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A YEAR OF MONUMENTAL CHANGE: A REVIEW OF  
VIRGINIA'S 2021 GENERAL ASSEMBLY REGULAR AND  
SPECIAL SESSIONS

*Andrew Mullen\**

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## ABSTRACT

*Between the abolition of the death penalty and the continued fallout from the COVID-19 pandemic, the Virginia General Assembly had a full plate of legislative priorities in 2021. This Article will provide a summary of the major bills that were introduced, passed, or that failed during the 2021 Regular and Special Sessions. The other articles within this issue cover the following topics in depth: reproductive justice, criminal justice legal reform, housing policy concerns during the pandemic, cannabis legalization, and environmental justice. This Article summarizes legislation grouped in the following parts: I. Civil and Criminal law, II. Education, III. Labor and Commerce, IV. Housing, V. Immigration, VI. Voting rights, and VII. The Environment.*

## INTRODUCTION

On the morning of September 8, 2021, the statue of Confederate General Robert E. Lee came down in the former capital of the Confederacy after being atop its pedestal since 1890.<sup>1</sup> This came after many other Confederate monuments were removed, both in Richmond and throughout the state in places like Charlottesville, where the deadly “Unite the Right” rally was held in 2017.<sup>2</sup> The removal of the Lee monument and other monuments throughout the state symbolizes the significant change occurring in Virginia. In addition to the change in the physical landscape, the change in the political landscape is in full force as 2021 was the second year of full Democratic control in Richmond.<sup>3</sup> The demographics in Virginia have changed significantly in the last decade, with the 2020 Census showing that the state’s population has grown by 7.9% since 2010.<sup>4</sup>

The Virginia legislature had to get creative to convene for the 2021 session. Because of the COVID-19 pandemic, the House of Delegates met virtually for the Regular Session while the Senate convened at the Science Museum of Virginia.<sup>5</sup> In August, both chambers of the General Assembly returned to the state Capitol for the first time in over a year when they

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<sup>1</sup> Sarah Rankin & Denise Lavoie, Gen. Lee Statue Comes Down in Former Confederate Capital, ASSOCIATED PRESS (Sep. 9, 2021), <https://apnews.com/article/robert-e-lee-statue-virginia-removed-92955a351d9fda6319f379ddc28df8a0>.

<sup>2</sup> Ben Paviour, Charlottesville Removes Confederate Statues That Sparked a Deadly Rally, NPR (July 10, 2021), <https://www.npr.org/2021/07/10/1014926659/charlottesville-removes-robert-e-lee-statue-that-sparked-a-deadly-rally>.

<sup>3</sup> See generally 2019 Virginia General Election Results, N.Y. Times (Nov. 14, 2019), <https://www.nytimes.com/interactive/2019/11/05/us/elections/results-virginia-general-elections.html>.

<sup>4</sup> America Counts Staff, Virginia: 2020 Census, U.S. Census Bureau, <https://www.census.gov/library/stories/state-by-state/virginia-population-change-between-census-decade.html>.

<sup>5</sup> Amy Friedenberger, *Short Session, Long To-Do List: Virginia General Assembly Kicks Off Wednesday*, ROANOKE TIMES (Jan. 9, 2021), [https://roanoke.com/news/short-session-long-to-do-list-virginia-general-assembly-kicks-off-wednesday/article\\_3a8b7c28-5201-11eb-8467-0bfff682a8e5.html](https://roanoke.com/news/short-session-long-to-do-list-virginia-general-assembly-kicks-off-wednesday/article_3a8b7c28-5201-11eb-8467-0bfff682a8e5.html).

convened for a short special session to elect judges and consider the state budget to account for federal coronavirus relief money.<sup>6</sup> Between the Regular Session and the two Special Sessions, the General Assembly considered a wide variety of legislation. This article will summarize some of that legislation, grouped in the following areas: civil and criminal law, education, labor and commerce, housing, immigration, voting rights, and the environment.

