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NO REST FOR THE WEARY: A SURVEY OF VIRGINIA'S 2020
GENERAL ASSEMBLY REGULAR AND SPECIAL SESSIONS

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ABSTRACT

This has been possibly the most historic year in the Virginia General Assembly in decades. During the regular session alone, 3,857 bills were introduced, spanning thousands of pages covering topics as vast as criminal justice reform to election laws to natural resource protection.¹ As if that wasn't enough, the General Assembly reconvened for a Special Session in August to address the COVID-19 pandemic, related budgetary changes, and a myriad of police conduct-related bills in response to the killing of George Floyd and the national Black Lives Matter movement. This article will provide a summary of some of the major bills that were introduced, passed, or failed this Regular Session and Special Session. The other articles within this issue were selected to provide a deeper dive into highly influential pieces of legislation and touch on the following topics: marijuana decriminalization, the Virginia Values Act, the Equal Rights Amendment, redistricting, and the COVID-19 pandemic's influence on the budget.

This article summarizes key legislation grouped in the following nine areas. I. Agriculture and Natural Resources, II. Commerce, III. Civil and Criminal Law, IV. Voting and Elections, V. Firearms, VI. Health, Safety and Human Rights, VII. Housing and Transportation, VIII. Racial Justice with a Focus on Confederate Monument Litigation, and IX. Special Session Legislation.

INTRODUCTION

Not too long ago, farmlands covered northern Virginia. Today, those farmlands would be unrecognizable. White-picket fences, cookie-cutter townhouses, and strip-malls now stretch for miles as far as the eye can see. Since 1990, Virginia's population has increased by 38 percent, with the largest growth in densely populated D.C. suburbs.² "In 1990, the census tracts that make up the [13th] Senate district were home to about 35,000 people — 91 percent of them white. Today, its population of 225,000 is just 64 percent white."³ This population boom is in part what contributed to the shift in political views across the Commonwealth.⁴ For the first time in twenty-five

¹ See *From vaccine schedules to milk labels, Va. General Assembly navigates 'legislative icebergs'*, FORT HUNT HERALD (Mar. 10, 2020), <https://forhurtherald.com/from-vaccine-schedules-to-milk-labels-va-general-assembly-navigates-legislative-icebergs/>.

² Sabrina Tavernise & Robert Gebeloff, *How Voters Turned Virginia From Deep Red to Solid Blue*, N.Y. TIMES (Nov. 9, 2019), <https://www.nytimes.com/2019/11/09/us/virginia-elections-democrats-republicans.html>.

³ *Id.*

⁴ *Id.*

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years, Virginia turned blue when democrats won the majorities in both the Senate and the House of Delegates.⁵ Cemented by a democratic Governor, some have nicknamed Virginia's new government the democratic "trifecta."⁶

I. Agriculture and Natural Resources

A. *Got Lacteal Secretion (Milk)?*

Who knew in the year 2020 the definition of milk would be such a heavily debated issue? Farmers and lobbyists for both big dairy and the plant-based foods industry have been debating the definition of what we think of as a very ordinary shopping list item for at least the last ten years.⁷ Delegate Barry Knight, a pig-farmer, who sits on the agriculture committee, proposed a bill that would define milk as "the lacteal secretion of a healthy hooved mammal and provides that a food product is unlawfully misbranded if its label states that it is milk and it fails to meet such definition, except for human breast milk."⁸ This would include milk from cows or goats, but would ban the branding of beverages such as almond milk, soy milk and oat milk.⁹

The bill was championed by dairy farmers across the Commonwealth, who are concerned by the shrinking number of dairy farms, on average twenty-six farms have closed every year for the last five years.¹⁰ In an interview with the *Virginian Pilot* newspaper, Knight said, "Some people maybe are capitalizing on the good name of milk, which most people associate with dairy milk . . . If you are a plant-based fluid, let's get you a different definition."¹¹ However, this fight is not new, the dairy industry and plant-based foods industry have fought over this contentious issue for the last ten years or so as milk sales and consumption have declined.¹²

Although, the bill passed both Virginia's House of Delegates with a vote of 66 to 32, and the State Senate with a vote of 24 to 16, ultimately it was the one of only four bills vetoed by Governor Ralph Northam this regular

⁵ Martin Austermuhle et al., *Virginia State Government Control Goes Fully Democratic For First Time in Two Decades*, NPR (Nov. 5, 2019), <https://www.npr.org/local/305/2019/11/05/776618670/virginia-state-government-control-goes-fully-democratic-for-first-time-in-two-decades>.

⁶ See Tim Fitzsimons, *Democratic trifecta sparks a revolution for LGBTQ Virginians*, NBC News (Mar. 10, 2020), <https://www.nbcnews.com/feature/nbc-out/democratic-trifecta-sparks-revolution-lgbtq-virginians-n1153941>.

⁷ Marie Albiges, *Virginia lawmaker's new bill says only milk from a "hooved mammal" should be called milk*, VIRGINIAN-PILOT (Dec. 23, 2019), <https://www.pilotonline.com/government/virginia/vp-nw-fzx19-milk-bill-20191223-swpphhaozjbobgndyezgh4qzwwq-story.html>.

⁸ H.D. 119, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁹ Albiges, *supra* note 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

session.¹³ In the Governor's veto explanation he stated, "[e]liminating the ability to label certain food products with the term 'milk' could hinder some businesses' ability to thrive in Virginia."¹⁴ Additionally, the executive contended that the bill likely "conflict[ed] with both the United States Constitution and the Constitution of Virginia and each's protection of commercial speech."¹⁵

B. Taxes for The Trees: Implementing Single-use bag taxes and increasing the litter tax

The single-use bag tax is also not a new issue for the legislature; Senator Chap Petersen has introduced a bag tax or fee bill six times and Senator Adam Ebbin has introduced similar legislation at least eight times.¹⁶ The bag tax law authorizes cities and counties to impose a five cents tax on disposable plastic bags with certain exceptions and allows the retailers that collect the tax to keep two cents effective January 1, 2021.¹⁷ The remainder of the tax revenue is slated to go toward environmental cleanup and the provision of reusable bags.¹⁸ The measure authorizes the Tax Commissioner to collect, administer and enforce the tax.¹⁹ In other litter legislation, H.B 502 raises the litter tax for the first time in forty-three years by adding \$100 to the existing penalty for litter tax delinquency.²⁰

C. Clean Energy and Community Flood Preparedness Act

The General Assembly passed legislation which allowed Virginia to join the Regional Greenhouse Gas Initiative (RGGI).²¹ The legislation directs the Department of Environmental Quality (DEQ) to incorporate into regulations previously adopted by the State Air Pollution Control Board certain

¹³2020 Session Bill List: Vetoed by Governor, LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?201+lst+VET> (last visited Nov. 15, 2020).

¹⁴ Governor's Veto, H.D. 119, 2020 Gen. Assemb., Reg. Sess. (Va. 2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+amd+HB119AG>.

¹⁵ *Id.*

¹⁶ Sarah Vogel song, *Will this be the year Virginia imposes a plastic bag tax?*, VA. MERCURY (Nov. 26, 2019), <https://www.virginiamercury.com/2019/11/26/will-this-be-the-year-virginia-imposes-a-plastic-bag-tax/>.

¹⁷ S. 11, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ H.D. 502, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); *History of Litter Legislation*, LITTER FREE VA., <https://litterfreeva.org/legislation-tracker/> (last visited Nov. 14, 2020).

²¹ Kenny Fletcher, *Virginia to Join Regional Greenhouse Gas Initiative*, CHESAPEAKE BAY FOUND. (Feb. 28, 2020), <https://www.cbf.org/news-media/newsroom/2020/virginia/virginia-to-join-regional-greenhouse-gas-initiative.html>.

