such employer is the owner or occupier.

10. That nothing herein contained shall be construed or operate to prevent any person who, on the date which this act shall be adopted in any city or town, shall have acquired a legal right to occupy as a resident any building, or portion thereof in any such district, in such city or town, whether by devise, purchase, lease, or other contract, and who shall not, on the date which this act shall be so adopted have actually moved into such premises from thereafter moving into and occupying the same.

11. This act shall apply only to the cities or towns which by a recorded vote of a majority of the members elected to the council thereof, or if there be two branches of such council by a recorded vote of a majority of the members elected to each branch thereof, shall adopt the provisions of this act, and in all respects comply with the requirements hereof.

---

CHAP. 158.—An ACT to provide for the examination and testing of dairy cattle for controlling tuberculosis, and to appropriate money for expenses thereof.

Approved March 12, 1912.

1. Be it enacted by the general assembly of Virginia, That under the direction of the live stock sanitary board and the State dairy and food commissioner, the State veterinarian shall from time to time apply the tuberculin test to breeding or dairy cows, as may be directed by the said State live stock sanitary board, and the State dairy and food commissioner, for the purpose of controlling in the herds of the State the disease known as tuberculosis, and under such rules and regulations as may be prescribed from time to time by said board and commissioner; provided, that no tuberculin test or tests shall be applied to any animal or animals in this State unless requested by the owner or owners thereof, and the further agreement by the owner or owners of such animals as may be submitted for tests to meet such requirements as may be made by the said live stock board and commissioner.

It is further enacted that all re-acting animals shall be surrendered to the State, said animals to be disposed of according to such rules and regulations as may be prescribed by said board and commissioner; the owner of said re-acting animals to receive in compensation for said re-acting animals a sum as may be agreed upon between the owner of said re-acting animals and the said commissioner and board, and not to exceed forty (\$40.00) dollars.

## **EXHIBIT 10**

CHAP. 179.—An ACT to amend and re-enact an act approved February 5, 1916, entitled an act to make it larceny to receive money or other thing of value with intent to injure or defraud, from any person engaged in the cultivation of the soil, under a contract of employment for personal service, and fraudulently refuse or fail to perform such service or refund such money or other thing of value so received. [H B 350]

Approved March 14, 1918.

1. Be it enacted by the general assembly of Virginia, That if any person, with intent to injure or defraud his employer, enters into a contract of employment, oral or written, or for the performance of personal service to be rendered within one year, in and about the cultivation of the soil and thereby obtains from the land owner, or the person so engaged in cultivation of the soil, money or other thing of value under such contract, and fraudulently refuses to perform such service, or to refund the said money or other thing of value so obtained, shall be deemed guilty of the larceny of the said money or other thing of value so received; provided, however, that prosecutions hereunder shall be commenced within sixty days after breach of such contract.

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CHAP. 180.—An ACT authorizing and empowering the board of supervisors of any two or more counties in this State, or the board of supervisors of any one or more of the counties in this State and the council or councils of any one or more of the several cities in this State, to establish a home for the care and maintenance of the poor; to authorize the sale and conveyance of certain real and personal property belonging to such cities and counties as may adopt the provisions of this act; to authorize the authorities of such counties and cities to purchase farms of suitable size, fertility and location; to authorize such authorities to erect suitable buildings to be called district homes, to which all of the counties and cities composing such district must send its poor, and care for same; providing for the appointment of boards of control, superintendents, physicians and necessary employees; and to abolish county and city poor houses in the several counties and cities which adopt the provisions of this act. [H B 68]

Approved March 14, 1918.

1. Be it enacted by the general assembly of Virginia, That the boards of supervisors of any two or more of the several counties in this State, or the board of supervisors of any one or more of the counties in this State, and the council of any one or more of the several cities in this State are hereby authorized and empowered to establish a home for the care and maintenance of persons unable to care for themselves, to be known as 'district home for the counties of ....., or district home for the county or counties of ....., and city or cities of ....., as the case may be.

2. That each of these homes shall be erected upon a farm of suitable size and of soil susceptible of high improvement, and be controlled by a board to consist of at least one representative from each



county and city composing the district, but where a county or city shall have more than twenty thousand inhabitants its representative shall have one vote and an additional vote for every twenty thousand inhabitants or fractional part thereof over ten thousand; provided, that no city shall have more votes in any district than the combined votes of the counties composing the districts. The representatives from the counties shall be elected by the board of supervisors, and from the cities by the councils thereof, and shall be entitled to necessary expenses incurred in attending meetings of the board, and in addition each shall receive an allowance of five (\$5.00) dollar per day for each day that he shall be in attendance on said board, said allowance, however, not to exceed in any one year the sum of thirty (\$30.00) dollars, to be paid by the counties and cities respectively. The accounts for such expenses and allowances shall be made out and verified by affidavits of the representative and attested by the secretary of the board.

3. The boards of supervisors of the respective counties and the councils of the several cities in the State for which such district homes are established, are hereby authorized and empowered to sell and convey by proper deed, all the real estate held by them for the use, benefit and maintenance of their poor, and to sell all personal property used for that purpose, and out of the proceeds to appropriate so much as may be required by this act for each county or city to purchase farms, stock, tools, and all other necessary equipment, and to erect district homes as hereinafter provided.

4. It shall be the duty of the several boards of supervisors of the counties and councils of the cities, that elect to adopt the provisions of this act, to appoint, as soon thereafter as practicable, the members of the boards provided for by this act, and which shall be known as the district home board for the counties of .....  
..... or counties and cities of.....

5. The district home board shall, as soon as possible after appointment, upon call of the representatives of the city or county, commencing with the letter nearest to the first in the alphabet, assemble at some time and place to be named in the call, organize by the election of a chairman and secretary, and proceed at once to the purchase of a farm of suitable size and fertility to be located at some convenient place, having regard to transportation facilities, and to provide all necessary stock, tools, machinery and equipment, and shall cause to be erected plain, substantial and comfortable buildings for the accommodation of the inmates, and separate buildings for white and colored people so placed that the white inmates and colored inmates will not interfere with each other, which buildings shall be furnished with plain, comfortable and substantial furniture. The several counties, or the several counties and cities establishing the district homes hereinabove provided for shall pay for the farm, stock, buildings, furniture, tools, and other necessary equipment in proportion to population, and shall hold and own the same in same proportion.

6. As soon as the buildings shall be finished and ready for occu-

pancy, the several poorhouses and almshouses hertofore maintained by the several counties and cities for which the district home is established, shall be abolished, and the inmates shall be moved to the district home.

7. Each district board shall elect a suitable superintendent, competent physician and necessary assistants for the conduct and management of the home, and shall fix their salaries, having due regard to the number of inmates occupying the said home. The district board shall meet at least twice a year for the conduct of such business as may be required by the district home, and shall have the general conduct and management of its affairs, and shall meet at the call of the chairman whenever he shall deem it necessary, or upon call issued by a majority of the board. In the calls for special meetings the matters to be considered shall be set out, but any business may be transacted which shall at said special meeting receive a two-thirds vote of the entire board, although not mentioned in the call.

8. The several counties or the several counties and cities of the State, establishing the district homes hereinbefore provided for, shall, as required by law now in force for the care and maintenance of those unable to care for themselves, send such persons to the district homes, and pay the expenses of the maintenance of said home in proportion to the number of inmates from the several counties and cities.

9. The board having charge of each home shall have the control and management of its home, and may make such rules and regulations in respect thereto, as shall not be inconsistent with the laws of the State.

10. As soon after the first day of January of each year as may be practical the district board shall cause a report to be made of the home, which shall show the number and age of the inmates, the condition of health of each one of them, the county or city of his or her residence, the average number during the year, the amount received from each county and city composing the district, and the amount expended, and an itemized statement of all expenditures. It shall also show an inventory and appraisement of the property on hand at the commencement of the year, and shall give an account of receipts from the farm and disbursements on account of it, and such other matters as may be required by the board of supervisors of any county or the council of any city included in the district, or by the State board of charities and corrections. A copy of the report of the board shall be furnished to the boards of supervisors of the counties and to the council of the city or cities within the district, and to the State board of charities and corrections.

11. All acts and parts of acts inconsistent with this act are hereby repealed.

## **EXHIBIT 11**

ballot on which shall be written or printed the words "for bond issue," and each qualified voter who shall disapprove said issue of bonds shall deposit a ticket or ballot whereon shall be written or printed the words "against bond issue." The ballots shall be counted, returns made and canvassed, as in other special elections, and the results certified by the commissioners of election to the said circuit court. If it shall appear by the report of the commissioners of election that a majority of the qualified voters of the county voting on the question are in favor of issuing bonds for the purpose aforesaid, the circuit court shall, at its next term, enter an order authorizing the board of supervisors of the county to proceed at their next meeting to carry out the wishes of the voters.

§3. Upon such proceedings being had, and not otherwise, the board of supervisors is authorized and empowered to issue the bonds of the said county for such loans, either registered or coupons, in denominations of one hundred dollars, or multiples thereof. The said bonds shall be in such form as the board may prescribe, shall be signed by the chairman of the said board, countersigned by the clerk of the board, and sealed with its seal; shall bear rate of interest not exceeding six per centum, payable semi-annually; to be payable not exceeding thirty years after date, and redeemable after such time as the said board may prescribe. If coupon bonds are issued, they shall be payable to bearer, and shall have coupons attached for the semi-annual installments of interest. No bonds issued under this act shall be sold at less than par.

§4. The board of supervisors shall annually include in the levy upon the property and lawful subjects of taxation in said county, as a part of the annual county levy, a sum and tax sufficient to pay the interest on said bonds, and in such manner as they may deem best create a sinking fund sufficient to pay the said bonds at or before maturity.

§5. Owing to the uncertain state of the law on this subject, and the necessity for prompt action to correct this condition, an emergency is declared to exist, and this act shall take effect from its passage.

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CHAP. 28.—An ACT to amend and re-enact an act of the general assembly of Virginia, approved May 20, 1903, entitled an act to amend and re-enact an act of the general assembly of Virginia, approved February 3, 1900, entitled an act to amend and re-enact section 2229 of the Code of Virginia, relating to certificates to be issued by the clerk with marriage licenses, the return to be made by persons celebrating the marriage.

Approved February 16, 1910.

1. Be it enacted by the general assembly of Virginia, That an act of the general assembly of Virginia, approved May twentieth, nineteen hundred and three, entitled an act to amend and re-enact an act of the general assembly of Virginia, approved February third, nineteen hundred, entitled an act to amend and re-enact section twenty-two hundred and twenty-nine of the Code of Virginia, relating to certificates to be issued by the clerk with marriage licenses, the return to be made by persons celebrating the marriage, be amended and re-enacted so as to read as follows:



§2229. The certificate to be issued by the clerk with license; the return to be made by persons celebrating the marriage; the clerk to furnish to the attorney for the Commonwealth list of those failing to make return, the record of certificate of marriage to be prima facie evidence.

The clerk issuing any marriage license shall at the time ascertain from the party obtaining such license, as near as may be, the date and place of the proposed marriage, the full names of both parties, their ages and condition before marriage (whether single, widowed or divorced), their race, whether white or colored, the places of their birth and residence, the names of their parents and the occupation of the husband, and make a certificate thereof and deliver it, together with the license, to the person entitled thereto.

It shall be the duty of every minister or other persons celebrating such marriage, within thirty days after the same has been celebrated, to return such license and certificate of the clerk, together with his own certificate of the time and place at which the said marriage was celebrated, to the clerk who issued the said license. Any minister or other person celebrating such marriage violating the provisions of this section shall be liable to a fine of not less than ten dollars nor more than twenty dollars for each offense.

It shall be the duty of the clerk issuing marriage license of any county or city on the first day of February of each year to furnish to the Commonwealth attorney of his county or city a list of all marriage licenses issued for the year just preceding the first day of January last past that has not been returned by the minister or other person celebrating the marriage, and for failure to perform the duty required by this section the clerk shall be liable on conviction to a fine of twenty dollars.

It shall be the duty of the Commonwealth's attorney for each county and city, upon the receipt of such list from the clerk, to have such person or persons as he may think proper summoned before the next regular grand jury of his county or city to ascertain the name of the minister or other person celebrating such marriage and failing to return such license and certificate to the clerk, together with the certificate of such minister or other person celebrating such marriage.

When the said certificate of such minister or other person celebrating such marriage is returned to the clerk, and recorded as provided in section twenty-two hundred and thirty, then the record thereof shall be prima facie evidence in all courts of this Commonwealth of the facts stated therein.

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CHAP. 29.—JOINT RESOLUTION proposing an amendment to section 46 of article 4 of the Constitution of Virginia.

Signed February 16, 1910.

Whereas, the proposed amendment to section forty-six of article four of the Constitution, hereinafter fully set forth, was agreed to by a majority of the members elected to the two houses of the general assembly at its session of nineteen hundred and eight, and referred to this, the next

## **EXHIBIT 12**

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CHAPTER 702

*An Act to amend and reenact § 1-14 of the Code of Virginia, relating to the definition of colored persons and Indians, so as to change the definition of tribal Indians.*

[S 369]

Approved April 8, 1954

Be it enacted by the General Assembly of Virginia:

1. That § 1-14 of the Code of Virginia be amended and reenacted as follows:

§ 1-14.—Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes \* *existing in this* Commonwealth having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians. \*

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# Identifying and addressing the vestiges of inequity and inequality in Virginia's laws



REPORT *from*

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## The Commission to Examine Racial Inequity in Virginia Law

NOVEMBER 15, 2020



FRONT COVER: Thomas J. O'Halloran, photographer. Students arriving at the Free School #2 in Farmville, Prince Edward County, Virginia (1963).

<https://www.loc.gov/exhibits/brown/brown-aftermath.html>



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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 Law.<sup>1</sup> Later that summer, Governor Northam appointed a number of lawyers, judges, and law professors to this Commission.<sup>2</sup> Governor Northam’s Executive Order directed the Commission 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.<sup>3</sup>

The first task of the Commission was to review numerous old Virginia laws contained in the *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 review of these old laws laid bare what many Virginians already knew or had directly experienced: the Commonwealth’s state-sanctioned segregation and racial oppression had been pervasive, far-reaching, intentional, and strategic. Whether it was through creating segregated neighborhoods or imposing poll taxes, assigning segregated schools or providing inferior health care, all branches of Virginia government did all they could to separate races and ensure that White Virginians were advantaged over Black Virginians.

After this troubling, but important, review, the Commission issued a [report](#) to the Governor in December of 2019, detailing the *Acts* it reviewed and recommending broad sections of these *Acts* be repealed. The Governor worked with a number of legislators to submit legislation calling for this repeal, and, during the 2020 legislative session, the General Assembly unanimously passed all of these bills.<sup>4</sup>

Given the Executive Order’s directive that the Commission review not only explicitly racist laws but the disparate racial impact of Virginia’s existing laws and policies, the Commission’s initial report also proposed that during the second phase of its work the Commission begin to examine the lingering effects of the almost four centuries of Virginia’s state-approved systemic racism.

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

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

<sup>3</sup> *Id.*

<sup>4</sup> *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.

More specifically, the Commission proposed to examine pervasive and negative racial disparities across many areas of life in Virginia and to determine whether there were policy or legislative changes that might help address these disparities.

The Governor endorsed this proposal, amending Executive Order Number 32 in June 2020 to continue the work of the Commission and to direct the Commission to “identify the vestiges of inequity and inequality in Virginia’s laws,” laying a foundation for redefining the Commonwealth’s commitment to each citizen’s success and equitable treatment through proposed recommendations. Accordingly, the Commission’s work over the past calendar year has focused on that task. During multiple meetings over the spring and summer of 2020, with recommendations from individual Virginians and advocacy groups and with considerable research support from students in the State and Local Government Policy Clinic at the University of Virginia School of Law, Commissioners examined racial disparities. This included potential policy solutions to address these inequities, in the areas of housing, education, health, criminal justice, voting, environmental justice, and agricultural equity. The following report details some key research findings in each of those areas and presents the Commission’s policy recommendations to help tackle the damaging and longstanding inequities still facing too many people of color in Virginia.

While the pandemic briefly interrupted the Commission’s work, and required the meetings to be conducted virtually, it has also reinforced in life and death terms the importance of addressing the negative and harmful impact of these racial disparities. Accordingly, some of our recommendations address the specific problems and challenges posed by the pandemic on the education of low-income and minority children in the Commonwealth.

The Commission also recognizes that the Virginia General Assembly has been actively engaged in tackling issues of racial inequity. Appendix A details, by issue category, the various bills aiming to tackle racial disparities that the General Assembly passed and Governor Northam signed during both the 2020 Regular Session and the 2020 Special Session, which contextualizes our recommendations.

It is important to note that the release of this report follows a racially polarized election, a spring and summer of protests sparked by the murder of George Floyd and other Black individuals at the hands of law enforcement, and, as described above, a pandemic which has had a devastating and disparate impact on people of color in Virginia and across the country. During this time, the terms “systemic racism” or “structural racism” have been used by some to describe current conditions in our country and Commonwealth and have been rejected by others as anachronistic and no longer relevant given the legal prohibitions on explicit discrimination.

It is our sincere hope that this report, especially when read together with our first report, not only offers a comprehensive set of policy recommendations to help address persistent racial disparities in Virginia, but also provides a meaningful contribution to this conversation and our collective understanding of the meaning and reality of systemic or structural racism.

While definitions vary, the Aspen Institute has described structural racism as a “system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity...structural racism is not something that a few people or institutions choose to practice. Instead it has been a feature of the social, economic and political systems in which we all exist.”<sup>5</sup>

Indeed, even though *de jure* or explicit discrimination in Virginia has been outlawed for decades, the intended impacts of the preceding state-sanctioned discrimination—most plainly, diminished opportunities and continued subjugation of people of color—have persisted in varying degrees since that time and are apparent in the racial disparities this report documents. As this report details, many people of color in Virginia still live in segregated communities, attend segregated schools, have disparately negative health, economic, and educational outcomes, and represent a disproportionately large share of the Commonwealth’s prison population. And while Virginia has made undeniable progress, these divergent outcomes should come as no surprise; Virginia’s more than 350 years of intentional and systemic racism virtually guaranteed, even sought, this result.

On a national level, things are much the same. For example, although people of color no longer face expressly racially restrictive zoning laws or housing covenants that expressly prohibit the sale of certain housing stock, “over 70 percent of African Americans who live in today’s poorest, most racially segregated neighborhoods are from the same families that lived in the ghettos of the 1970s.”<sup>6</sup> Similarly, though people of color no longer face state-sanctioned “redlining,” a racist practice that allowed U.S. banks to afford prospective White homebuyers preferential treatment while concurrently denying mortgages to equally-qualified Black and Brown families,<sup>7</sup> the Black-White homeownership gap is larger today than it was in 1968 when housing discrimination was legal.<sup>8</sup>

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<sup>5</sup> 11 Terms You Should Know to Better Understand Structural Racism, The Aspen Institute, (July 11, 2016), <https://www.aspeninstitute.org/blog-posts/structural-racism-definition/>.

<sup>6</sup> Patrick Sharkey, *Struck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality*, The University of Chicago Press (2013) at 9.

<sup>7</sup> Emily Badger, *How Redlining’s Racist Effects Lasted for Decades*, New York Times, (Aug. 24, 2017), <https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasting-for-decades.html>.

<sup>8</sup> Caitlin Young, *These Five Facts Reveal the Current Crisis in Black Homeownership*, Urban Institute, (July 31, 2019), <https://www.urban.org/urban-wire/these-five-facts-reveal-current-crisis-black-homeownership>.

In the Commission’s view, this is what structural racism looks like. Virginia policymakers and other leaders spent centuries building legal and other structures to comprehensively segregate and oppress people of color. While the laws have gone away, the impact of what they built, indeed much of the structure they built, has not. The collective goal of the recommendations contained in this report is to make efforts in specific and effective ways to further dismantle this structure, and to address the lingering and disparate effects of Virginia’s segregationist past. These policy ideas, and others like them, will not only help people of color in Virginia, but will help all of us, as well.

As a recent, and acclaimed, text on the history of segregation and discrimination in the United States described:

*As citizens in this democracy, we—all of us, White, Black, Hispanic, Asian, Native American, and others—bear a collective responsibility to enforce our Constitution and to rectify past violations whose effects endure. Few of us may be the direct descendants of those who perpetuated a segregated system or those who were its most exploited victims. African Americans cannot await rectification of past wrongs as a gift, and White Americans collectively do not owe it to African Americans to rectify them. We, all of us, owe this to ourselves. As American citizens, whatever routes we or our particular ancestors took to get to this point, we’re all in this together now.<sup>9</sup>*

As a final note, the members of the Commission want to thank Governor Northam for the opportunity to serve in this way. It has been an honor to have the chance to meaningfully and intentionally address these problems that have always plagued the Commonwealth and to take part in worthwhile and long overdue conversations about overcoming the enduring burdens of Virginia’s racist past. We look forward to the work ahead.

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<sup>9</sup> Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America*, Liveright Publishing, (May 2017).



## EXECUTIVE SUMMARY

This report proceeds in six main chapters: Housing, Education, Criminal Justice, Health, Environmental Justice, and Agricultural Equity. It concludes with a seventh chapter on institutionalizing the Commission's work. Note that because the General Assembly addressed barriers to voting in the 2020 Regular Session, the Commission makes no specific recommendations in the voting area, with the notable exception of addressing the problem of how Virginia handles the disenfranchisement of people with felony convictions.

Each chapter begins with a brief history of the topics' racial inequities in the Commonwealth followed by an overview of the current data on the disparities Virginians face. After this introduction, each chapter proceeds into topical subsections in which numbered recommendations are presented and explained. To the extent possible, 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 report concludes with recommendations for further work, including subjects that were not covered this year due to time constraints. Lastly, an appendix is attached which (A) details the legislation passed this year on topics of interest to the Commission, and (B) includes the Commission's letter of recommended actions on police reform, that was sent to Governor Northam this summer following the protests after the death of George Floyd in Minneapolis.

*The Commission's Recommendations are as follows:*

### HOUSING

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1. Allow the adoption of more effective inclusionary zoning laws statewide by expanding the ADU program under § 15.2-2304 to all cities.
2. Impose state limits on exclusionary zoning in localities.
3. Add provisions to § 58.1-3965 that require locality foreclosure for tax delinquency within a set time frame on vacant or commercial properties in cities, in order to donate those properties to a community land bank for affordable housing.

4. Incentivize local solutions with state dollars by (1) creating a state subsidy program for affordable housing development, (2) adding more funds to the Virginia Housing Trust Fund, and/or (3) attaching state development dollars to inclusionary zoning and affordable housing actions by localities.
5. Provide building space and staff grants to Richmond and other high-eviction cities to serve as a physical, community-based space for a coordinated eviction prevention program.
6. Request a cost-benefit analysis study on models for providing a right to counsel in eviction cases, from JLARC or another trusted research entity.
7. Revise Virginia's landlord-tenant laws to:
  - Increase pay-or-quit period from 5 to 14 days
  - Decrease allowed judgment use period from 6 months to 30 days
  - Increase number of times a tenant can use the right of redemption
  - Extend the appeal bond period in eviction cases to 30 days, allow waivers for indigency
  - Create stricter consequences for informal evictions
  - Seal/expunge eviction records after two years, or provide a court process for expungement
  - Automatic expungement for eviction cases that are dismissed
  - Treat hotel/motel residents as tenants after 30 days of stay
  - Limit what screening rules landlords may use to exclude poor tenants
  - Clarify that income requirements must be based on tenant's portion of the rent (e.g. for voucher holders)
  - Limit tenancy application fees

## EDUCATION

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1. Repeal § 22.1-25 (A) 1-3 to allow regional solutions to inequity.
2. Incentivize and facilitate integration programs.
3. Add a diversity metric to school accreditation ratings.
4. Eliminate bias by changing course access, counseling, and gifted regulations
5. Invest in educational infrastructure.
6. Reconfigure the funding formula to take account of student need.
7. Advocate for high quality pre-kindergarten programs for all children.
8. Support the Governor's initiative to unify the Pre-K data system and create Pre-K student identifiers.
9. Mandate data collection and reporting on diverse teacher recruitment and retention.
10. Endorse recommendations by the Taskforce on Diversifying Virginia's Educator Pipeline.
11. Establish the Virginia Council to Dismantle the School-to-Prison Pipeline via statute.
12. Limit the presence of School Resource Officers (SRO) in Virginia K-12 schools by reallocating a portion of the resources from the state's SRO program to invest in increased school counselors/mental health supports in schools.
13. Impose stronger statutory limits on out-of-school suspension.
14. Increase support staff funding as an alternative to suspension.
15. The Commission endorses the following guidelines for crisis education spending:
  - a. Federal emergency funds should be distributed proportionally by need.
  - b. When using emergency funds to support education during a crisis, decision makers must consider affordability issues for families.
  - c. Cuts to state spending due to crisis economic conditions should preserve equity efforts.
  - d. Spending restoration after a crisis should prioritize equity funding first.

## CRIMINAL JUSTICE

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1. Require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity; require courts to publish racial and other demographic data of all low-level offenses.
2. Require the collection of data on the results of pretrial hearings, bail decisions, and pre-trial incarceration, including breakdowns by race.
3. Prevent the Compensation Board from considering the volume of felony cases when calculating Commonwealth Attorney's office resourcing.
4. Propose legislation that addresses the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration.
5. Propose legislation that fosters restorative practices like expungement, clemency, sentence reductions and retroactive sentencing.
6. Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.

## HEALTH

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1. Close the gap in healthcare access for immigrants.
2. Exercise the option for 12-month continuous coverage to Medicaid and CHIP for children.
3. Create a pipeline program to support Black college students' preparation for medical school.
4. Require Virginia continuing medical training to include implicit bias training.
5. Increase mental health programming in schools.
6. Direct the Commission Studying Mental Health Services in the 21st Century to specifically address racial disparities in their work.



## ENVIRONMENTAL JUSTICE

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1. Require the Department of Environmental Quality (DEQ) to develop measures designed to ensure meaningful public involvement from environmental justice communities.
2. Direct the Department of Conservation and Recreation to adopt a Statewide Park Equity Mapper to include demographic and health data necessary to inform equitable decision-making.
3. Amend Code § 10.1-200.1 to include access for environmental justice communities as a required consideration in state park master planning.
4. Develop strategies to target residential solar energy development toward environmental justice communities.
5. Establish a Tribal Liaison with DEQ.

## AGRICULTURAL EQUITY

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1. Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.
2. Sufficiently fund Virginia Cooperative Extension services at Virginia State University (VSU).
3. Create an Office of Small Farms within the Virginia Department of Agriculture and Consumer Services (VDACS) with a duty to consider racial equity in farming.
4. Order state Agencies and Institutions to implement a long-term goal for food procurement from minority producers.

## INSTITUTIONALIZING RACIAL EQUITY

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1. Codify the Commission as an ongoing Commission of the Commonwealth of Virginia.
2. Enact a process that would require examination of proposed legislation with an equity lens.

# RESEARCH METHODOLOGY AND PROCESS

## MEMBERS OF THE COMMISSION

- **Cynthia Hudson** of Richmond, Counsel, Sands Anderson, former Chief Deputy Attorney General of Virginia (Chair)
- **Andrew Block** of Charlottesville, Director of the State and Local Government Policy Clinic, University of Virginia School of Law (Vice-Chair)
- **Henry L. Chambers, Jr.** of Richmond, Professor of Law, University of Richmond School of Law
- **Jill Hanken** of Richmond, Health Attorney, Virginia Poverty Law Center
- The Honorable **Michael N. Herring** of Richmond, Partner, McGuire Woods, former Commonwealth's Attorney for the City of Richmond
- **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
- **Leslie Chambers Mehta** of Chesterfield, Chief of Staff and Counsel to the CEO, Richmond Metropolitan Transportation Authority

## 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: housing, education, criminal justice, voting, health, environmental justice, and agricultural equity.

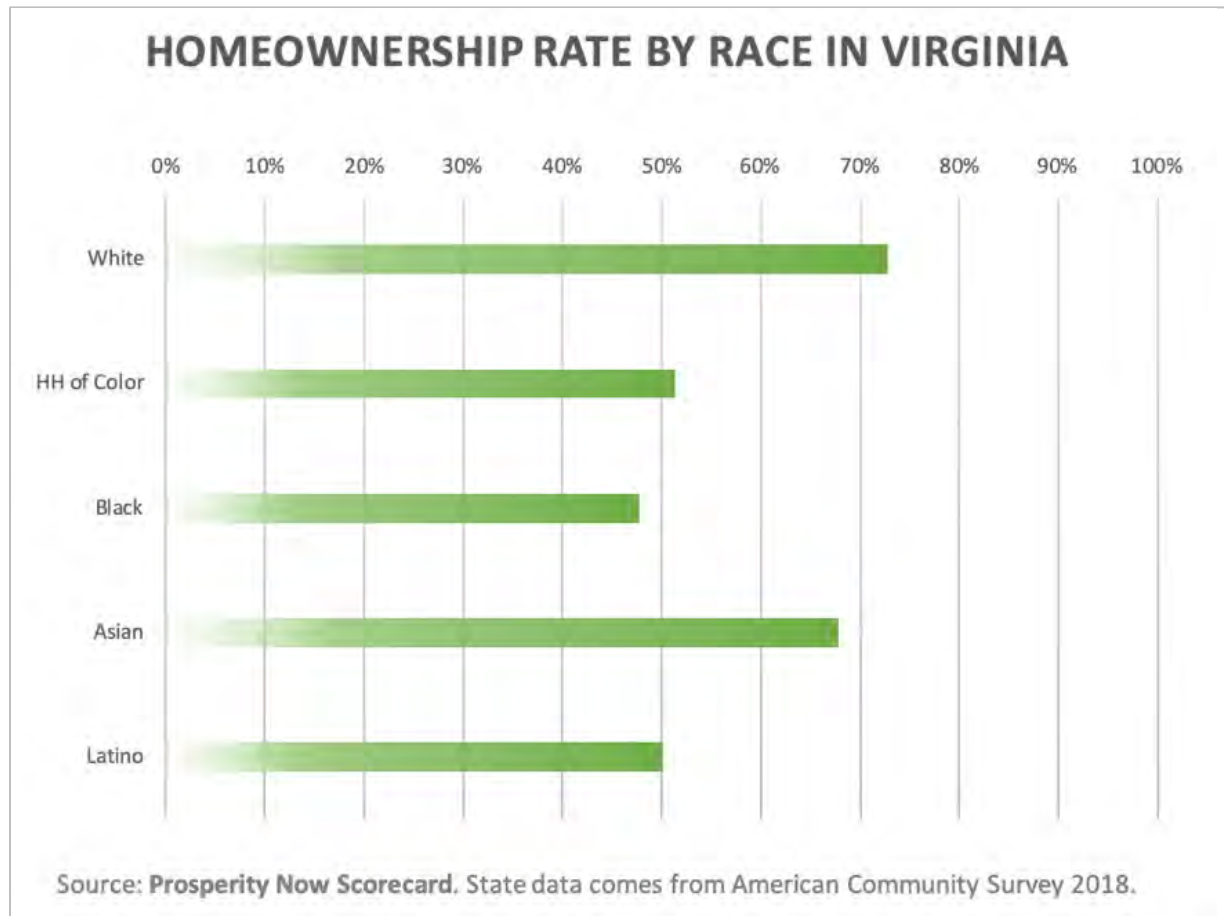
In some cases, it was clear that there was a racial disparity, but it wasn't clear why. In these areas, the research team identified data gaps that could be rectified by statutes or regulations. In other areas, the racial disparity at issue highlighted specific policy focus areas for making substantive policy recommendations based on empirical evidence of effectiveness. Considering these policy areas, the team conducted a review of statutes and regulations currently on the books in Virginia to determine potential language that could be modified to improve racial equity.

Policy recommendations do not generally include budget recommendations, but there are some exceptions when budgetary choices have significant inequity impacts that are not otherwise rectified easily. The Commission then reviewed each proposal through a majority vote process.

Throughout its process, the Commission has received public comment and policy recommendations from various organizations. These organizations include the Virginia Legislative Black Caucus, the Virginia Poverty Law Center, the Commonwealth Institute, the New Virginia Majority, ECHO Virginia, as well as individuals during public comment. The final recommendations approved by the Commission include many of these suggestions.

# HOUSING

Racial disparities in housing are widely acknowledged to be the direct result of government action, including state and local zoning and lending choices. For example, in the 1930s, the Home Owners Loan Association graded neighborhoods by lending risk. These grades were highly dependent upon race -- what is often called redlining. Unfortunately, the legacy of this redlining lives on today.



As a result of these historical practices that denied families of color the chance to participate in homeownership, there are stark disparities in homeownership rates today. While nearly three quarters of White families in Virginia own their homes today, only about half of households of color are homeowners, with Black and Hispanic families being the least likely to own homes.