## I. CIVIL AND CRIMINAL LAW

### A. *Death Penalty Now Dead*

One of the most significant acts of the General Assembly this year was the abolition of the death penalty.<sup>7</sup> With the passage of HB 2263 and SB 1165, Virginia became the first state in the South to abolish the practice.<sup>8</sup> In the modern era of capital punishment, Virginia has executed a higher percentage of death-row prisoners than any other state.<sup>9</sup> No death sentences have been imposed since 2011, but the history of the death penalty in Virginia is both long and troubling.<sup>10</sup> The first execution in the United States occurred in Virginia in 1608.<sup>11</sup> Since then, Virginia has executed roughly 1,400 people, including 114 people in the modern death penalty era, more than any other state except Texas.<sup>12</sup> Racial disparities have defined Virginia's capital punishment laws, which originally authorized the death penalty for white defendants only for first-degree murder while allowing the practice for Black defendants for numerous crimes.<sup>13</sup> Between 1900 and 1969, Virginia executed 73 Black men, but not a single white person, for crimes besides homicide.<sup>14</sup>

Emphasizing his belief that the death penalty was fundamentally flawed, Gov. Northam said that “[j]ustice and punishment are not always the same thing, that is too clearly evident of 400 years of the death penalty in

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<sup>6</sup> Sarah Rankin, *Virginia Lawmakers Convene In Person For Special Session*, WSLs 10 (Aug. 2, 2021), <https://www.wsls.com/news/virginia/2021/08/02/virginia-lawmakers-convene-in-person-for-special-session/>.

<sup>7</sup> H.D., 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1165, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>8</sup> Hailey Fuchs, *Virginia Becomes First Southern State to Abolish the Death Penalty*, N.Y. TIMES (July 22, 2021), <https://www.nytimes.com/2021/03/24/us/politics/virginia-death-penalty.html>.

<sup>9</sup> *History of the Death Penalty*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/virginia> (last visited Oct. 17, 2021).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Virginia Abolishes the Death Penalty*, EQUAL JUSTICE INITIATIVE (Mar. 24, 2021), <https://eji.org/news/virginia-death-penalty-abolition/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Virginia.”<sup>15</sup> LaKeisha Cook from the Virginia Interfaith Center for Public Policy said the state’s legacy on the death penalty was closely connected to its history of slavery and lynching: “Now that it is coming to an end, we can start a new chapter that embraces an evidence-based approach to public safety: one that values the dignity of all human beings and is focused on transforming the justice system into one rooted in fairness, accountability, and redemption.”<sup>16</sup> Some victims’ families have also criticized the death penalty in Virginia, arguing that it does not help their healing process.<sup>17</sup> For example, Rachel Sutphin, who objected to the 2017 execution of her father’s killer, the last person to be executed in Virginia, said that she objected to his execution because he was diagnosed with a serious mental illness.<sup>18</sup>

It is remarkable to look back at Virginia’s history on capital punishment and compare it to today. After the Supreme Court brought the death penalty back to life in 1976, it looked as if it was here to stay forever.<sup>19</sup> However, Virginia has changed, and a big part of that change involves the multiple racial reckonings the state has had. Michael Stone, the Executive Director of Virginians for Alternative to the Death Penalty, credits the Black Lives Matter protests for “turbocharging the move toward criminal justice reform in general and death penalty abolition in particular.”<sup>20</sup> As of July 1, 2021, the first state of the former Confederacy has banned what Delegate Jay Jones has referred to as “the direct descendant of lynching and state-sponsored racism.”<sup>21</sup>

### *B. Marijuana Legalization*

After decriminalizing marijuana in 2020, the General Assembly took it a step further this year and accelerated the legalization of the possession and use of small amounts of marijuana.<sup>22</sup> HB 1815 establishes a regulatory scheme for marijuana cultivation facilities, manufacturing facilities, testing facilities, and retail marijuana stores overseen by the Board of Agriculture

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<sup>15</sup> Amanda Golden & Geoff Bennett, *Virginia Becomes 1st Southern State to Abolish Death Penalty as Governor Signs Law*, NBC POLITICS NEWS (Mar. 24, 2021), <https://www.nbcnews.com/politics/politics-news/virginia-becomes-first-southern-state-abolish-death-penalty-governor-signs-n1261974>.

<sup>16</sup> *Id.*

<sup>17</sup> Whitney Evans, *Virginia Governor Signs Law Abolishing the Death Penalty, A 1st in the South*, NPR (Mar. 24, 2021), <https://www.npr.org/2021/03/24/971866086/virginia-governor-signs-law-abolishing-the-death-penalty-a-1st-in-the-south>.

<sup>18</sup> *Id.*

<sup>19</sup> *See generally* Gregg v. Georgia, 428 U.S. 153, 169 (1976) (holding that the death penalty did not violate the Eighth or Fourteenth Amendments); *see also* Furman v. Georgia, 408 U.S. 238, 239 (1972) (holding that the death penalty constitutes cruel and unusual punishment and thus violates the Constitution).