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provisions which establish a carbon dioxide cap and trade program.²² Over time the program will steadily reduce carbon emissions released by Virginia's energy generation plants.²³

The bill authorizes the Director of the DEQ to establish and manage an auction program by which the DEQ will sell allowances into a market-based trading program.²⁴ The revenues from the sale of the carbon allowances will be distributed as follows: forty-five percent of the funds would go toward the Virginia Community Flood Preparedness Fund, which assists localities and their residents who are most affected by recurrent flooding and rising sea levels; fifty percent of the revenue will be allocated toward supporting energy efficiency programs for low income families including programs for housing developments.²⁵ The remaining five percent will go toward administrative costs, monitoring, mitigation activities and policy development.²⁶

According to Chesapeake Bay Foundation's Virginia Executive Director, Peggy Sanner, joining RGGI is an important step toward mitigating the effects of climate change by lowering greenhouse gas emissions and helping Virginians prepare for sea level rise and extreme weather.²⁷ Sanner states, "RGGI will reduce the air pollution from power plants that enters our region's rivers and streams through deposition, a significant source of nitrogen pollution to the Bay. Investing a portion of the proceeds from RGGI in flood preparedness will be a major benefit for families, businesses, and communities already suffering from the effects of climate change."²⁸

D. Virginia's Watershed Implementation Plan is Leading Toward Healthier Waterways

In 2010, after years of declining water quality in the Chesapeake Bay, the Environmental Protection Agency (EPA) released water pollution limits for a variety of pollutants.²⁹ In response, six bay states and D.C., one of which being Virginia, established Watershed Implementation Plans (WIP) to meet those goals by 2025.³⁰ In order to meet those conservation goals, the General

²² H.D. 981, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²³ Fletcher, *supra* note 21; S. 1027, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²⁴ S. 1027, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

²⁵ *Id.*

²⁶ *See id.*

²⁷ Fletcher, *supra* note 21.

²⁸ *Id.*

²⁹ *Virginia's Watershed Implementation Plan*, CHESAPEAKE BAY FOUND., <https://www.cbf.org/how-we-save-the-bay/chesapeake-clean-water-blueprint/state-watershed-implementation-plans/virginia/> (last visited Nov. 13, 2020).

³⁰ *Id.*

Assembly passed two required practices to create healthier waterways.³¹ The first measure requires farmers with fifty acres or more of Chesapeake Bay cropland to submit and implement site-specific nutrient management plans.³² The other measure requires farmers with twenty or more cattle to install and maintain stream fencing to keep the cattle out of the water.³³ When cattle are allowed to wade in streams their feces contaminate the local and downstream waters, thus the cattle fencing should prevent unhealthy water, in addition to mitigating erosion.³⁴

The bill's flexibility and cost-sharing program are projected to lead to effective conservation practices without being overly burdensome for farmers.³⁵ By December 31, 2025, the Secretary of Natural Resources will determine if Virginia has met the Phase III water quality goals contained in the WIP.³⁶ If the Secretary of Natural Resources determines that the goals have been met through cropland management plans and cattle fencing he or she may recommend that the Governor repeal all or part of the chapter and report his recommendation to the General Assembly.³⁷

E. Something Smells Fishy: Managing the Menhaden

For years, Virginian anglers have questioned why every single fish species, except for the Menhaden, are managed by the Virginia Marine Resources Commission, while the Menhaden have been under the control of the legislature.³⁸ Over the years, there have been several efforts to remove management authority from the General Assembly, but all previous bills have failed.³⁹ However, as of last year, the Commonwealth found Omega Protein Corp., a major Menhaden fisher, to be out of compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Menhaden.⁴⁰ Omega Protein exceeded the Bay Cap, which restricts the maximum amount of fish that can be harvested, by 35 million pounds of

³¹ Kenny Fletcher, *Virginia Bills Would Set 2026 Deadline for Farm Conservation Practices*, CHESAPEAKE BAY FOUND. (Jan. 24, 2020), <https://www.cbf.org/news-media/newsroom/2020/virginia/virginia-bills-would-set-2026-deadline-for-farm-conservation-practices.html>.

³² H.D. 1422, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

³³ *Id.*

³⁴ Fletcher, *supra* note 31.

³⁵ *See id.*

³⁶ *See* H.D. 1422, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

³⁷ *See id.*

³⁸ *Menhaden Changes in Virginia*, AM. SALTWATER GUIDES ASS'N (Jan. 30, 2020), <https://saltwaterguidesassociation.com/menhaden-changes-in-virginia/>.

³⁹ *Id.*

⁴⁰ *Secretary of Commerce Decision on Menhaden*, AM. SALTWATER GUIDES ASS'N (Dec. 19, 2019), <https://saltwaterguidesassociation.com/secretary-of-commerce-decision-on-menhaden/>.

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fish!⁴¹ The new law is a tremendous victory for the fish species, as it has permanently removed management from the legislature and given all authority to a group of appointed stakeholders within the Virginia Marine Resources Commission (VMRC).⁴² The law tasks VMRC with adopting regulations to manage the Menhaden population and come into compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Menhaden.⁴³

II. Commerce

A. Minimum Wage Stays Minimal for a bit Longer

The new minimum wage law was just one of the many laws impacted by the COVID-19 pandemic.⁴⁴ The bill as originally proposed to the Governor was scheduled to go into effect on January 1, 2021.⁴⁵ However, the Governor, rather than signing the new legislation, proposed an amendment that delayed the minimum wage's first increase to May 1, 2021.⁴⁶ The Governor's office stated that the delay, "[] will ensure workers get the support they need while allowing greater economic certainty in the wake of the COVID-19 pandemic."⁴⁷ This will be the first time in the Commonwealth's history that Virginia's minimum wage will surpass the federal minimum wage.⁴⁸ The minimum wage will raise from the current federally mandated level of \$7.25 per hour to \$9.50 per hour effective May 1, 2021; to \$11.00 per hour effective January 1, 2022; to \$12.00 per hour effective January 1, 2023; to \$13.50 per hour effective January 1, 2025; and to \$15.00 per hour effective January 1, 2026, however the 2025 and 2026 scheduled increases will not go into effect unless they are reenacted by the General Assembly prior to July 1, 2024.⁴⁹

⁴¹ *Id.*

⁴² S. 791, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁴³ *Id.*

⁴⁴ Michael McIntosh & Charles Trowbridge, *Virginia Increases its Minimum Wage to \$12.00 per Hour by 2023*, JDSUPRA (Apr. 24, 2020), <https://www.jdsupra.com/legalnews/virginia-increases-its-minimum-wage-to-51692/>; Courtney M. Malveaux & D. Paul Holdsworth, *Virginia Minimum Wage Increase Will Take Effect on May 1, 2021*, JACKSONLEWIS (Apr. 27, 2020), <https://www.jacksonlewis.com/publication/virginia-minimum-wage-increase-will-take-effect-may-1-2021>.

⁴⁵ Malveaux & Holdsworth, *supra* note 44.

⁴⁶ *Id.*

⁴⁷ Sarah Rankin, *Northam Seeks to Delay Minimum Wage, Collective Bargaining*, U.S. NEWS (Apr. 12, 2020), <https://www.usnews.com/news/best-states/virginia/articles/2020-04-12/northam-seeks-to-delay-minimum-wage-collective-bargaining>.

⁴⁸ McIntosh & Trowbridge, *supra* note 44.

⁴⁹ H.D. 395, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

III. Changes in Civil and Criminal Law

A. Statute of Limitations Extended for Survivors of Sexual Assault

Legislators voted to extend the timeframe in which individuals can report sexual assault.⁵⁰ The new law provides survivors of sexual abuse with ten years to bring suit from the date of the cause of action.⁵¹ The new statute of limitation has no impact on the current 20-year statute of limitations for sexual abuse that occurred when the individual was a minor.⁵²

B. Changing the Criminal Justice Landscape for Juvenile Offenders

A full generation has grown up under the previously promulgated law, which mandated that 14 and 15 year old's be tried as adults and sent to adult prisons for certain crimes.⁵³ The new law increases the minimum age by which a juvenile must be tried as an adult in circuit court from 14 years old to 16 years old in cases of murder or aggravated malicious wounding.⁵⁴ The new law does not permit 14 or 15 year-olds to be tried as adults in murder and malicious wounding cases, without first receiving a transfer hearing.⁵⁵

Additionally, H.B. 35 provides that offenders who were sentenced as juveniles and have served twenty years for crime(s) committed are now eligible for parole.⁵⁶ Virginia joins twenty-two other states and D.C. in signing legislation banning life without parole for juveniles.⁵⁷

C. Expanding the Definition of Victims of Hate Crimes

Delegate Ken Plum introduced a law which expands the class of persons who are considered victims for the purpose of the hate-crime statute.⁵⁸ The

⁵⁰ H.D. 870, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Dave Ress, *New law will mean fewer 14- and 15-year-olds tried as adults in Virginia*, DAILY PRESS (Mar. 1, 2020), <https://www.dailypress.com/government/virginia/dp-nw-juveniles-tried-as-adults-20200301-mj6hfyqwobc3plmgva353ra5ba-story.html>.