*Ashtford*  
This Deed, made this 17<sup>th</sup> day of June, 1914, by and between WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, a corporation existing under the laws of the State of Virginia, party of the first part, and Clifton Lee Jr party of the second part,

Witnesseth, That for and in consideration of the sum of Five hundred (\$500.<sup>00</sup>/<sub>100</sub>) dollars, and also in consideration of the said party of the second part by the acceptance of this deed hereby agreeing to comply with all the restrictions and conditions hereinafter contained as to the property hereby conveyed:

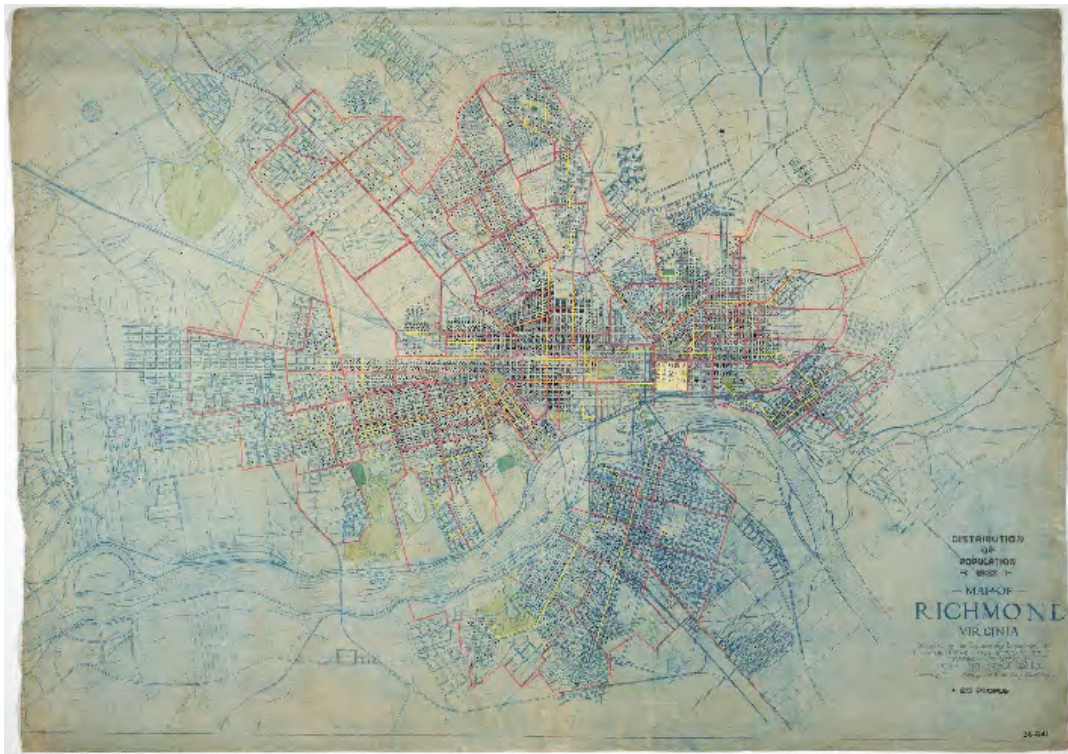
The said WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, doth grant unto the said party of the second part, with GENERAL WARRANTY, the following described lot of land, to-wit: Lot 14 in Block No. 4, described as follows:

Beginning at a point on the South line of Patterson Avenue, Two hundred and Fifty (250) feet East of Hampton Avenue, thence running in a easterly direction along and fronting fifty (50) feet to the South line of Patterson Avenue, thence running back in a southerly direction and between nearly parallel lines one hundred and seventy five (175) feet to an alley,

being a part of the property lying in the county of Henrico, Tuckahoe District, about three miles west of the city of Richmond, on Patterson Avenue, near Three Chop Road, and which was conveyed to the said WESTHAMPTON HEIGHTS COMPANY, INCORPORATED, by L. Shere et als. by deed dated May 11, 1910. and recorded in the Henrico Circuit Court Clerk's Office, and for a further description of the said property reference is hereby made to said deed and to a plat of WESTHAMPTON HEIGHTS, recorded in the Henrico Circuit Court Clerk's Office, in Plat Book 9, page 79.

Racial covenants, enforced in Virginia's courts, restricted Black families from purchasing homes in certain neighborhoods and excluded them from the housing market. *Deed between Westhampton Heights Company, Inc. and Clifton Lee, Jr., City of Richmond, Restrictive Covenant example, 1914, from T. Crawford Redd & Bros. (Richmond, Va.), Plats and Surveys, 1786-1952, Business records collection of the Library of Virginia.*



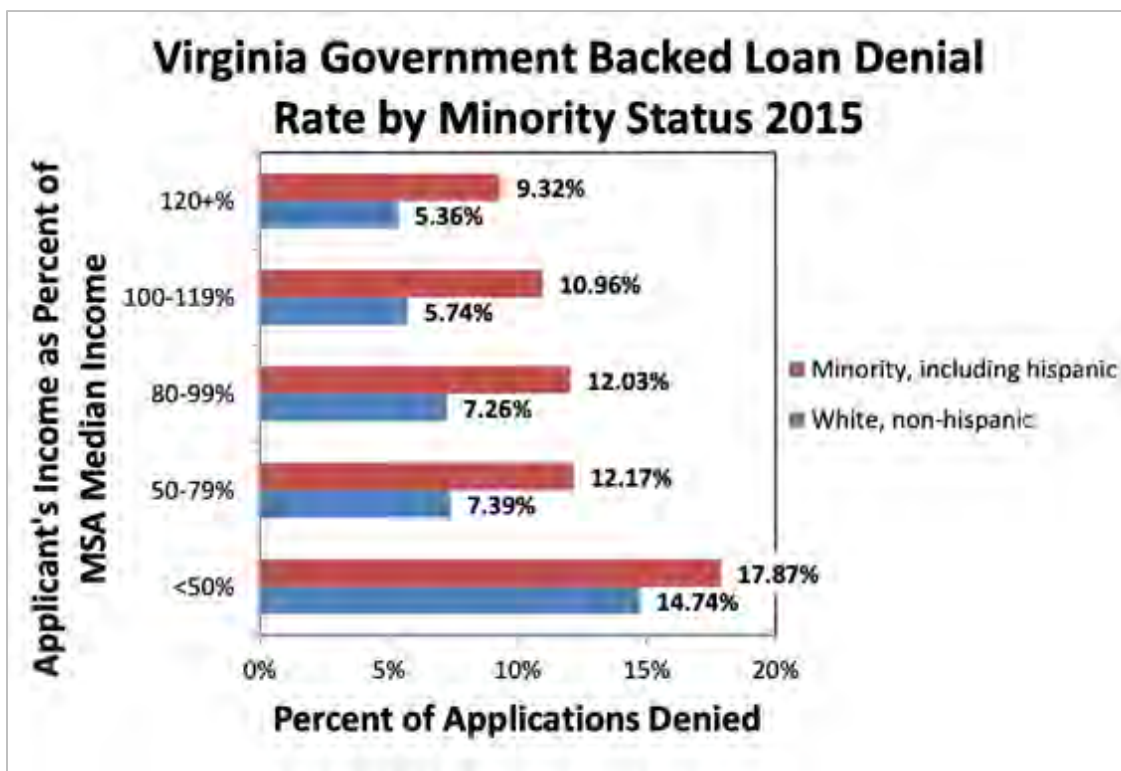


Redlining was a process by which government actors and lenders discriminated against Black families and excluded them from wealth acquisition. *Distribution of population 1922: map of Richmond, Virginia, from the Map Collection of the Library of Virginia.*



Because of exclusion and disinvestment, Black families were often segregated in poor quality housing. *“Section of Big Dump and housing conditions just below Confederate Museum. Strikingly visible from trains into Main Street Station from the North,” undated, from the Visual Studies Collection of the Library of Virginia.*

Lending practices of today have not improved much either. Current data on loan denial rates suggests that, even when controlling for income, families of color are nearly twice as likely to be denied a loan as White families.



Graphic: Department of Housing and Community Development, “Analysis of Impediments to Fair Housing Choice in the Commonwealth of Virginia” (2018). <https://dhcd.virginia.gov/sites/default/files/Docx/consolidated-plan/analysis-of-the-impediments-to-fair-housing.pdf>

Since families of color are overwhelmingly excluded from the financing necessary to participate in homeownership, they are overrepresented amongst renters. This makes the lack of affordable rental units in Virginia particularly concerning.

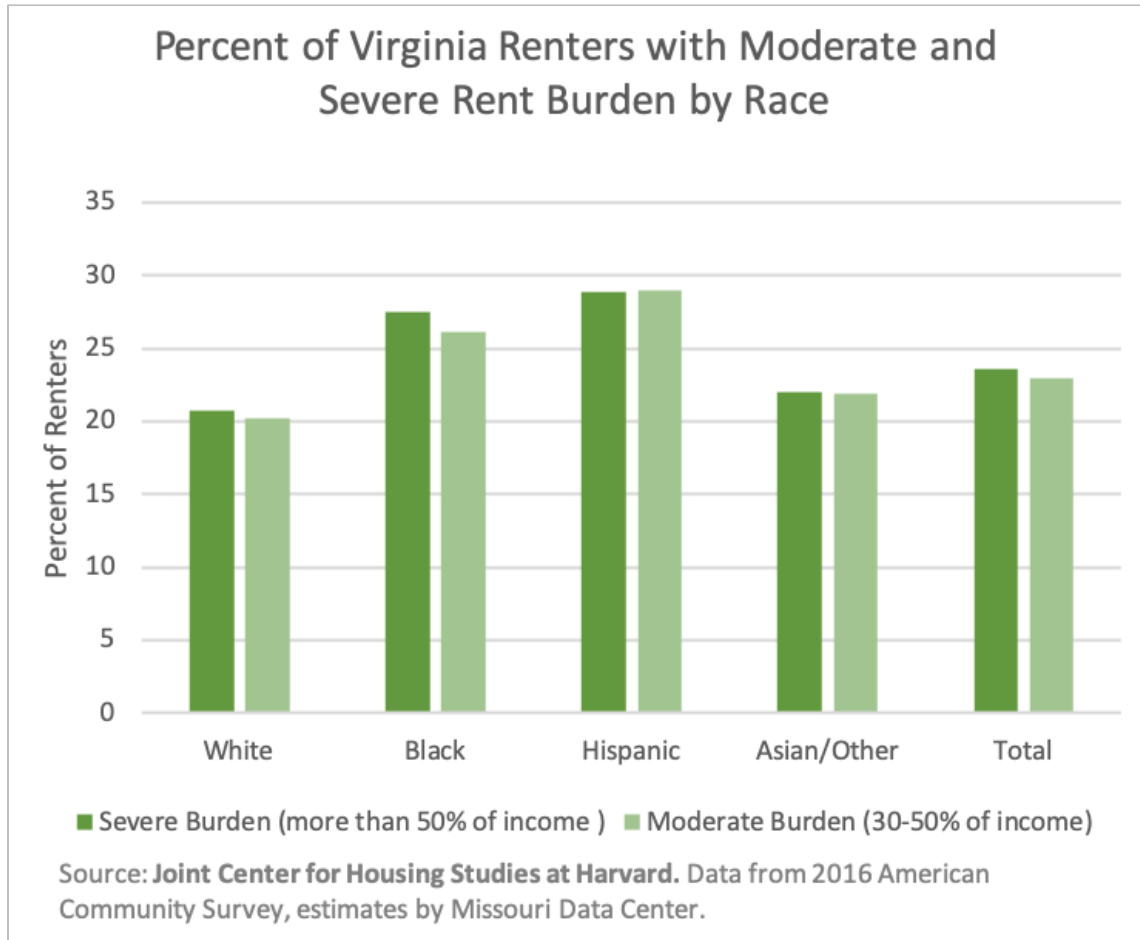
In the last ten years, Virginia’s housing stock for low-income individuals has drastically declined.<sup>10</sup> While Virginia’s rental stock is sufficient for individuals making 80% or higher of their area median income—that is, for the financially secure, the rental stock is significantly lacking for those in lower income brackets.<sup>11</sup> Estimates suggest Virginia needs over 150,000 new rental units for those in the lowest income brackets in order to address the housing crisis.<sup>12</sup>

<sup>10</sup> Joint Center for Housing Studies of Harvard University, The Low-Rent Stock in Most Metros Has Declined Substantially Since 2011, <https://www.jchs.harvard.edu/son-2019-low-rent-units-map>

<sup>11</sup> National Low Income Housing Coalition, Virginia: The Gap Report (2018), <https://reports.nlihc.org/gap/2018/va>

<sup>12</sup> *Id.*

This means that an increasing number of Virginians put far too much of their income towards rent—many times, over half of their earnings go to paying rent, leaving essential expenses like food, clothing, and medication to chance. This high rent burden is experienced at a much greater rate for Black and Hispanic Virginians than other racial groups.



All these factors often lead to evictions, that have devastating and far-reaching impacts for tenants and their families. Virginia’s eviction rate is shockingly high. Half of the top ten cities with the highest eviction rates nationwide are in Virginia.<sup>13</sup> This shameful statistic has severe repercussions because evictions are not merely a consequence of poverty but a cause of it. An eviction solidifies an individual’s impoverishment by throwing their life into disarray; causing psychological, educational, and other harms to members of the individual’s entire family; and excluding them in the future from access to stable housing through strict screening processes. Children in particular suffer severely from evictions, becoming less academically successful and more prone to teenage criminal activity.<sup>14</sup>

<sup>13</sup> Princeton Eviction Lab, Top Evicting Large Cities in the U.S. (2016), <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en>

<sup>14</sup> See *Evicted* by Matthew Desmond (2016).

Evictions are not equally distributed by race. In fact, race is far more influential than rent burden percentage or income in determining if a family will be evicted.<sup>15</sup> In other words, evictions present a significant issue of racial inequity that the Commonwealth must resolve.

The Commission makes seven recommendations to the Governor. These recommendations have two primary goals: increase Virginia’s affordable housing stock for those earning 30% or less and 50% or less of area median income, and reduce the occurrence of evictions.

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## AFFORDABLE HOUSING AND ZONING

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### BACKGROUND

Exclusionary zoning and historical zoning practices enable cities to exclude certain residents, both contributing to the concentration of low-income individuals of color in poor-quality housing as well as the affordable housing crisis statewide. The National Low Income Housing Coalition estimates that Virginia currently has a shortage of over 150,000 homes for renters.<sup>16</sup> Homes for those in the lowest income brackets—less than 30% of Area Median Income, and less than 50% of Area Median Income—are even more severely lacking.<sup>17</sup> The Governor has already made clear that increasing affordable housing stock is a priority.<sup>18</sup> The Commission endorses the following recommendations to address the lack of affordable housing.

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<sup>15</sup> Benjamin Theresa, RVA Eviction Lab, included with permission. See also Benjamin Theresa, *The Geography of Eviction in Richmond: Beyond Poverty*, [https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL\\_Geographies-of-Eviction.pdf](https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL_Geographies-of-Eviction.pdf)

<sup>16</sup> National Low Income Housing Coalition, *2020 Virginia Profile*, [https://nlihc.org/sites/default/files/SHP\\_VA.pdf](https://nlihc.org/sites/default/files/SHP_VA.pdf)

<sup>17</sup> National Low Income Housing Coalition, *Virginia: The Gap Report (2018)*, <https://reports.nlihc.org/gap/2017/va>

<sup>18</sup> Executive Order Number Twenty-Five: *Establishing the Governor’s Affordable Housing Priorities To Address Virginia’s Unmet Housing Needs*, Commonwealth of Virginia Office of the Governor (2018), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-25-Establishing-The-Governors-Affordable-Housing-Priorities-To-Address-Virginias-Unmet-Housing-Needs.pdf>



**RECOMMENDATION 1: The adoption of more effective inclusionary zoning laws statewide by expanding the affordable dwelling units (ADU) program under § 15.2-2304 to all localities.**

Currently, only a few Virginia localities are permitted to mandate their own inclusionary zoning rules to encourage ADUs.<sup>19</sup> Other localities across the commonwealth are only included in the “voluntary” program, which experts admit simply hasn’t worked.<sup>20</sup> Changing zoning laws to encourage ADUs generally requires no public funding. Plus, proper inclusionary zoning regulations ensure that new developments contribute to the solution by making homes more equitably available to low-income families. Additionally, addressing zoning is a racial justice issue.<sup>21</sup> Virginia localities should be allowed more freedom to tackle inclusionary zoning and affordable housing within their own jurisdictions.

**RECOMMENDATION 2: Impose state limits on exclusionary zoning in localities.**

The Commonwealth should also make efforts to increase the density of housing by requiring localities to have a certain percentage of affordable housing, lowering lot size requirements, and/or enacting other statutory or regulatory changes that allow lower income people to move into a locality. HB152 which was left in the House Committee on Counties, Cities, and Towns during the 2020 regular session, is an example of a policy that could have a strong impact on the share of affordable housing. The bill allowed for “middle housing,” or the building of duplexes, townhouses, cottages, and similar structures on all lots zoned for single family housing.

**RECOMMENDATION 3: Add provisions to § 58.1-3965 that require locality foreclosure for tax delinquency within a set time frame on vacant or commercial properties and would automatically donate such properties to any local Community Land Bank (15.2-7500–7512) established for affordable housing.**

One of the lesser-known problems in our housing crisis is the reluctance of local governments to engage in foreclosure for vacant tax delinquent properties, which would move those properties back onto the market where they can be redeveloped. Note that this policy does not refer to the struggling family that has been unable to pay the bills; this change would only address vacant buildings, sitting off the market, with absentee landlords or complex judgments against them in court. If the Commonwealth requires that these properties be foreclosed and put back on the market, we increase our statewide housing stock and improve localities’ resources to continue to invest in affordable housing solutions.

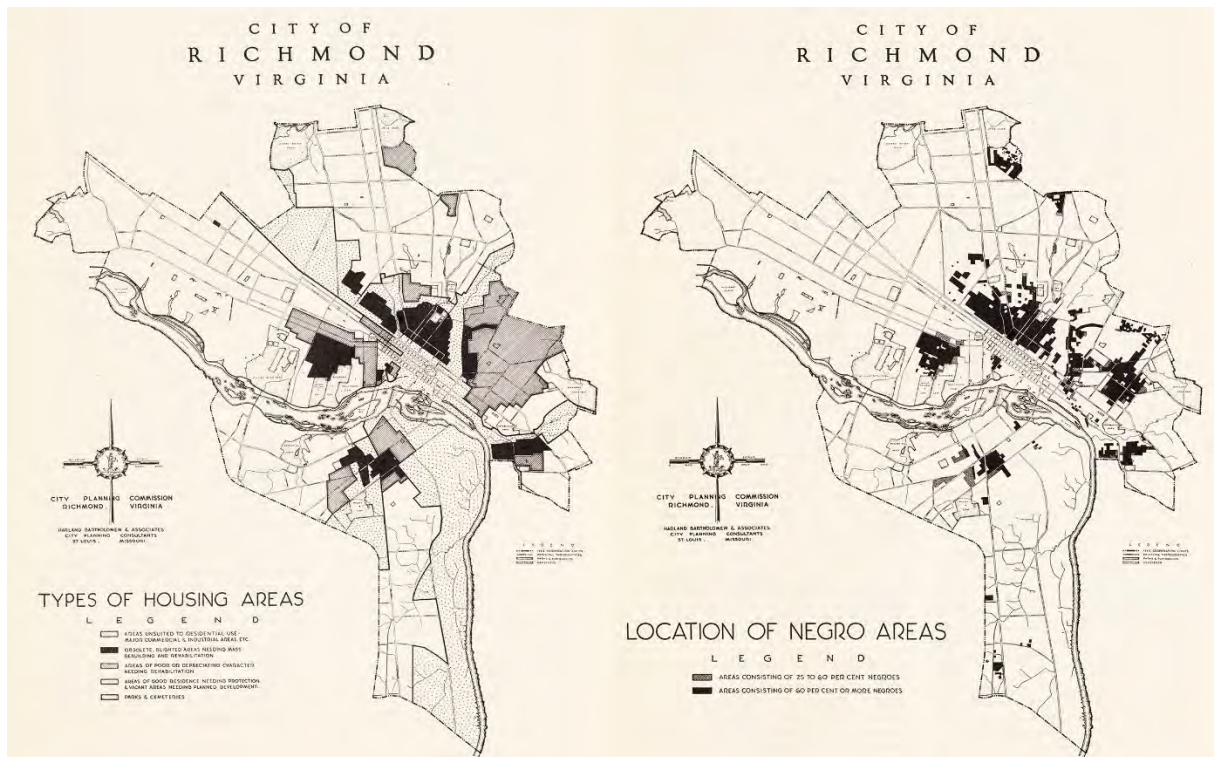
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<sup>19</sup> See HB 832 (2020), which added Charlottesville to the list of cities.

<sup>20</sup> See Solution 1-E, Partnerships for Housing Affordability, Richmond Regional Housing Framework, <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>21</sup> Ibraheem Samirah, Zoning for Abundant Housing is a Racial Justice Issue, Richmond Times Dispatch (July 15, 2020), [https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article\\_18a96bf0-9a52-5945-995c-be9dfa0db340.html](https://richmond.com/opinion/columnists/ibraheem-s-samirah-column-zoning-for-abundant-housing-is-a-racial-justice-issue/article_18a96bf0-9a52-5945-995c-be9dfa0db340.html)





During urban revitalization efforts, many policymakers used racial makeup to determine the blighted areas that would be torn down. In the wake of such efforts Black families were displaced and often forced into public housing against their will. *City of Richmond, Types of Housing Areas, Plate 8 and Plate 6, 22 June 1942, from the Map Collection of the Library of Virginia. City of Richmond.*

**RECOMMENDATION 4: Incentivize local solutions with state dollars by (1) creating a state subsidy program for affordable housing development, (2) adding more funds to the Virginia Housing Trust Fund,<sup>22</sup> and/or (3) attaching state development dollars to inclusionary zoning and affordable housing actions by localities.** Increasing the affordable rental unit stock and promoting lower-income home ownership can be accomplished through a variety of methods, including subsidized lending, building efforts, and community land trusts.<sup>23</sup> Many Virginia localities know this, but have little incentive to solve what has become a collective problem that each locality passes on to the next. Virginia should attempt to create statewide incentives for such programs in order to discourage localities from excluding new and low-income residents. Virginia could also attach state development and housing funds to certain inclusionary zoning requirements. For other models, see Denver’s Housing fund, which has subsidized rents, renovated vacant hotels, and helped families in crisis.<sup>24</sup>

<sup>22</sup> Virginia Housing Trust Fund, Department of Housing and Community Development, <https://www.dhcd.virginia.gov/vhtf>

<sup>23</sup> See generally, Partnerships for Housing Affordability, Richmond Regional Housing Framework, <https://pharva.com/framework/solutions/#1578339862797-28a37a1d-c767>

<sup>24</sup> Jon Murray, Denver’s Affordable Housing Fund Covered a Woman’s Rent after a Medical Emergency. Here’s what else \$24 million is accomplishing, Denver Post (Aug. 25, 2018), <https://www.denverpost.com/2018/08/25/denver-affordable-housing-fund-expansion-spending/>

### BACKGROUND

While a number of efforts have been implemented in the last two years,<sup>25</sup> evictions are the clearest area of disparate impact in Virginia's housing. Neighborhoods of color in particular have been devastated. Individuals of color are far more likely to be evicted than their White neighbors, even when income and other circumstances are equal.<sup>26</sup> Matthew Desmond, a national housing scholar based at Harvard University, found that overwhelmingly, nationwide, the people being evicted most are single Black moms with school-age children—an incredibly vulnerable group. Coronavirus has shed new light on the crisis with ongoing debates about rental relief, an eviction moratorium, and the danger of housing instability during a pandemic.

**RECOMMENDATION 5: Provide building space and staff grants to Richmond and other high-eviction cities to serve as a physical, community-based space for a face-to-face coordinated eviction prevention program.** Recent research suggests that one of the reasons for such high eviction rates in Richmond, is not at all a lack of resources, but an inability to connect such resources to the right individuals in a timely fashion.<sup>27</sup> Renters who have been passed from phone call to phone call have repeatedly advocated for an office with friendly faces that they can visit to get help. Providers agree that the disorganization is harmful to their ability to help clients. The staff in this space could coordinate with local nonprofits on rental assistance, rental repair funds, pre- and post- eviction support, and legal advocacy.

**RECOMMENDATION 6: Request a cost-benefit analysis study on models for providing a right to counsel in eviction cases, from JLARC or another trusted research entity.** Research has shown that providing counsel to those facing eviction has a host of community benefits, including reduced ultimate eviction rate (by nearly 80%), help applying for rental assistance and securing alternate housing, improvements in credit and other records consequences, and help negotiating payment options with a landlord.<sup>28</sup> This is an expensive option, but we recommend this topic for further study because of its proven effectiveness in reducing evictions. We suggest a Virginia-based cost-benefit analysis of various models for counsel.

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<sup>25</sup> Central Virginia Legal Aid Society, 7 New Laws that are More Fair, Favorable and Friendly to Tenants, [www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf](http://www.reduceevictions.org/wp-content/uploads/2019/04/new-landlord-tenant-laws-0319.pdf).

<sup>26</sup> Kathryn Howell, Eviction and Educational Instability in Richmond, Virginia, RVA Eviction Lab, [https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL\\_Eviction-and-Educational-Instability-in-Richmond.pdf](https://rampages.us/rvaevictionlab/wp-content/uploads/sites/33937/2020/02/RVAEL_Eviction-and-Educational-Instability-in-Richmond.pdf).

<sup>27</sup> Tayla Lockman-Fine and Olivia Rosenthal, Evictions in Richmond: Overview, Current Responses, and Program Proposals (August 2019), <https://pharva.com/wp-content/uploads/Achieving-Coordinated-Access.pdf>

<sup>28</sup> Heidi Schultheis and Caitlin Rooney, A Right to Counsel is a Right to a Fighting Chance, Center for American Progress (Oct. 2, 2019), <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/>

## RECOMMENDATION 7: Revise Virginia's landlord-tenant laws to:

- Increase pay-or-quit period from 5 to 14 days
- Decrease allowed judgment use period from 6 month to 30 days
- Increase the number of times a tenant can use the right of redemption
- Extend the appeal bond period in eviction cases to 30 days, allow waivers for indigency like in other civil cases
- Create stricter consequences for informal evictions
- Seal/expunge eviction records after two years, or provide a court process for expungement, similar to Minnesota<sup>29</sup>
- Automatic expungement for eviction cases that are dismissed
- Treat hotel/motel residents as tenants after 30 days of stay
- Limit what screening rules landlords may use to exclude poor tenants
- Clarify that income requirements must be based on tenant's portion of the rent (e.g. for voucher holders)
- Limit tenancy application fees

One of the biggest harms of eviction is its nearly permanent future damage to an individual's chances to get back on their feet. While a landlord may lose a small percentage of profit from unpaid rent, an evicted person may forever be screened from housing and unable to provide their family and children a safe space to live. Landlords use a variety of screening tools, including background checks, credit checks, and former eviction filings, to find ways to keep the poor out of their homes.

The current court process favors landlords over tenants. If we want people to stay in their homes, and our neighborhoods, schools, and economy to flourish, we should balance the process and help all Virginians be safely and stably housed. These recommendations are extensive, but each would help tenants stay in their homes and prevent unnecessary evictions.

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<sup>29</sup> Minnesota Education for Justice Fact Sheet H-27: Expunging an Eviction Case (Fall 2011), [https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self\\_Help\\_Center/3981H-27-Expunging-Evictions.pdf](https://www.mncourts.gov/mncourtsgov/media/assets/documents/0/public/Self_Help_Center/3981H-27-Expunging-Evictions.pdf)



## EDUCATION

The importance of public education is well-documented in the annals of Virginia state history. On June 12, 1776, the Virginia Declaration of Rights declared:

*That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.*<sup>30</sup>



In July of 1870, the Virginia General Assembly enacted a statute to establish and maintain a uniform system of free public schools. The statute also mandated that this new school system be racially segregated. *"Educational Progress in Virginia, The Schools for Colored Children in Richmond," Frank Leslie's Illustrated Newspaper, July 21, 1883, from the Visual Studies Collection of the Library of Virginia.*

On June 8, 1779, nearly three years after the drafting of Virginia's Declaration of Rights, Thomas Jefferson furthered this declaration by proposing a more detailed plan to educate the citizenry. In his *Bill for the More General Diffusion of Knowledge*, Jefferson aimed to provide three years of state-sponsored education in an array of subject areas that would help to "guard the sacred deposit of the rights and liberties of their fellow citizens."<sup>31</sup> Jefferson's bill languished in the state

<sup>30</sup> Virginia Constitution, Art. I, § 15.

<sup>31</sup> "A Bill for the More General Diffusion of Knowledge" (1779), <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0079>

legislature for years until 1796, when a significantly scaled down version was passed.<sup>32</sup> Though his plan to construct a broader system of state-run education in Virginia ultimately failed to meet his expectations, Jefferson’s vision for constructing such a system was finally realized nearly 80 years later. On October 8, 1869, the newly-adopted Virginia Constitution established, among other things, the state’s first system of free public schools.<sup>33</sup> The central aim of this newly-established system was to, “prevent children [from] growing up in ignorance, or [from] becoming vagrants.”<sup>34</sup> Despite this seemingly placid history, public education in Virginia was not meant to be available to all Virginians on equal terms.

Only a few years removed from defeat in the Civil War, Virginia ratified the Thirteenth, Fourteenth, and Fifteenth Amendments, which abolished slavery, guaranteed equal protection of the laws, and protected the right to the franchise, respectively.<sup>35</sup> When Reconstruction failed in 1877, the vestiges of slavery and White racial terror pervaded in Virginia—and much of the south— through “Pig Laws.”<sup>36</sup> These restrictive, racist laws were designed by recalcitrant White southerners to subjugate Black Americans to a life of social control, violence, and second-class citizenship.<sup>37</sup> By 1902, school children of different races were constitutionally prohibited from attending the same schools in Virginia, which served as the first instance that the state had expressly required racial segregation in schools.<sup>38</sup> It was not until the seminal *Brown v. Board of Education I* and *II* decisions half a century later that such *de jure* segregation—that is, formal segregation that existed as a result of local mandates—was outlawed. Yet, the era of massive resistance following *Brown* stymied any meaningful progress.

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<sup>32</sup> April Barkes, A Bill for the More General Diffusion of Knowledge, Jefferson’s Monticello (April 2009), [https://www.monticello.org/site/research-and-collections/bill-more-general-diffusion-knowledge#footnote2\\_02gn9k1](https://www.monticello.org/site/research-and-collections/bill-more-general-diffusion-knowledge#footnote2_02gn9k1)

<sup>33</sup> Virginia Museum of History and Culture, Education in Virginia, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/education-virginia>

<sup>34</sup> *Id.*

<sup>35</sup> The National Constitution Center, The Reconstruction Amendments, <https://constitutioncenter.org/learn/educational-resources/historical-documents/the-reconstruction-amendments>

<sup>36</sup> Slavery by Another Name: Black Codes and Pig Laws, PBS, <https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes/>

<sup>37</sup> Ferris State University, Black Code, Jim Crow Museum of Memorabilia, <https://www.ferris.edu/htmls/news/jimcrow/links/mislink/blackcode.htm>; *see also* PBS, Slavery by Another Name: Black Codes and Pig Laws, <https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes/>

<sup>38</sup> Virginia Museum of History and Culture, Jim Crow to Civil Rights in Virginia, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/jim-crow-civil-rights-virginia>.



EDUCATION - VIRGINIA

# VIRGINIANS!

Protect the rights of your children and yourself by voting FOR the convention on January 9, 1956.

**A vote FOR the Convention is a vote**

**(1) Against enforced MIXED schools**

**(2) For the PRESERVATION of the public school system.**

Do not be confused by the NAACP, the integrationists and the misinformed. A vote FOR the convention is simply a vote against enforced mixed schools. Nothing more.

Both DOCTORS DABNEY S. LANCASTER and DOWELL J. HOWARD, respectively, past and present State Superintendent of Schools, say that

**A VOTE FOR THE CONVENTION IS A VOTE IN THE BEST INTEREST OF YOUR PUBLIC SCHOOLS.**

**WORK FOR  
TALK FOR  
VOTE FOR THE CONVENTION**

## Virginia's General Assembly Bars State Funds for Mixed Schools

**RICHMOND, Va.** A BATTERY of new laws—including one to deny state funds to integrated schools—was enacted by the Virginia General Assembly during its month-long special session which adjourned Saturday, Sept. 22. They were signed by the governor on Sept. 29.

The legislators adopted a program designed to implement Gov. Thomas B. Stanley's announced policy of "unyielding resistance" to the Supreme Court's anti-segregation decision. (See "Legislative Action.")

The plan provides for creation of a three-member Pupil Placement Board, appointed by the Governor, to take over from the local school boards the full authority to assign pupils to schools.

**AUTOMATIC CLOSING**

If the races are mixed in any school, that school is automatically closed and removed from the public school system. The governor then takes over, and by the reassigning of pupils or the reorganization of the school, attempts to make it possible to reopen the school on a segregated basis.

If the school cannot be reopened and if the pupils cannot be reassigned to segregated schools, tuition grants are made available to the children so that they can continue their education in nonsectarian private schools.

The big controversy in the Assembly was over the question whether one firm statewide anti-integration policy was to be established, or whether there was to be local option.

### NARROW MARGIN



—Richmond Times-Dispatch

the wholesale. Let's stop kidding ourselves."