<sup>20</sup> Evans, *supra* note 17.

<sup>21</sup> *Id.*

<sup>22</sup> S. 2, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

and Consumer Services.<sup>23</sup> It also gives localities the authority to pass ordinances that establish additional licensing requirements and allows the home cultivation of marijuana for personal use under certain circumstances.<sup>24</sup> Those circumstances include the following:

A. A person 21 years of age or older may cultivate up to three mature marijuana plants, three immature marijuana plants, and an unlimited number of seedlings for personal use on a parcel or tract of land (i) on which the person is domiciled, (ii) owned by the person on which the person is not domiciled, or (iii) not owned by the person and on which the person is not domiciled so long as the owner of the parcel or tract of land permits, by written agreement, the cultivation and care of the marijuana plants on the parcel or tract of land by such person.

B. A person who cultivates marijuana for personal use shall ensure that the marijuana is not visible from a public way, take reasonable precautions to prevent unauthorized access by persons under 21 years of age, attach a legible tag to each plant that includes the person's name or driver's license number, and comply with all applicable local regulations.<sup>25</sup>

The legislation also imposes a tax on retail marijuana and products sold by a retail marijuana store at a rate of 9.7%.<sup>26</sup> Further, it requires that 67% of that revenue be deposited into the general fund, and the other 33% be deposited into a "Retail Marijuana Education Support Fund" to be used for public education purposes.<sup>27</sup> The General Assembly also approved SB 1406 and HB 2312, which eliminate criminal penalties for simple possession of marijuana and provide for an automatic expungement process for those convicted of certain marijuana-related crimes.<sup>28</sup> The bills contain social-equity provisions that provide support and resources to persons and communities that have been historically and disproportionately affected by the enforcement of previous laws.<sup>29</sup> The effective dates are staggered, with retail marijuana sales set to begin on January 1, 2024.<sup>30</sup>

The passage of these bills is a huge win for advocates and those who have been unfairly penalized for decades. JM Pedini, the Executive Director of Virginia NORML, the Virginia affiliate of the National Organization for the Reform of Marijuana Laws, applauded the legislation approved by

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<sup>23</sup> H.D. 1815, 2021 Gen. Assemb., Reg. Sess. § 3.2-4123 (Va. 2021).

<sup>24</sup> H.D. 1815, 2021 Gen. Assemb., Reg. Sess. §§ 3.2-4146, 3.2-4154 (Va. 2021).

<sup>25</sup> H.D. 1815, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> H.D. 2313, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1406, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>29</sup> H.D. 2313, *supra* note 28; S. 1406, *supra* note 28.

<sup>30</sup> H.D. 2313, *supra* note 28; S. 1406, *supra* note 28.

lawmakers.<sup>31</sup> They called it a “historic step” for cannabis justice in the state and said that it would promote Virginia’s economy as well as the public health and safety of all Virginians.<sup>32</sup> They also noted that the effort remains a work in progress as they hope to completely eradicate criminal or civil penalties for adults’ personal use or cultivation of cannabis.<sup>33</sup>

### *C. Presumption Against Bail*

Another big piece of criminal justice legislation was the end of the presumption against bail.<sup>34</sup> SB 1266 states that prior to conducting any hearing on the issue of bail, release, or detention, judicial officers must, to the extent feasible, obtain the person’s criminal history.<sup>35</sup> The bill also states that:

A person who is held in custody pending trial or hearing for an offense shall be admitted to bail by a judicial officer unless there is probable cause to believe that (1) he will not appear for trial or hearing at such other time and place as may be directed, or (2) his liberty will constitute an unreasonable danger to himself or the public.<sup>36</sup>

This list of factors is based on Va. Code §19.2-121, which directs judges when determining conditions of release.<sup>37</sup>

Proponents of bail reform have argued that the 1990s-era laws led to needless mass incarceration.<sup>38</sup> Senator Creigh Deeds, the sponsor of SB 1266, said that the “no bond” presumptions are contrary to the American legal standard of “innocent until proven guilty.”<sup>39</sup> He said that he has voted for measures before over the past two decades but that they have not worked, and, as a result, Virginia has faced the problem of overcrowded jails.<sup>40</sup> Judges should ultimately be able to make bail decisions on a case-by-case basis, says Senator Deeds.<sup>41</sup> This type of discretion is ultimately what is provided for in the bill.<sup>42</sup>

<sup>31</sup> See Jenn Michelle Pedini, *Virginia Legislature Gives Final Approval of Legalization Measure*, VA. NORML (Feb. 27, 2021), <https://www.vanorml.org/2021-02-27-virginia-legislaturegives-final-approval-of-legalization-measure>.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> S. 1266, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> VA. CODE ANN. § 19.2-121 (2021).