⁵⁴ S. 546, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁵⁵ *Id.*

⁵⁶ Brianna Crummy, *New Law Gives Va. Prisoners with Life Sentences the Chance at Parole*, NBC4 WASH. (Feb. 24, 2020), <https://www.nbcwashington.com/news/local/new-law-gives-va-prisoners-with-life-sentences-the-chance-at-parole/2224085/>.

⁵⁷ *Id.*

⁵⁸ H.D. 618, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

new law adds crimes motivated by animosity toward an individual based on gender, disability, gender identity, and sexual orientation to the list of “hate crimes.”⁵⁹ Under the current law, hate crime perpetrators face higher criminal penalties for simple assault, assault and battery and trespassing with the intent to damage property.⁶⁰

D. Expungement Efforts Have Not Yet Led to Success

In January, Senator Tommy Norment introduced a bill that would allow people to petition for the expungement of police and court records for misdemeanors and certain felonies after being granted a simple pardon.⁶¹ During the regular session, the bill was left to die in the House Committee for Courts of Justice.⁶² Under the current law, the only way that one can receive expungement off their record is if they receive an absolute pardon for a crime that the Governor declares they did not commit.⁶³ This is an incredibly high standard. Most other states, forty-two to be exact, allow for expungement for certain offenses.⁶⁴

During the special session, this bill was revived by Senator Norment in S.B. 5009 and senators introduced complementary legislation in SB 5006 and SB 5110, all of which were referred to the Senate Committee on the Judiciary and incorporated with 14 Yeas and 0 nays.⁶⁵ The three bills, were incorporated as a package into S.B. 5043, which would allow people to petition for the expungement of convictions related to marijuana possession, underage alcohol or tobacco possession, and using a false ID to obtain alcohol and the like, after five years and all court costs have been paid, as well as misdemeanors and certain felonies after receiving a simple pardon.⁶⁶ However, the legislation was halted yet again in the halls of the General Assembly.⁶⁷

⁵⁹ Fiscal Impact Statement for Proposed Legislation, Va. Crim. Sent’g Comm’n (Nov. 21, 2019) (on file with author).

⁶⁰ H.D. 618, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁶¹ S. 608, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁶² *Id.*

⁶³ *See* VA. CODE ANN. § 19.2-392.2 (2020).

⁶⁴ Adam H. Rosenblum, *Clearing Criminal Records: Ranking the States from Toughest to Easiest*, ROSENBLUM LAW (Jan. 6, 2020), <https://rosenblumlaw.com/data/clearing-criminal-records-ranking-the-states-from-toughest-to-easiest/>.

⁶⁵ *See* S. 5006, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); S. 5009, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); S. 5110, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

⁶⁶ *See* S. 5043, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

⁶⁷ *See id.*

IV. Voting and Elections

Election law became a top priority in 2020 as evidenced by the fifty-six bills that passed in the regular session alone spanning from absentee voting, campaigns and campaign finance, candidates and parties, the code commission, the department of elections and state board of elections, election day procedures, officers, recounts, and registration to Voter identification laws.⁶⁸

The first bill that the House introduced during the regular session permits any registered voter to vote by absentee ballot without an excuse in any election in which he or she is qualified to vote.⁶⁹ In sixteen states, voters must provide an excuse for why they cannot vote on election day.⁷⁰ Virginia recently joined the thirty-three other states, which do not require an excuse to vote absentee or by mail.⁷¹

The new voter ID laws expanded the list of acceptable forms of identification to also include voter confirmation documents, any Help America Vote Act (HAVA) compliant ID documents, and valid higher education student IDs regardless of whether they include a photo or not and regardless of whether they are out of state.⁷² Additionally, if the voter does not have an acceptable ID, he or she can sign an ID confirmation statement confirming his or her identity which will allow them to vote regularly.⁷³ The Commonwealth now provides automatic voter registration for qualified citizens when they get a new driver's license or ID, renew their existing license or ID, or change their listed address with the DMV.⁷⁴ Previously qualified citizens had to opt-in confirming that they wanted their information sent for voter registration, whereas now they must simply opt-out.⁷⁵

S.B. 5120, the first law passed, enrolled, and approved by the Governor during the special session comes during the wake of voters scrambling to vote by mail.⁷⁶ The law is in part a response to the pandemic, which has made

⁶⁸ *2020 Changes to Virginia's Election Laws*, VA. DEP'T OF ELECTIONS, <https://www.elections.virginia.gov/media/electionadministration/electionlaw/2020-Changes-to-Virginia-Election-Laws.pdf> (last visited Nov. 30, 2020).

⁶⁹ See H.D. 1, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁷⁰ *VOPP: Table 1: States with No-Excuse Absentee Voting*, NAT'L CONF. OF STATE LEGISLATURES (May 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>.

⁷¹ *Id.*

⁷² H.D. 19, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); S. 65, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); H.D. 213, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

⁷³ H.D. 19; S. 65.

⁷⁴ H.D. 235, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); S. 219, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁷⁵ H.D. 235; S. 219.

⁷⁶ S. 5120, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

voting in person unsafe for many citizens.⁷⁷ It appropriates \$2,000,000 to the Department of Elections to provide prepaid postage for the return of absentee ballots for the presidential election, establishes drop boxes for ballots, and a procedure by which voters can correct their paperwork for an improperly submitted ballot.⁷⁸

Politically, President Trump made unsubstantiated claims that mail-in voting is going to be used to rig the elections, whereas Democrats argued that President Trump and his postal service allies were attempting to sabotage the election.⁷⁹ This new law came at a time in which the postal service experienced an increased volume of election mail ballots due to the COVID-19 pandemic.⁸⁰ There was a grave concern that the Postal Service would not be able to handle the surge in volume. This was compounded by the fact that President Trump recently appointed a new postmaster general, who reorganized the Postal Service to cut-costs, which immediately began to cause delays in mail delivery.⁸¹ Representative Gerry Connolly of Virginia, the chairman of the House subcommittee that oversees the Postal Service, called this move by President Trump “[] a different form of massive voter suppression occurring in front of our eyes.”⁸²

Furthermore, states and the Postal Service have been at odds, as the Postal Service has notified forty-six states and the District of Columbia that it cannot guarantee that all votes cast by mail this election will be counted.⁸³ The letter warns “there is a significant risk that, at least in certain circumstances, ballots may be requested in a manner that is consistent with your election rules [as of July 27, 2020] and returned promptly, and yet not be returned in time to be counted.”⁸⁴

As the nation patiently awaited the final counts from the presidential election, long-time Virginia Senator Mark Warner announced his third term re-

⁷⁷ Barry Burden et al., *More voting by mail would make the 2020 election safer for our health. But it comes with risks of its own.*, WASH. POST (Apr. 6, 2020), <https://www.washingtonpost.com/politics/2020/04/06/more-voting-by-mail-would-make-2020-election-safer-our-health-it-comes-with-risks-its-own/>.

⁷⁸ S. 5120.

⁷⁹ See Kenneth P. Vogel et al., *Postal Service and State Officials Feud Over Mail Voting as Election Looms*, N.Y. TIMES (Sept. 25, 2020), <https://www.nytimes.com/2020/09/16/us/politics/postal-service-mail-voting.html>.

⁸⁰ See *id.*

⁸¹ See Russell Berman, *What Really Scares Voting Experts About the Postal Service*, ATLANTIC (Aug. 14, 2020), <https://www.theatlantic.com/politics/archive/2020/08/how-postal-service-preparing-election/615271/>.

⁸² *Id.*

⁸³ See, e.g., Letter from Thomas J. Marshall, Gen. Couns. & Exec. Vice President, U.S. Postal Serv., to Michael Adams, Ky. Sec’y of State (July 29, 2020).