Sen. A. S. Harrison Jr. of Lawrenceville—Resistance should be on a statewide basis. "There may come a time when we have to retreat, but now is not the time." Any assignment plan to be valid can't stop at integrating only a few Negro pupils. "And who plays God to decide which superior colored child" should be integrated? Local option referendums would turn every locality into "little battlegrounds" of emotional struggles that would be dangerous. "There is more affection and more desire to help the Negro in these 140 members of the General Assembly than there is in the entire NAACP."

### FAVORING OPTION BY AN

A person dissatisfied with the placement of a pupil may appeal to the governor, and from the governor to the state courts.

If a court orders a Negro child admitted to a white school, or if local authorities attempt to integrate a school, that school will automatically be closed.

### GOVERNOR TAKES OVER

The governor then will take over direct control of that school and by reassigning pupils or reorganization of the school attempt to reopen it on a segregated basis. If that is not possible, he will try to reassign the children to other segregated public schools. Failing in this, the state will offer tuition grants to the children so that they may attend nonsectarian private schools.

In order to make the issue one directly between the state (rather than local officials) and the federal government, the law declares:

"Every action authorized and taken in conformity with the provisions of this act shall be and is hereby declared to be the act of the General Assembly of Virginia and an act of the governor of Virginia and an act taken on behalf of the sovereign commonwealth of Virginia, and if any suit, action or other legal proceedings be instituted relative thereto, the same shall be regarded and is hereby declared to be a suit, action or proceeding against the commonwealth of Virginia, and the commonwealth hereby declines and refuses for the commonwealth of Virginia or the governor of Virginia to be subject to such suit unless it shall be one brought by the attorney general of Virginia to enforce the laws of the commonwealth."

### SCHOOL BOARDS AND SCHOOLMEN

The boycott of Surry County's Lebanon Elementary School for Negroes was resumed when schools opened last month.

The boycott started last February when the school board rented a cinderblock building close to Lebanon School and converted it for use as a temporary classroom. At the same time, work was being done on plans for a new \$240,000 12-room school building which is expected to be ready by next fall.

Approximately 30 third-graders were supposed to attend school in the cinderblock building pending completion of the new structure, but their parents kept them home. The parents took the view that the arrangement was not satisfactory.

### BOYCOTT CONTINUED

When the fall term began last month, the same children were supposed to return to the cinderblock building, but the boycott was resumed. Miss Helen B. Slade, the teacher, sat in the building and waited in vain for her class.

Two weeks later, however, two of the Negroes returned to the school.

Three adult Negroes attempted unsuccessfully to register a group of about 30 Negro children at the all-White Stone Elementary School in Lancaster County when schools opened on Sept. 4.

The children and a number of adults with them waited in eight or 10 automobiles parked outside the school while the three spokesmen talked with the principal, T. Benjamin Hall. The three soon left the school and the entire

Jarnette, who recommended the change, said he felt the month-to-month appropriation was unnecessary for the remainder of the fiscal year since the schools had opened for the fall term "with everybody in his cubbyhole."

### COMMUNITY ACTION

Asa Carter, head of the Alabama White Citizens Council, addressed a segregation rally in Charlottesville early last month, at which about 30 persons indicated they would form a Charlottesville branch of the Seaboard White Citizens Council.

Carter said he was willing to attend school to avoid integration. He said "they don't build a federal government big enough to integrate my children."

### POLITICAL ACTIVITY

T. Coleman Andrews, the Richmonder who formerly headed the U. S. Bureau of Internal Revenue, will appear on Virginia ballots as a third party candidate for President.

One of the chief supporters of Andrews in Virginia is Robert B. Crawford of Prince Edward County, president of the Virginia Defenders of State Sovereignty and Individual Liberties, the strongly pro-segregation organization that has been active in the school controversy.

### New Legislation

The Virginia General Assembly, in its special session which adjourned

In 1956, U.S. Senator Harry Byrd infamously stated that Massive Resistance laws were passed to "prevent a single Negro child from entering any White school." *Virginia's General Assembly Bars State Funds for Mixed Schools. Southern School News, October 1956, from the Visual Studies Collection of the Library of Virginia. Virginians! Protect the Rights of your Children, 1956. Library of Virginia Special Collections Broadside.*

Between 1954 and 1970, massive resistance to school desegregation continued virtually unabated. By way of example, only 170 of 204,000 Black students in Virginia were enrolled in formerly White public schools as of 1960.<sup>39</sup> Massive resistance helped bolster White supremacists' cause of preventing school desegregation across the Commonwealth. Massive resistance effectively ended with the Virginia 1971 Constitution's repeal of § 140 of the state's 1902 constitution, which had mandated school segregation.

And yet, the legacy of segregation—be it racial or socioeconomic—lives on in Virginia's schools. Since 2003, the number of racially-isolated, underserved public schools has nearly doubled.<sup>40</sup> Such *de facto* segregation not only undermines the spirit of our laws, but also proves counterintuitive given the overwhelming research finding a net positive relationship for students enrolled in integrated school environments.<sup>41</sup> Students in integrated schools are less likely to drop out, more likely to enroll in college, more likely to earn higher overall test scores, and more likely to develop critical thinking, creativity, and problem-solving skills.<sup>42</sup> Perhaps more critically, students of color and students from lower income families are not the only ones to receive these benefits. Rather, all students benefit from diverse environments.<sup>43</sup> Despite the recognized, collective benefit, Virginia's practices demonstrate that it has not prioritized integration.

In terms of socioeconomic disparities, Virginia's educational funding scheme ranks in the bottom half of states nationwide, creating vastly different low- and high-income school experiences.<sup>44</sup> Worsening this inequity, Virginia's state-level contributions to education rank among the bottom ten states in the nation (#41).<sup>45</sup> Under Virginia's funding scheme, nearly 60% of non-federal school dollars in Virginia come from localities (compared to a 48% national average).<sup>46</sup>

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<sup>39</sup> University of Virginia's Digital Resources for United States History, Virginia's "Massive Resistance" to School Desegregation, [http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml\\_docs/solguide/Essays/essay13a.xml&xsl=/xml\\_docs/solguide/sol\\_new.xsl&section=essay](http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml_docs/solguide/Essays/essay13a.xml&xsl=/xml_docs/solguide/sol_new.xsl&section=essay)

<sup>40</sup> Chris Duncombe and Michael Cassidy, Increasingly Separate and Unequal in U.S. and Virginia Schools, The Commonwealth Institute (2016), <https://www.thecommonwealthinstitute.org/2016/11/04/increasingly-separate-and-unequal-in-u-s-and-virginia-schools/6>

<sup>41</sup> The Century Foundation, The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms (Apr. 29, 2019), <https://tcf.org/content/facts/the-benefits-of-socioeconomically-and-racially-integrated-schools-and-classrooms/?session=1>

<sup>42</sup> *Id.*

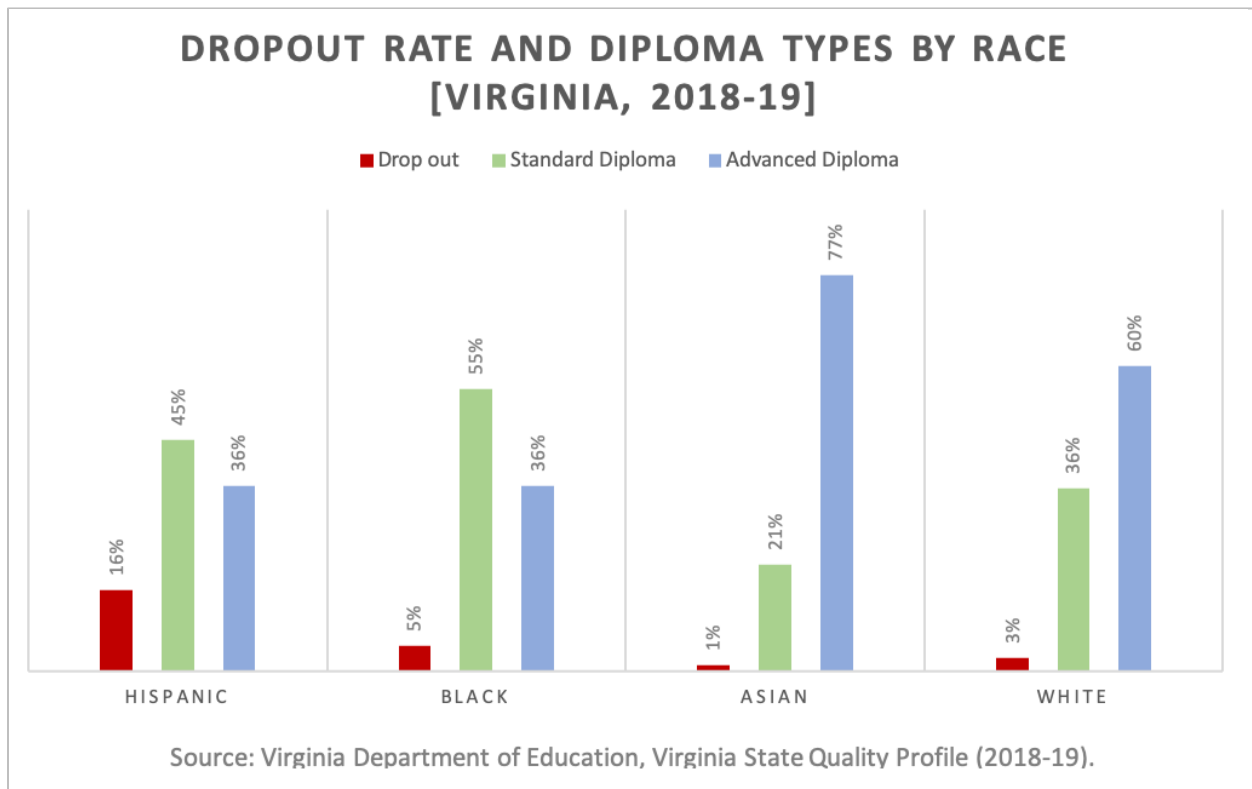
<sup>43</sup> *Id.*

<sup>44</sup> Cary Lou and Kristen Blagg, School District Funding in Virginia, Urban Institute (2018), [https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_3.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_3.pdf)

<sup>45</sup> National Education Association, Rankings of the States 2019 and Estimates of School Statistics 2020, [https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL\\_0.pdf](https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL_0.pdf)

<sup>46</sup> *Id.*

This is a problem because local funding depends on property values, which align with racial disparities from historical government practices.



These inequities have stark impacts on outcomes. Today, Black and Hispanic students are twice as likely to lack proficiency in reading by third grade compared to their White peers.<sup>47</sup> By graduation, this achievement gap results in wide differences in dropout rates.<sup>48</sup> There is a noticeable disparity between the majority of White students who receive advanced diplomas, and their Black and Hispanic peers who receive standard diplomas.<sup>49</sup> COVID-19's disruption of education, particularly for low-income students, is likely to only worsen these disparities.

This section outlines education proposals adopted by the Commission. Each proposal seeks to address negative racial disparities in Virginia's education system. The Commission prioritized proposals which are shown by empirical data or other research to be effective in achieving equity outcomes and likely to have a large impact.

<sup>47</sup> Virginia Department of Education, Virginia State Quality Profile (2018-19), <https://schoolquality.virginia.gov/virginia-state-quality-profile>

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

*The following topics are addressed in this section:*

- Racial & Socioeconomic Integration
- School Funding Equity
- Early Childhood Education
- Teacher Diversity
- School-to-Prison Pipeline
- COVID-19 Education Recovery and Crisis Spending Guidelines



Region III  
220 7th Street, N. E.  
Charlottesville, Virginia 22901

OFFICE FOR CIVIL RIGHTS

MAR 15 1968

Dear Mrs. Hall:

Dr. Severinson has asked me to thank you for your February 28 letter regarding Henrico County Schools.

Your letter expresses displeasure at a suggestion, evidently published in the newspaper, for the grouping of Ratcliffe and Central Gardens Elementary Schools. We have read the newspaper account of this suggestion and we find it to be as unacceptable as you do. The suggestion did not originate in our office or with any member of our staff. It would be interesting to know just how it did originate and how it got into the newspaper.

Suggestions made by our staff for the desegregation of Henrico County Schools are, in our judgment, educationally sound. At the same time, we have made it clear to Henrico County School officials that this office is not requiring that any particular plan be adopted by school officials in order to comply with the requirements of Title VI of the Civil Rights Act of 1964. We have asked school officials to submit to this office a plan for completing the desegregation process and for removing all vestiges of a racially dual structure of schools. The county is operating illegal, segregated schools and must cease to do this. The procedures by which it eliminates the racial identification of its Negro schools must be determined by local school officials. Our staff will be pleased to give every possible assistance to school officials in their efforts to develop and implement such a plan.

We appreciate your concern for the education of Henrico County students. I am sure the Henrico County Board of Education will welcome any suggestions you may have for helping it to accomplish the purposes and meet the requirements under Title VI.

Sincerely yours,

*/s/* W. Kenneth Haddock

W. Kenneth Haddock  
Chief, Education Branch

Mrs. Edmund Hall  
2602 Byron Street  
Richmond, Virginia 23223

In 1956, only 49% of Americans—61% of Northerners and 15% of Southerners— supported school integration efforts.<sup>50</sup> Letter regarding integration of Henrico County Schools, 15 March 1968, from the Virginia. Dept. of Education, School Division, Desegregation files, 1965-1971, Accession 29479, State Government Records of the Library of Virginia.

<sup>50</sup> BROWN v. BOARD: Timeline of School Integration in the U.S., Teaching Tolerance, (2004), <https://www.tolerance.org/magazine/spring-2004/brown-v-board-timeline-of-school-integration-in-the-us>.



BACKGROUND

Substantial research supports the idea that, in addition to the social benefits of diversity, integration makes a positive difference in student learning outcomes. Students in integrated schools are less likely to drop out, more likely to enroll in college, they have higher overall test scores and smaller achievement gaps. These benefits don't just accrue to minority or poor students: all students benefit from diverse environments.<sup>51</sup> Yet Virginia has not prioritized integration. Schools in Virginia are increasingly isolated by race and socioeconomic status, with the number of highly-segregated, high-poverty schools nearly doubling in the last twenty years.<sup>52</sup>

**RECOMMENDATION 1: Repeal 22.1-25 (A) 1-3<sup>53</sup> to allow regional solutions to inequity.** This statutory language strictly limits the power granted to the Board of Education under the Virginia Constitution to draw school zone lines that “promote the realization of the standards of quality.”<sup>54</sup> Instead, it preserves division lines from the 1970s, after *Milliken v. Bradley*, the Supreme Court decision that forbade integration plans that crossed district lines. This law effectively protects segregation created by families who had moved to avoid integration. The statute prevents regional solutions to school inequality and exacerbates problems caused by housing discrimination. Note that no other statutes currently on the books regulate student assignment or school zone drawing within districts. The Commission recommends the statute's repeal because of its problematic purpose and history.

<sup>51</sup> *Id.*

<sup>52</sup> Chris Duncombe and Michael Cassidy, *Increasingly Separate and Unequal in U.S. and Virginia Schools*, The Commonwealth Institute (2016), <https://www.thecommonwealthinstitute.org/2016/11/04/increasingly-separate-and-unequal-in-u-s-and-virginia-schools/6>; see also Genevieve Siegel-Hawley, et al., *School Segregation by Boundary Line in Virginia: Scope, Significance, and State Policy Solutions*, The Center for Education and Civil Rights (Nov. 2020), [https://cecr.ed.psu.edu/sites/default/files/School\\_Segregation\\_by\\_Boundary\\_Line\\_in\\_Virginia\\_Nov\\_2020.pdf](https://cecr.ed.psu.edu/sites/default/files/School_Segregation_by_Boundary_Line_in_Virginia_Nov_2020.pdf) (finding that segregation between schools in the same division is prominent, and that division boundary lines around independent cities in metro areas “are related to higher school segregation.”).

<sup>53</sup> Current Virginia Code § 22.1-25(A) 1-3. *How School Divisions Made.* ... 1. The school divisions as they exist on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education taken in accordance with the provisions of this section except that when a town becomes an independent city, the town shall also become a school division. 2. No school division shall be divided or consolidated without the consent of the school board thereof and the governing body of the county or city ... 3. No change shall be made in the composition of any school division if such change conflicts with any joint resolution ... of the General Assembly ...

<sup>54</sup> The Constitution of Virginia, Article VIII, Section 5(a) reads as follows: Section 5. Powers and duties of the Board of Education. The powers and duties of the Board of Education shall be as follows: (a) Subject to such criteria and conditions as the General Assembly may prescribe, the Board shall divide the Commonwealth into school divisions of such geographical area and school-age population as will promote the realization of the prescribed standards of quality, and shall periodically review the adequacy of existing school divisions for this purpose. (emphasis added)

**RECOMMENDATION 2: Incentivize and facilitate integration programs** such as controlled choice zoning, magnet schools, and metro-wide agreements. There are many models to use. For example, the merged city-suburban school district of Louisville and Jefferson County in Kentucky started controlled choice in the 1990's. The school district has been able to meet diversity goals for the vast majority of its schools while receiving broad support from parents and students. Other examples include Hartford's magnet school programs, which draw suburban students in and send urban students out to nearby districts, and the METCO program in Massachusetts (in which the state covers transportation and other costs for underprivileged students from inner-city Boston to fill empty seats in suburban schools). METCO also provides wraparound services such as social worker counseling and college visits. Another model of regional funding is Omaha's "Common Levy," which helps achieve equity in school funding by sending more money where it is most needed.<sup>55</sup> Virginia could encourage integration through a number of methods, including funding incentives, new laws and policies, and resource incentives. The Commission notes that it is important for such programs to be well-funded, include free transportation, and include sufficient funding for building awareness and enrollment through marketing.

**RECOMMENDATION 3: Add a diversity metric to school accreditation ratings.** Research has shown that diversity is important for the growth of all students, from resource equity and to personal growth and relationship building. Since diversity is necessary for a quality education and adequate workforce preparation, it should be part of the state accreditation process. Adding a diversity metric can be done by the Board of Education, which has authority to set the state accreditation process under the Every Student Succeeds Act.<sup>56</sup>

**RECOMMENDATION 4: Eliminate bias by changing course access, counseling, and gifted regulations.** All children deserve learning experiences that adequately challenge them and prepare them for long-term studies. Yet Virginia's advanced courses disproportionately leave out students of color. White students are 2.1 times more likely to be enrolled in a gifted or Advanced Placement (AP) course than Black students and 1.9 times more likely than Hispanic students.<sup>57</sup> There are several possible reasons. First, students are not being identified or counseled to take

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<sup>55</sup> John Britton, Larkin Willis, and Peter Cookson, *Sharing the Wealth: How Regional Finance and Desegregation Plans Can Enhance Education Equity*, The Learning Policy Institute (Feb. 2019),

[https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing\\_The\\_Wealth\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Sharing_The_Wealth_REPORT.pdf)

<sup>56</sup> Genevieve Siegel Hawley, et al., *Confronting School and Housing Segregation in the Richmond Region: Can We Learn and Live Together?* (2017),

<https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1074&context=spcs-faculty-publications>

<sup>57</sup> Lena Groeger, Annie Waldman, and David Eads, *Miseducation: Is there Racial Inequality at Your School?* ProPublica (October 16, 2018), <https://projects.propublica.org/miseducation/>

advanced courses.<sup>58</sup> Second, their families are unable to pay private costs required to advocate through the appeals process.<sup>59</sup> Third, students of color disproportionately attend under-resourced schools that do not offer advanced courses. To respond, we should add cultural sensitivity training to the gifted identification process. Second, we must reform the gifted appeals process. In Northern Virginia in particular, many wealthy families have their children privately identified as gifted (at the cost of at least several hundred dollars), then appeal their school's initial decision, ultimately succeeding in getting their children into advanced programs. But many families cannot afford such expensive exams or appeals processes. If the state offers gifted programming, it must reform the identification and appeals processes to remove the inherent advantage to certain families.<sup>60</sup>

Lastly, there should be checks on bias in career counseling and guidance. Virginia guidance counselors provide career counseling in middle school, and then help students choose the best diploma option for their life and professional goals. Somehow in this process, Black and Hispanic students are ending up with standard diplomas and worse options. According to the New York Times, this may actually be due to biased counseling.<sup>61</sup> The Commission recommends legislation that would require the Board of Education to revise the career counseling and diploma regulations to combat this trend, or direct regulatory reform.<sup>62</sup>

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<sup>58</sup> Steven Vegh, Statistics show a Gap in Gifted Education, *The Virginian-Pilot* (Sep. 19, 2012), [https://www.pilotonline.com/news/education/article\\_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html](https://www.pilotonline.com/news/education/article_9d576f91-7b15-5adc-8bea-9ffd39d0bc7b.html)

<sup>59</sup> Matthew Barakat, School System's Appeals Process Leaves Some Minorities Out, *Business Insider* (Feb. 3, 2018), <https://www.businessinsider.com/ap-school-systems-appeals-process-leaves-some-minorities-out-2018-2>

<sup>60</sup> See regulations at 8VAC20-40.

<sup>61</sup> Erica Green and Annie Waldman, "You are still Black": Charlottesville's Racial Divide Hinders Students (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/us/charlottesville-riots-black-students-schools.html>

<sup>62</sup> See regulations at 8VAC20-131-140. See diploma regulations at 8VAC20-131-51.

### BACKGROUND

According to at least two national research centers, Virginia ranks poorly—near the bottom of the 50 states—in the equity of its state educational funding scheme.<sup>63</sup> In 2015, students in Virginia’s highest-poverty districts received 7% fewer dollars overall than their peers in the lowest-poverty districts, one of the largest of such disparities nationwide.<sup>64</sup> These school funding disparities are more pronounced when assessing race and ethnicity data, with districts serving the most students of color receiving 8% less funding from the state.<sup>65</sup> In addition to an inequitable funding scheme, Virginia’s state-level contributions to education rank in the worst ten states in the nation (#41), leaving nearly 60% of non-federal school dollars in Virginia to come from localities (compared to a 48% national average).<sup>66</sup> This is a problem because local funding is dependent on property values – which align with racial disparities from historical government practices, such as redlining, as previously mentioned. As the Commonwealth’s school-aged population continues to grow and diversify, one of the chief problems for government leaders becomes reassessing how funds are distributed to districts of higher need statewide.

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<sup>63</sup> Cary Lou and Kristen Blagg, *School District Funding in Virginia*, Urban Institute (2018), [https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf); Bruce Baker, Danielle Farrie, David Sciarra, *Is School Funding Fair? A National Report Card*, Education Law Center with Rutgers School of Education (2018), [https://edlawcenter.org/assets/files/pdfs/publications/Is\\_School\\_Funding\\_Fair\\_7th\\_Edit.pdf](https://edlawcenter.org/assets/files/pdfs/publications/Is_School_Funding_Fair_7th_Edit.pdf). Note that the Education Trust ranks Virginia in the middle of states for funding disparities based on socioeconomic status alone, but ranks Virginia near the bottom in terms of racial disparities. The Education Trust, *The State of Funding Equity in Virginia* (2017), <https://edtrust.org/graphs/?sname=Virginia>.

<sup>64</sup> Andrew Warren and Chris Duncombe, *In Funding High-Poverty Schools, Virginia Gets a Failing Grade*, The Commonwealth Institute: Half Sheet (Aug. 28, 2018), <https://thehalfsheet.org/post/177487398498/in-funding-high-poverty-schools-virginia-gets-a>

<sup>65</sup> The Education Trust, *The State of Funding Equity in Virginia* (2017), <https://edtrust.org/graphs/?sname=Virginia>.

<sup>66</sup> National Education Association, *Rankings of the States 2019 and Estimates of School Statistics 2020*, [https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL\\_0.pdf](https://www.nea.org/sites/default/files/2020-07/2020%20Rankings%20and%20Estimates%20Report%20FINAL_0.pdf)

**RECOMMENDATION 5: Invest in educational infrastructure.** The COVID-19 pandemic has highlighted how important good technology and healthy learning environments are for students in our schools. Yet our state funding scheme generally does not provide funding for school buildings or other capital expenses, expecting cash-strapped municipalities to foot the bill. This means that our poorest districts have the worst buildings, the most outdated software, and the weakest data security, making it even harder for them to provide a quality education and meet the state and federal reporting requirements. It is time for Virginia to recognize that capital expenses are a part of the Commonwealth’s responsibility to our children. The Commission supports using state operating and capital funds to support Virginia’s school infrastructure.

**RECOMMENDATION 6: Reconfigure the funding formula to take account of student need.** The inequities above are, in part, the result of simple budget language. Virginia should reform the “Local Composite Index” formula to consider levels of need and concentration of need. While the current formula considers a locality’s ability to pay, it generally ignores the proportion of high-needs students the district is educating.<sup>67</sup> This results in major inequities: the districts that most need additional resources aren’t getting them. Note that both the Commonwealth Institute and the Virginia Legislative Black Caucus suggest increasing the At-Risk Add-on as an alternative measure, and the Board of Education has suggested a new line item called the Equity Funding for addressing concentrated poverty. Though the Add-On and Equity Fund are ways to achieve equity that the Commission would also support, the Commission officially recommends changing the foundation formula entirely so that equity does not depend on an annual allocation. As an example, the COVID-19 economic crisis resulted in an unallotment of millions of dollars meant to improve school equity through the Add-On during the spring of 2020.<sup>68</sup> This unallotment—though later restored—shows why it’s better not to leave equity of funding up to a separate line item in the budget. It is important to work equity into the foundational funding system.

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<sup>67</sup> “Virginia could consider ... whether to cap the required local share and at what level, whether the local share of the state’s poor school-age children should be accounted for in sales tax revenue distributions, whether to fund cost of competing adjusted salaries in selected districts, and the size of various funding streams targeting low-income, special education, and other at-risk students.”

[https://www.urban.org/sites/default/files/publication/99540/school\\_district\\_funding\\_in\\_virginia\\_2.pdf](https://www.urban.org/sites/default/files/publication/99540/school_district_funding_in_virginia_2.pdf)

<sup>68</sup> “The funds that were unallotted (but later restored) included \$490 million in aid for early education and K-12 schools. The General Assembly had voted earlier this year to substantially increase Virginia’s At-Risk Add-On program, which directs resources to school divisions with the highest concentration of students from low-income families, to help address Virginia’s long-standing inequity in school funding, and that funding has now been suspended. Other unallotted investments include resources for the Virginia Preschool Initiative (\$91.5 million) and increasing students’ access to school meals (\$10.6 million).” Chris Duncombe and Chad Stewart, Virginia Can Choose Equity for School Funding During Economic Crisis, The Commonwealth Institute (June 8, 2020), <https://www.thecommonwealthinstitute.org/2020/06/08/virginia-can-choose-equity-for-school-funding-during-economic-crisis/>



### BACKGROUND

According to the Centers for Disease Control and Prevention (CDC), for every \$1 spent on a state or district early childhood education program, \$3 to \$5 worth of benefits follow.<sup>69</sup> Not only do students have better academic outcomes in the first few years of schooling, they have better long-term outcomes, such as reductions in criminal offenses and increased health benefits. Pre-K is also associated with reductions in poverty and increases in parental employment. While Virginia has made progress in recent years on expanding access to early childhood education, challenges in equity and access remain. One problem that can be solved is the lack of data. Because Virginia's early childhood education system is so fragmented—between home-grown daycare, Federal Head Start, Virginia Preschool Initiative (VPI), and private preschools—researchers do not have a clear picture of where disparities are or how to make improvements. In addition, kindergarten teachers lack information on the abilities of their entering students.

### **RECOMMENDATION 7: Advocate for high quality pre-kindergarten programs for all children.**

Universal Pre-K is one of the most powerful long-term investments Virginia could make, and increasing both access and quality is essential to the Commonwealth's long-term success. Research suggests such programs should be at least full day, five days a week, and should be available for children at as young an age as possible in order to reap the best benefits in education, public health, and family stability.<sup>70</sup> The Commission encourages further Pre-K access.

**RECOMMENDATION 8: Support the Governor's initiative to unify the Pre-K data system and create Pre-K student identifiers.** Identifying and researching Pre-K disparities is essential to the work of the racial justice. The Commission therefore supports efforts to unify the Pre-K data collection system by assigning student identifiers to younger children, specifically those not in state-run Pre-K programs.<sup>71</sup> This will allow the Commonwealth to know where students are getting Pre-K experiences, what those experiences are like, and how their kindergarten-readiness relates to those experiences.

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<sup>69</sup> Centers for Disease Control and Prevention, Early Childhood Education, <https://www.cdc.gov/policy/hst/hi5/earlychildhoodeducation/index.html>

<sup>70</sup> Kelsey Piper, Early Childhood Education Yields Big Benefits—Just Not the Ones You Think, Vox (Oct. 16, 2018), <https://www.vox.com/future-perfect/2018/10/16/17928164/early-childhood-education-doesnt-teach-kids-fund-it>

<sup>71</sup> Current Virginia Code § 22.1-287.03(B) Unique Student Identification Numbers: ... (B) The Department of Education shall develop a system of unique student identification numbers.... to each student enrolled in a public elementary or secondary school.

### BACKGROUND

Teacher diversity has a huge impact on student outcomes. Studies have shown that minority students who had a teacher from their own background during elementary school were 7% more likely to graduate from high school and 13% more likely to enroll in college.<sup>72</sup> Teachers of color serve as role models, effective educators, and valuable signals of the importance of education and diversity. While half of Virginia’s students are children of color, nearly 80% of Virginia teachers are White. In fact, while the proportion of students of color continues to rise, the proportion of teachers of color has fallen in recent years. We must reverse this trend. This problem is one of both recruitment and retention. Only a quarter of individuals in Virginia’s teacher preparation programs are individuals of color. In addition, Virginia loses nearly one fifth of its teachers of color every year (compared to 15% of White teachers) due to high turnover. Teachers of color with provisional licenses, particularly Black teachers, are significantly less likely to complete the requirements and remain teachers long term (63% for Black teachers compared to around 75-80% for other races).<sup>73</sup>

**RECOMMENDATION 9: Mandate data collection and reporting on diverse teacher recruitment and retention.** The Commission recommends that VDOE or the Board of Education annually collect and publish district-level data on teacher diversity at each stage of the teacher pipeline, including recruitment, application, hiring, and retention. This can be mandated by statute, for example at § 22.1-290.01(C), where the Teacher Loan program is established. This data will help inform how best to combat the high turnover and poor recruitment of diverse teachers in Virginia, while also incentivizing districts to improve their outcomes.

**RECOMMENDATION 10: Endorse recommendations by the Taskforce on Diversifying Virginia’s Educator Pipeline.** The Commission recommends that VDOE approval of a 4-year Bachelors-to-licensure program and VDOE creation of a model “Grow-Your-Own” program for districts to implement. While not a goal of the Commission, we also include the following recommendations that would require state budgetary changes: increased state funding for teacher compensation in high-needs schools, scholarships for Praxis and other licensure exams, stipends for student teachers, and expansion of the teacher loan program; and state investment in marketing programs to recruit more minority teachers.

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<sup>72</sup> Seth Gershenson, et al., The Long-Run Impacts of Same-Race Teachers, NBER Working Paper 25254 (Nov. 2018), <https://www.nber.org/papers/w25254.pdf> ; *see also* <http://educationnorthwest.org/resources/resources-recruiting-hiring-and-retaining-teachers-color>

<sup>73</sup> Report from the Taskforce on Diversifying Virginia’s Educator Pipeline (Aug. 2017), <https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/final-tdvrep-report.pdf>

### BACKGROUND

What has come to be called the “School-to-Prison Pipeline” has been confirmed by multiple long-term studies: students overexposed to exclusionary discipline practice—such as out-of-school suspensions, or court referrals for simple school misconduct—are more likely to drop out of school, fall behind academically, and get caught up in the juvenile justice system. By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students’ long-term outcomes.<sup>74</sup> Despite a massive increase in Virginia’s student enrollment numbers, support staff numbers have dropped in the last fifteen years, with a corresponding increase in exclusionary discipline use.<sup>75</sup> The damaging consequences of this trend are overwhelmingly felt by students of color. For example, Virginia’s unusually high use of police officers to manage behavior in classrooms (one of the top 3 states in the nation) falls far more harshly on Black students, who are 2.5 times more likely to have the police called on them from class. Suspensions are also used disparately: as of 2018, Black students were 4.5 times more likely than their White classmates to be suspended from school.<sup>76</sup>

**RECOMMENDATION 11: Establish the Virginia Council to Dismantle the School-to-Prison Pipeline via statute.** The Commission proposes the creation of the Virginia Council to Dismantle the School-to-Prison Pipeline, a statutorily-established body charged with tracking law enforcement and disciplinary practices within public schools. Creating such a body will build upon efforts from previous administrations, while also establishing a central authority that can continue to effect positive change in this space long after the Northam administration has ended. Specifically, this body will be responsible for (1) studying current disciplinary practices and data trends, particularly as they relate to disparate educational outcomes and justice involvement by racial category within Virginia K-12 schools; and (2) recommending best practices and statutory changes that will lead to safer school environments and more equitable disciplinary practices.