<sup>38</sup> Peter Dujardin, *Virginia Lawmakers Scrap ‘Presumption’ that Those Charged with Certain Crimes Don’t Get Bail*, DAILY PRESS (Feb. 26, 2021), <https://www.dailypress.com/government/virginia/dp-nw-bail-reform-20210226-5ez6eseyl5aqnokb5lpz4qqbri-story.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> H.D. 2046, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

*D. For Now, Qualified Immunity is Here to Stay*

One of the most controversial topics from the 2020 Special Session was qualified immunity. The effort to eliminate qualified immunity in Virginia became a focal point of the Black Lives Matter movement in its calls for police accountability.<sup>43</sup> The way the law stands today, public employees of the Commonwealth or any political subdivision thereof that are engaging in emergency services cannot be held liable for the death or injury to persons or damage to property as a result of those activities.<sup>44</sup> HB 2045, unsuccessfully introduced in the 2021 Regular Session, proposed creating a civil action for the deprivation of a person's rights by a law-enforcement officer.<sup>45</sup> If the bill had passed, it would have provided for plaintiffs to be awarded compensatory damages, punitive damages, and equitable relief for such instances.<sup>46</sup> It explicitly provided that sovereign immunity and limitations on liability or damages would not apply to these actions, and qualified immunity would not be a defense.<sup>47</sup> Another provision in the bill stated that any public or private entity that employs or contracts for the services of a law enforcement officer owes a duty of reasonable care to third parties in its hiring, supervision, and training of those officers under its employment.<sup>48</sup>

In April 2021, after HB 2045 was defeated, the NAACP renewed its call for ending qualified immunity following a viral traffic stop in which Lt. Caron Nazario, a Black and Latino man, was pulled out of his car, pepper-sprayed, and threatened.<sup>49</sup> The video sparked outrage and led to the termination of the officer who threatened Lt. Nazario.<sup>50</sup> Da'Quan Love, Executive Director of the Virginia NAACP, demanded that Gov. Northam call a special session for the sole purpose of ending qualified immunity and passing Delegate Bourne's HB 2045.<sup>51</sup> Despite no action on the legislation this year, the debate is likely to continue.

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<sup>43</sup> Jackie DeFusco, *Virginia House Kills Bill to End Qualified Immunity for Police Officers, Scaled-Back Senate Proposal Lives On*, WRIC (Jan. 29, 2021), <https://www.wric.com/news/virginia-house-kills-bill-to-end-qualified-immunity-for-police-officers-scaled-back-senate-proposal-lives-on/>.

<sup>44</sup> VA. CODE ANN. § 44-146.21 (2021).

<sup>45</sup> H.D. 2045, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

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

<sup>47</sup> *Id.*

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

<sup>49</sup> Karina Bolster, *Va. NAACP Calls for End to 'Qualified Immunity' Following Viral Video of Traffic-Stop*, NBC12 (Apr. 12, 2021), <https://www.nbc12.com/2021/04/12/va-naacp-calls-end-qualified-immunity-following-viral-video-traffic-stop/>.

<sup>50</sup> *Id.*

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

## II. EDUCATION

A. *Return to In-Person Learning*

Since the shutdown of schools back in March 2020, the debate over when and how to return to in person learning has dominated the General Assembly. It cannot be emphasized enough how much the disruption to in-person learning has affected students throughout the Commonwealth.<sup>52</sup> One concrete example of how students have been affected is reflected in the standardized test scores from last year.<sup>53</sup> Fewer Virginia students took the 2020-2021 Standards of Learning tests, and the passage rate for the students who did dropped.<sup>54</sup> Passage rates for the reading, math, and science exams were 69%, 54%, and 59%, respectively.<sup>55</sup> This is a significant drop from 2018-2019 tests when the passage rates for those same subjects were 78%, 82%, and 81%.<sup>56</sup> The number of students who sat for these exams also decreased to around 75%, much lower than the usual rate of 99%.<sup>57</sup> “The test scores confirm what we already knew — students need to be in the classroom without disruption to learn effectively. The connections, structures and supports our school communities provide are irreplaceable” said James Lane, Virginia’s Superintendent of Public Instruction.<sup>58</sup> In addition to lower test scores during the last year, the data also shows that racial and socioeconomic gaps in academic achievement widened.<sup>59</sup>