⁸⁴ See, e.g., *id.*

election victory.⁸⁵ Democrats secured seven seats and Republicans secured the remaining four seats across Virginia's eleven districts in the U.S. House of Representatives as well.⁸⁶

Finally, on November 7, 2020, four days after Election Day, the final vote count from Pennsylvania pushed former Vice President Joe Biden beyond the necessary 270 electoral college votes resulting in a long-awaited victory.⁸⁷

V. Firearms

A. Governor Northam's "Commonsense" Gun Laws Took a Year to Become Commonly Accepted

Last summer, after the tragic Virginia Beach shooting, in which a gunman fatally shot twelve people, the Governor called the General Assembly for a special session on gun control.⁸⁸ The Governor put forth a legislative package of eight bills, calling for "votes and laws, not thoughts and prayers."⁸⁹ The session was adjourned in less than two hours and not a single vote was cast on the legislation in response to the tragedy.⁹⁰

However, after the November 2019 state election, Virginia's House and Senate both became Democrat-led, and Governor Northam reintroduced his "commonsense" legislative package.⁹¹ "In November, Virginians called out loud and clear for meaningful legislation to address gun violence in the Commonwealth. They demanded action and we delivered," said Speaker of the House, Eileen Filler-Corn.⁹² During regular session and reconvention, the

⁸⁵ *Democrat Warner wins 3rd term as US senator from Virginia*, WSET (Nov. 3, 2020), <https://wset.com/news/local/democrat-mark-warner-wins-reelection-to-us-senate-from-virginia>.

⁸⁶ Rick Massimo et al., *Spanberger projected to win in near-sweep for Va. incumbents in Congress*, WTOP (Nov. 8, 2020), <https://wtop.com/local-politics-elections-news/2020/11/on-the-ballot-in-virginia-us-house-members-1-senator/>.

⁸⁷ Jonathan Lemire et al., *Biden defeats Trump for White House, says 'time to heal'*, AP NEWS (Nov. 8, 2020), <https://apnews.com/article/joe-biden-wins-white-house-ap-fd58df73aa677acb74fce2a69adb71f9>.

⁸⁸ Sarah McCammon, *After Virginia Beach Shooting, Gov. Ralph Northam Calls Session On Gun Violence*, NPR (June 4, 2019), <https://www.npr.org/2019/06/04/729573620/after-virginia-beach-shooting-gov-ralph-northam-calls-session-on-gun-violence>.

⁸⁹ Alan Suderman & Sarah Rankin, *GOP-led Virginia Legislature abruptly adjourns gun session*, AP NEWS (July 9, 2019), <https://apnews.com/article/e9c53a50baac4f9eaf04034feecf7259>; McCammon, *supra* note 88.

⁹⁰ Suderman & Rankin, *supra* note 89.

⁹¹ Veronica Stracqualursi, *Virginia governor signs background checks, 'red flag' and other gun control bills into law*, CNN (Apr. 10, 2020), <https://www.cnn.com/2020/04/10/politics/ralph-northam-signs-gun-bills/index.html>.

⁹² Press Release, Governor Ralph Northam, Governor Northam Signs Historic Gun Safety Legislation into Law (Apr. 10, 2020) (on file with the Office of the Governor of Virginia).

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General Assembly passed, and the Governor signed into law seven-gun control measures.⁹³

S.B. 70 and the identical H.B. 2 require background checks for all firearm sales in Virginia and directs the state police to establish a procedure for transferors to get a background check from licensed dealers.⁹⁴ S.B. 240 and the identical H.B. 674 created an Extreme Risk Protective Order, also known as a “red flag” law, which prohibits a person who poses a substantial risk of danger to themselves or others from purchasing, possessing, or transporting a firearm.⁹⁵ Virginia joins nineteen other states and the District of Columbia in enacting this type of law.⁹⁶ S.B. 69 and the identical H.B. 812 reinstates Virginia’s “one-handgun-a-month rule”.⁹⁷ The law prohibits individuals from buying more than one handgun in a 30-day period and makes the offense a class-one misdemeanor.⁹⁸ H.B. 9 requires gun owners, who lawfully possess a gun, to report their lost or stolen gun to law enforcement within 48 hours after the person discovers the loss or theft or face a civil penalty.⁹⁹ Finally, H.B. 1083 aims to prevent children from having access to loaded, unsecured guns and increases the penalty for recklessly leaving guns accessible to children to a class one misdemeanor.¹⁰⁰

Under Virginia’s Constitution, the General Assembly must reconvene the sixth Wednesday after the session has adjourned to consider the Governor’s amendment recommendations.¹⁰¹ The Governor’s recommendations were adopted in S.B. 35 and the identical H.B. 421 as well as S.B. 479 and the identical H.B. 1004. S.B. 35 allows localities by ordinance to prohibit carrying guns into public buildings, public parks, community centers and on public roads during a permitted event.¹⁰² The amendments to S.B. 479 were made at the request of the Virginia Sexual and Domestic Violence Action Alliance.¹⁰³ The law prohibits individuals who are subject to permanent protective orders from possessing guns and requires them to surrender, sell, or transfer their weapons within 24 hours and file a certification to the court within 48 hours.¹⁰⁴ Violating this provision would result in a class six felony.¹⁰⁵

⁹³ *Id.*

⁹⁴ S. 70, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁹⁵ Press Release, Governor Ralph Northam, *supra* note 92.

⁹⁶ See Stracqualursi, *supra* note 91.

⁹⁷ Press Release, Governor Ralph Northam, *supra* note 92.

⁹⁸ S. 69, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁹⁹ H.D. 9, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁰⁰ H.D. 1083, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁰¹ VA. CONST. art. IV, § 6.

¹⁰² Press Release, Governor Ralph Northam, *supra* note 92.

¹⁰³ *Id.*

¹⁰⁴ H.D. 1004, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁰⁵ *Id.*

VI. Health, Safety and Human Rights

The Virginia Values Act has been touted as monumental legislation, making Virginia the first state in the South to ban LGBTQ discrimination.¹⁰⁶ However, the General Assembly did not stop there, the legislature also passed numerous other laws to protect Virginia's gay, lesbian, bisexual and transgender community with special considerations for LGBTQ youth.¹⁰⁷

A. Banning Conversion Therapy to Protect LGBTQ Youth

Conversion therapy has been used to target LGBTQ youth and seeks to change their sexual or gender identity.¹⁰⁸ S.B. 245 and the corresponding H.B. 386 prohibit health care providers from engaging in conversion therapy with minors, making the unprofessional conduct grounds for disciplinary action.¹⁰⁹ This practice has long been repudiated by every mainstream medical and mental health organization including the American Academy of Child Adolescent Psychiatry, American Medical Association and American Psychological Association.¹¹⁰ The Human Rights Campaign has stated that “[m]inors are especially vulnerable, and conversion therapy can lead to depression, anxiety, drug use, homelessness, and suicide.”¹¹¹

B. New Policies for Transgender Students in Schools

The second bill aimed at providing more protections for LGBTQ youth is H.B. 145, which is identical to S.B. 161. The law requires that the Department of Education develop and provide every school board, by the end of 2020, with model policies dictating the treatment of transgender students.¹¹²

¹⁰⁶ Graham Moomaw & Ned Oliver, *Virginia becomes first southern state to pass sweeping LGBTQ non-discrimination bill*, VA. MERCURY (Feb. 6, 2020), <https://www.viriniamercury.com/blog-va/virginia-becomes-first-southern-state-to-pass-sweeping-lgbtq-nondiscrimination-bill/>.

¹⁰⁷ See *Virginia's General Assembly*, EQUALITY VA., <https://www.equalityvirginia.org/equality-virginia-at-the-general-assembly/> (last visited Nov. 10, 2020).

¹⁰⁸ *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy> (last visited Nov. 10, 2020).

¹⁰⁹ S. 245, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); H.D. 386, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹¹⁰ *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, *supra* note 108.

¹¹¹ *Id.*

¹¹² H.D. 145, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

The law requires schools to adopt the model policies or adopt more comprehensive policies by the 2021-2022 school year.¹¹³

C. Localities Given the Flexibility to Ban Discrimination

Delegate Danica Roem, who, when she was elected in 2017, became the first openly transgender candidate to be seated in a U.S. state legislature, introduced H.B. 696.¹¹⁴ The law provides localities with the flexibility to prohibit discrimination in housing, employment, public accommodations, credit, and education against persons on the basis of sexual orientation and gender identity.¹¹⁵

D. Prohibiting Healthcare Restrictions Based on Sex or Gender

Delegate Roem also introduced H.B. 1429, which prohibits health carriers from denying coverage, limiting coverage or imposing additional limitations on services based on a transgender person's sex assigned at birth, the person's gender identity or if the service is ordinarily or exclusively available to a certain sex or gender.¹¹⁶ The law also prohibits health carriers from discriminating under a health plan solely based on an individual's gender identity or because the person is transgender.¹¹⁷

E. Repealing a Law Which Discriminates Against the LGBTQ Community

Senator Ebbin, also a long-time champion of LGBTQ rights introduced several notable laws. Senator Ebbin introduced S.B. 17 which repeals the statutory language which prohibited same-sex marriages and civil unions.¹¹⁸ This change in the law was largely symbolic as the former statute was unenforceable under the 2015 U.S. Supreme Court decision in *Obergefell v. Hodges*.¹¹⁹ S.B. 868 added teeth to what had been considered as a toothless tiger - the Virginia Human Rights Act. The law imbued a cause of action in

¹¹³ *Id.*

¹¹⁴ Saphora Smith et al., *Democrat Danica Roem, a Transgender Woman, Elected to Virginia State Legislature*, NBC NEWS (Nov. 8, 2017), <https://www.nbcnews.com/feature/nbc-out/democrat-danica-roem-transgender-woman-elected-virginia-statelegislature-n818876>; H.D. 696, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹¹⁵ H.D. 696.