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<sup>74</sup> Emily Morgan, et al., The Council of State Governments Justice Center, *The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System* (2014), [http://knowledgecenter.csg.org/kc/system/files/The\\_School\\_Discipline\\_Consensus\\_Report.pdf](http://knowledgecenter.csg.org/kc/system/files/The_School_Discipline_Consensus_Report.pdf)

<sup>75</sup> Sherri Egerton, et al., Legal Aid Justice Center, *Investing in Student Safety and Success: The Growing Importance of Effective Staffing in Schools* (August 2018), <https://www.justice4all.org/wp-content/uploads/2018/08/Investing-in-Student-Safety-and-Success.pdf>

<sup>76</sup> Amy Woolard, et al., Legal Aid Justice Center, *Suspended Progress 2018: An Update on the State of Exclusionary Discipline and Alternative Education in Virginia’s Public Schools* (October 2018), <https://www.justice4all.org/wp-content/uploads/2018/10/FullSuspendedProgress2018.pdf>

**RECOMMENDATION 12: Limit the presence of School Resource Officers (SRO) in Virginia K-12 schools by reallocating a portion of the resources from the state’s SRO program to invest in increased school counselors/mental health supports in schools.** A school resource officer (SRO) is a “certified law-enforcement officer hired by a local law enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.”<sup>77</sup> A 2017-2018 School Safety audit, the most recent data available, found that approximately 770 SROs were placed in nearly 1100 schools across the Commonwealth.<sup>78</sup> This total amounts to roughly 55% of all Virginia schools.<sup>79</sup> The presence of SROs in Virginia schools has had a disproportionately adverse effect on children of color.<sup>80</sup> Specifically, though students of color represent approximately 40% of the school-age population, they accounted for nearly 60% of school arrests.<sup>81</sup> According to Justice Forward Virginia, “Black girls make up 17% of the school population,” but were “43% of the students arrested or referred to law enforcement for prosecution.”<sup>82</sup>

The American Civil Liberties Union (ACLU) has recently provided helpful guidance on how to remove police from schools while creating and maintaining a safe school environment.<sup>83</sup> Specifically, the ACLU recommends that states provide additional school-based mental health professionals and counselors, provide trauma-informed training for staff, and ensure accurate data collection so as to better identify and address safety concerns.<sup>84</sup> The President of the Fairfax NAACP, Sean Perryman, recently drafted and sent a letter signed by more than a dozen organizations in Virginia to Governor Northam requesting that \$9 million in state funds be reallocated away from the SRO program during the special session.<sup>85</sup> More than a dozen advocates signed onto the letter, including Delegate Kaye Kory (D-Fairfax).<sup>86</sup> The Commission recommends an action along these lines.

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<sup>77</sup> Virginia Code § 9.1 - 101.

<sup>78</sup> Legal Aid Justice Center, School Resource Officers and Virginia Law (2020), <https://www.justice4all.org/2020/06/05/sro-va-law/>

<sup>79</sup> Jason Langberg and Angela Ciolfi, Protecting Childhood: A Blueprint for Developmentally Appropriate School Policing in Virginia (2016), <https://www.justice4all.org/wp-content/uploads/2016/01/School-Policing-Report-Full.pdf>

<sup>80</sup> Alliance for Educational Justice, We Came to Learn: A Call to Action for Police-Free Schools, <https://wecametolearn.com/>

<sup>81</sup> *Id.*

<sup>82</sup> Justice Forward Virginia, Do Police in Schools Really Make Our Kids Safer? <https://justiceforwardva.com/police-in-schools>

<sup>83</sup> Amir Whitaker, et al., Cops and Counselors: How the Lack of School Mental Health Staff is Harming Students , ACLU, [https://www.aclu.org/sites/default/files/field\\_document/030419-acluschooldisciplinereport.pdf](https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf)

<sup>84</sup> *Id.*

<sup>85</sup> Michelle Murillo, Letter to Governor Northam Pushes for Shift in School Resource Officer Funding, WTOP News, (July 7, 2020), <https://wtop.com/virginia/2020/07/letter-to-gov-northam-pushes-for-shift-in-school-resource-officer-funding/>

<sup>86</sup> *Id.*

**RECOMMENDATION 13: Impose stronger statutory limits on out-of-school suspension.** By relying on exclusionary discipline for relatively minor classroom misbehavior, school actors aggravate and worsen students’ long-term outcomes. Due to the devastating effects that out-of-school suspensions can have on students and the racially disproportionate use of such suspension, Virginia, in 2018, reduced the maximum length of long-term suspensions from a full year to 45 days, and limited available suspensions for K-3 students to 3 days. However, Virginia could go further still. New York, for example, has a 20-day limit.<sup>87</sup> The Commission recommends that Virginia impose stronger statutory limits on such suspensions.

**RECOMMENDATION 14: Increase support staff funding as an alternative to suspension.**

Access to quality support staff, where a student is supported academically, socially and emotionally, can lead to positive outcomes in a student’s life. Specifically, recent research has found that “just one additional counselor at a school can have nearly a 10 percentage point increase on average in 4-year college attendance rates.”<sup>88</sup> For nearly 15 years, however, Virginia’s student population has increased by nearly 60,000, but such critical investments—like these social and emotional supports—have decreased.<sup>89</sup> Currently, a Virginia school counselor’s average caseload is more than 360 students per counselor. In some jurisdictions, this ratio balloons to more than 1,000 students per counselor.<sup>90</sup> The Commission recommends an increase of state funding to adequately staff schools with such critical counseling and student support services.

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<sup>87</sup> Alex Zimmerman, NYC to Curb Suspensions longer than 20 days, a major victory for discipline reform advocates (June 20, 2020), <https://chalkbeat.org/posts/ny/2019/06/20/nyc-is-capping-suspensions-at-20-days-a-major-victory-for-discipline-reform-advocates/>

<sup>88</sup> Kathy Mendes, Sufficiently Staffed Counselors are Key for Safe and Healthy Schools, The Commonwealth Institute: The Half Sheet (Feb. 7, 2020), <https://www.thecommonwealthinstitute.org/wp-content/uploads/2020/02/Sufficiently-Staffed-Counselors-Are-Key-for-Safe-and-Healthy-Schools.pdf>

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*



### BACKGROUND

The COVID-19 pandemic has had a devastating impact on Virginia's public schools. Last March schools closed for the year, and this fall schools across the Commonwealth are experimenting with online coursework, hybrid learning, and limited opening plans. Despite the heroic efforts of educators during this difficult time, new alarming research shows that all these learning disruptions are having a big impact, and one that is disparately harming children of color.<sup>91</sup> Some of this disparity is due to lack of access to computers, quiet spaces at home, good and affordable internet service, as well as stable housing.<sup>92</sup> Other disparities are a result of schools themselves—some schools and school divisions have far more resources to provide engaging face-to-face online learning.<sup>93</sup> Students with special needs in particular are struggling with online learning, which requires high executive functioning and rarely includes the special support and redirection needed from qualified educators in the classroom.<sup>94</sup>

All in all, researchers estimate the learning loss to be significant for all children, but to be most severe for children in low income homes, particularly Black and Hispanic/Latinx children.<sup>95</sup> It will be essential for Virginia to prioritize equity next year as it begins to lay out plans for recovery. Rather than laying out a specific solution, below are several principles the Governor should follow in making choices on spending, budget cuts, and allocation of emergency funds for education during or following a crisis. These guidelines were created in collaboration with The Commonwealth Institute.

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<sup>91</sup> Maya King and Nicole Gaudiano, The Pandemic could widen the achievement gap. A generation of students is at risk. Politico (Sept. 23, 2020), <https://www.politico.com/news/2020/09/23/how-the-coronavirus-is-making-school-segregation-worse-420839>

<sup>92</sup> Dana Goldstein, Research Shows Students Falling Months Behind During Virus Disruptions, New York Times (June 5, 2020), <https://www.nytimes.com/2020/06/05/us/coronavirus-education-lost-learning.html>

<sup>93</sup> *Id.*

<sup>94</sup> Anna North, We Need to Talk About What School Closures Mean for Kids with Disabilities, Vox (Aug. 6, 2020), <https://www.vox.com/2020/8/6/21353154/schools-reopening-covid-19-special-education-disabilities>

<sup>95</sup> Emma Durn, et al., COVID-19 and student learning in the United States: The hurt could last a lifetime, McKinsey & Company (June 1, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime>

**RECOMMENDATION 15: The Commission proposes the following guidelines for crisis education spending: A. Federal emergency funds should be distributed proportionally by need.** The use of federal recovery funds is essential help in an emergency, but acting as if all schools need the same amount of help ignores the reality of a crisis’s effect on education.<sup>96</sup> Crises harm poor and disadvantaged students more severely than their wealthier peers. Thus, to preserve any kind of fairness it is essential that federal funds be distributed based on student need. While the federal CARES funds have largely been allocated, there are ongoing discussions for additional federal assistance. State leaders should allocate any additional federal assistance based on student need.

One way to do this is to allocate assistance based on the previous year’s Title I shares similar to the Elementary and Secondary School Emergency Relief funds (ESSER) in the CARES Act. Another way would be to count the ADM (average daily membership) for each district, add an additional ADM number for each child from a family in poverty, and an additional ADM for children with an Individual Education Plan (IEP) or English Language Learner (ELL) status. The resulting ‘score’ for each school will be proportionally based on the concentration of need, and funds distributed based on these scores will give those who most need help a greater chance of recovery.

**B. When using emergency funds to support education during a crisis, decision makers must consider affordability issues for families.** Since the COVID-19 crisis has thrown much into disarray, state and local leaders have also allocated new resources to important factors outside of the school building that affect education. These include food security, housing stability and evictions, and broadband access or computer ownership for remote learning. All of these are excellent priorities, but it is important to consider not just access to each of these elements, but also affordability. For example, the Commonwealth Institute discovered that despite legislators’ focus on broadband expansion, there is actually a huge broadband affordability problem. Therefore, many children of color who live in cities with broadband networks are still excluded from effective online schooling.<sup>97</sup> When state leaders use federal funds or other emergency funds to solve problems like these, it is important for them to consider the issue of affordability for families. For example, Alabama used its CARES Act funding to provide internet credits for students who are recipients of free and reduced-price lunch.<sup>98</sup> Just like housing vouchers can help people pay the rent, internet

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<sup>96</sup> Northam Announces Additional \$220 million in Federal Funds for Schools, NBC4 Washington (Oct. 8, 2020), <https://www.nbcwashington.com/news/local/northam-announces-additional-220m-in-federal-funds-for-schools/2439348/>

<sup>97</sup> Gabriel Worthington et al., Addressing Barriers to Virtual Learning for Virginia Students, The Commonwealth Institute: The Half Sheet (Aug. 21, 2020), <https://thehalfsheet.org/post/627080175386066944/addressing-barriers-to-virtual-learning-for>

<sup>98</sup> Trisha Powell Crain, Alabama to Give \$100 Million in Internet Vouchers for Low-Income Students, Alabama.com (July 31, 2020), <https://www.al.com/news/2020/07/alabama-to-give-100-million-in-internet-vouchers-for-low-income-students.html>

credits can help people purchase the expensive broadband service that has become essential in an emergency. [Note that these are not “vouchers” that would offer alternate private education services but similar to coupons for internet service].

**C. Cuts to state spending due to crisis economic conditions should preserve equity efforts.** Even in a budget shortfall, it is critical to look at the entire budget and preserve equity-based investments. The suspension of new state K-12 funding this spring did not affect all students equally. School divisions with the highest share of students of color and students from low-income households lost significantly more funding on a per pupil basis from the suspension of new state budget spending.<sup>99</sup> Though it appears these funds are being restored under the new special session budget,<sup>100</sup> the initial decision was exactly the reverse of what policymakers should have done, since there is increasing evidence that students of color and students from low income households face major barriers to education at this time. If state spending on education is cut during a crisis, the Governor should preserve the At-Risk Add-On (as has been proposed by the General Assembly) and other equity efforts, while cutting from general education assistance instead. This is a matter of policy effectiveness: losing a dollar in a high poverty school hurts a lot more than losing a dollar in other schools.

**D. Spending restoration after a crisis should prioritize equity funding first.** The Board of Education last year passed new Standards of Quality that not only realistically addressed staffing and resource needs for Virginia’s schools but prioritized equity by creating a brand-new fund for addressing students learning in settings of concentrated poverty—the Equity Fund.<sup>101</sup> The combination of the Equity Fund and the At-Risk Add-On (or alternatively, a recalculation of the Local Composite Index that includes these same factors) should be the first priority of state leaders as soon as the crisis begins to wind down and budgets begin to grow. Recovery requires resources—great teachers, great curriculum, safe buildings, and plenty of support staff. The Commonwealth has the power and capacity to raise funds to provide these things to our high-needs schools. It is essential, in the wake of an educational crisis, to do so.

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<sup>99</sup> Chris Duncombe and Chad Stewart, Virginia Can Choose Equity for School Funding During Economic Crisis, The Commonwealth Institute (June 8, 2020), <https://www.thecommonwealthinstitute.org/2020/06/08/virginia-can-choose-equity-for-school-funding-during-economic-crisis/>

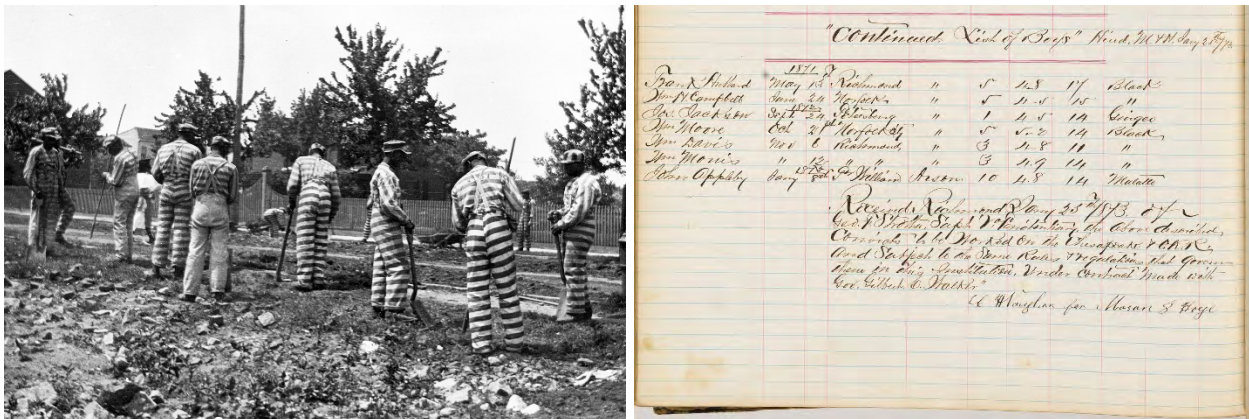
<sup>100</sup> Amy Friedenberger, General Assembly Passes Budget, But it’s Unlikely to Go into Effect for Weeks, The Roanoke Times (Oct. 16, 2020), [https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article\\_3bcf8e07-f040-55e9-bb03-390c550acedf.html](https://roanoke.com/news/general-assembly-passes-budget-but-its-unlikely-to-go-into-effect-for-weeks/article_3bcf8e07-f040-55e9-bb03-390c550acedf.html)

<sup>101</sup> Megan Pauly, Virginia Board of Education Prioritizes Equity in Funding Recommendations, VPM (Oct. 17, 2019), <https://vpm.org/news/articles/7760/virginia-board-of-education-prioritizes-equity-in-funding-recommendations>

## CRIMINAL JUSTICE

Virginia’s criminal justice system, like many institutions in our Commonwealth, has explicitly racist roots.

After the federal Reconstruction Amendments were passed, Virginians quickly sought to suppress Black people in both civic and social life.<sup>102</sup> John Goode, president of Virginia’s 1902 Constitutional Convention and former Confederate Colonel, described that Black voters enfranchised during Reconstruction threatened the “purity and inviolability of the ballot.”<sup>103</sup> The 1902 Virginia Constitution included a clause disenfranchising Virginians convicted of varied crimes, including “treason or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery, or perjury.”<sup>104</sup> The final suffrage article put forward for the 1902 Virginia Constitution, as its drafter, future U.S. Senator and Treasury Secretary Carter Glass described, “d[id] not necessarily deprive a single White man of the ballot, but will inevitably cut from the existing electorate four-fifths of the negro voters.”<sup>105</sup>



The Virginia State Penitentiary, a segregated institution, was known for its exploitation of Black labor. The document here lists laborers by their race used to work on a railroad in the 1870s. *Prisoners from the Virginia Penitentiary on a Work Detail, undated, from the Virginia Studies Collection of the Library of Virginia. List of Boys sent to work on the Chesapeake and Ohio Railroad, January 1873, from the Virginia Penitentiary, Prisoner Register No. 2, from the State Records Collection of the Library of Virginia.*

<sup>102</sup> Matt Ford, The Racist Roots of Virginia’s Felony Disenfranchisement, The Atlantic (April 27, 2016), <https://www.theatlantic.com/politics/archive/2016/04/virginia-felon-disenfranchisement/480072/>

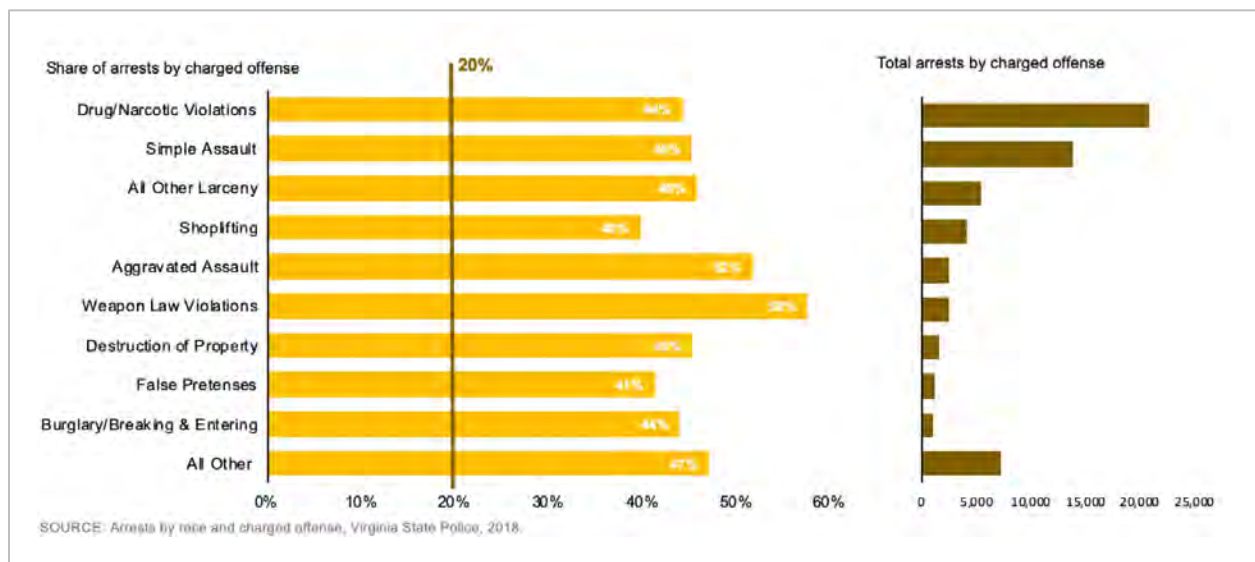
<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

After constitutionalizing felony disenfranchisement (along with poll taxes, voter ‘literacy tests,’ and school segregation), Virginia’s government created a criminal justice system designed to exploit Black labor and exclude Black people from the social world. In the segregated Virginia State Penitentiary, Black children and adults were used as labor for the state.<sup>106</sup> They engaged in life-endangering work, such as working on chain gangs in railroad tunnels and stone quarries. Black Virginians faced harsh punishment, largely designed to promote their further suffering.<sup>107</sup>

The Virginia State Penitentiary remained segregated until the early 1970s.<sup>108</sup> The Black prison was infamous nationwide for its systematic torture of inmates. For example, in 1946, Missouri’s governor refused to extradite an escaped prisoner to Virginia because of Virginia’s torturous treatment of inmates, which included flogging and racks.<sup>109</sup> The women in the state penitentiary were separated from the men, raped by guards, and forced to raise their children behind bars.<sup>110</sup>



In 2018, Black individuals made up 20% of the Virginia population but 45% of all arrests.

<sup>106</sup> Dale Brumfield’s book *Virginia State Penitentiary: A Notorious History*, documents some of the practices that occurred in the segregated facility, which was home to Black men, women, and children. See also, Sandy Hausman, *One Man’s Journey Through the Notorious History of the Virginia State Penitentiary*, WVTF (Oct. 27, 2017), <https://www.wvtf.org/post/one-mans-journey-through-notorious-history-virginia-state-penitentiary#stream/0> ; Dave Brumfield, *Excerpt: A New Book Explores How the Electric Chair Came to Virginia*, Style Weekly (Jan. 31, 2017), <https://www.styleweekly.com/richmond/excerpt-a-new-book-about-the-state-penitentiary-explores-how-the-electric-chair-came-to-virginia/Content?oid=2397653>

<sup>107</sup> Richard Foster, *A New Book Tells of the Horrors of the Virginia State Penitentiary*, Style Weekly (Oct. 24, 2017), <https://www.styleweekly.com/richmond/a-new-book-tells-of-the-horrors-of-the-virginia-state-penitentiary/Content?oid=5378240>

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*



This past is not fully behind us. Black men and women continue to face unequal treatment in the Virginia criminal justice system. Although Black individuals make up only 20% of Virginia's population, they make up 45% of arrests and over 50% of prison inmates in the Commonwealth.<sup>111</sup> Black individuals also comprise the majority of those disenfranchised by Virginia's automatic felony disenfranchisement laws.<sup>112</sup> Despite this obvious disparity, the Commonwealth tracks little data on race when it comes to sentencing, pre-trial decision-making, or even bail decisions, making it nearly impossible to know which stage of the process is causing the racial disparity.

Even upon release, an individual continues to face collateral consequences. One study found that Virginia imposes nearly 900 collateral consequences on those convicted of felonies.<sup>113</sup> The most significant of these is permanent disenfranchisement from voting.

The Commission puts forward the following six recommendations, which fall within four main problem areas:

- Data gaps throughout the criminal justice process
- Over-Incarceration
- Inequitable Sentencing Laws
- Constitutional Felony Disenfranchisement

Each topic listed has been shown by research to have a disproportionate racial impact in Virginia.

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<sup>111</sup> Virginia State Police, Crime in Virginia 2018, [https://www.vsp.virginia.gov/downloads/Crime\\_in\\_Virginia/Crime\\_in\\_Virginia\\_2018.pdf](https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime_in_Virginia_2018.pdf); Virginia State Police, Crime in Virginia 2019, [https://www.vsp.virginia.gov/downloads/Crime\\_in\\_Virginia/Crime%20In%20Virginia%202019.pdf](https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime%20In%20Virginia%202019.pdf); Vera Institute, Incarceration Trends in Virginia [dataset], <http://trends.vera.org/rates/virginia>

<sup>112</sup> Chris Uggen et al., Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction, The Sentencing Project (Oct. 30, 2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>; Prison Policy Institute, Virginia Profile, <https://www.prisonpolicy.org/profiles/VA.html>

<sup>113</sup> Ronald Fraser, Life After Prison in Virginia, Roanoke Times (Mar. 24, 2019), [https://www.roanoke.com/opinion/commentary/fraser-life-after-prison-in-virginia/article\\_04129dc0-18b9-588d-83f6-165756045829.html](https://www.roanoke.com/opinion/commentary/fraser-life-after-prison-in-virginia/article_04129dc0-18b9-588d-83f6-165756045829.html)

**BACKGROUND**

Virginia lacks adequate data on racial disparities at each step in the criminal justice process, particularly in the pre-trial and sentencing phases. Having this data is essential to making more substantive policy recommendations.

**RECOMMENDATION 1: Require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity; require courts to publish racial and other demographic data of all low-level offenses.** The Black prison population is vastly overrepresented compared to the general population of Black Virginians. Though the State Police provide a robust data source regarding arrest rates, there is no race-based data about sentencing itself. The Virginia Criminal Sentencing Commission does not use race in the sentencing algorithms it employs, which we commend. But there ought to be room for tracking the race of a sentenced person over time for aggregate data analysis, in order to answer questions like, “Are there offenses for which Black defendants are more likely to receive prison terms than White defendants?” or “How often did a judge depart from the Sentencing Commission’s discretionary sentencing guidelines for White defendants compared to Black defendants?”

§ 17.1-803(10) currently reads:

*[The Commission shall] [r]eport upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia. Such report shall include any modifications to the discretionary sentencing guidelines adopted by the Commission pursuant to subdivision 1 and shall be accompanied by a statement of the reasons for those modifications.*

The Commission recommends adding language to this code section that would require the Sentencing Commission to collect, analyze, and report on sentencing outcomes by race and ethnicity.

**RECOMMENDATION 2: Require the collection of data on the results of pretrial hearings, bail decisions, and pre-trial incarceration, including breakdowns by race.** The Sentencing Commission does not use race, and the Virginia Pretrial Risk Assessment Instrument (VPRAI) prohibits the use of race. Further, magistrates provide little to no data insight regarding the actual use of the VPRAI, as well as bail outcomes, pretrial sentencing, and demographic data related to that sentencing. A new statute requiring magistrate data be made publicly available would act to increase transparency and, hopefully, increase trust between the public and this slice of the criminal justice system. Such data would also inform policy changes on bail decisions and pretrial incarceration.

The Virginia State Crime Commission has taken valuable steps to study pre-trial outcomes through the Virginia Pre-Trial Data Project, which identified and tracked a cohort of 22,993 adult defendants charged with a criminal offense in October 2017.<sup>114</sup> This Project tracked whether defendants were arrested for a new in-state offense punishable by incarceration during the pre-trial period and whether defendants were charged with failure to appear during the pre-trial period. The Project obtained data from seven agencies.<sup>115</sup> The Commission encourages further study in this area.

To address these issues, the Commission recommends introducing a new section in Title 19.2 Chapter 9 that requires all magistrate judges to provide data about each pretrial hearing decision, including bail amounts, recognizance decisions, and whether the defendant is placed in pretrial incarceration. Magistrate reports to DCJS should also include the race and ethnicity of the defendant in each case and any data about the use of the VPRAI in that hearing. In addition, the new code section should include a requirement for DCJS to annually publish this data in aggregate, and to analyze whether such pre-trial decisions are disproportionately falling on racial lines.

The legislature did consider part of this effort with HB922 (2020), which would have required DCJS to collect data relating to bail determinations for any person who is held in custody pending trial or hearing for an offense, civil or criminal contempt or otherwise, in every locality, create a uniform reporting mechanism for criminal justice agencies to submit such data, and submit an annual report on the data collected to the Governor and the General Assembly, as well as publish the annual report on the Department's website. The bill was left in committee.

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<sup>114</sup> Virginia State Crime Commission, Virginia Pre-Trial Data Project Preliminary Findings (Dec. 2019), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=15a92af3-2ac9-7c2f-c4c8-1666cb4a702f&forceDialog=0>

<sup>115</sup> Alexandria Circuit Court, Fairfax County Circuit Court, Compensation Board, Office of the Executive Secretary of the Supreme Court of Virginia, Virginia Department of Corrections, Virginia Department of Criminal Justice Services, and Virginia State Police. *Id.*

**BACKGROUND**

A disproportionate number of Virginia’s prisoners are individuals of color. This means that policies which encourage over-incarceration have a disproportionate effect on communities of color.

**RECOMMENDATION 3: Prevent the Compensation Board from considering the volume of felony cases when calculating Commonwealth Attorney’s office resourcing.** The

“Compensation Board Criteria for Allocating New Assistant Commonwealth’s Attorney Positions in Commonwealth’s Attorneys’ Offices” says, “the Compensation Board will use the staffing methodology and weighted three-year average workload criteria developed by the Virginia Association of Commonwealth’s Attorneys (VACA), to determine the appropriate level of Compensation Board assistant Commonwealth’s Attorney support for each office requesting additional positions.”

*That formula is:*

$$\# \text{ of Attorneys} = \frac{\text{Workload Total (3yr avg felony defendants + 3yr avg sentencing events)}}{\text{Factor}}$$

The “Factor” shifts the recommended new attorney count based on an assessment of economies of scale in an office of a given size.<sup>116</sup>

Based on this formula, Commonwealth’s Attorneys’ Offices are provided staffing funds based on the number of felonies they try in a given year, incentivizing the felonization (and incarceration) of defendants, while discouraging diversion or sentencing de-escalation. The Compensation Board’s composition and decisions are governed by statute (see § 15.2-1636.5 and § 15.2-1636.8, respectively). The Commission therefore recommends amending § 15.2-1636.8 to prohibit the Compensation Board from considering the number of felony counts pursued by an office or any other criterion that might discourage a Commonwealth’s Attorney from pursuing diversion, in decisions about staffing and funding. The General Assembly did consider a similar reform during the 2020 regular session in HB1035/SB803, but both houses continued the bill to 2021.

<sup>116</sup> “Compensation Board Criteria for Allocating New Assistant Commonwealth’s Attorney Positions...,” amended June 25, 2014, <https://www.scb.virginia.gov/docs/fy19staffstd772.pdf>

### BACKGROUND

A disproportionately high number of incarcerated people in Virginia are Black. Thus, statutes that target formerly convicted individuals or otherwise make incarceration more aggressive will have an inequitable effect on our communities of color.

**RECOMMENDATION 4: Propose legislation that addresses the impact that mandatory minimum sentencing laws have on racially disproportionate rates of incarceration.** There were efforts during the 2020 regular session, such as SJ34, that would have directed the Virginia State Crime Commission to study this issue. The Commission recommends further study, or repeal/reduction of mandatory minimums.

**RECOMMENDATION 5: Propose legislation that fosters restorative practices like expungement, clemency, sentence reductions and retroactive sentencing.** Restorative practices of this nature work to curtail the negative effects of past convictions, allowing a convicted individual to engage with civil, employment, educational, and social opportunities after their conviction.<sup>117</sup> Engaging in such restorative practices currently occurs at the federal level<sup>118</sup> with certain drug offenses, which would be applicable for marijuana convictions in Virginia.

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<sup>117</sup> Deborah Ahrens, *Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform*, *Journal of Criminal Law and Criminology* (Summer 2020), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7671&context=jclc> (p. 425, 439)

<sup>118</sup> United States Sentencing Commission, *Retroactivity Analyses and Data Report*, <https://www.ussc.gov/research/data-reports/retroactivity-analyses-and-data-reports>



### BACKGROUND

Felony disenfranchisement was used historically as a targeted means to strip Black Americans of their rights to be active civic participants. While modern laws may more broadly impact other racial communities, the Black community still suffers disproportionately under felony disenfranchisement. Many states have moved away from Virginia’s strict iteration of such laws, and Virginia should follow suit.

**RECOMMENDATION 6: Abolish or limit felony disenfranchisement by amending or repealing Article II, Section I of the Virginia Constitution.**<sup>119</sup> Virginia’s current constitutional rule leaves the opportunity to vote for disenfranchised Virginians at the discretion of whatever governor is in office, which is too great a risk to take considering how integral the right to vote is to a well-functioning democracy. Article II, Section I of the Constitution has gone through a number of changes throughout the years, so changes are definitely possible. The Commission recommends that the Governor propose repealing the provision altogether (leaving disenfranchisement to statute) or draft new constitutional language automatically restoring the rights of those who have completed their sentences. The Commission also expresses concern about the events with Florida’s Amendment Four, and recommends provisions that prevent the imposition of required payment of fees or other restrictions on re-enfranchisement.

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<sup>119</sup> Constitution of Virginia, Article II, Section 1: Qualifications of voters. “. . . No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority. . . .”





## HEALTH

Health systems in Virginia have long been plagued by systemic inequities. In fact, Virginia health care institutions were segregated until the latter half of the twentieth century.

Amongst the segregated institutions, the Central State Hospital (previously the Central Lunatic Asylum for Colored Insane), has a particularly troubling history.<sup>120</sup> The institution operated from 1870 until 1970 as Virginia's only facility offering psychiatric treatment for African Americans. In an 1870 report from the hospital, patients were described in troubling terms. Patients were categorized in terms of their "use." Examples include: "useless old harlot," "useless," "very useful," and "learning to work."<sup>121</sup> Over half of the patients with detailed remarks in the 1870 report were described by their work ability, as the Freedmen's Bureau wanted to create a labor force of recently freed African Americans.<sup>122</sup> Juxtaposed with this emphasis on ability for patients to work was a view that patients' insanity came from not wanting to work for free.<sup>123</sup>

The report details patient Godfrey Goffney who "attempts to kill every White man," describing "freedom" as his cause of psychosis.<sup>124</sup> "Freedom" was likewise listed for several other patients.<sup>125</sup> Additionally, another patient was described: "will not work now free."<sup>126</sup> Yet another, Caleb Burton, was described as seeing himself on a "mission to free the world," and suffering from "delusional insanity" of the "freedom-result of war."<sup>127</sup>

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<sup>120</sup> Rachel Nuwar, Psychiatric Records for African American Patients Are Rare, And This Hospital Has a Century's Worth, *Smithsonian Magazine*, Feb. 4, 2014, <https://www.smithsonianmag.com/smart-news/former-hospital-virginia-holds-centurys-worth-rare-african-american-psychiatric-records-180949586/>.