¹¹⁶ H.D. 1429, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹¹⁷ *Id.*

¹¹⁸ S. 17, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹¹⁹ *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015).

the Virginia Human Rights Act for unlawful discrimination in employment, and public accommodations.¹²⁰ The cause of action may be directly pursued by the aggrieved party and in some circumstances, suit may be brought by the Attorney General.¹²¹

F. Amending the Virginia Human Rights Act: Reasonable Accommodations for Pregnant People

Senator Jennifer McClellan and Delegate Jennifer Carroll Foy also introduced S.B. 712 and H.B. 827, respectively, which amended the Virginia Human Rights Act.¹²² The legislation requires that employers make reasonable accommodations for people who are pregnant, recently experienced childbirth, or related medical conditions.¹²³ The law prohibits employers from taking adverse action against an employee who requests a reasonable accommodation or denying a promotion opportunity solely on the basis that the employer would have to provide a reasonable accommodation for the individual.¹²⁴ Similarly to S.B. 868, this law creates a cause of action against any employer who denies an individual rights afforded in the Act and permits the court or jury to award compensatory damages, back pay, and other equitable relief.¹²⁵

VII. Housing and Transportation

A. Major Railway Expansion Calls for Major Legislative Changes

In late 2019, Governor Northam announced plans to expand reliability and service along Virginia's railway system.¹²⁶ The \$3.7 billion investment between Virginia and CSX includes plans to construct a bridge across the Potomac River, acquire over 225 miles of railroad track and 37 miles of new track improvements.¹²⁷ After this major deal, House Speaker, Eileen Filler-Corn proposed H.B. 1414 and Senate Majority Leader, Dick Saslaw

¹²⁰ S. 868, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹²¹ *Id.*

¹²² S. 712, 2020 Gen. Assemb. Reg. Sess. (Va. 2020); H.D. 827, 2020 Gen. Assemb. Reg. Sess. (Va. 2020).

¹²³ S. 712; H.D. 827.

¹²⁴ S. 712; H.D. 827.

¹²⁵ S. 712; H.D. 827.

¹²⁶ Press Release, Governor Ralph Northam, Virginia and CSX Announce Landmark Rail Agreement (Dec. 19, 2019) (on file with the Office of the Governor).

¹²⁷ *Id.*

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introduced identical legislation, S.B. 890.¹²⁸ The bills amend numerous laws related to transportation funds, revenue sources, construction, and safety programs.¹²⁹ Notably the bills increase the gas tax, lower registration fees, and establish a new Virginia Passenger Rail Authority, amongst other changes.¹³⁰

B. On the Highway and in the Know, New Laws Pertaining to Virginia Drivers

H.B. 874 and corresponding Senate legislation, S.B.160, both passed, finally instituting the long-awaited “hand free” law, which bans drivers from holding a cellphone or other personal communication device while driving a car.¹³¹ Finally, Virginia drivers on I-64 can let out a sigh of relief; the Governor signed legislation that raised the minimum threshold for per-se reckless driving from 80 miles per hour to 85 mph on highways where the speed limit is 65 mph.¹³² Since 2010 and prior to the adoption of this new legislation, drivers exceeding 10 mph on roadways where the speed limit is 70 mph, which includes most major highways in Virginia, faced a \$2,500 fine or possible jail time.¹³³ The law, however, does not change the threshold for per se reckless driving for speeding at or more than 20 miles per hour above the speed limit.¹³⁴

C. Increased Anti-Discrimination Housing Protections

Judging from the sheer volume of bills alone, the top housing concern this legislative session was evidently housing discrimination.¹³⁵ Legislators introduced bills to protect individuals from discrimination based on their status as a victim of domestic violence as well as “source of income” protections.¹³⁶

¹²⁸ S. 890, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); H.D. 1414, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹²⁹ S. 890; H.D. 1414.

¹³⁰ S. 890; H.D. 1414.

¹³¹ See H.D. 874, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); S. 160, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); Wyatt Gordon, *Which bills could improve transportation in Virginia? Here are a few we're following*, GREATER GREATER WASH. (Jan. 17, 2020), <https://ggwash.org/view/75688/which-bills-could-improve-transportation-in-virgina-where-are-some-were-following>.

¹³² S. 63, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹³³ Keith Goble, *Virginia revises reckless driving, passing rules*, LANDLINE (Apr. 23, 2020), <https://landline.media/virginia-revises-reckless-driving-passing-rules/>.

¹³⁴ S. 63.

¹³⁵ Wyatt Gordon, *Barriers to housing abound in Virginia. Can these bills help break them down?*, GREATER GREATER WASH. (Jan. 21, 2020), <https://ggwash.org/view/75743/a-flurry-of-bills-could-address-several-barriers-to-housing-in-virgina>.

¹³⁶ H.D. 99, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (outlining the protections for victims of domestic violence); H.D. 6, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (prohibiting discriminatory practices based

Prior to the enactment of H.B. 6, which provides “source of income” protection, landlords were free to reject providing rental applications to tenants who received governmental assistance in the form of housing choice vouchers.¹³⁷ By adding “source of income” protection to the Virginia Fair Housing Law, the Commonwealth joins 16 other states and 85 localities which have already done so.¹³⁸ Delegate Bourne, who patroned the bill, said that the bill attempts to provide low-income households with a fair shot at finding affordable housing.¹³⁹

D. Expanding Ways to Incentivize Affordable Housing Development

The General Assembly also passed another one of Delegate Bourne’s proposed housing legislation efforts.¹⁴⁰ H.B. 810 establishes a commission to develop a housing opportunity tax credit program to incentivize private developers to build more affordable housing.¹⁴¹

Finally, H.B. 1101 and corresponding S.B. 834, allow localities to enact ordinances that aim at reducing economic barriers to affordable housing.¹⁴² Localities may now offer density bonuses, waivers or reductions of local development standards and fees such as parking requirements, height restrictions, setbacks, buffers, and other local regulations in order to increase the number of affordable housing units.¹⁴³

VIII. Racial Justice with a Focus on Confederate Monument Litigation

During the regular session, racial justice was addressed in several bills; however, after the tragic killing of George Floyd and the national Black Lives Matter movement that permeated throughout this country, the legislature

on a person’s “source of funds”).

¹³⁷ See H.D. 6 (adding protections for tenants receiving governmental assistance).

¹³⁸ *Source of Income: Wins and Losses for the Apartment Industry*, NAT’L APARTMENT ASS’N (Apr. 15, 2020), <https://www.naahq.org/news-publications/source-income-wins-and-losses-apartment-industry>.

¹³⁹ See Yasmine Jumaa, *Virginia Bill Offers Protections For Tenants Who Use Choice Vouchers*, NPR (Dec. 26, 2019), <https://npr.org/news/articles/9398/virginia-bill-offers-protections-for-tenants-who-use-housing-choice-vouchers>; H.D. 6.

¹⁴⁰ H.D. 810, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁴¹ *Id.*

¹⁴² S. 834, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); H.D. 1101, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁴³ See *Virginia Home Builders Log Big Wins During 2020 Legislative Session*, NAHB NOW (Apr. 14, 2020), <http://nahbnow.com/2020/04/virginia-home-builders-log-big-wins-during-2020-legislative-session/>; H.D. 1101 (describing the ways localities may “offer incentives . . . such as reductions or waivers of permit, development, and infrastructure fees, as the governing body deems appropriate”); S. 834.

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reconvened for a special session with racial justice as one of the primary topics on its mind.