<sup>121</sup> Craig Swenson, Seeking Asylum, Clara Barton Museum, May 17, 2017, <https://www.clarabartonmuseum.org/asylum/>.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

(Page 2)

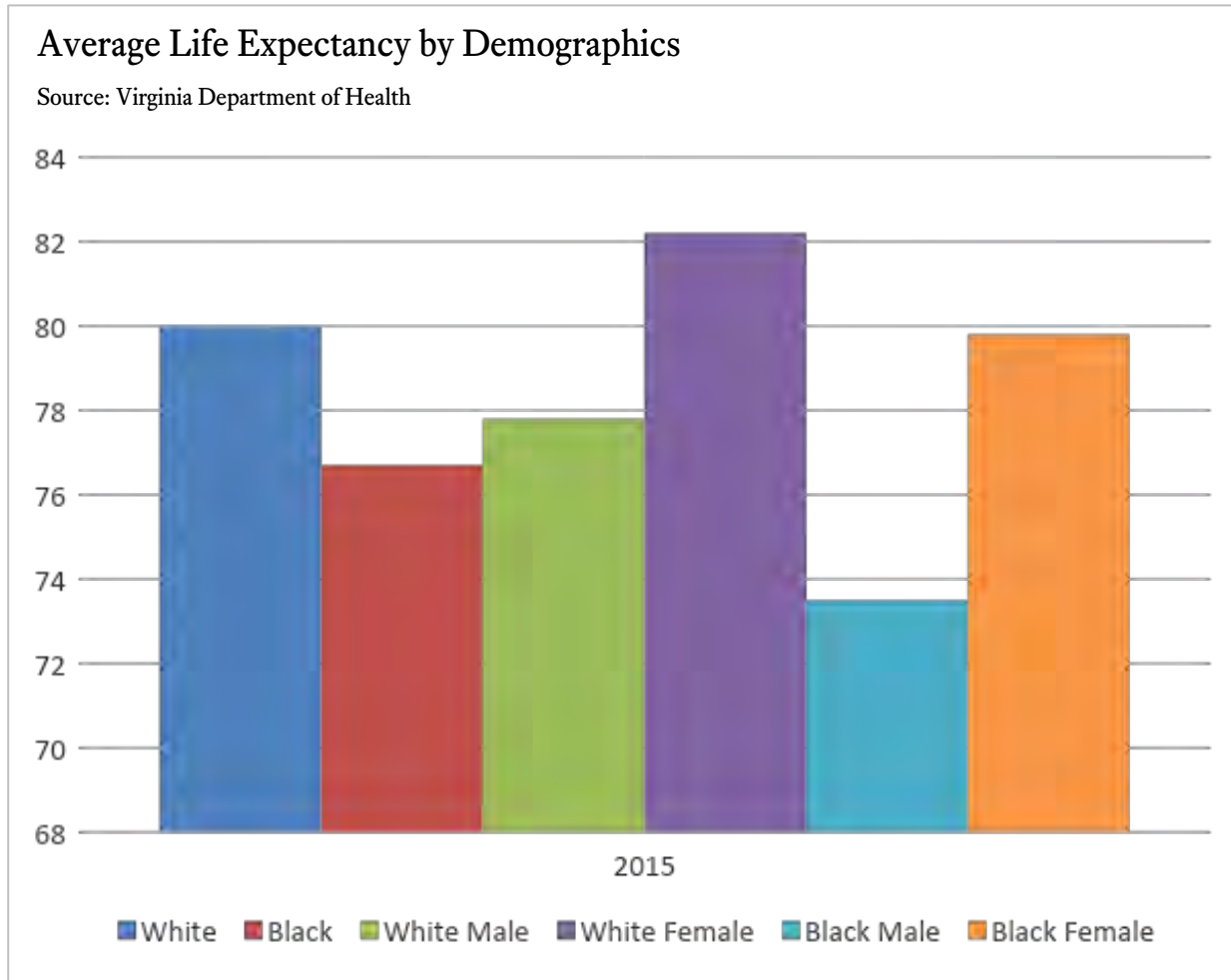
Ques 5<sup>th</sup> About Seven Days.  
 Ques 6<sup>th</sup> Where were they  
 Ans At Thompson Whites in Fluvanna  
 County Virginia.  
 Ques 6<sup>th</sup> Does the disease appoints increase?  
 Ans it happens to yesterday.  
 Ques 7<sup>th</sup> Are there Periodical Exacerbations  
 Any Lucid Intervals and of What  
 Duration?  
 Ans The first spell lasted for day and  
 night, then got better for about one  
 day then got Rud again for five days  
 and to day he seems better, dont  
 know how long it may last.  
 Ques 8<sup>th</sup> is his Amusement  
 Ans Talk more about his in neighborhood  
 than anything else. Also talk about  
 him with Guns after him. Talk  
 about Snakes & etc.  
 is the supposed cause of  
 disease.  
 Ques 9<sup>th</sup> is what except  
 he has been drinking a  
 deal of Turpentine Oil  
 and the girl seem to be  
 mind a good deal.

(Page 3)



Hiram Steele was a Central State Hospital patient several times throughout his life. After being convicted of a crime, he was found insane and sent to Central State Hospital. The attached document describes the condition of Steele upon his commitment to the institution. *Photograph of Hy Steele, No. 1679, from the Virginia State Penitentiary, Prisoner Records, Photographs and Negatives; Commitment Papers for Hiram Steele, February 1895, from the Central State Hospital, Commitment Orders. State Records Collection of the Library of Virginia.*

Until the mid-1960s, hospital discrimination in Virginia was expressed in a number of ways, including “denial of staff privileges to minority physicians and dentists, refusal to admit minority applicants to nursing and residency training programs, and failure to provide medical, surgical, pediatric, and obstetric services to minority patients.”<sup>128</sup> It took a series of court cases, litigated by the NAACP Legal Defense and Education Fund between 1956 and 1967 to end the overt discrimination in hospitals and professional health care associations.<sup>129</sup> While these lawsuits won some battles, Virginia continues to experience negative racial disparities in health care.



In Virginia, life expectancy varies by both race and gender. White Virginians in 2015 on average lived longer than Black Virginians, with White females having the longest life expectancy and Black males having the shortest.<sup>130</sup>

<sup>128</sup> P. Preston Reynolds, Professional and Hospital DISCRIMINATION and the US Court of Appeals Fourth Circuit 1956-1967, Am. J. Public Health, May 2004, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448322/>.

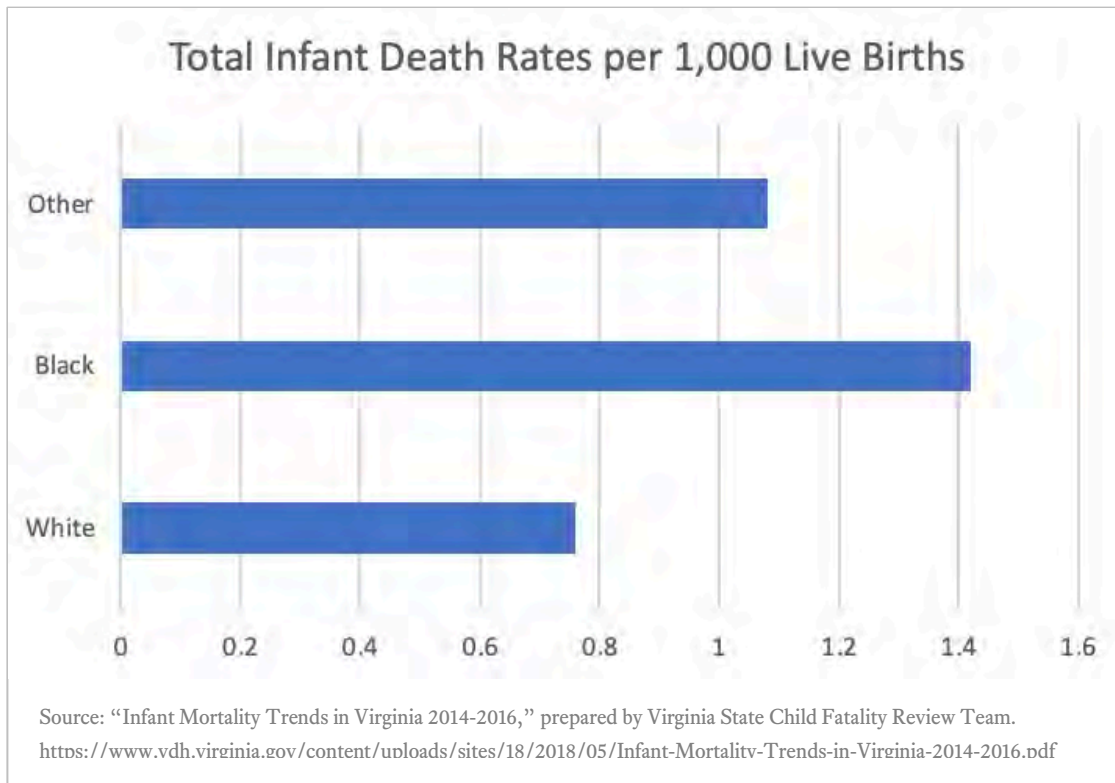
<sup>129</sup> *Id.*

<sup>130</sup> Statistical Reports and Tables, VDH, <https://apps.vdh.virginia.gov/HealthStats/stats.htm>.



Black Virginians are also more likely to deal with health issues related to obesity and diabetes than those of other racial or ethnic backgrounds.<sup>131</sup>

Additionally, infants born to African American women are twice as likely to die in Virginia.<sup>132</sup> Black women in Virginia are three times more likely to die from pregnancy complications than White women.<sup>133</sup>

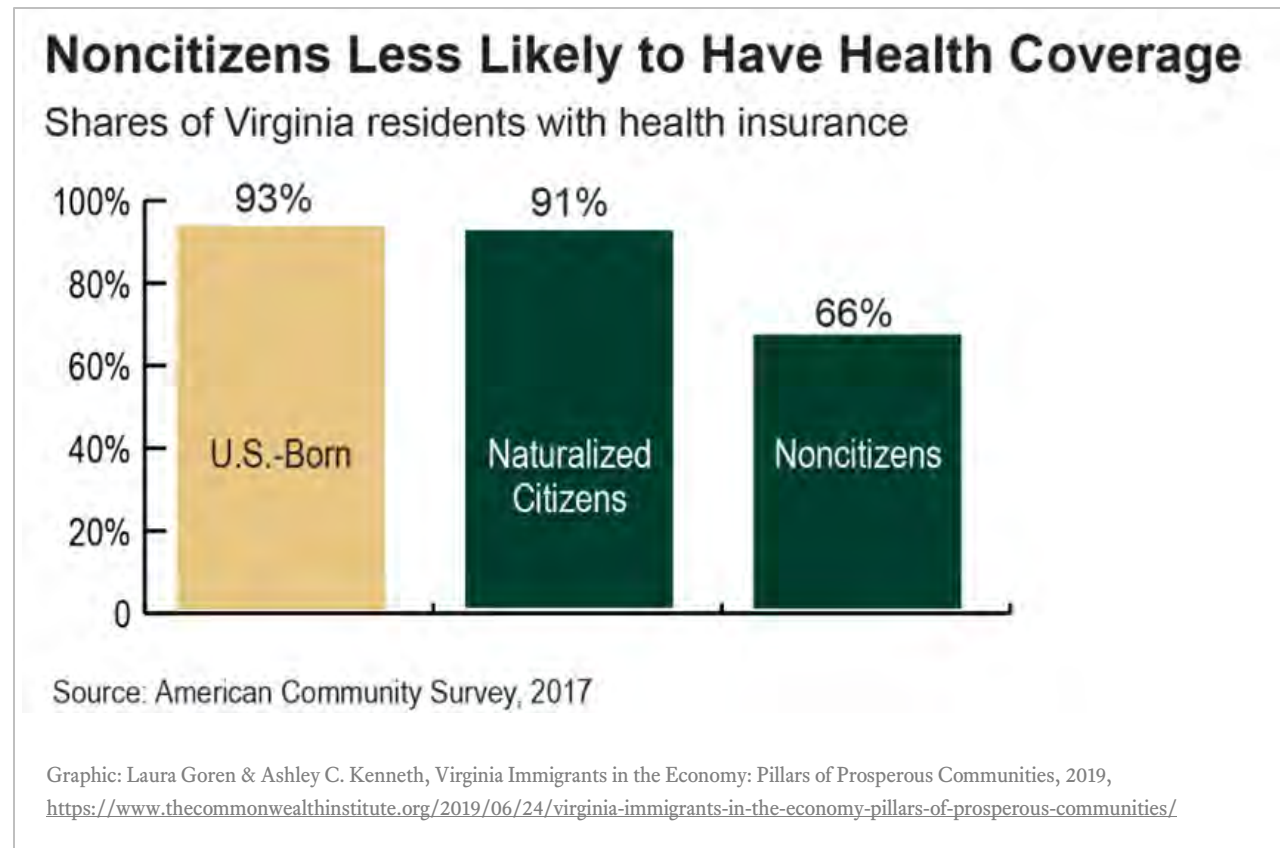


<sup>131</sup> Behavioral Risk Factor Surveillance System (BRFSS) Data from the CDC, <https://www.cdc.gov/brfss/index.html>.

<sup>132</sup> Virginia State Child Fatality Review Team, Infant Mortality Trends in Virginia 2014-2016, 2018, <https://www.vdh.virginia.gov/content/uploads/sites/18/2018/05/Infant-Mortality-Trends-in-Virginia-2014-2016.pdf>.

<sup>133</sup> Megan Pauly, Lawmakers Act to Correct Racial Disparity in Maternal Mortality Rates, VPM NPR News, March 4, 2020, <https://vpm.org/news/articles/11186/lawmakers-act-to-correct-racial-disparity-in-maternal-mortality-rates>.

Black Virginians are also disparately represented in Commonwealth HIV cases. In Virginia, Black, non-Hispanic persons were almost seven times more likely to be living with HIV at the end of 2015 than White, non-Hispanic persons.<sup>134</sup> Hispanic/Latino individuals were around twice as likely to be living with HIV at the end of 2015 than White, non-Hispanic persons.<sup>135</sup> This disproportionate health representation leads to increased risk in terms of Virginia’s criminal HIV laws (Virginia Code §§ 18.2-67.4:1, 18.2-11, 18.2-62, 18.2-346.1).<sup>136</sup>



<sup>134</sup> VDH, Virginia HIV Epidemiologic Profile, 2016, [https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/HIV\\_Epi\\_Profile\\_2016.pdf](https://www.vdh.virginia.gov/content/uploads/sites/10/2016/01/HIV_Epi_Profile_2016.pdf).

<sup>135</sup> *Id.*

<sup>136</sup> In the future, the Commission aims to further consider the disparities inherent to HIV criminalization laws in Virginia. The Commission recognizes that the American Medical Association, American Nursing Association, National Alliance of State and Territorial AIDS Directors, HIV Medicine Association, Association of Nurses in AIDS Care, U.S. National HIV/AIDS Strategy, Presidential Council on HIV/AIDS, U.S. Conference of Mayors, American Psychological Association, the U.S. Department of Justice, and other public health, legal and public policy organizations have called for an end to HIV criminalization.

In Virginia and nationally, minorities tend to have less health insurance coverage, higher cost barriers to healthcare access, and lower self-rated health.<sup>137</sup> Uninsured Americans have lower cancer survival rates, lower rates of receiving important screening tests, are more likely to have preventable hospitalizations, and are more likely to be diagnosed with diseases at later stages.<sup>138</sup>

Although immigrants may receive emergency-only Medicaid services, their access to comprehensive Medicaid coverage has historically been limited and complex, creating negative health disparities. For years, Virginia imposed a 40-quarter work requirement, by which immigrants must have worked in Virginia for 40 quarters, or ten years, to qualify for Medicaid coverage.<sup>139</sup> However, in November 2020, Governor Northam approved a budget amendment allocating funds for certain noncitizens' health coverage without the 40-quarter barrier, which had been previously passed then unallocated in response to the COVID-19 pandemic.<sup>140</sup>

Additionally, research indicates that people have a higher comfort level and are willing to share more information with a physician who looks like them.<sup>141</sup> Further, physicians' implicit biases can be dangerous for people of color. For example, research has shown that half of White medical trainees believe myths purporting that Black people feel less pain because they have thicker skin or less sensitive nerve endings than White people, prompting inadequate treatment of Black patients' pain.<sup>142</sup> In 2019, of the approximately 45,000 people with a Virginia medical license, only around 8% identified as African American.<sup>143</sup>

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<sup>137</sup> Office of Minority Health & Public Health Policy, Virginia Health Equity Report 2008: Executive Summary, 2008, <https://www.vdh.virginia.gov/content/uploads/sites/76/2016/06/health-equity-report-summary.pdf>; Center on Society and Health, Health Equity in Richmond, Virginia, 2016, <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>138</sup> Virginia Health Care Foundation, Profile of Virginia's Uninsured, <https://www.vhcf.org/data/profile-of-virginias-uninsured/>.

<sup>139</sup> Freddy Mejia, A Harsh, Little Known Rule Leaves Many Immigrants Without Health Coverage, The Commonwealth Institute, January 29, 2019, <https://thehalfsheet.org/post/182403343218/a-harsh-little-known-rule-leaves-many-immigrants>; Virginia Immigrants Have to Work 10 Years to Qualify for Medicaid, VPM NPR News, June 25, 2019, <https://vpm.org/news/articles/6073/virginia-immigrants-have-to-work-10-years-to-qualify-for-medicaid>.

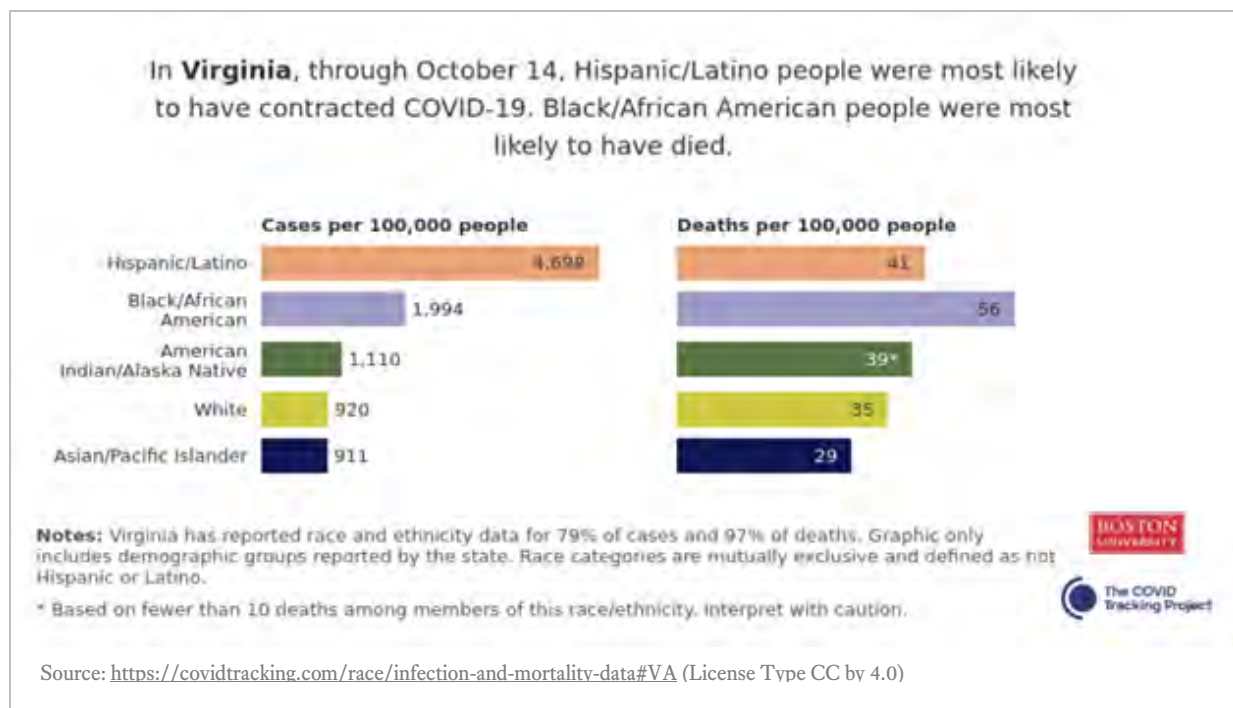
<sup>140</sup> Budget Amendments – HB 5005, <https://budget.lis.virginia.gov/amendment/2020/2/HB5005/Introduced/MR/482.20/6h/>.

<sup>141</sup> Joseph P. Williams, Why America Needs More Black Doctors, US News, Aug. 31, 2018, <https://www.usnews.com/news/healthiest-communities/articles/2018-08-31/why-america-needs-more-black-doctors>.

<sup>142</sup> Janice A. Sabin, How we fail black patients in pain, AAMC, Jan. 6, 2020, <https://www.aamc.org/news-insights/how-we-fail-black-patients-pain> (discussing 2012 and 2016 studies).

<sup>143</sup> Jason Fuller, Improving the Doctor to Patient Ratio in the African American Community, WVTF, Nov. 14, 2019, <https://www.wvtf.org/post/improving-doctor-patient-ratio-african-american-community#stream/0>.

Research also suggests that Black Virginians are exposed to a higher levels of trauma in their communities than other Virginians. Trauma can affect children’s health, development, and functioning later in life, but risk and protective factors play a valuable role in children’s long-term outcomes.<sup>144</sup> Black and Hispanic children are more likely to have adverse childhood experiences (ACEs) than their White and Asian peers, which can lead to toxic stress.<sup>145</sup> ACEs have long-term effects, which increase in risk with each additional ACE. Effects include smoking, alcohol, and drug abuse; mental and physical health problems; relationship troubles; suicide; criminal activity; and even early death.<sup>146</sup> However, social support and protective conditions can prevent these repercussions for children with ACEs.<sup>147</sup>



The COVID-19 pandemic has increased focus on health disparities. Black, Hispanic, and Native American coronavirus cases and deaths exceeded their share of the population nationally and in Virginia.<sup>148</sup> Yet, as evidenced in the preceding data, negative health disparities for racial and ethnic minority groups in Virginia are nothing new.

<sup>144</sup> Center on Society and Health, Health Equity in Richmond, Virginia, 2016, <https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>145</sup> Alysse ElHage, Nearly Half of U.S. Children Have Suffered At Least One Adverse Childhood Experience, Institute for Family Studies, March 1, 2018, <https://ifstudies.org/blog/nearly-half-of-us-children-have-suffered-at-least-one-adverse-childhood-experience>.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> Daniel Wood, As Pandemic Deaths Add Up, Racial Disparities Persist – And In Some Cases Worsen, NPR, Sept. 23, 2020, <https://www.npr.org/sections/health-shots/2020/09/23/914427907/as-pandemic-deaths-add-up-racial-disparities-persist-and-in-some-cases-worsen>.

By calling attention to longstanding health-based inequities, COVID-19 may eventually produce positive changes in health policy. Our recommendations take into account the need to continue policies reducing health-based inequity after the pandemic, recognizing that health inequities run far deeper than just what the statistics present in coronavirus cases.

The Commission puts forward six recommendations, aimed to mitigate inequity in the Commonwealth's health system.

These recommendations fall within three main problem areas:

- Health Care Access
- Medical Professionals Support
- Mental Health

Each topic listed has been shown by research to have a disproportionate racial impact in Virginia.

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## HEALTH CARE ACCESS

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### BACKGROUND

Based on 2018 US Census data, prior to Virginia's Medicaid expansion, which went into effect on January 1, 2019, 10.2% of Virginians under age 65 were without medical insurance, the vast majority of which (64.2%) were part of families with at least one full-time worker.<sup>149</sup> Since then, Governor Northam has expanded Virginia's Medicaid program, promoting historic health care disparity reductions.<sup>150</sup> Following the January 2019 Medicaid expansion, more than 450,000 additional individuals were enrolled in Medicaid by August 2020.<sup>151</sup> Even with this progress, however, most immigrants may receive emergency-only Medicaid services. Because their access to comprehensive Medicaid coverage is limited and complex, negative health disparities persist.

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<sup>149</sup> Virginia Health Care Foundation, Profile of Virginia's Uninsured, <https://www.vhcf.org/data/profile-of-virginias-uninsured/>.

<sup>150</sup> Office of the Governor, Governor Northam Announces More than 300,000 Virginians Now Enrolled in Expanded Medicaid Program, July 31, 2019, <https://www.governor.virginia.gov/newsroom/all-releases/2019/july/headline-841926-en.html>.

<sup>151</sup> Louise Norris, Virginia and the ACA's Medicaid Expansion, HealthInsurance.org, Oct. 3, 2020, <https://www.healthinsurance.org/virginia-medicaid/>.



**RECOMMENDATION 1: Close the gap in healthcare access for immigrants.** The following are specific steps that could be taken to close this gap:

**A. Adopt the CHIP Option to provide prenatal care to all children regardless of the expectant mother’s immigration status.** For over a decade, this CHIP option has been available to provide prenatal care to pregnant immigrants who can’t otherwise get Medicaid, including undocumented immigrants who are not legally residing in the U.S. According to the Kaiser Family Foundation, 17 states have taken this option.<sup>152</sup> In all other states (including Virginia), while the pregnant woman can’t get Medicaid during her pregnancy, if she’s a state resident and income eligible for Medicaid, the state is required to provide her emergency Medicaid services at the time of her labor and delivery. Of course, the newborn will be a U.S. Citizen and typically deemed eligible for Medicaid for one year. The recommended option enables states to provide the pregnant woman comprehensive prenatal care before the baby is born—a compassionate as well as cost-effective approach to protecting the health of the mother and the baby.

**B. Increase the age that “legally residing” immigrant children can qualify for Medicaid and FAMIS.** “Legally residing” is a broad term that includes any documented immigrant status, including valid visas. Currently, “legally residing” immigrant children in Virginia qualify for coverage until they turn 19 years old. Federal law allows this optional coverage to continue up to age 21. Raising the age threshold would protect continuity of care for these young people.

**C. Expand emergency Medicaid coverage to include COVID-19 testing and treatment.** Immigrants qualify for emergency Medicaid coverage if they are eligible by income but do not meet the Medicaid non-citizen requirements. Emergency Medicaid coverage is only for life-threatening or severe medical needs. Several states have included COVID-19 testing and treatment under emergency Medicaid coverage, and Virginia should follow this example.<sup>153</sup>

**RECOMMENDATION 2: Exercise the option for 12-month continuous coverage to Medicaid and CHIP for children.** Low-income individuals may experience financial ups and downs throughout the year. One month they may be eligible for Medicaid, and the next month they may be slightly over the income line for Medicaid. States have the option to provide children with 12 months of continuous coverage through Medicaid and CHIP, even if their family’s income

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<sup>152</sup> Tricia Brooks et al., Medicaid and CHIP Eligibility, Enrollment, and Cost Sharing Policies as of January 2020: Findings from a 50-State Survey, Henry J. Kaiser Family Foundation, March 2020, <http://files.kff.org/attachment/Report-Medicaid-and-CHIP-Eligibility,-Enrollment-and-Cost-Sharing-Policies-as-of-January-2020.pdf>.

<sup>153</sup> Approved State Actions to Address COVID-19, Henry J. Kaiser Family Foundation, Oct. 29, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/medicaid-emergency-authority-tracker-approved-state-actions-to-address-covid-19/>.

changes throughout the year.<sup>154</sup> This allows for reliable access to health care for children.<sup>155</sup> Twenty-three states have exercised this option for Medicaid, and twenty-five have adopted it for CHIP.<sup>156</sup> Virginia should follow suit.

## MEDICAL PROFESSIONALS



The vast majority of healthcare workers in Virginia are White, while patients are increasingly diverse. *Nurse interviewing a patient, undated, from the Visual Studies Collection, Library of Virginia.*

### BACKGROUND

In 2019, of the approximately 45,000 people with a Virginia medical license, only around 8% identified as African American.<sup>157</sup> In 2018, the Virginia Department of Health Professions (VDHP) conducted a “Physician Workforce Survey” where over 33,000 physicians responded, and only 1,700 respondents identified as Black or African American, whereas the state’s African

<sup>154</sup> Continuous Eligibility for Medicaid and CHIP Coverage, Medicaid.gov, <https://www.medicaid.gov/medicaid/enrollment-strategies/continuous-eligibility-medicaid-and-chip-coverage/index.html>.

<sup>155</sup> *Id.*

<sup>156</sup> State Adoption of 12-Month Continuous Eligibility for Children’s Medicaid and CHIP, Henry J. Kaiser Family Foundation, <https://www.kff.org/health-reform/state-indicator/state-adoption-of-12-month-continuous-eligibility-for-childrens-medicaid-and-chip/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>; Judith Solomon, Continuous Coverage in Families First Act Prevent Coverage Gaps by Reducing “Churn,” Center on Budget and Policy Priorities, July 16, 2020, <https://www.cbpp.org/research/health/continuous-coverage-protections-in-families-first-act-prevent-coverage-gaps-by>.

<sup>157</sup> Jason Fuller, Improving the Doctor to Patient Ratio in the African American Community, WVTF, Nov. 14, 2019, <https://www.wvtf.org/post/improving-doctor-patient-ratio-african-american-community#stream/0>.

American population exceeds 1.6 million. The Black doctor to Black patient ratio is approximately 1 doctor for every 1,000 patients, while the White doctor to White patient ratio is approximately 1 doctor for every 400 patients.

**RECOMMENDATION 3: Create a pipeline program to support Black college students' preparation for medical school, particularly at Virginia's HBCUs.** This would also work to reduce the number of health provider shortage areas (HPSAs) in Virginia.<sup>158</sup> Similar pipelines have been used for recruiting Black teachers,<sup>159</sup> and specifically STEM educators,<sup>160</sup> in Virginia.

**RECOMMENDATION 4: Require Virginia continuing medical training to include implicit bias training.** California passed a bill with such a requirement in 2019,<sup>161</sup> and Virginia should do the same.

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## MENTAL HEALTH

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### BACKGROUND

In general, African Americans appear to have the same or lower incidence of diagnosed mental disorders compared to other racial/ethnic groups, but this may reflect lower access to mental health services, less frequent recognition of mental health needs among African Americans by physicians, and relative exclusion of vulnerable populations from national epidemiological surveys.<sup>162</sup> There is also concern that Black Virginians are exposed to a high level of trauma in their communities, as discussed above.<sup>163</sup>

As of 2013, Virginia had 50 Mental Health Professional Shortage Areas.<sup>164</sup> Since then, legislation has sought to reduce socioeconomic and racial mental health disparities. However, nationally, in 2018, 8.7 percent of African American adults received mental health services compared with 18.6

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<sup>158</sup> Shortage Designations and Maps, VDH, <https://www.vdh.virginia.gov/health-equity/shortage-designations-and-maps/>.

<sup>159</sup> Brian McNeill, VCU School of Education joins national effort to recruit, prepare and retain black teachers, VCU, Oct. 1, 2019,

[https://news.vcu.edu/article/VCU\\_School\\_of\\_Education\\_joins\\_national\\_effort\\_to\\_recruit\\_prepare](https://news.vcu.edu/article/VCU_School_of_Education_joins_national_effort_to_recruit_prepare); Report from the Task Force on Diversifying Virginia's Educator Pipeline, Aug. 2017,

<https://www.education.virginia.gov/media/governorvirginiagov/secretary-of-education/pdf/final-tdvrep-report.pdf>.

<sup>160</sup> Office of the Governor, Virginia Works to Grow, Diversify STEM Educator Pipeline, Feb. 10, 2020,

<https://www.governor.virginia.gov/newsroom/all-releases/2020/february/headline-851715-en.html>.

<sup>161</sup> SB-464 California Dignity in Pregnancy and Childbirth Act,

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB241](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB241).

<sup>162</sup> Center on Society and Health, Health Equity in Richmond, Virginia, 2016,

<https://societyhealth.vcu.edu/media/society-health/pdf/RVAHealthEquityFINAL.pdf>.

<sup>163</sup> *Id.*

<sup>164</sup> The Virginia Health Care Landscape, Henry J. Kaiser Family Foundation, May 20, 2014,

<https://www.kff.org/medicaid/fact-sheet/the-virginia-health-care-landscape/>.

percent of non-Hispanic White adults; 8.8 percent of Hispanic adults received mental health services compared with 18.6 percent of non-Hispanic White adults.<sup>165</sup> This indicates a need for greater attention on mental health inequities.

**RECOMMENDATION 5: Increase mental health support in schools.** Differences in use of school-based behavioral health services by racial and ethnic groups suggest the need for culturally appropriate support and tailoring of services to increase resource utilization.<sup>166</sup> Reallocating funds previously used for school resource officers (SROs) to hire more school counselors is one way to increase mental health support in schools. School counselors provide direct and indirect mental health services for students and build alliances in school communities.<sup>167</sup> This goes beyond teaching about mental health by encouraging a climate of wellness. However, teaching about mental health could also increase utilization of mental health services.<sup>168</sup> In 2018, legislation passed requiring a review and update of the health Standards of Learning for students in grades 9 and 10 to include mental health. Recognizing the negative effects of trauma in childhood, the health Standards of Learning for younger students should also be reviewed and updated to include mental health. SB1440 and HB2593 would have done so in 2019, but these bills were left in the Appropriations Committee.<sup>169</sup> Additionally, the feasibility of Mental Health First Aid training for relevant school personnel should be considered.<sup>170</sup>

**RECOMMENDATION 6: Direct the Commission Studying Mental Health Services in the 21<sup>st</sup> Century to specifically address racial disparities in their work.** The Commission has considered a variety of topics, including tele-mental health, mental health services in jails, and housing for the serious mental ill.<sup>171</sup> This Commission should consider racial disparities in mental health services in one of its upcoming meetings.