A. Combing Out Hair Type Discrimination and a Commission to Study the Effects of Slavery & Discrimination

During the regular session, the legislature passed H.B. 1514, which bans racial discrimination on the basis of hair texture, type or style, including braids, locks and twists.¹⁴⁴ Delegate Delores McQuinn also introduced H.B. 1519, which establishes the Commission to Study Slavery and Subsequent De Jure and De Facto Racial and Economic Discrimination Against African Americans, with the goal of examining these instances of discriminations specifically in Virginia.¹⁴⁵ The Commission is also tasked with making recommendations to the General Assembly with potential remedies to address the impact of these inequities.¹⁴⁶

B. Eliminating Reminders of the Jim Crow South in Marriage Records

A lawsuit filed in 2019 inspired S.B. 62, which eliminates the requirement that an individuals' race be listed on marriage records, divorce reports, and annulment reports filed with the State Registrar.¹⁴⁷ The lawsuit resulted in the Attorney General declaring that individuals would not have to disclose their race to the registrar, and subsequently a Federal Judge struck down the disclosure of race as unconstitutional.¹⁴⁸ Senator Lionell Spruill Sr., stated "This is another Jim Crow law that should have been out of the books and I'm so grateful that the younger generation isn't judging people based on color of skin."¹⁴⁹ The law also removes the requirement that the State Registrar include race data, when compiling data on marriage, divorce, and annulments.¹⁵⁰ The legislation passed both chambers unanimously.¹⁵¹

¹⁴⁴ H.D. 1514, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁴⁵ H.D. 1519, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁴⁶ *Id.*

¹⁴⁷ See S. 62, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); Zach Armstrong, *Bill removing race requirement in Virginia marriage records passes*, CAP. NEWS SERV. (Mar. 2, 2020), <https://www.whsv.com/content/news/Bill-removing-race-requirement-in-marriage-records-passes-568415061.html>.

¹⁴⁸ Armstrong, *supra* note 147.

¹⁴⁹ *Id.*

¹⁵⁰ S. 62; H.D. 180, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); S. 1066, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁵¹ S. 62. The bill passed the Senate unanimously with 40 Yeas and zero Nays and the House with 98 Yeas and zero Nays.

C. An Occasion to Celebrate: Aligning VA's Values with its State Holidays

The legislature also prioritized reexamining its values by deliberating choosing to remove certain state holidays and add new state holidays. The House and Senate introduced identical bills, H.B. 108 and S.B. 601, in which they removed the state holiday which celebrated the leaders of the Confederacy, Lee-Jackson Day, and replaced it by designating Election Day, the Tuesday after the first Monday in November, as a state holiday.¹⁵² During Special Session, both the House and Senate introduced identical bills recognizing the nineteenth of June, Juneteenth as a state holiday.¹⁵³ According to the bill “Juneteenth . . . commemorate[s] the announcement of the abolition of slavery in Texas, the last of the former Confederate States of America to abolish slavery, and to recognize the significant roles and many contributions of African Americans to the Commonwealth and the nation.”¹⁵⁴ Additionally, the Governor announced on October 12th, 2020, that the Commonwealth of Virginia would recognize for the first time in Virginia’s history, Indigenous Peoples’ Day, thereby removing Columbus day.¹⁵⁵

D. Giving Localities the Ability to Remove Confederate Monuments

Finally, newly elected delegate from Charlottesville, Sally Hudson, sponsored H.B. 1537.¹⁵⁶ The law allows localities to remove, relocate, contextualize, or cover any monument or memorial for war veterans on the localities’ public property, not including a monument or memorial located in a publicly owned cemetery, regardless of when the monument or memorial was erected.¹⁵⁷ This law comes nearly three years after the “Unite the Right” Rally that took place in Charlottesville, in which hate groups including white-supremacists, alt-right, neo-Nazis, and the Klu Klux Klan gathered for “the most visible display of white nationalist and white supremacist hate en masse

¹⁵² H.D. 108, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); S. 601, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁵³ H.D. 5052, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); S. 5031, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁵⁴ H.D. 5052.

¹⁵⁵ Proclamation, Governor Ralph Northam, Indigenous Peoples’ Day, (Oct. 12, 2020) (on file with the Office of the Governor of Virginia).

¹⁵⁶ *Hudson launches campaign to support Confederate monuments removal bill*, CBS19 NEWS, <https://www.cbs19news.com/story/41505170/hudson-launches-campaign-to-support-confederate-monuments-removal-bill> (last visited Nov. 11, 2020); H.D. 1537, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁵⁷ H.D. 1537.

in the United States in years.”¹⁵⁸ The hate groups gathered for the stated purpose of saving the statue of former Confederate General Robert E. Lee after the city’s council had voted to remove the monument.¹⁵⁹ The violence resulted in deadly attacks on counter protestors; a man drove his car into counter-protesters killing Heather Heyer and nineteen other individuals were injured.¹⁶⁰

E. Confederate Monument Litigation

Prior to this new legislation, a group of Charlottesville residents and the Monument Fund sued to enjoin the removal and successfully argued the city did not have the authority to remove the monument.¹⁶¹ Hudson says “[t]he new law empowers communities to decide what we celebrate in public spaces. Changing monuments won’t solve the inequity in our housing, schools, and health care -- in our every institution -- but we’ve seen here in Charlottesville how much it’s helped our community channel energy toward those deeper challenges. Public art sparks conversations about what we value. That’s exactly what it’s meant to do.”¹⁶²

Following the enactment, on July 1st, the Mayor of Richmond, Levar Stoney, began removal proceedings by ordering crews to take down Confederate monuments along Monument Avenue, starting with Stonewall Jackson.¹⁶³ Almost immediately litigation ensued when two Monument Avenue residents filed suit in Richmond Circuit court challenging the mayor’s authority to remove the monuments on the first day that the new law went into effect.¹⁶⁴ The Mayor justified his actions by citing public safety concerns

¹⁵⁸ Jane Coaston, *Trump's new defense of his Charlottesville comments is incredibly false*, VOX (Apr. 26, 2019), <https://www.vox.com/2019/4/26/18517980/trump-unite-the-right-racism-defense-charlottesville>; *Handout: Unite the Right Rally in Charlottesville Timeline*, FACING HIST. & OURSELVES, https://www.facinghistory.org/sites/default/files/Unite_the_Right_Rally_in_Charlottesville_Timeline.pdf (last visited Nov. 20, 2020).

¹⁵⁹ *Handout: Unite the Right Rally in Charlottesville Timeline*, *supra* note 158.

¹⁶⁰ *Id.*

¹⁶¹ Tyler Hammel, *Hudson's planned statues bill could be among several challenging Dillon rule*, DAILY PROGRESS (Nov. 27, 2019), https://dailyprogress.com/news/local/hudsons-planned-statues-bill-could-be-among-several-challenging-dillon-rule/article_db8e73f6-a587-530f-9e9c-74b2e5116828.html.

¹⁶² Email Interview with Sally Hudson, Virginia House of Delegates (Oct. 7, 2020).

¹⁶³ See Mark Robinson, *In victory for Stoney, Virginia tosses injunction in Richmond Confederate statue removal case*, RICH. TIMES-DISPATCH (Aug. 26, 2020), https://richmond.com/news/local/supreme-court-of-virginia-tosses-injunction-in-richmond-confederate-statue-removal-case/article_41eeae2c-e530-5320-8096-0ecc455af7c5.html; see also Denise Lavoie & Alan Suderman, *Stonewall Jackson removed from Richmond's Monument Avenue*, AP NEWS (July 1, 2020), <https://apnews.com/article/b27b2bfce3eefe13c917a69a59cd9da>.

¹⁶⁴ Justin Mattingly, *Two Monument Avenue residents sue over removal of Confederate statues, urge their restoration*, RICH. TIMES-DISPATCH (July 10, 2020), https://richmond.com/news/virginia/two-monument-avenue-residents-sue-over-removal-of-confederate-statues-urge-their-restoration/article_5a0acc6a-53d7-

from ongoing demonstrations and stated that the removal was temporary until the City Council could carry out the 60-day administrative process for permanent removal, which is part of the new legislation.¹⁶⁵

Circuit Court Judge Cavado ordered a 60-day injunction to prevent the removal, the Mayor appealed, and the Virginia Supreme Court vacated the temporary injunction.¹⁶⁶ In the meantime the City Council voted to remove the monuments and down came the stone giants from their pedestals.¹⁶⁷

However, the new legislation squarely controls only locality-owned monuments and does not pertain to the colossal state-owned monument to Robert E. Lee atop his horse.¹⁶⁸ The monument to General Lee is unique in that it stands alone six stories tall in a 100-foot circular island of state-owned land, surrounded by the city of Richmond at the intersection of Monument and Allen Avenues.¹⁶⁹ In a press conference on June 4th 2020, Governor Northam vowed to remove the monument and directed the Department of General Services to remove the monument “as soon as possible.”¹⁷⁰ The Governor and his Legal Counsel, Rita Davis, had been working to justify the legal removal of the monument for about a year.¹⁷¹

Shortly thereafter, litigation ensued in a lawsuit brought by several Monument Avenue homeowners and owners of property within the plat of “The Wm C Allen Addition.”¹⁷² The Plaintiffs argued that the provisions of an 1889 Joint Resolution are binding on the Governor and restrict his ability to unilaterally remove the monument because such an action would override the will of the legislature.¹⁷³ The Plaintiffs argued that the language in the 1890 deed, which deeded the monument from the Lee Monument Association to the Commonwealth, stated in part “[the state of Virginia . . . will hold said

5cfb-a6d5-a3c2b12a46f6.htm.