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<sup>165</sup> Sofia Carratala & Connor Maxwell, Health Disparities by Race and Ethnicity, Center for American Progress, May 7, 2020, <https://www.americanprogress.org/issues/race/reports/2020/05/07/484742/health-disparities-race-ethnicity/>.

<sup>166</sup> Jill Locke et al., Ethnic disparities in school-based behavioral health service use for children with psychiatric disorders, *J. Sch. Health*, Jan. 2017, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5142755/>.

<sup>167</sup> Ariane Datil, Virginia teachers want school police funding reallocated to mental health, WUSA9, June 18, 2020, <https://www.wusa9.com/article/news/education/school-resource-officers-reallocating-funds-for-mental-health/65-d4d9bc7b-282e-469b-9e87-cea7e249da07>; Carol J. Kaffenberger & Judith O'Rorke-Trigani, ASCA, <https://www.schoolcounselor.org/asca/media/asca/ASCAU/Mental-Health-Specialist/Kaffenberger.pdf>.

<sup>168</sup> Lucy Hood, More states requiring mental health education, Education Dive, Sept. 3, 2019, <https://www.educationdive.com/news/more-states-requiring-mental-health-education/561250/>.

<sup>169</sup> Ashley Airington, Children's Mental Health: 2019 Session Wrap-Up, Voices for Virginia's Children, Feb. 25, 2019, <https://vakids.org/our-news/blog/childrens-mental-health-proposed-legislation-2019-legislative-session>.

<sup>170</sup> See SB 1472, 2019, <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB1472&191+sum+SB1472>

<sup>171</sup> See, e.g., Mental Health Services in the Twenty-First Century, Joint Subcommittee to Study, <https://studies.virginiageneralassembly.gov/studies/341>.

## ENVIRONMENTAL JUSTICE

Racial inequity linked to environmental justice has deep roots in the Commonwealth. In January 2020, the Fourth Circuit vacated a Clean Air permit for a natural gas compressor station in Union Hill and remanded back to Virginia’s State Air Pollution Control Board. The Fourth Circuit stated that “[e]nvironmental Justice is not just a box to be checked.”<sup>172</sup> The Virginia Environmental Justice Act, which the General Assembly enacted during the 2020 session, defines environmental justice as “the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, income, faith, or disability, regarding the development, implementation, or enforcement of any environmental law, regulation, or policy.”<sup>173</sup> The Act provides for a specific focus on “environmental justice communities” and “fenceline communities,” which are defined as “any low-income community or community of color” and “an area that contain all or part of a low-income community or community of color and that present an increased health risk to its residents due to its proximity to a major source of pollution,” respectively.<sup>174</sup> The Act’s focus on these communities stems from their long history of lower environmental quality due to their being effectively shut out of decision-making processes. By focusing on the fair treatment and meaningful involvement of these communities, the General Assembly has given clearer guidance on how to achieve environmental justice.

Environmental justice should be about giving communities a voice in decision making processes and making sure they are treated fairly, not merely checking a box. These recommendations seek to further these goals in the areas of public involvement, access to outdoor recreational areas, access to clean energy, and tribal consultation.

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<sup>172</sup> Friends of Buckingham v. State Air Pollution Control Board, No. 19-1152 at 44 (4th Cir. 2020).

<sup>173</sup> Virginia Environmental Justice Act, Va. Code § 2.2-235, <https://law.lis.virginia.gov/vacode/title2.2/chapter2/section2.2-235/>.

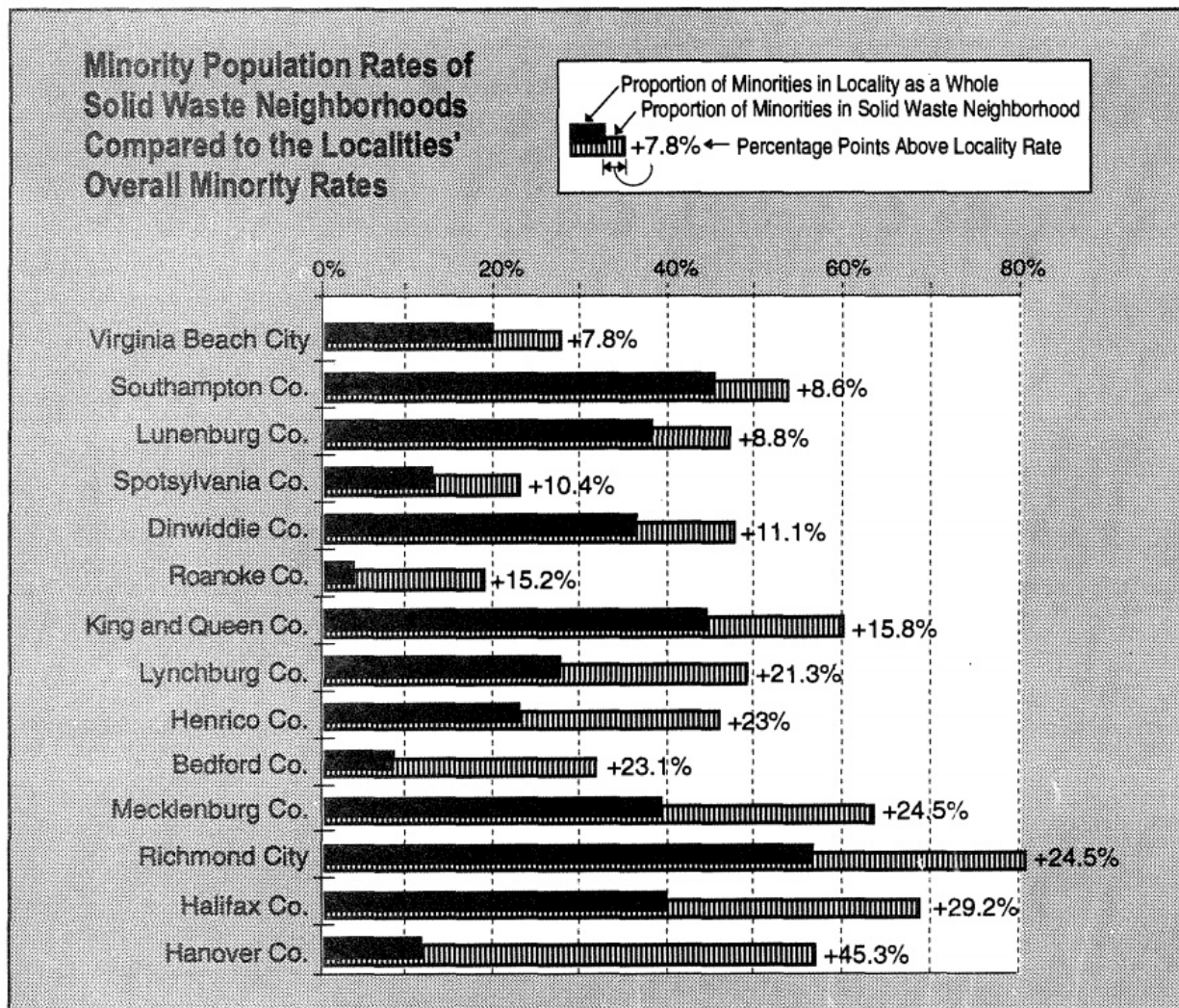
<sup>174</sup> *Id.*





Pollution has negative environmental and health effects on nearby residents. Communities of color disproportionately bear the burden of pollution. *Pollution, undated, from the Visual Studies Collection of the Library of Virginia.*





Source: Joint Legislative Audit and Review Commission of the Virginia General Assembly, *Solid Waste Facility Management in Virginia: Impact on Minority Communities*, 1995, <http://jlarc.virginia.gov/pdfs/reports/Rpt166.pdf>.

The story of Union Hill captures the need for increased attention to environmental justice. In January 2019, the state approved Dominion Energy’s plan to site a natural gas compressor station for the Atlantic Coast Pipeline in Union Hill, a historic community founded by freedmen.<sup>175</sup> While Dominion argued that the decision to place the compressor station in Union Hill was a matter of economics and environmental footprint, the Fourth Circuit vacated the air permit a year later.<sup>176</sup> The case highlighted an issue central to environmental justice. Communities of color are often disproportionately burdened by locally undesirable land uses. For example, a 1995 Joint Legislative Audit and Review Commission report found that in Virginia, minorities were

<sup>175</sup> Sarah Vogel song, In Virginia, Union Hill and racial tensions have put environmental justice back on the map, *Virginia Mercury*, Dec. 5, 2019, <https://www.virginiamercury.com/2019/12/05/in-virginia-union-hill-and-racial-tensions-have-put-environmental-justice-back-on-the-map/>.

<sup>176</sup> *Friends of Buckingham v. State Air Pollution Control Board*, No. 19-1152 at 44 (4th Cir. 2020).

disproportionately likely to live in neighborhoods near solid waste facilities.<sup>177</sup> While the placement of these facilities frequently meet technical legal requirements, they can be justified in non-discriminatory terms, this does not make these decisions just. In order to combat these racial disparities, the Commission’s first recommendation is to develop measures to ensure the members of the affected communities and meaningfully involved in government decisions to site environmentally harmful facilities.

While meaningful public involvement is a core component of environmental justice, there are other areas of environmental law that should be considered through an equity-oriented lens. While the COVID-19 pandemic has highlighted the importance of ready access to nature and outdoor recreation, a study has found that, nationally, people of color are 51% more likely to be nature deprived than White people.<sup>178</sup> Thus, the Commission’s second area of recommendations concern access to outdoor recreational space.

Environmental justice must also consider energy costs. Electricity burden is defined as “the percentage of your household income that is spent on electricity costs.”<sup>179</sup> Virginians, on average, experience an electricity burden of 3.1%, which is higher than the national average of 2.7%.<sup>180</sup> It is estimated that low-income households in Virginia have an electricity burden of approximately 8.8%.<sup>181</sup> While it is estimated that a typical set of residential solar panels would meet more than half of a low-income household’s electricity needs, much of the growth in residential solar energy in recent decades has benefited middle-class families.<sup>182</sup>

Lastly, the concerns of Virginia’s 11 Commonwealth-recognized American Indian Tribes need to be meaningfully included in the decision-making process, as it is important to ensure that their concerns are considered in government decisions.

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<sup>177</sup> Joint Legislative Audit and Review Commission of the Virginia General Assembly, Solid Waste Facility Management in Virginia: Impact on Minority Communities, 1995, <http://jlarc.virginia.gov/pdfs/reports/Rpt166.pdf>.

<sup>178</sup> Jenny Rowland-Shea, Sahir Doshi, Shanna Edberg, and Robert Fanger, The Nature Gap, Center for American Progress, <https://www.americanprogress.org/issues/green/reports/2020/07/21/487787/the-nature-gap/>.

<sup>179</sup> Virginia Poverty Law Center, Affordable Clean Energy Project, <https://vplc.org/electricity-burden-and-the-myth-of-virginias-rate-utopia/>.

<sup>180</sup> *Id.*

<sup>181</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 31, [https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final\\_July-2020.pdf](https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final_July-2020.pdf).

<sup>182</sup> *Id.*

Previously existing via Executive Order number 29,<sup>183</sup> SB1042 made the Virginia Council on Environmental Justice a permanent advisory committee.<sup>184</sup> The Council’s 2020 annual report provides a useful list of findings and broad initial recommendations for executive and legislative action; some of the following proposals seek to turn those recommendations into specific changes to the code or regulations. Additionally, the Virginia Department of Environmental Quality (DEQ) has released its report following an 18-month study as part of its Environmental Justice Initiative which details many legislative and executive policy recommendations.<sup>185</sup> The report includes numerous findings and recommendations that would further environmental justice within DEQ.

The Commission puts forward the following five recommendations, aimed to further the objectives of environmental justice, which fall into four categories:

- Public Involvement
- Access to Outdoor Recreational Areas
- Clean Energy Access
- Tribal Consultation

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## PUBLIC INVOLVEMENT

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### BACKGROUND

Meaningful public involvement in decisions that will affect a community’s environmental quality is a central tenet to the concept of environmental justice. For a multitude of reasons, the siting of locally undesirable land uses has historically occurred near low-income communities and communities of color. Because these communities have historically been politically disenfranchised, there is also concern that they are seen as the path of least resistance by private companies in government approval processes.<sup>186</sup>

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<sup>183</sup> Executive Order 29, <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-29-Establishment-Of-The-Virginia-Council-On-Environmental-Justice.pdf>.

<sup>184</sup> HB 1042, <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1042>.

<sup>185</sup> Environmental Justice Study for the Virginia Department of Environmental Quality, October 2020, <https://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/EJ/Environmental%20Justice%20Study%20Report%20to%20DEQ.pdf?ver=2020-10-16-102023-147>.

<sup>186</sup> Tamara Deitrich, Pipeline projects draw criticism for “environmental racism,” Bay Journal, June 8, 2020, [https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article\\_99af061e-a98e-11ea-bcdf-33bf50122f39.html](https://www.bayjournal.com/news/energy/pipeline-projects-draw-criticism-for-environmental-racism/article_99af061e-a98e-11ea-bcdf-33bf50122f39.html).

The consequences of this pattern are reflected in public health. A number of studies have shown an association between exposure air pollution and asthma.<sup>187</sup> The distribution of asthma cases in Virginia varies according to race, income, and education. While 16.5% of African American residents have Asthma, only 13.5% of White residents do.<sup>188</sup> Adults in the lowest income bracket (\$15,000 - 24,000) had the highest Asthma prevalence in 2018; those who did not graduate high school were almost 3% more likely to have Asthma than those who have graduated.<sup>189</sup>

**RECOMMENDATION 1: Require the Department of Environmental Quality (DEQ) to develop measures designed to ensure meaningful public involvement from environmental justice communities.** Last session, the General Assembly passed SB1075, which modified the duties of the Air Pollution Control Board, forcing it to meet additional procedural requirements when granting a variance to a regulation or issuing a permit to certain facilities that will “particularly affect” one locality. Something similar could be accomplished at a broader level by adding another section to the DEQ’s general powers in Va. Code § 10.1-1186, which would read “Develop procedures to solicit meaningful involvement from environmental justice communities, particularly when the Boards make determinations affecting such communities.”<sup>190</sup>

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<sup>187</sup> Centers for Disease Control and Prevention, Asthma and the Environment, <https://ephtracking.cdc.gov/showAsthmaAndEnv#:~:text=Important%20asthma%20triggers%20are%3A%201%20env%20ironmental%20tobacco%20smoke%2C,high%20humidity%2C%20or%20freezing%20temperatures%3B%20More%20ite%20ms...%20>.

<sup>188</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 24, [https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final\\_July-2020.pdf](https://www.naturalresources.virginia.gov/media/governorvirginiagov/secretary-of-natural-resources/pdf/VCEJ-Report-Final_July-2020.pdf) (data reported to CDC).

<sup>189</sup> *Id.*

<sup>190</sup> The term “Boards” is defined by § 10.1-1186(B)(9) as the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.





The siting of environmental projects such as pipelines and waste dumps can have inequitable impacts on communities of color. *Images from the Visual Studies Collection, Library of Virginia.*

Examples in other states include Oregon’s requirement that its agencies hold hearings at times and in locations that are convenient for people in affected communities.<sup>191</sup> Tennessee offers an online interactive map that shows public participation opportunities throughout the state.<sup>192</sup> Lastly, the West Virginia Department of Environmental Protection has an Office of Environmental Advocate that responds to citizen requests, guides citizens through Department processes, and helps implement informational workshops and public education forums.<sup>193</sup> DEQ could also alter the general focus of its notice requirements during a proceeding by focusing on input received instead of notice given. For example, DEQ could require a party to show that it received public input from a certain number of interested individuals or contacted a certain number of people instead of the mere showing of something like publication of notice in a newspaper.

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## ACCESS TO OUTDOOR RECREATION AREAS

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### BACKGROUND

Historically, the United States has systematically segregated and excluded people of color from public lands and other natural places. The legacies of this exclusion persist in many forms, including the continued underrepresentation of people of color in hiring at natural resource agencies, as well as in the histories of different groups underrepresented by national parks and public lands.

State parks provide opportunities for families to be outdoors and engage with nature in ways that would otherwise not be available to many. There are concerns that high parking fees at current state parks may limit access for low-income families, and new state parks may not be placed in areas close enough to environmental justice communities to adequately serve them.<sup>194</sup>

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<sup>191</sup> Or. Rev. Stat. § 182.545, <https://www.oregonlaws.org/ors/182.545>.

<sup>192</sup> Tennessee Dep’t of Environment & Conservation, Public Participation Opportunities Map, <https://www.tn.gov/environment/ppo-public-participation.html>.

<sup>193</sup> W. Va. Dep’t of Environmental Protection, Office of Environmental Advocate, <https://dep.wv.gov/Pages/agencydetail.aspx?CustomID=16>; *see also* Environmental Justice Study for the Virginia Department of Environmental Quality at 37, <https://www.deq.virginia.gov/Portals/0/DEQ/ConnectwithDEQ/EJ/Environmental%20Justice%20Study%20Report%20to%20DEQ.pdf?ver=2020-10-16-102023-147>.

<sup>194</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

**RECOMMENDATION 2: Direct the Department of Conservation and Recreation to adopt a Statewide Park Equity Mapper to include demographic and health data necessary to inform equitable decision making.** The current Recreation Access Model does not provide adequate data to reflect the needs of certain communities. The Department should use the Equity Mapper to make planning decisions related to state and local land acquisitions, grant funding opportunities and development of conservation and open space lands for recreation access in communities where those amenities do not exist. The Equity Mapper should include the following data points:

- Census tract data for Race, Age, Education
- Localities without a local Parks and Recreation Agency
- Percent of population below the poverty line
- Percent of population considered obese, with diabetes, or heart disease
- Percent of population within a ten-minute walk of a local park/trail
- Percent of population within a thirty-minute drive of a regional park/trail
- Percent of population within an hour drive of a state park/trail
- Native lands
- Urban heat island data
- All local and state-held lands, trails, and water access points that are open to the public

**RECOMMENDATION 3: Amend Code § 10.1-200.1 to include access for environmental justice communities as a required consideration in state park master planning.** Code § 10.1-200.1 requires the Department of Conservation and Recreation (DCR) to undertake the master planning process (i) for all existing state parks, (ii) following the substantial acquisition of land for a new state park, and (iii) prior to undertaking substantial improvements to state parks.<sup>195</sup> “A master plan shall be considered a guide for the development, utilization and management of a park and its natural, cultural and historic resources and shall be adhered to closely.”<sup>196</sup> This section of the Code should be amended to require DCR to consider access for environmental justice communities, as defined in the Environmental Justice Act, in the state park master planning process.

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<sup>195</sup> Va. Code § 10.1-200.1, <https://law.lis.virginia.gov/vacode/title10.1/chapter2/section10.1-200.1/#:~:text=1-200.1.%20State%20park%20master%20planning.%20A.%20The%20Department,prior%20to%20undertaking%20substantial%20improvements%20to%20state%20parks.>

<sup>196</sup> *Id.*

**BACKGROUND**

Virginians experience a higher electricity burden than the national average, and this burden falls heavily on low-income Virginians. Residential solar panels have the potential to meet more than half of the energy needs of an average low-income household, but growth in residential solar energy has largely been confined to middle-class households.

**RECOMMENDATION 4: Develop strategies to target residential solar energy development toward environmental justice communities.** Virginia currently has several programs in place to incentivize residential solar development. These include net metering,<sup>197</sup> the VirginiaSAVES Green Community Program,<sup>198</sup> the Energy Efficient Buildings Tax Exemption,<sup>199</sup> and others.<sup>200</sup> Additionally, the Clean Energy and Community Flood Preparedness Act (HB981/SB1027) will provide funding to reduce the energy burden on low-income customers through efficiency goals and increased clean energy access.<sup>201</sup> Either within the current programs or through a new program, agencies should develop strategies to make solar energy available to those in environmental justice communities.

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TRIBAL CONSULTATION

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**BACKGROUND**

The Council on Environmental Justice has considered Tribal recommendations. Virginia currently has 11 state and federally recognized tribes, each with their own organizational structure, tribal membership, government, staff, landholding, and economic development plans. The Virginia Council on Indians, active from 1988-2012, pursued a mission of education, research, economic development, and tribal recognition. However, in 2011 Governor McDonnell's Commission on Government Reform and Restructuring recommended the

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<sup>197</sup> See Va. Code § 56-594; see also Va. Dep't of Environmental Quality, Net Metering, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceforEnergy/DistributedGeneration/NetMetering.aspx>.

<sup>198</sup> VirginiaSAVES, Sustainable Energy Solutions, <http://www.vasavesgcp.com/>.

<sup>199</sup> See Va. Code § 58.1-3221.2, <https://law.lis.virginia.gov/vacode/title58.1/chapter32/section58.1-3221.2/#:~:text=1-3221.2.%20Classification%20of%20certain%20energy-efficient%20buildings%20for%20tax,taxation%20separate%20from%20other%20classifications%20of%20real%20property.>

<sup>200</sup> Va. Dep't of Environmental Quality, Incentives for Virginians, <https://www.deq.virginia.gov/Programs/PollutionPrevention/VirginiaInformationSourceForEnergy/FinancialIncentives.aspx>.

<sup>201</sup> Office of Governor Ralph S. Northam, Governor Northam Signs Clean Energy Legislation, <https://www.governor.virginia.gov/newsroom/all-releases/2020/april/headline-856056-en.html>.

elimination of the Virginia Council on Indians, and it was abolished during the subsequent regular session. In 2016, the General Assembly passed a bill allowing the Secretary of the Commonwealth to establish a Virginia Indian Advisory Board, but its activities are limited to matters relating to tribal recognition. Because the 11 tribes have varying organizational structures and administrative capacities, requests for consultation made by state agencies often go unanswered. There is concern among the tribes that agencies interpret this lack of capacity as lack of interest, and their perspectives often go unheard in situations in which they are entitled to be heard.<sup>202</sup>

**RECOMMENDATION 5: Establish a Tribal Liaison within DEQ.** To ensure the meaningful involvement of recognized tribes in decisions affecting environmental quality, the DEQ should establish a Tribal Liaison to commit the Department to effective communication with tribal leaders. The Liaison should consult with leaders from tribal communities to determine the best means of establishing meaningful communicating in Department processes. Pursuant to these initial consultations, the Liaison should ensure that the tribes have adequate information to understand the government action at issue and ensure that the Department receives meaningful input from the affected tribal communities.

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<sup>202</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 52.

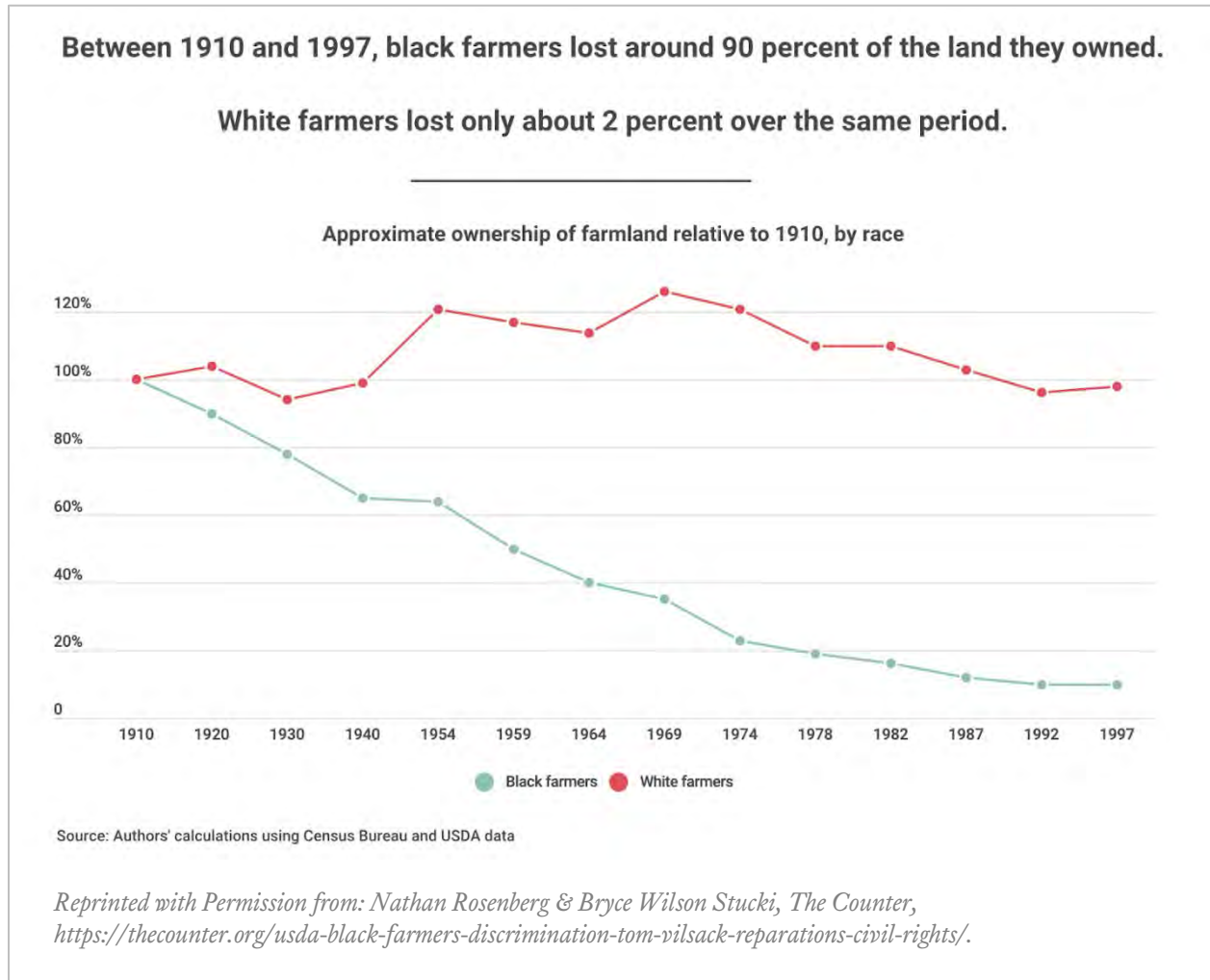




In the early 1900s, Black farm producers constituted a great number of farms in Virginia and throughout the South. However, throughout the twentieth century, Black farmers were systematically dispossessed of their property. *Images from the Visual Studies Collection of the Library of Virginia.*

## AGRICULTURAL EQUITY

Over the last century, African American farmers and landowners have been systematically dispossessed of their property. In 1910, African Americans held title to approximately 16-19 million acres of farmland, and one in seven farmers was Black.<sup>203</sup> However, between 1910 and 2010, 98% of Black farmers were dispossessed through discriminatory practices.<sup>204</sup> Today, of the more than 43,000 farm producers in Virginia, only about 2,400 are people of color.<sup>205</sup>



One historic obstacle for minority-owned farms in Virginia has been the heirs' property system. Land becomes heirs' property when its owner dies without a will, and interests in it are divided among the owner's heirs. Heirs' property has historically been vulnerable to property speculators

<sup>203</sup> Virginia Council on Environmental Justice, 2020 Annual Report at 19.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*



who could cause forced sales through partition proceedings.<sup>206</sup> Additionally, owners of heirs' property usually do not qualify for certain U.S. Department of Agriculture loans to purchase livestock or cover the cost of planting.<sup>207</sup> Individual heirs cannot use their land as collateral with banks or other institutions, so they are denied private financing and federal home-improvement loans.<sup>208</sup> Additionally, owners of heirs' property generally are not eligible for disaster relief funds.<sup>209</sup>

The owners of heirs' property are often unaware of the tenuous state of their title, but even when they are, clearing the title can be a costly and complex process, requiring owners to track down every living heir.<sup>210</sup> During the 2020 Regular Session, the General Assembly passed HB1605, which incorporated major parts of the Uniform Partition of Heirs' Property Act, consisting of provisions designed to protect the owners of heirs' property during partition proceedings. Even with these protections for heirs' property owners, minority farmers are faced with systemic problems that limit their access to financing, consultation, and education services.

The Commission puts forward the following four recommendations, aimed at equitably serving minority farmers and mitigating systemic inequities.

**RECOMMENDATION 1: Modify Code § 58.1-3965 to allow an extended redemption period for tax sales involving heirs' property.** Currently, § 58.1-3965 provides for the “owner’s right of redemption” prior to a tax sale. At least 30 days prior to instituting any judicial proceeding for the sale of property at auction for delinquent taxes, the officer charged with collecting taxes must send a notice to several addresses at which the property owner may be located and publish a list of the real estate which will be offered for sale in a newspaper of general circulation. Subsection B provides that “[t]he owner of the property listed may redeem it at any time before the date of the sale by paying all accumulated taxes, penalties, reasonable attorney’s fees, interest, and costs thereon.” Partial payment is insufficient to abate the sale. However, subsection C provides that the treasurer “may suspend any action for sale ... upon entering into an agreement with the

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<sup>206</sup> Samantha Willis, Growing forward: Facing historic and modern challenges, Virginia’s black farmers look to bolster ranks and grow their communities, *Virginia Mercury*, Dec. 4, 2018, <https://www.viriniamercury.com/2018/12/04/growing-forward-facing-historic-and-modern-challenges-virinias-black-farmers-look-to-bolster-ranks-and-grow-their-communities/>.

<sup>207</sup> Lizzie Presser, Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It, *ProPublica*, July 15, 2019, <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/>.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* In the aftermath of Hurricane Katrina, approximately 25,000 families around New Orleans applied for rebuilding grants for their heirs' property, leading one attorney to estimate that up to \$165 million of recovery funds were never claimed because of title issues relating to heirs' property.

<sup>210</sup> *Id.*

owner of the real property for the payment of all delinquent amounts in installments over a period which is reasonable under the circumstances, but in no event shall exceed 36 months.”

Historically, many heirs’ property owners are unaware of the state of their title, leading to delinquent property taxes.<sup>211</sup> To the unsuspecting owner, 30 days is likely insufficient to secure the necessary funds to prevent a tax sale. Therefore, the period between notice and sale, during which an owner may redeem the property, should be extended in cases involving heirs’ property. Because of the circumstances unique to heirs’ property, the period over which an owner may set up a payment plan should be extended in these cases as well.

**RECOMMENDATION 2: Sufficiently fund Virginia Cooperative Extension services at Virginia State University.** The Cooperative Extension services from Virginia’s land grant institutions – Virginia State University and Virginia Tech - provide meaningful education and other support to farmers throughout the Commonwealth. These programs play a vital role in the success of small farms across Virginia, as well as other initiatives within communities. However, Virginia Tech receives almost seven times more funding for its program than Virginia State receives.<sup>212</sup> While this is understandable given some of the different missions of each school’s extension program, Virginia State, which houses the Small Farms Outreach Program, is primarily responsible for serving Black farmers (who often own small farms). More funding is required to serve more communities and more farmers within those communities. Notably, the Small Farms Outreach Program currently lacks the resources to provide services in the Shenandoah Valley and parts of southwest Virginia, but it would be able to serve these communities with more resources.

**RECOMMENDATION 3: Create an Office of Small Farms within the Virginia Department of Agriculture and Consumer Services (VDACS) with a duty to consider racial equity in farming.** Stakeholders have expressed concerns that VDACS does not adequately consider the interests of small farm owners.<sup>213</sup> Compared to large grain farms, those who operate smaller farms face unique challenges. There are currently seven boards and organizations that operate within

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<sup>211</sup> *Id.* See also April Simpson, Racial Justice Push Creates Momentum to Protect Black-Owned Land, Pew, Sep. 21, 2020, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/21/racial-justice-push-creates-momentum-to-protect-black-owned-land>. Additionally, communication with Ebonie Alexander, Executive Director of Black Family Land Trust, has conveyed that she is personally aware of these circumstances.

<sup>212</sup> Research into the state budget bill (Chapter 1289, 2020 Acts of Assembly) shows that the appropriation for Virginia Tech’s program is just shy of \$94 million, while Virginia State’s program is around \$14 million. Moreover, while approximately 80% of Virginia Tech’s funds come from the General Fund, only about half of Virginia State’s funds are from the General Fund.

<sup>213</sup> This was revealed through discussions with stakeholders and experts in the areas of agricultural equity and heirs’ property.

VDACS, and none are geared toward addressing issues for small farms or racial equity.<sup>214</sup>

According to the 2017 Agricultural Census, most minority farmers in Virginia operate farms with less acreage while a larger percentage of White farmers operate large farms.<sup>215</sup> Thus, the creation of an Office of Small Farms within VDACS would allow greater consideration for both the needs of small farmers and racial equity. While creating the Office would be the best means of achieving this outcome, an alternative approach is to add the consideration of racial equity and issues facing small farmers to the list of duties assigned to the Board of Agriculture and Consumer Services in § 3.2-109.