¹⁶⁵ Robinson, *supra* note 163.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ See H.D. 1537, 2020 Gen. Assemb., Reg. Sess. (Va. 2020); see also S. 183, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

¹⁶⁹ *Removal of Robert E. Lee Confederate Monument in Richmond*, C-SPAN (June 4, 2020), <https://www.c-span.org/video/?472767-1/virginia-governor-orders-removal-robert-e-lee-confederate-monument-richmond>.

¹⁷⁰ Ralph Northam, Va. Governor, News Conference on Removal of Robert E. Lee Confederate Monument in Richmond (June 4, 2020).

¹⁷¹ *Virginia Governor Discusses His Decision to Remove Confederate Monument*, NPR (June 5, 2020), <https://www.npr.org/2020/06/05/871083529/virginia-governor-discusses-his-decision-to-remove-confederate-monument>; see Gregory S. Schneider, *Northam’s case for removing Lee statue was devised by a lawyer descended from slaves*, WASH. POST (June 22, 2020), https://www.washingtonpost.com/local/virginia-politics/rita-davis-lee-statue/2020/06/22/f8c2d46e-b168-11ea-8758-bfd1d045525a_story.html.

¹⁷² Complaint for Declaratory and Injunctive Relief at 2, Taylor et al. v. Northam et al., CL 20-3339 (Va. Cir. Ct. July 20, 2020).

¹⁷³ Taylor et al. v. Northam et al., CL 20-3339, at 4, 10–11 (Va. Cir. Ct. Oct. 27, 2020).

Statue and Pedestal and Circle of ground perpetually sacred to the Monumental purpose to which they have been devoted and that she will faithfully guard it and affectionally protect it” binds the Commonwealth.¹⁷⁴ Virginia’s Solicitor General, on behalf of the Commonwealth argued that the Commonwealth ought not to be forced to continue displaying a monument, which no longer aligns with the ideology of Virginia, nor may a state contract away its own sovereignty.¹⁷⁵

Mere days before Judge Marchant, in Richmond Circuit Court, was slated to hear the case, the General Assembly approved a new budget provision that includes language, which repeals the 131-year-old joint resolution of the 1889 legislature.¹⁷⁶ The General Assembly also apportioned \$1.1 million necessary to remove the monument and put it in storage.¹⁷⁷ The Plaintiffs argued that the legislature’s action should be deemed “special legislation” and thus invalid under the Virginia Constitution.¹⁷⁸

On October 27th, 2020, Judge Marchant held that that enforcing the restrictive covenants in the deeds from 1887 and 1889 would contravene Virginia’s current public policy, which has been clearly established by the General Assembly.¹⁷⁹ Judge Marchant stated, in his order “[] given the Court’s current finding of a change in public policy, the proposed executive action, would no longer contravene public policy nor be in violation of the Virginia Constitution.”¹⁸⁰ In February 2021, the Supreme Court of Virginia agreed to hear appeals from the groups seeking to block the Governor from removing the Lee Monument; the injunction, which protects the monument from being removed, will remain in place until the case is decided.¹⁸¹

Amidst this court battle, the state-owned island became a space for community members to come together, mourn and work together towards social change. The Circle was renamed Marcus David Peters circle to honor

¹⁷⁴ *Id.* at 3–4.

¹⁷⁵ *Richmond judge during hearing to remove Lee statue: ‘It’s a very difficult case’*, RICH. FREE PRESS (Oct. 22, 2020), <http://richmondfreepress.com/news/2020/oct/22/richmond-judge-during-hearing-remove-lee-statue-it/>; Eric Kolenich, *Richmond judge in Lee statue case says ruling expected in 7 to 10 days*, RICH. TIMES-DISPATCH (Oct. 19, 2020), https://richmond.com/news/local/govt-and-politics/richmond-judge-in-lee-statue-case-says-ruling-expected-in-7-to-10-days/article_2d58b5fb-2dd8-5df3-8fac-a14baa295c54.html.

¹⁷⁶ *Richmond judge during hearing to remove Lee statue: ‘It’s a very difficult case’*, *supra* note 175.

¹⁷⁷ *Id.*

¹⁷⁸ *Taylor et al.*, CL 20-3339, at 11.

¹⁷⁹ *See id.* at 13.

¹⁸⁰ *Id.*

¹⁸¹ Gregory Schneider, *Virginia Supreme Court agrees to hear appeals in cases seeking to block removal of Richmond’s Robert E. Lee statue*, WASH. POST (Feb. 12, 2021), https://www.washingtonpost.com/local/virginia-politics/virginia-supreme-court-lee-statue/2021/02/12/5fbed24-6d7f-11eb-ba56-d7e2c8defa31_story.html.

Marcus-David Peters, a high school biology teacher, who was fatally shot and killed by Richmond police in 2018, while he was suffering from a mental health crisis.¹⁸² On November 5th, the Governor signed into law the Marcus Alert system.¹⁸³ The legislation tasks the Department of Behavioral Health and Developmental Services (DBHDS) to develop and implement Mental health Awareness Response and Community Understanding Services (Marcus) alert systems throughout Virginia.¹⁸⁴ The goal of the Marcus Alert is to reform the way in which law enforcement officers interact with individuals having a mental health crisis.¹⁸⁵

IX. Special Session Legislation

A. Police Reform Legislation

To address pre-textual stops, both the House and Senate passed bills, which provide that officers may not lawfully stop cars for operating without a light illuminating a license plate, brake lights or a high mount stop light, an exhaust system that prevents excessive or unusual levels of noise, or for having defective and unsafe equipment, or having certain sun-shading materials and tinting films or certain objects suspended in the vehicle.¹⁸⁶ The bill also prohibits officers from stopping, or seizing a person, place, or thing based solely on the smell of marijuana.¹⁸⁷ Furthermore, any object obtained in any of those unlawful stops, searches or seizures may not be admitted as evidence in Court.¹⁸⁸ However, the Governor stopped short of signing the bill into law stating that officers must be allowed to pull over vehicles driving without headlights or working brake lights and sent the bill back to the general assembly.¹⁸⁹

In response to the horrific killing of George Floyd, the House and Senate

¹⁸² Ali Rockett, *UPDATE: Prosecutor says deadly police shooting of Marcus-David Peters was justifiable homicide; report shows THC and Ritalin found in his system*, RICH. TIMES-DISPATCH (Aug. 31, 2018), https://richmond.com/news/local/crime/update-prosecutor-says-deadly-police-shooting-of-marcus-david-peters-%20wa%20s-justifiable-homicide-report-shows/article_2881439b-5c91-5edb-982e-edad8671b5b4.html.

¹⁸³ Michael Martz, *Northam adds \$1 million to budget for VMI probe, signs Marcus Alert legislation*, RICH. TIMES-DISPATCH (Nov. 5, 2020), https://richmond.com/news/state-and-regional/govt-and-politics/northam-adds-1-million-to-budget-for-vmi-probe-signs-marcus-alert-legislation/article_cecec187-2b29-5071-bb39-26da4d5a89f4.html.

¹⁸⁴ H.D. 5043, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁸⁵ *See id.*

¹⁸⁶ H.D. 5058, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Governor's Recommendation, H.D. 5058, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?202+amd+HB5058AG>.

attempted to ban the practice of police using neck restraints, however the houses clashed over whether to institute a total ban or provide exceptions.¹⁹⁰ Delegate Carrol Foy originally proposed a complete ban on the police practice of chokeholds.¹⁹¹ However the Senate, would not agree to an entire ban and instead added a substitution to the House's bill which reads, "[t]he use of a neck restraint by a law-enforcement officer is prohibited unless the use of a neck restraint is immediately necessary to protect the law-enforcement officer or another person", carving out an exception, which Delegate Carroll Foy stated, "[a]n officer could say almost anything was necessary."¹⁹² However, once it was clear the Senate would not budge, the House agreed to the substitution.¹⁹³

On what would have been George Floyd's 47th birthday, Virginia passed Senator Mamie Locke's 19-page omnibus police reform bill.¹⁹⁴ The Governor subsequently signed the legislation, which incorporates reform legislation passed by the House, into law.¹⁹⁵ The extensive legislation includes:

- Bans on chokeholds unless necessary to protect the law enforcement officer or another person;
- Prohibits no-knock warrants;
- Makes it a Class 6 Felony for law enforcement officers to engage in sexual intercourse with an individual who has been arrested, detained, is an inmate, parolee, or other pre or post trial offender;
- Prohibits hiring officers who were fired or resigned during the course of use of force investigations;
- Authorizes decertification procedures for law enforcement officers who engaged in serious misconduct;

¹⁹⁰ See Ned Oliver, *Virginia lawmakers vote to limit use of chokeholds by police, but reject outright ban*, VA. MERCURY (Oct. 7, 2020), <https://www.virginiamercury.com/2020/10/07/virginia-lawmakers-vote-to-limit-use-of-chokeholds-by-police-but-reject-outright-ban/>.

¹⁹¹ H.D. 5069, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁹² See *id.* (including neck restraint exception when immediately necessary); Oliver, *supra* note 189.

¹⁹³ Oliver, *supra* note 190.

¹⁹⁴ Jenn McClellan (@jennmcclellanva), INSTAGRAM, <https://instagram.com/jennmcclellanva> (last visited Nov. 10, 2020); S. 5030, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁹⁵ Note: the House passed legislation in single bills as opposed to omnibus legislation. H.D. 5099, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (prohibiting no-knock warrants); H.D. 5049, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (reducing militarization of police, which Governor clarified in amendment law that enforcement can seek waiver for search and rescue missions); H.D. 5109, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (instituting minimum statewide curriculum for police training); H.D. 5104, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (mandating law enforcement agencies and jails request prior employment and disciplinary records for new hires); H.D. 5108, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (expanding composition of Criminal Justice Services Board); H.D. 5051, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (strengthening law enforcement decertification processes); H.D. 5069 (limiting circumstances in which police may use neck restraints); H.D. 5029, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (requiring law enforcement intervention during instances of excessive force); H.D. 5045, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020) (creating class 6 felony for law enforcement engaging in carnal knowledge with detainee).

- Requires that officers attempt to de-escalate situations prior to using force and exhaust all other means prior to using deadly force;
- Creates a duty for fellow officers to intervene when they see an instance of excessive force;
- Adds reporting requirements for wrongful arrests and use of force complaints; and
- Requires de-escalation and sensitivity training as well as standardizes minimum officer training.¹⁹⁶

Additionally, Senator Ghazala Hashmi and Leader Charniele Herring introduced S.B. 5035 and H.B. 5055, respectively, which enable localities to create law-enforcement civilian oversight boards to investigate civilian complaints, investigate incidents and police practices, examine law-enforcement expenditures and create public reports.¹⁹⁷ The law also allows civilian review boards to issue subpoenas and make binding disciplinary decisions.¹⁹⁸

B. Prison Reform: Earned Sentence Credits

The first prison reform in possibly twenty-five years creates a new earned sentence credit program, in which state prison officials estimate that over 14,000 inmates in Virginia could see their release dates moved up.¹⁹⁹ The legislation creates a four-tier system for awarding and calculating earned credits: tier-one sets a flat rate of 15 days off for every 30 days served.²⁰⁰ The system allows inmates to cut their sentences by up to a third, subject to the type of conviction, if they follow the prison's rules, as well as participate in counseling and education programs.²⁰¹ The legislation was endorsed by democratic lawmakers and unanimously opposed by Republican legislators, even after the bill's patrons contended that much more conservative states, like Texas, Arkansas, Mississippi and South Carolina offer earned sentence credits up to fifty percent.²⁰²

¹⁹⁶ This list is not exhaustive. *BREAKING: Senate of Virginia Passes Sweeping Policing Reform Package*, BLUE VA. (Sept. 10, 2020), <https://bluevirginia.us/2020/09/senate-of-virginia-passes-sweeping-policing-reform-package/>; S. 5030.

¹⁹⁷ S. 5035, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020); H.D. 5055, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁹⁸ S. 5035; H.D. 5055.

¹⁹⁹ Ned Oliver, *Thousands of Virginia prisoners could be released early under new earned sentence credit program*, VA. MERCURY (Oct. 26, 2020), <https://www.virginiamercury.com/2020/10/26/thousands-of-virginia-prisoners-could-be-released-early-under-new-earned-sentence-credit-program/>.

²⁰⁰ H.D. 5148, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

²⁰¹ Oliver, *supra* note 199.

²⁰² *Id.*

C. Legislation in Response to the COVID-19 Pandemic

New COVID-19 focused legislation requires that the health commissioner make data as to the number of confirmed COVID-19 cases publicly available on a website for the duration of the Governor's state of emergency.²⁰³ Another law requires that the Department of Health inform the public of outbreaks that occur in medical care facilities, residential programs, schools, camps or state-operated services.²⁰⁴ Additionally, HB 5041 requires that all nursing homes, certified nursing facilities, and hospices establish procedures for visiting patients consistent with CDC guidelines to minimize the spread of the virus.²⁰⁵

D. Food Insecurity in the Wake of a Deadly Pandemic

Food insecurity, particularly for children, was also raised as a critical issue during the special session. In the midst of the pandemic, Delegate Danica Roem proposed H.B. 5113, which aims to provide free school meals for an additional 109,000 public school students in the commonwealth.²⁰⁶ The law requires that eligible school districts apply to Community Eligibility Provision (CEP) through the U.S. Department of Agriculture Food and Nutrition Service (FNS).²⁰⁷ The program, which had previously been underutilized in Virginia, allows students to receive free breakfast and lunch.²⁰⁸

The Office of the Governor estimates that prior to the Covid-19 pandemic, approximately 850,000 Virginians were food insecure, including 250,000 children.²⁰⁹ The pandemic only increased rates of food insecurity, adding 445,000 Virginians to the list of individuals experiencing food insecurity.²¹⁰ In addition to Delegate Roem's legislation, the Governor released the inaugural Virginia Roadmap to End Hunger; the Roadmap, a product of the Governor's Children's cabinet, provides actionable solutions which aim to encourage greater participation in SNAP and WIC, encourages food and

²⁰³ S. 5090, 2020 Gen. Assem., 1st Spec. Sess. (Va. 2020).

²⁰⁴ H.D. 5048, 2020 Gen. Assem., 1st Spec. Sess. (Va. 2020).

²⁰⁵ *See id.*

²⁰⁶ Aliviah Jones, *Virginia House bill to guarantee free school meals to students advances to Senate*, WHSV (Sept. 20, 2020), <https://www.wHSV.com/2020/09/18/virginia-house-bill-to-guarantee-free-school-meals-to-students-advances-to-senate/>.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Press Release, Governor Ralph Northam, Governor Northam Releases Virginia Roadmap to End Hunger (Oct. 20, 2020) (on file with the Office of the Governor of Virginia).

²¹⁰ *Id.*

agriculture businesses to invest and expand into food deserts, increases nutrition programs for seniors, access to local food for children and families, and supports collaboration with grassroots organizing groups aimed at combatting food insecurity.²¹¹

On November 9, 2020, after an eighty-three day long special session, longer than the typical regular session, the General Assembly officially adjourned.²¹² In just over two months' time the General Assembly met again for the start of the 2021 Regular Session, and with that there was truly no rest for the weary.

²¹¹ *Id.*

²¹² Ned Oliver, *Va. General Assembly adjourns 83-day special session, Norment denounces resignation of VMI superintendent, Richmond's Confederate Avenue renamed, and more headlines*, VA. MERCURY (Nov. 10, 2020),

<https://www.viriniamercury.com/blog-va/va-general-assembly-adjourns-83-day-special-session-norment-denounces-resignation-of-vmi-superintendent-richmonds-confederate-avenue-renamed-and-more-headlines/>.