**RECOMMENDATION 4: Order State Agencies and Institutions to implement a long-term goal for food procurement from minority producers.** In July 2019, Governor Northam issued Executive Order Number 35, which established a 42% target for food procurement from certified Small, Women- and Minority-owned (SWaM) businesses. The SWaM program creates a preferential track for small businesses owned by women, minorities, and service-disabled veterans.<sup>216</sup> However, those working within the program have found that while it benefits women and veteran-owned businesses, it has largely left out minority farmers who are unable to obtain the required certifications.<sup>217</sup> The administration should take steps, through executive orders or other means, to help minority-owned businesses participate more fully in the procurement process.

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<sup>214</sup> The organizations and boards include the Aquaculture Advisory Board, Board of Agriculture & Consumer Services, Virginia Agricultural Council, Virginia's Agricultural Commodity Boards, Virginia's Charitable Gaming Board, Virginia Specialty Food & Beverage Association, and Virginia Winery Distribution Company.

<sup>215</sup> USDA Agriculture Census, 2017,

[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Virginia/st51\\_1\\_0062\\_0062.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_State_Level/Virginia/st51_1_0062_0062.pdf)

<sup>216</sup> Va. Dep't of Small Business and Supplier Diversity, Governor Northam Signs Executive Order 35, <https://www.sbsd.virginia.gov/2019/07/11430/>.

<sup>217</sup> This information is derived from communications with those in the field.



As the work of this Commission shows, Virginia spent centuries systematically pursuing racial inequity, oppression, and exclusion. And even today, many policies have failed to account for this history or repair its harms, resulting in the perpetuation of those same inequities. Continuing legal practices end up disadvantaging our communities of color in marked ways, from education funding choices to zoning, from choices about Medicaid and CHIP to choices about where to site undesirable waste or industrial facilities.

These realities have revealed the necessity of elevating the Commission's work to official and permanent status in the Commonwealth of Virginia, so that efforts to address racial inequity in Virginia law extend beyond this moment and this Administration. Therefore, the Commission puts forth the following two recommendations to institutionalize racial equity in Virginia law:

**RECOMMENDATION 1: Codify the Commission as an ongoing Commission of the Commonwealth of Virginia.** The Commission's work so far has barely scratched the surface of a full review of Virginia law and history. Vast swaths of Virginia's policies have yet to be investigated or considered through an equity lens, and the Commission is aware that the work must continue, particularly as the Commonwealth commits to better data collection on many topics. It is therefore recommended that the legislature officially codify the Commission's existence as a permanent Advisory Commission, as defined in §2.2-2100, to outlast any single administration.

**RECOMMENDATION 2: Enact a process that would require examination of proposed legislation with an equity lens.** The Virginia Department of Budget and Planning reviews every potential law in Virginia for its fiscal impact on the Commonwealth. But there is currently no requirement or review process for a law's equity impact. Does a bill disproportionately and negatively impact a racial or ethnic minority community? What unintended consequences might occur? How will a bill's effect either perpetuate or reduce racial disparities? These are questions that our lawmakers should consider with every bill on which they vote, just as they consider a bill's fiscal impact on the budget.

## CONCLUSION AND ACKNOWLEDGMENTS

As described in the introduction, our hope in writing this report and its predecessor is not only to make specific policy recommendations to Governor Northam, but also to contribute to the conversation that Virginians are having about race, equity, and justice. Understanding our past, while at the same time looking clearly at what data and facts tell us about the present, can hopefully move people beyond polarized finger-pointing towards mutual understanding and constructive policy solutions that will make Virginia a fairer and more equitable place for all of our residents.

Despite the breadth of this report and its recommendations, the Commission recognizes that it still has much work to do. The Commission looks forward to planning and executing its 2021 agenda when it hopes to further investigate laws and regulations that contribute directly to inequity in economic achievement and stability. We will review, for example, Virginia's laws and policies on worker rights, consumer protection, debt collection, and other economic areas. As in this work reported here, the Commission will explore these and other areas of statutory and regulatory law that perpetuate racial inequity, and consider specific legislative and policy approaches to addressing identified racial disparities. The Commission will also continue to encourage, welcome, and accept feedback and input from individuals and organizations to help us identify other areas of statutory and regulatory law that perpetuate racial inequity, and require examination and reform.

Lastly, it is important to acknowledge that this report would not have happened without the extraordinary efforts of a number of non-Commission members. In particular, the Commission wants to thank University of Virginia School of Law State and Local Government Policy Clinic students Juliet Buesing, Lukus Freeman, Catherine Ward, and Christopher Yarrell who worked tirelessly on the research and drafting that formed the basis for this report. Your time, effort, and talent made our work easy. In addition, the Commission wants to thank UVA law students Trust Kupupika, Kelsey Massey, and Wes Williams who contributed to much of the initial research on housing, criminal justice, and voting referenced in this report.

Staff at the Library of Virginia, led by Roger Christman, also worked tirelessly to identify some of the powerful historic images found in the report, including Vince Brooks, Greg Crawford, Kelley Ewing, Mark Fagerburg, Cassandra Farrell, Dale Neighbors, Renee Savits, and Ben Steck. Thank you.

Finally, the Commission wants to thank Governor Northam for appointing us to do this important equity examination of Virginia law, and Grace Kelly, Jessica Killeen, Nathan Dowdy, and James “J.D.” Ratliff, who were the lead staff from the Governor’s office who supported our efforts over the last year.

## APPENDIX A. RELEVANT LEGISLATION

The following bills passed during the regular or special session in 2020, relating to topics of interest to the Commission. By listing them here, we hope to provide additional context to our recommendations above.

### CONFEDERATE MONUMENTS

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[HB1537](#), signed during the 2020 Regular Session, allows localities to remove, relocate, contextualize, or cover any monument or memorial for war veterans on the locality's public property. Since enactment, jurisdictions across Virginia have started to remove a range of confederate monuments.

### VOTING

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Virginia made historic progress in becoming an easier and fairer place to vote:

- [HB1](#): Absentee voting; no excuse required (Permits any registered voter to vote by absentee ballot in any election in which they are qualified to vote). Creates provisions for early voting (“in person absentee” voting).
- [HB108](#) | [SB601](#): Legal holidays; Election Day (Designates Election Day, the Tuesday after the first Monday in November, as a state holiday and removes Lee-Jackson Day as a state holiday).
- [SB65](#): Voter identification; repeal of photo identification requirements (Removes the requirement that voters show a form of identification containing a photograph in order to be allowed to vote).

### HOUSING

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During the 2020 Regular Session, several improvements were made to Virginia's landlord-tenant laws:

- [HB6](#): Preventing source of funds being used as a proxy/basis for discrimination by landlords with a smaller quantity of rental housing. This protects renters who use federal or state programs to finance their housing.
- [HB99](#): Prohibiting discrimination based on a tenant's status as a victim of family abuse.
- [HB519](#): Requiring legal aid information to be included in any termination of tenancy.

- [HB1420](#): Limiting fees for late payment of rent.
- [HB810](#): Creating a stakeholder advisory group to provide recommendations on starting a Virginia housing opportunity tax credit program to fund affordable housing construction.
- [HB1101](#): Allowing certain localities to adopt affordable housing unit dwelling ordinances.
- [SB834](#): Allowing localities to i) establish jurisdiction-wide affordable housing prices ii) establish jurisdiction-wide affordable housing income guidelines, and iii) offer incentives other than density increases to encourage provisions of affordable housing.
- [HB329](#): Requiring legal aid information to be added to lease termination notices.
- [HB393](#): Creating a tenant bill of rights.

The Special Session primarily addressed aspects of the housing crisis brought on by the pandemic:

- [HB5115](#) | [HB5111](#): Bills brought up to pause or limit evictions during the state of emergency
- [HB5119](#) | [HB5120](#): Bills brought up to govern emergency stays in hotels or motels.
- [HB5106](#): Forbids future landlords from considering evictions that occurred during the COVID-19 pandemic against a potential tenant.
- [HB5064](#): Requires landlords to offer a payment plan prior to eviction for overdue rent (only through July 2021)

## EDUCATION

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Virginia made important progress in addressing injustices in schools this year:

- [HB256](#): Repeal of Disorderly Conduct statute criminalizing classroom misbehavior
- [HB257](#): Repeal of laws requiring principals to report school-based misdemeanors to the police
- [HB697](#) | [698](#) | [703](#): Prohibition on school meal debt discrimination or punishment
- [HB837](#): Creation of guidelines to ensure dress codes are not racially biased
- [HB916](#): Authorization of a Cultural Relevancy Committee to review social history standards



- [HB415](#): Required learning access during suspensions
- [HB1469](#) | [HB1630](#): Certain extensions to provisional license periods for teachers in high-needs areas
- [HB1419](#): Required training for school resource officers
- [HB292](#): Transparency in MOUs between law enforcement and school districts

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## CRIMINAL JUSTICE

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During the 2020 Regular session, bills addressing the following issues were passed:

- [HB35](#) | [SB103](#): Make eligible for parole any offender convicted of an offense as a juvenile who has served 20 years in prison
- [HB995](#) | [SB788](#): Raise the grand larceny value of goods threshold from \$500 to \$1000
- [HB477](#): Raise the age of juvenile transfer to adult courts from 14 to 16
- [HB744](#): Allow a sentencing court to depart from mandatory minimums for juveniles tried as adults
- [HB972](#): Decriminalize simple marijuana possession and provide a civil penalty of no more than \$25
- [HB974](#): Allow for more than one filed writ of actual innocence per case and increases eligibility criteria for filing said writs

During the 2020 Special Session, bills addressing the following issues were passed:

- [SB5007](#): Provides that Courts, rather than juries, shall determine punishment.
- [SB5013](#): Provides that a violation of possession of marijuana by an adult shall be a pre-payable offense.
- [SB5014](#): Minimum training standards for law-enforcement officers; crisis intervention team training.
- [SB5024](#) | [HB5072](#): Authorizes the Attorney General to file a civil suit or otherwise investigate potentially unlawful actions by law enforcement officers or agencies.

- [SB5030](#): Omnibus policing reform bill, including issues of conduct, equipment, and training.
- [SB5033](#) | [HB5062](#): Requires a court in certain circumstances to grant a motion to dismiss made by the Commonwealth's Attorney.
- [SB5034](#): Provides for parole consideration for the terminally ill.
- [SB5035](#) | [HB5055](#): Authorizes a locality to establish a law-enforcement civilian oversight body with binding legal powers.
- [HB5029](#): Requires that any law-enforcement officer intervene with another officer to end the use of excessive force or attempted use of excessive force.
- [HB5043](#): Provides that the Department of Criminal Justice Services (DCJS) and the Department of Behavioral Health and Developmental Services (DBHDS) shall develop and establish a mental health awareness response and community understanding services (Marcus) alert system throughout the Commonwealth.
- [HB5045](#): Adds law-enforcement officers to those persons who are guilty of a felony if they are in a position of authority over and carnally know without force, threat, or intimidation a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pre-trial defendant or post-trial offender.
- [HB5051](#): Provides for officer decertification based on serious misconduct.
- [HB5058](#): Restricts reasons for which an individual can be pulled over for a traffic stop by a law-enforcement officer.
- [HB5069](#): Prohibits a law-enforcement officer from using a neck restraint in the performance of his official duties and provides for disciplinary sanctions on an officer who uses a neck restraint.
- [HB5098](#): Increases the penalty for falsely summoning or giving false reports to law-enforcement officials because of an individual's race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin.
- [HB5099](#): Prohibits any law-enforcement officer from seeking, executing, or participating in the execution of a no-knock search warrant.
- [HB5104](#): Provides for mandatory disclosure to a prospective law-enforcement or jail employer any information related to the prospective officer's prior misconduct or unlawful actions.

- [HB5108](#): Changes the membership of the Criminal Justice Services Board and its Committee on Training by requiring that some members be representatives of a social justice organization, representatives of community interests of minorities, and mental health service providers.
- [HB5109](#): Requires the Department of Criminal Justice Services (the Department) to develop a uniform curriculum and lesson plans for the compulsory minimum entry-level, in-service, and advanced training standards to be employed by criminal justice training academies approved by the Department when conducting training.
- [HB5148](#): Establishes a four-level classification system for the awarding and calculation of earned sentence credits.

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## HEALTH

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During the 2020 Regular Session, a number of bills successfully passed that will aid in reducing health disparities in Virginia. These include:

- [SB903](#): Hospitals; protocols and screening related to substance use disorders and mental health services at emergency department
- [SB818](#): Behavioral health dockets; established.
- [SB280](#): Health insurance; mental health parity; required report.
- [SB279](#) | [HB1549](#): Certificate of public need; criteria for determining need.
- [SB619](#) | [HB74](#): Public schools; mental health awareness training required.
- [SB734](#) | [HB728](#): Residential psychiatric placement and services; SOE, et al., to establish work group.
- [HB1332](#): Statewide Telehealth Plan. Telehealth services; definitions, report.
- [SB172](#) | [HB1251](#): Health insurance; definitions, payment to out-of-network providers, emergency services (banning balance billing; being implemented January 1, 2021)
- [HB42](#): Prenatal and postnatal depression, etc.; importance of screening patients.
- [HB687](#): State-certified doulas; certification, registry.
- [HB826](#): State plan for medical assistance; payment for services provided by certified doulas.

- [HB907](#): Sickle cell anemia; treatment.
- [SB301](#): Medically underserved areas; transporting patients to 24-hour urgent care facilities.
- The Biennial Budget adopted during the regular legislative session included many health initiatives that were “unallotted” in the April 2020 veto session, due to revenue concerns related to COVID-19. However, many of those initiatives were included and re-funded in the budget adopted during the legislature’s 2020 special session. Adopted items that address racial inequity include the elimination of the 40-quarter work history requirement, which limits legal immigrants’ access to Medicaid; the extension of Medicaid and FAMIS post-partum coverage from 60 days to 12 months to address maternal mortality concerns; and a comprehensive Adult Dental Benefit in Medicaid.

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## ENVIRONMENTAL JUSTICE

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The following provides a summary of bills passed by the General Assembly in the 2020 Regular Session:

- [SB406](#) | [HB704](#): Environmental Justice; definitions, agency regulations, Virginia Environmental Justice Act, policy.
- [HB1042](#): Environmental Justice, Virginia Council on; established.
- [HB1162](#): Environmental Quality, Department of; definition of environmental justice.
- [HB1164](#): Environmental Quality, Department of; policy statement.
- [HB1605](#): Partition of property; in partition actions the court shall order an appraisal of property.
- [SB1075](#): Environmental Quality, Department of; public comment.
- [HB572](#) | [SB710](#): Distributed solar & other renewable energy; sales of electricity under third-party agreements.
- [HB528](#): Electric generation facilities; SCC shall determine retirement of facilities.
- [HB981](#) | [SB1027](#): Clean Energy and Flood Preparedness Act; definitions, funds, report.
- [HB1526](#) | [SB851](#): Electric Utility Regulation; environmental goals.
- [HB394](#): Diversity, Equity, and Inclusion, Director of; position created.

- Previously existing via [Executive Order 29](#), [SB1042](#) made the Virginia Council on Environmental Justice (“CEJ”) a permanent advisory committee.

## AGRICULTURAL EQUITY

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In the 2020 Regular Session, the General Assembly passed [HB1605](#), which incorporated major parts of the Uniform Partition of Heirs’ Property Act, consisting of provisions designed to protect the owners of heirs’ property during partition proceedings.



## **APPENDIX B. COMMISSION'S LETTER ON POLICING**



# COMMONWEALTH of VIRGINIA

## Office of the Governor

Commission to Examine  
Racial Inequity in Virginia Law

August 6, 2020

The Honorable Ralph S. Northam  
Governor, Commonwealth of Virginia  
1111 East Broad Street  
Richmond, Virginia 23219

Dear Governor Northam:

Per your charge to the Commission to Examine Racial Inequity in Virginia Law on June 11, 2020 that the Commission develop a set of legislative or policy recommendations to facilitate needed reforms of law enforcement practices. The Commission has been hard at work to develop such a set of recommendations. Specifically, with the help of research provided by students from the University of Virginia School of Law, and contributions and public comments received from a range of stakeholders, the Commission,<sup>1</sup> over the course of meetings on June 17, 2020, July 1, 2020, and July 22, 2020, forged a series of legislative and policy recommendations for your consideration. This letter details those recommendations that, in general, fall into the following four categories: (1) Transparency; (2) Accountability; (3) Safety; and (4) Policy/Budget Initiatives.

### I. INTRODUCTION

The Commission comes to this task in the aftermath of acts of police violence that, of course, demand a response and re-affirm data showing that African Americans are disproportionately arrested, injured and killed by police compared to white people. The Commission has also approached this work within the broader context of an examination of practices and policies in the Commonwealth that have negatively and disparately impacted people of color across almost all areas of life.<sup>2</sup>

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<sup>1</sup> For the research and analysis supporting these recommendations see materials from the June 17<sup>th</sup>, July 1<sup>st</sup>, and July 22<sup>nd</sup> meetings of the Commission, which is available at the Commission's website:

<https://www.governor.virginia.gov/racial-inequity-commission/>.

<sup>2</sup> See materials from May 21<sup>st</sup> meeting of the Commission, including memo and presentation detailing racial disparities in Virginia in the areas of housing, education, criminal justice, and health, which is available at the Commission's website: <https://www.governor.virginia.gov/racial-inequity-commission/>.

While the responses we propose are, we think, necessary state legislative mandates, rules, and models, the Commission fully appreciates that legislation only goes so far. In addition to the changes proposed below, and others that you and the legislature may consider, the Commission believes necessary change must also come from the personal and professional commitment of each and every law enforcement agency leader and those who elect or appoint them. This change must help their departments rise to the challenge of this moment and transform their role and relationship with the communities they serve from, to paraphrase Bryan Stevenson, an occupying force to trusted “guardians.”

This level of change is cultural and relational, and something that no law can mandate. Therefore, the Commission supports the leadership that some members of the law enforcement community are already taking to realize that kind of change. The Commission also champions various non-legislative efforts to bring this change about. For example, the Commission encourages programs to promote mutual trust by bringing police and residents in heavily-policed communities together in non-enforcement community/social activities; police ride-along programs that better orient community members to the challenges of policing and needs of officers; intensifying efforts to make police forces more diverse in terms of race, ethnicity, gender, cultural background and language; involvement of citizens in policy and strategy development for dealing with crime in high-crime communities; as well as expanding resources for law enforcement officers' emotional and mental health.

## **II. DATA COLLECTION AND TRANSPARENCY**

### **1. Require local law enforcement data reporting on use of force, pedestrian stops, all civilian complaints (amending the Community Policing Act, Va. Code § 52-30.1.), and enact an enforcement mechanism for local agency data reporting requirements.**

Comment: The Commission recommends adding data collection on pedestrian stops to the recently passed Community Policing Act (CPA), as well as requiring the collection of demographic data and narrative information regarding any use of force, and civilian complaints, which may include complaints of unjustifiable stops or searches, harassment, or profiling. The Commission also proposes adding an enforcement mechanism to both incentivize appropriate data collection and hold accountable agencies that fail to follow statutory requirements.

### **2. Establish a public, free database of downloadable data elements from data collected under the Community Policing Act.**

Comment: The CPA makes great strides in improving statewide collection of data and thereby improves transparency in policing. However, under the CPA, this data still goes solely to the Department of Criminal Justice Services (DCJS) and the Virginia State Police. Currently, this data only gets reported out to the public on an annual basis, in a report in which analysis has already been conducted and conclusions already drawn. Researchers

strongly recommend improving public trust, law enforcement research, and police accountability by allowing the public to download and work with police department data directly.

**3. Create more public transparency regarding law enforcement officer misconduct involving improper use of force and criminal investigations of law enforcement officer conduct.**

Comment: Due to broad records protection laws created by Freedom of Information Act exemptions, Virginians have been effectively barred from accessing internal affairs investigative files, personnel files, and non-active criminal investigative files about law enforcement officers. As a result, Virginia police are generally exempt from ordinary government and public oversight. The Commission recommends legislation to promote greater transparency.

### **III. ACCOUNTABILITY**

**4. Mandate and empower civilian review boards to investigate and address complaints of misconduct, including the use of professional staff, subpoena power, and authority to make recommendations on discipline.**

Comment: Many advocates and organizations, including many local governments, are currently calling for mandated civilian complaint review boards (CCRBs) with investigative, auditing, and/or disciplinary authority across the Commonwealth. The Commission, when discussing this issue, recognized both the value of citizen engagement and the need for full-time professional staff if CCRBs were to be successful. While acknowledging that there are costs and benefits to any approach, both in terms of fiscal impact and community value, the Commission recommends the establishment of CCRBs across the Commonwealth, with professional staff, subpoena power, authority to investigate civilian complaints, and pre-established agreements with local law enforcement agencies to make discipline recommendations based on the outcomes of those investigations.

**5. Create civil liability for bias-based profiling, as defined by the Community Policing Act (CPA).**

Comment: The CPA includes a welcome prohibition of racial profiling by law enforcement on the basis of race and ethnicity, as well as age and gender. While the CPA is a good start for Virginia, additional provisions should be added to make the law enforceable, such as creating express civil liability for officers who illegally profile civilians or their employers. Racial profiling laws, when enforceable, can provide important rights to people who are left behind by gaps in federal constitutional enforcement.

**6. Provide additional decertification criteria for law enforcement officers based on repeated or serious misconduct or dishonesty.**

Comment: Virginia law currently provides for the decertification of law enforcement officers who fail to complete training requirements, who are found to use drugs, or who are convicted of certain crimes. It does not provide for the decertification of officers who have been found to violate department policy or regulations, or who have a record of misconduct or integrity violations. Expanding the law to also provide for decertification when officers engage in serious misconduct, or demonstrate dishonesty and lack of integrity, will make it easier for local departments to remove problem officers, and make it harder for such officers to move from department to department and avoid accountability.

**7. Give the Office of Attorney General concurrent jurisdiction to investigate and prosecute serious criminal allegations against law enforcement officers, without the need for consent from the local Commonwealth's Attorneys.**

Comment: Currently, investigation and prosecution of criminal allegations against a police officer are handled by the local prosecutor, who may personally know the involved officer and whose investigation, and prosecution (if any), may be tainted, at a minimum, by the appearance of bias, if not actual bias. To restore public faith in the independence and reliability of such prosecutions, the legislature should grant the Attorney General concurrent, but superseding, authority to investigate and prosecute serious criminal allegations against law enforcement officers.

**8. Strengthen civil liability and limit sovereign immunity protections, for both law-enforcement officers engaged in misconduct and their employers.**

Comment: The doctrine and codification of sovereign immunity can all too often shield law enforcement officers and those who employ them from appropriate civil liability for harm they may cause to members of the public. The Commission recommends, accordingly, that you propose, or support, legislation instituting or permitting some degree of civil legal liability for law enforcement officers, and their employing entities. So as to ensure that abuses of force, physical violence, and intentional tortious actions are met with accountability, and that employers are held accountable for failure to exercise a defined level of care in hiring, training, and retaining officers who abuse their authority to the detriment of the public.



#### IV. MAKE POLICING SAFER

- 9. Require development of state model use-of-force policies with minimum requirements to be adopted by law enforcement agencies that address the following: limitations or bans on the use of chokeholds; warnings before shootings; reducing force as a threat subsides; creating duties to intervene to prevent use of excessive force and provide medical aid; and limiting use of force to execute non-violent felony or misdemeanor arrests.**

Comment: The Commission proposes that you recommend legislation requiring DCJS to create a model use-of-force policy for distribution to local law enforcement agencies, and further requiring all law enforcement agencies to adopt a use-of-force policy that includes mandatory provisions addressing the matters set forth in the recommendation above.

- 10. Expand community membership on the Department of Criminal Justice Services (DCJS) law enforcement training committee.**

Comment: Under current law, the membership of DCJS' Training Committee – the body charged with establishing training standards for law enforcement professionals across the Commonwealth – is reserved almost exclusively for law enforcement professionals, with only one seat on the Committee for a “citizen representing community interests.” Adding more diverse community voices to the training committee will better ensure community priorities are reflected in the training requirements for law enforcement officers.

- 11. Further limit the use of no-knock warrants (“Breonna’s Law”).**

The recent shooting of Breonna Taylor, an EMT asleep in her own home, by plain-clothes police officers, has drawn national attention to the problem of the so called ‘no-knock warrant.’ The Commission recommends that you propose or support legislation further limiting the use of such warrants.

- 12. Conduct a comprehensive review of the number and nature of arrestable offenses in Virginia law and recommend reductions in the number of arrestable offenses where the findings warrant.**

Comment: Like no-knock warrants, arrests risk substantial physical harm or injury, indignity, and deprivation of constitutional rights, often for offenses that do not justify this risk. Scholars increasingly argue that many arrests are unnecessary to promote public safety, even when criminal charges may be appropriate as sanctions. Requiring certain low-level offenses to be charged by summons rather than arrest avoids the physical risks of a forceful encounter and encourages police officers to focus their authority on more pressing risks to public safety.

## V. OTHER TOPICS & NON-LEGISLATIVE CHANGES

### 13. Study police militarization.

Comment: Over recent years law enforcement has increasingly obtained military-style equipment and employed military-style tactics during everyday law enforcement. While the Commission recognizes that such equipment and tactics may well be necessary during extreme circumstances, the Commission is also concerned that such equipment and tactics, when available, are deployed, at times, in an unsafe manner. Accordingly, the Commission recommends that the Joint Legislative and Audit Review Commission or other appropriate body study the issue of state funding of the militarization of police in Virginia and make recommendations regarding any necessary changes to current practice.

### 14. Study reallocation of policing funds.

Comment: Increasingly, law enforcement has been called upon to address social problems such as homelessness, untreated mental illness, or student misbehavior in school. These social problems may be better handled by professionals trained to address those specific problems rather than by a law enforcement officer. The Commission recommends a study of state spending on state and local law enforcement to determine whether and how best to reallocate some portion of those funds to human service interventions better targeted at addressing these underlying community challenges.

### 15. Incentivize Early Warning System pilot programs.

Comment: Early Warning Systems<sup>3</sup> are highly effective local law enforcement programs that flag problem officers for intervention early in their careers, and ideally before they abuse their positions. This change may be best expressed as a budget item to establish several pilot programs in localities across the state.

### 16. Adjust police training requirements.

Comment: Given the need for safer and more constructive community and police relations, and the likelihood of new practices, policies, and legal obligations, transforming the training of law enforcement should be an urgent priority.

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<sup>3</sup> For more information on Early Warning Systems see Samuel Walker et al., *Early Warning Systems: Responding to the Problem Police Officer*, *National Institute of Justice* (2001), <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>.

**17. Encourage diversity in law enforcement.**

Comment: To build stronger bridges between law enforcement agencies and the communities they serve, the Commission recommends measures to support the recruitment, hiring, and retention of members of those communities as local law-enforcement officers.

**CONCLUSION**

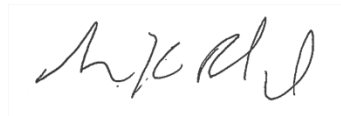
The Commission is grateful for the opportunity to serve you and your administration, and to have the chance to contribute to the important conversations taking place right now about how to better keep our communities safe. The recommendations set forth above result from the Commission's hard, unflinching look at the undisputable facts of racially disparate treatment of citizens at the hands of law enforcement, with the concurrent recognition of the value and need for good, fair, effective policing. The Commission submits that this kind of focus is a critically necessary exercise in the honest confrontation and assessment of the historical racism that continues to influence our laws, our practices, and our community relationships. We look forward to applying this approach to the other areas of racial inequity that continue to impede our progress toward becoming a more fair and just Virginia.

On behalf of the all of the members of the Commission to Examine Racial Inequity in Virginia Law, thank you for your consideration.

Sincerely,



Cynthia Hudson  
Commission Chair



Andrew Block  
Commission Vice-Chair



BACK COVER: BPOS Foundation, Inc. (Be Part of the Solution, Inc.), Fairfield Court Elementary School in Richmond, VA (Feb. 29, 2016).

<http://www.bposfoundation.com/fairfield-court-elementary-school-richmond-va.html>







# Identifying Virginia's Racially Discriminatory Laws and Inequitable Economic Policies



REPORT *from*

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## The Commission to Examine Racial and Economic Inequity in Virginia Law

JANUARY 6, 2022

FRONT AND BACK COVERS: PORTRAITS OF MAGGIE WALKER. COURTESY OF THE VISUAL STUDIES  
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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 Law<sup>1</sup>. 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

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*.<sup>5</sup> 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.

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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 Recommits 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.

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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."<sup>10</sup> 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.

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<sup>10</sup> 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

### Henry L. Chambers, Jr. of Richmond

Professor of Law, University of Richmond School of Law

### Rev. Pierre Greene of Henrico

Registered Representative, Capitol Financial Solutions

### 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

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### 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.

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## RACIAL DISPARITIES IN RURAL VIRGINIA

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### 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

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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.

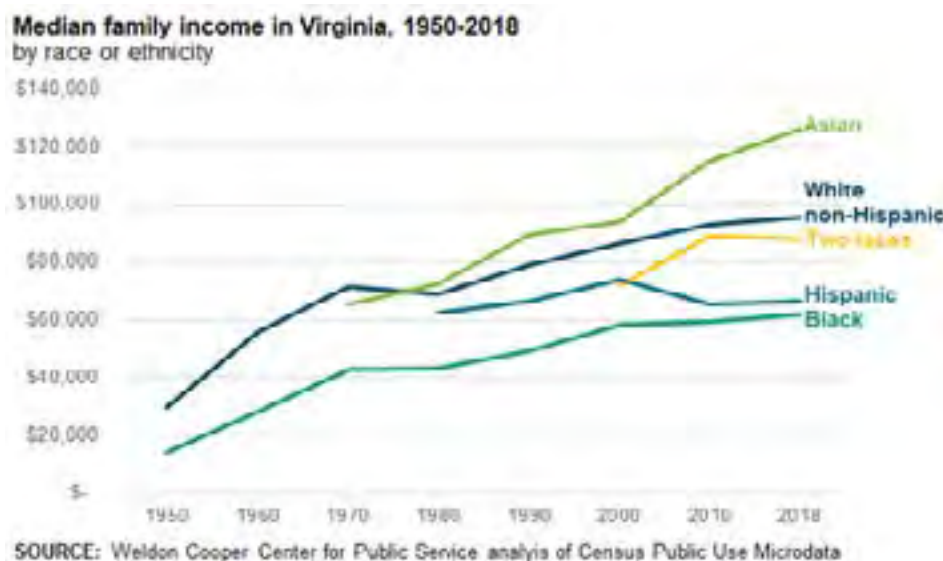
In some cases, it was clear that there was a racial disparity, but it wasn't clear why. In these areas, the research team identified data gaps that could be rectified by statutes or regulations. In other areas, the racial disparity at issue highlighted specific policy focus areas for making substantive 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,<sup>11</sup> 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.<sup>12</sup> 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.

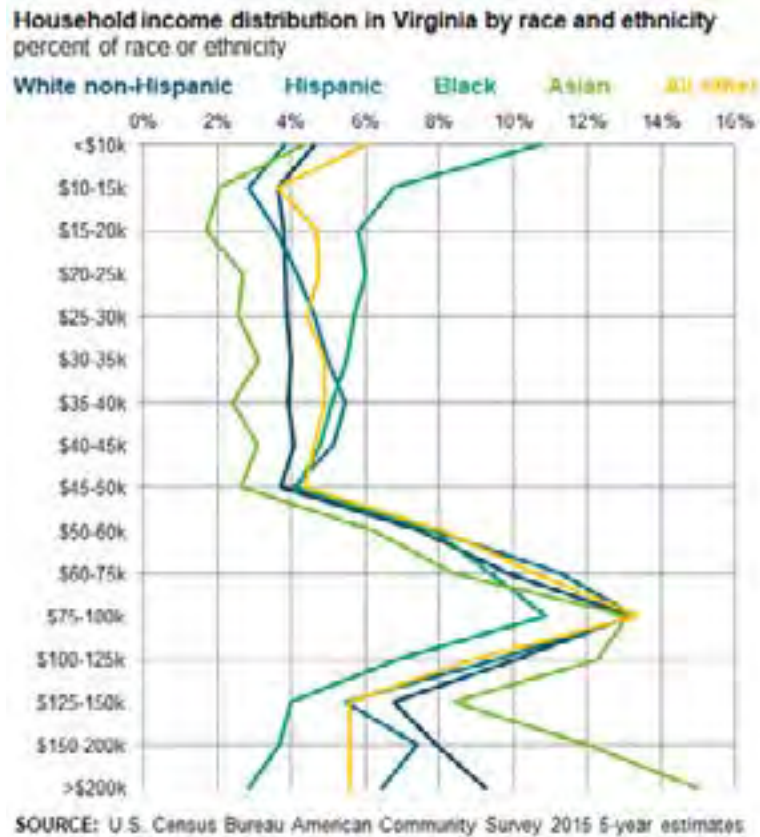
Wide racial disparities appear in everything from income and wages to unemployment and wealth. Historically, state-level policies intentionally created these disparities, and many current policies perpetuate the disparities. Recent legislative effort has focused on discrimination protections in the workplace, 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.



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

<sup>12</sup> *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.<sup>13</sup>



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.<sup>14</sup> 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.

<sup>13</sup> 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/>.

<sup>14</sup> 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/>.



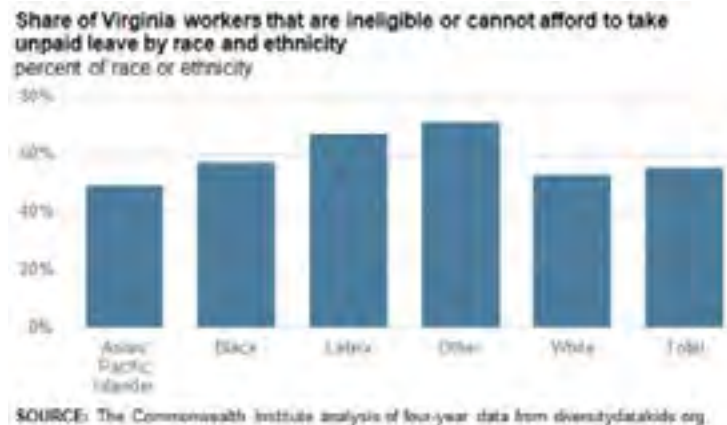


The current unemployment and nonworking rates for Virginians of color are nearly double those of white Virginians. The COVID-19 pandemic has highlighted many of the issues with Virginia’s unemployment system. At the start of the pandemic, Virginia’s unemployment insurance determinations took the longest 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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> Access to paid leave is also strongly correlated to income.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup> The infant mortality rate of Black infants is more than double that of white infants

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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.<sup>22</sup> 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.<sup>23</sup>

Nine states<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> Understandably, existing paid leave programs have been shown to also improve infant health, with Black children showing the biggest improvements.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> Second, children are increasingly growing up in households where all parents are working.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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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](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.<sup>33</sup> Workers could make a claim to care for themselves or a family member and would receive 80% of their wages during leave.<sup>34</sup> Such a bill would extend the protection of paid leave to more Virginians who need it than would other options.<sup>35</sup> It would especially lift up workers and families of color, who have less access to paid and unpaid leave as of today.<sup>36</sup>

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### EARNED INCOME TAX CREDIT

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The federal Earned Income Tax Credit (EITC) was enacted in 1975 and was established, in part, to address rising costs of living.<sup>37</sup> 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.<sup>38</sup> As of tax year 2018, about 600,000 families in Virginia received the federal EITC.<sup>39</sup> Most families who receive the EITC in Virginia have a federal adjusted gross income under \$25,000.<sup>40</sup> 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.<sup>41</sup>

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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>

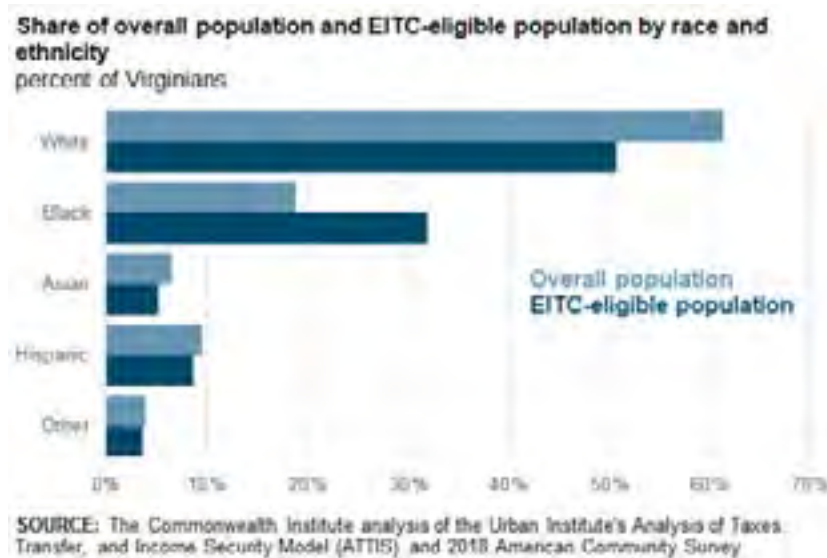
38 IRS, Earned Income and Earned Income Tax Credit (EITC) Tables (2021) <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-and-earned-income-tax-credit-eitc-tables>.

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,<sup>42</sup> 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.<sup>43</sup>



Virginia enacted a state-level EITC that became available in 2006 and matches up to 20% of a tax filer's federal EITC.<sup>44</sup> Though Virginia is one of 30 states, plus D.C. and Puerto Rico, with its own state EITC,<sup>45</sup> it is one of only five that is nonrefundable.<sup>46</sup> 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 proposal<sup>47</sup> to make Virginia's state EITC fully refundable would have helped about 385,000 tax filers in the state,<sup>48</sup> 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.

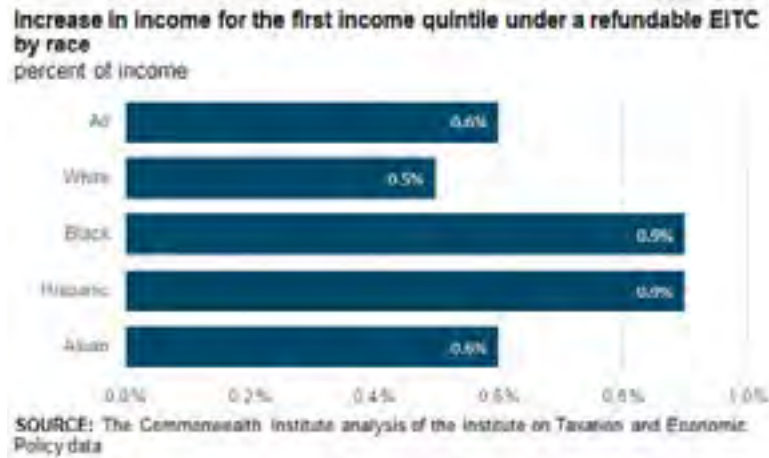
45 Samantha Waxman, *Record Number of States Create or Improve EITCs to Respond to COVID-19*, Center on Budget and Policy Priorities (2021) <https://www.cbpp.org/blog/record-number-of-states-create-or-improve-eitcs-to-respond-to-covid-19>.

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](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.<sup>49</sup> 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.<sup>50</sup> A phased approach that starts at partial refundability will accommodate a restriction against large net tax reductions currently in effect under ARPA.<sup>51</sup>

**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).<sup>52</sup> ITIN filers are not eligible for the federal EITC, but they are eligible for state EITCs in seven states.<sup>53</sup> (The federal exclusion applies if one adult has an ITIN even if other people in the family have Social Security numbers).<sup>54</sup> 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.<sup>55</sup> Relative to California, estimates indicate that Virginia's undocumented population includes a slightly larger share of immigrants from Asia and Africa.<sup>56</sup>

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.<sup>57</sup> At those ages, people of color in Virginia are much more likely to be working while also living in poverty.<sup>58</sup>

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

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## CONSUMER PROTECTION

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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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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

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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](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](http://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.<sup>62</sup> This law closes loopholes that previously allowed lenders to charge excessive rates for payday and title loans.<sup>63</sup>

## IMPACT OF FORECLOSURE ON MINORITY HOME BUYERS

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

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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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%.<sup>70</sup>

Virginia employs a non-judicial foreclosure process,<sup>71</sup> which means that a court does not have to be involved in a foreclosure.<sup>72</sup> As a result, individuals facing foreclosure have no right to counsel in the process<sup>73</sup> and, if they want to contest the foreclosure, must go to court on their own in order to assert a defense to the foreclosure.<sup>74</sup> 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.<sup>75</sup> The investment in homeownership is thus erased, and the effect is compounded by the impact of foreclosure on future credit extension.

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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](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.<sup>76</sup> 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.<sup>77</sup> Some recipients were able to obtain renewal based on need, availability of funding, and continued eligibility.<sup>78</sup> 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.<sup>79</sup> 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,<sup>80</sup> and including information about homeowners' options for avoiding foreclosure in notices of foreclosure.<sup>81</sup>

#### 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.<sup>82</sup> 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.<sup>83</sup> Judicial foreclosure would give homeowners more time to prepare for an impending foreclosure and an opportunity to reclaim their property after a foreclosure sale.<sup>84</sup> 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.<sup>85</sup>

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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 sale<sup>86</sup> and allows the buyer to remain in possession of their home for longer,<sup>87</sup> which is especially important in Virginia since the time between default and sale under the current law is only fourteen days.<sup>88</sup> 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.<sup>89</sup>

## DEBT COLLECTION

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According to research done by ProPublica, debt collection suits are primarily concentrated in Black neighborhoods.<sup>90</sup> The disparity remains even after accounting for differences in income.<sup>91</sup> 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.<sup>92</sup>

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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup>

### 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.<sup>97</sup> 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.<sup>98</sup> Furthermore, according to the Federal Trade Commission, debt buyers often abuse the court system by suing beyond the statute of limitations.<sup>99</sup> This phenomenon is especially concerning given that debt

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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](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](https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf)

[-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf](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.<sup>100</sup> 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.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> 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.<sup>104</sup>

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## CREDIT REPORTING

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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.<sup>105</sup> 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.<sup>106</sup> Furthermore, Black and Hispanic individuals are disproportionately affected by municipalities discriminatorily imposing fees and fines in order to raise revenue.<sup>107</sup>

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.<sup>108</sup> Auto insurance is required for driving in every state except New Hampshire.<sup>109</sup> The higher premiums can also result in reduced access to vehicles, which is a major barrier to employment opportunities.<sup>110</sup>

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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](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/](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.<sup>111</sup> This program helps low-income applicants obtain housing in rural areas by providing payment assistance to improve the applicants' repayment abilities.<sup>112</sup> However, it is infrequently used and limited to rural housing.<sup>113</sup> 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.<sup>114</sup> However, several studies have demonstrated that this is not the case.<sup>115</sup> As a result, several states (including California, Hawaii, Maryland, Massachusetts, Michigan, Oregon, and Utah)<sup>116</sup> have passed legislation to put a stop to such practices.<sup>117</sup>

### ACCESS TO CAPITAL

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#### 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.<sup>118</sup> 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.<sup>119</sup> Furthermore, on average, Black workers in Virginia earn 73 cents for every dollar white workers earn.<sup>120</sup> These factors result in young adults of color being both less likely to have access to financial

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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>.

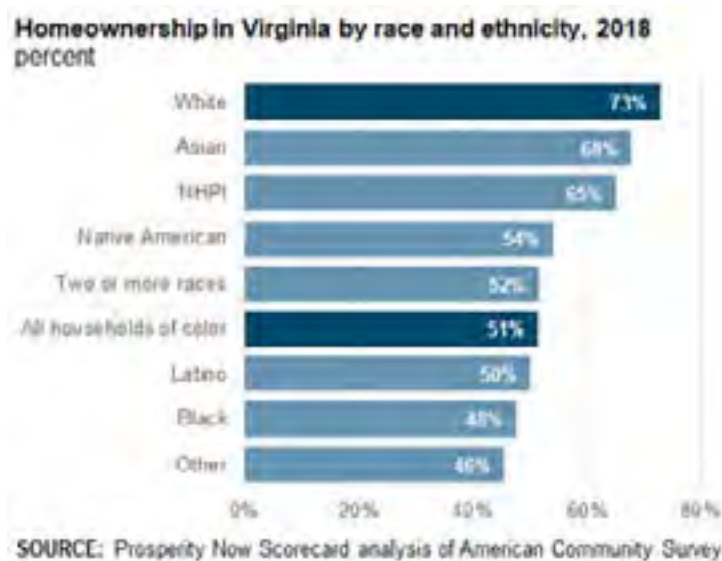
120 The Commonwealth Institute, *Latest Data Shows Trend Toward Economic Recovery, but Black Workers and Businesses are Being Left Behind* (2020) <https://thehalfsheet.org/post/624820264899936256/latest-data-shows-trend-toward-economic-recovery>.

support from family members<sup>121</sup> and less likely to receive loans.<sup>122</sup> 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

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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.<sup>123</sup> During the same period, the Black homeownership rate dropped 4.8%, while the white homeownership rate dropped only 0.5%.<sup>124</sup> In Virginia in 2019, the Black-white homeownership gap was 26.3%, up from 22.9% in 2000.<sup>125</sup>

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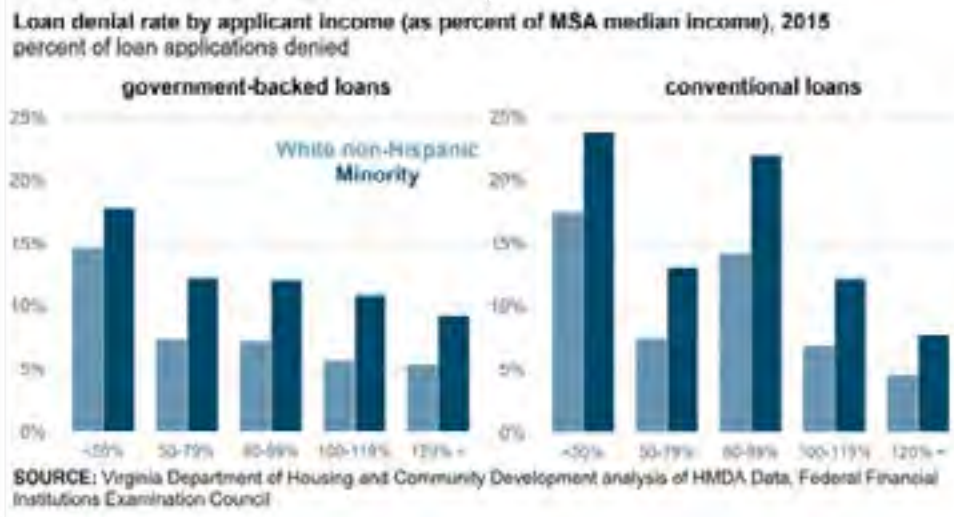
121 Choi et al., Urban Institute, *Explaining the Black-White Homeownership Gap* (2019) [https://www.urban.org/sites/default/files/publication/101160/explaining\\_the\\_black-white\\_homeownership\\_gap\\_2.pdf](https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf).

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.<sup>126</sup> Additionally, 3.6% of Black borrowers were denied mortgage loans because of their credit history, compared to only 1% of white borrowers.<sup>127</sup>

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.”<sup>128</sup>

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.”<sup>129</sup> 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.<sup>130</sup> 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.”<sup>131</sup> 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.<sup>132</sup> Furthermore, 33% of Black households with credit histories lack a credit score entirely, compared to 17.9% of white households.<sup>133</sup> 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.<sup>134</sup>

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.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup> For applicants making about \$115,000, the denial rates for Black and white Virginians, respectively, were 8.9% and 3.4%.<sup>138</sup> For applicants making about \$185,000, the gap was 7.4% versus 2.3%.<sup>139</sup>



in the visual studies collection of the Library of Virginia

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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.<sup>140</sup>

Communities that do not have adequate access to financial services and banks struggle with a lack of fairly priced financial services.<sup>141</sup> 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.<sup>142</sup> These issues have impacted predominantly Black communities especially heavily.<sup>143</sup> 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.<sup>144</sup>

Improving opportunities for young Black adults to buy homes can help to increase homeownership among people of color in Virginia.<sup>145</sup> 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](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.<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup>

## 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.<sup>149</sup> 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.<sup>150</sup> The loans are administered through the Affordable and Special Needs Housing (ASNH) Program and the Vibrant Community Initiative (VCI).<sup>151</sup> The loans are awarded to developers producing affordable housing who meet goals aligned with gubernatorial initiatives or state housing policies.<sup>152</sup> The loans are low-interest, and the loans' provisions encourage the recipients to use outside funding sources.<sup>153</sup> 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.<sup>154</sup> In 2019-20, \$4,460,000 was allocated for the Competitive Loan Pool, while \$1,000,000 was allocated for the Vibrant Community Initiative.<sup>155</sup> 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.<sup>156</sup>

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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.<sup>157</sup> 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.<sup>158</sup>

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.<sup>159</sup> 14% of Black households in the region are unbanked, which means they do not have a bank account at all.<sup>160</sup> Geographic areas with inadequate access to banks are known as banking deserts, a phenomenon that often affects rural areas.<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup>

### 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.<sup>164</sup> Although creditors today often use computer algorithms to make credit decisions, these systems tend to disadvantage Black households.<sup>165</sup> 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.<sup>166</sup> 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.<sup>167</sup>

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<sup>157</sup> South, *supra* note 126.

<sup>158</sup> *Id.*

<sup>159</sup> 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](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).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> McCargo et al., *supra* note 140.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *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.<sup>168</sup> Notably, Black-owned businesses in the U.S. have lower levels of start-up capital across all major industries.<sup>169</sup> The lack of access to financial capital among people of color leads to difficulty maintaining businesses through economic downturns.<sup>170</sup> These businesses are also likely to have lower sales, profits, and employment than businesses that have higher levels of start-up capital.<sup>171</sup>

The lack of access to start-up capital among people of color may be partially attributable to lending discrimination.<sup>172</sup> 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.<sup>173</sup> 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.<sup>174</sup> Without wealth, potential entrepreneurs cannot invest directly in businesses or secure collateralized business loans.<sup>175</sup> 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.<sup>176</sup>

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.<sup>177</sup> 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.<sup>178</sup>

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.<sup>179</sup> Additionally, Black business owners are given loans with higher interest rates, and these disparities remain even when controlling for creditworthiness.<sup>180</sup>

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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.<sup>181</sup> 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.<sup>182</sup>

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.<sup>183</sup> In contrast, white Americans own 82% of small businesses with employees despite making up 60% of the U.S. population.<sup>184</sup> 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.<sup>185</sup>

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.<sup>186</sup> 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.<sup>187</sup> 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.<sup>188</sup> 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.<sup>189</sup> 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.<sup>190</sup>

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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.<sup>191</sup>

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.<sup>192</sup> 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.<sup>193</sup> 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.<sup>194</sup>

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.<sup>195</sup> Because entrepreneurs of color are less likely to receive funding from traditional capital markets, they are especially vulnerable to predatory lending.<sup>196</sup> 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.<sup>197</sup> 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.<sup>198</sup> The Responsible Business Lending Coalition estimated that this act would save California small businesses \$617 million to \$2.9 billion annually.<sup>199</sup> 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.<sup>200</sup>

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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.<sup>201</sup> 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	
Holligan P.B.	Point House	5	2.75	14	1.80	Out-into lot's with
James Lee & Adeline	Land in Wood	24	1.01	20	7.27	Wald. B. B. B. B. B.
John J. Jones	Lytle Park	32	46	25	4.75	Wald. B. B. B. B. B.
Thurmond R. B. B.	Lytle Park	24	2.00	18	2.00	Wald. B. B. B. B. B.
Wald. B. B. B.	Lytle Park	22	2.5	18	2.00	Wald. B. B. B. B. B.

*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	
John J. Jones	Lytle Park	32	46	25	4.75	Wald. B. B. B. B. B.	
Wald. B. B. B.	Lytle Park	22	2.5	18	2.00	Wald. B. B. B. B. B.	
Wald. B. B. B.	Lytle Park	24	2.00	18	2.00	Wald. B. B. B. B. B.	
Wald. B. B. B.	Lytle Park	22	2.5	18	2.00	Wald. B. B. B. B. B.	

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

<sup>201</sup> 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.

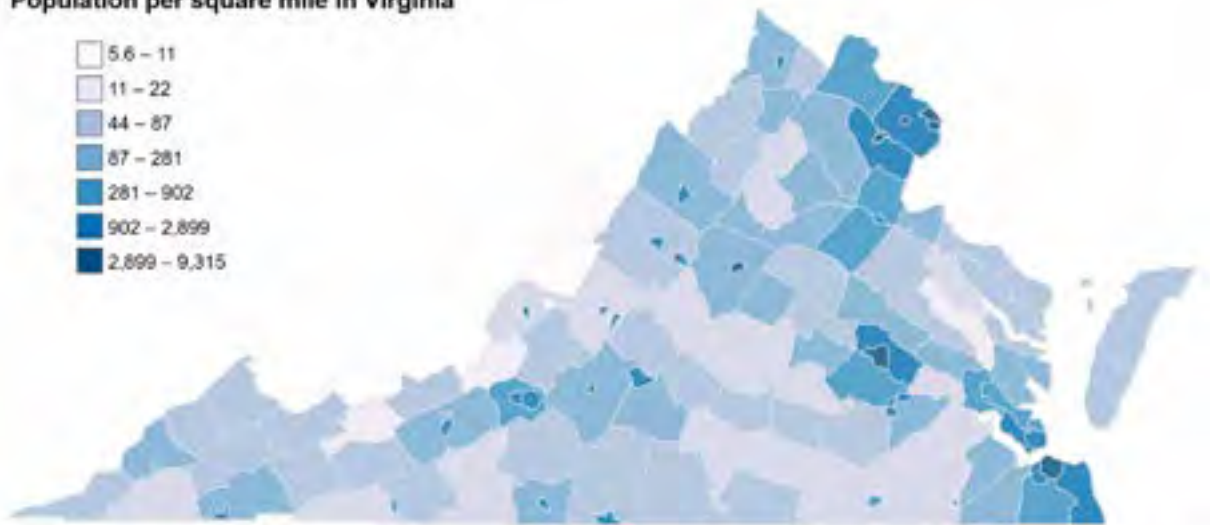
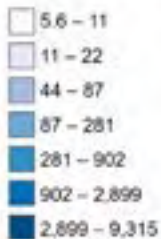
## RECOMMENDATION 2: DIRECT THE DEPARTMENT OF TAXATION TO STUDY AND DEVELOP A PROPOSAL TO REQUIRE THAT ALL INDIVIDUALS WHO CONDUCT LOCAL PROPERTY TAX ASSESSMENTS RECEIVE STATE CERTIFICATION AND ONGOING RECERTIFICATION.

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

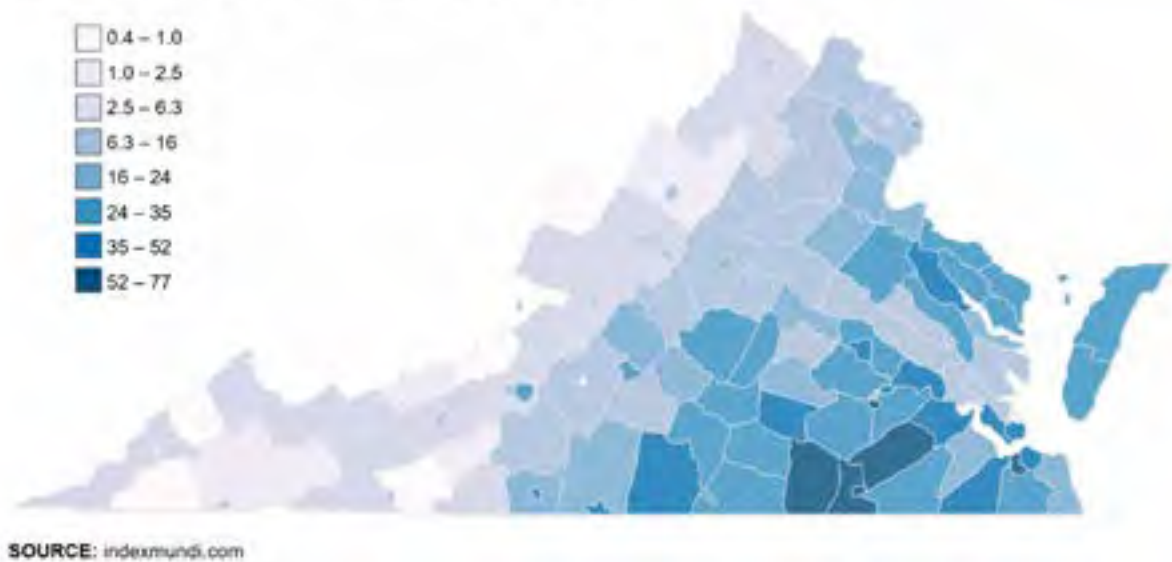
Reports of the Commission to Examine Racial Inequity in Virginia Law focused on people of color in Virginia generally, and did not consider how the challenges facing people of color in Virginia's rural communities might be different from those faced in urban communities. For that reason, this Commission 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](http://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.<sup>202</sup> In Virginia, the non-rural poverty rate is 9.9% and the rural poverty rate is 15.4%.<sup>203</sup> In rural communities, Virginians are 6% less likely to finish high school and 20% less likely to attain a bachelor's degree.<sup>204</sup> Rural Virginia communities also have the oldest public school buildings and the schools most in need of repair.<sup>205</sup> These rural populations are also more likely to not have health insurance.<sup>206</sup>

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

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.<sup>209</sup>

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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](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).

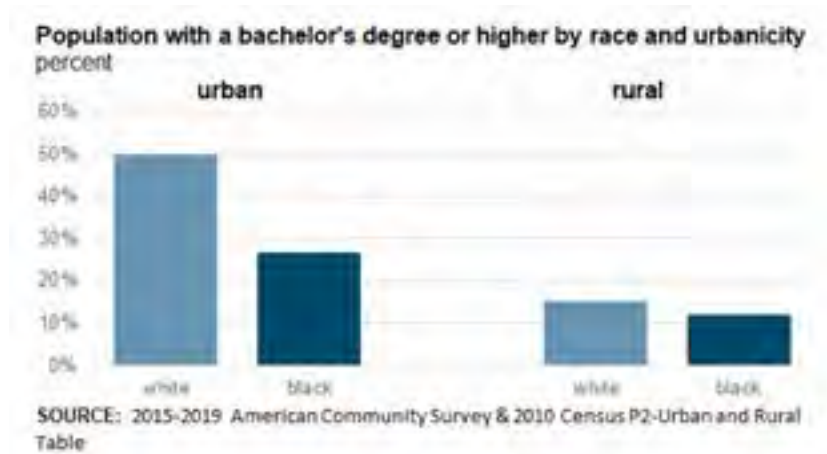
207 See Gordon Gong, et al, *Higher US Rural Mortality Rates Linked to Socioeconomic Status, Physician Shortages, and Lack of Health Insurance*, Health Affairs, December 2019.

208 *Id.*

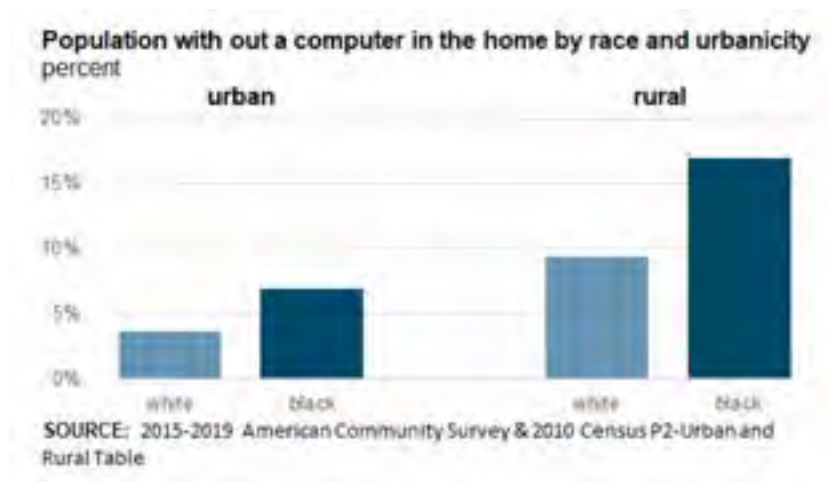
209 Vera, *Incarceration Trends in Virginia*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-virginia.pdf>.



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 1/5<sup>th</sup> of Black rural Virginians.<sup>210</sup>

<sup>210</sup> 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.”<sup>211</sup> These include “economic stability, education access and quality, healthcare access and quality, neighborhood and built environment, and social and community context.”<sup>212</sup>

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.<sup>213</sup>

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.<sup>214</sup> 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%.<sup>215</sup> Across the Commonwealth, Black households are 8% less likely to have access to internet than white households.<sup>216</sup> Still, Black households in rural areas are 10% more likely to not have a computer in the home than Black households in urban areas.<sup>217</sup> 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.<sup>218</sup> Food insecurity is associated with higher rates of obesity and diabetes as well as mood disorders and stress.<sup>219</sup> These problems can reinforce one another and lead to more serious health consequences.<sup>220</sup> 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.<sup>221</sup> The disparity in nutrition only exacerbates the differences in health, education, and economic outcomes between rural and urban communities.

<sup>213</sup> 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.

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

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Commission Census Data.

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

<sup>219</sup> 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](https://www.ruralhealthresearch.org/mirror/4/453/2010_halverson_final_report.pdf).

<sup>220</sup> *Id.*

<sup>221</sup> 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.<sup>222</sup>

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

More than 50% of schools in the Commonwealth are more than 50 years old.<sup>223</sup> The areas of the state with the oldest schools are also those with the highest poverty.<sup>224</sup> Therefore, it is no surprise that Southside and Southwest counties, with their comparative lack of financial resources,<sup>225</sup> have the oldest schools in the Commonwealth.<sup>226</sup> Virginia made school construction grants until 2010, when the state eliminated them during the Great Recession budget cuts.<sup>227</sup> 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.<sup>228</sup>

### 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.

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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.<sup>229</sup> Virginia, unfortunately, is a national leader in the rural-urban mortality disparity, with rural mortality about 30% higher than urban mortality.<sup>230</sup> People in rural communities are less likely to have health insurance and access to medical services.<sup>231</sup>

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.<sup>232</sup> 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.<sup>233</sup> And, as noted above, Black Virginians are nearly 1.5 times more likely to be obese than white Virginians.<sup>234</sup> 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.<sup>235</sup> 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

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

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

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

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> 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."<sup>236</sup>

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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.<sup>237</sup>

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.<sup>238</sup> Many of Virginia's rural communities are federally designated Health Professional Shortage Areas.<sup>239</sup> 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.<sup>240</sup> 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.<sup>241</sup>

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.

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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.<sup>242</sup> 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.<sup>243</sup>

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.<sup>244</sup> 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.<sup>245</sup> 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

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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/](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.”<sup>246</sup> Research has shown that doula services can help produce better maternal and infant health outcomes, including among women of color.<sup>247</sup>

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.

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## CRIMINAL JUSTICE

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### 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.<sup>248</sup> 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.<sup>249</sup> The highest increase in pretrial incarceration was in Brunswick County, which is predominantly Black.<sup>250</sup> According to the Vera Institute, Virginia ranks number one in the country for pretrial incarceration rate.<sup>251</sup> 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.<sup>252</sup>

### 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.<sup>253</sup> Still, there are some localities which do not have pretrial services.<sup>254</sup> Urban areas have been able to lessen their pretrial populations because they have more funding.<sup>255</sup> 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.<sup>256</sup> 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.

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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.<sup>257</sup> 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.

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## EDUCATION

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### Background

The achievement gap in education between race groups in Virginia is well documented in reports of the prior Commission.<sup>258</sup> 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.<sup>259</sup> 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.<sup>260</sup> 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.<sup>261</sup> 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.<sup>262</sup> Georgia has implemented a tax credit targeting rural schools and low-performing schools.<sup>263</sup> Studies have shown that small financial incentives can reduce teacher turnover.<sup>264</sup>

## 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

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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.<sup>265</sup> It is hard for rural school districts to attract qualified teachers, possibly because many prefer to live in metropolitan areas,<sup>266</sup> 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.<sup>267</sup> Distance learning could be leveraged for individual students whose schools are unable to offer the programming they need.

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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.<sup>268</sup>

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.<sup>269</sup> 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.<sup>270</sup> Their current criteria, however, prioritizes large parcels of land and parcels that are adjacent to other parcels already under conservation easement.<sup>271</sup> This approach often excludes Black and minority owned farms from consideration for grant funding. The average size of Black-owned farms in the United

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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.<sup>272</sup> 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.<sup>273</sup> 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.<sup>274</sup> 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.<sup>275</sup>

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.<sup>276</sup> Park access can also reduce childhood obesity, improve mental wellbeing, and improve the lives of nearby residents.<sup>277</sup>

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272 U.S. Dept. of Agriculture, *2017 Census of Agriculture: Black Producers*, [https://www.nass.usda.gov/Publications/Highlights/2019/2017Census\\_Black\\_Producers.pdf](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,<sup>278</sup> 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.<sup>279</sup> 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.<sup>280</sup> 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.”<sup>281</sup> 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.<sup>282</sup> 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.

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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 Code<sup>283</sup> 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.<sup>284</sup> Presently state agencies can receive 100% of project costs, while other entities must match 50% or more of project costs.<sup>285</sup> 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.<sup>286</sup> 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.<sup>287</sup> 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.<sup>288</sup>

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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.<sup>268</sup> 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.

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<sup>268</sup> 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

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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

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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

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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.

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## HEALTH AND HUMAN RESOURCES

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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

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## PUBLIC SAFETY

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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.

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#### OTHER BILLS

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- 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.

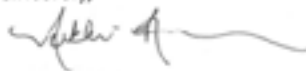
The Land Preservation Tax Credit (LPTC) program in Virginia has been an overwhelmingly successful tool in protecting over one million acres of farms, forests, historic and cultural resources, open space, and drinking water supplies and watersheds throughout the state. Virginia's LPTC program is known 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.











PHOTO CREDIT: JACK MAYER, 2019