The primary way for schools to address these issues was to figure out a way to open schools for in-person instruction. SB 1303 did that by requiring every local school division in the state to make in-person learning available to all students by choice of each student’s parent or guardian.<sup>60</sup> Senator Siobhan Dunnivant, a doctor of obstetrics and gynecology who sponsored the legislation, said that “[o]ur children needed to be in school last fall. We have spent an enormous amount of time discussing the science and the evidence

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<sup>52</sup> James F. Lane, *2020-2021 SOL Test Results Reflect National Trends, Unprecedented Challenges*, VA. DEP’T OF EDUC. (Aug. 26, 2021), [https://www.doe.virginia.gov/statistics\\_reports/sol-pass-rates/index.shtml](https://www.doe.virginia.gov/statistics_reports/sol-pass-rates/index.shtml).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *2018-2019 Test Administration: State Subject-Area*, VA. DEP’T OF EDUC., [https://www.doe.virginia.gov/statistics\\_reports/sol-pass-rates/index.shtml](https://www.doe.virginia.gov/statistics_reports/sol-pass-rates/index.shtml) (last visited Oct. 22, 2021).

<sup>57</sup> Lane, *supra* note 52.

<sup>58</sup> Hannah Natanson, *Standardized Testing Scores Drop in Virginia, Reflecting Impact of Pandemic*, WASH. POST (Sep. 2, 2021), [https://www.washingtonpost.com/local/education/virginia-school-exams-sol-scores-covid/2021/09/01/781483a2-0b4f-11ec-aea1-42a8138f132a\\_story.html](https://www.washingtonpost.com/local/education/virginia-school-exams-sol-scores-covid/2021/09/01/781483a2-0b4f-11ec-aea1-42a8138f132a_story.html).

<sup>59</sup> *Id.*

<sup>60</sup> S. 1303, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

that support that.”<sup>61</sup> Senator Chap Petersen, who worked across the aisle with Senator Dunnington on this bill, said that the General Assembly was just passing what was already common sense.<sup>62</sup> Children are entitled to five days a week of in-person instruction under the Virginia Constitution, and that means a teacher that is physically present in the classroom.<sup>63</sup> The bill passed despite pushback from some local school boards and superintendents, who said that decisions about whether in-person instruction is safe should be made at the local level.<sup>64</sup>

As of September 23, 2021, every single school district in the state was open full-time for in-person learning, according to Gov. Ralph Northam.<sup>65</sup> He commended the state’s teachers and families who worked hard to adjust to the virtual and hybrid learning that defined K-12 education over the last year and a half, but he was thrilled that all 132 school divisions are fully open.<sup>66</sup> While schools are open, that does not mean that COVID-19 safety measures have gone away. Per CDC guidance, the Virginia Department of Health issued an emergency order mandating that masks be worn in schools.<sup>67</sup> That order remains in full effect as long as the CDC guidelines for K-12 schools recommend mask-wearing.<sup>68</sup>

### *B. Cultural Competency*

As racial gaps in academic achievement have widened, an important issue in addressing those gaps is “cultural competency.” Cassandra Newby-Alexander, a history professor and dean at Norfolk State University and a member of the Virginia Commission on African American History Education in the Commonwealth, defines cultural competency as “an individual being aware that there is a large amount of information unknown to that individual, and the desire to seek that information.”<sup>69</sup> Part of the reason behind this push for cultural competency, in addition to achievement gaps among racial minorities, is that the history and language arts curriculum in the state has

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<sup>61</sup> Sarah Rankin, *Virginia Lawmakers Pass Bill Requiring In-Person Learning*, AP NEWS (Feb. 25, 2021), <https://apnews.com/article/ralph-northam-bills-legislation-coronavirus-pandemic-virginia-cb8fbb7e4edd87306d56c1d9c483409c>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Nathan Crawford, *All Virginia School Districts Open Full-Time for In-Person Learning, Gov. Northam Says*, WAVY10 NEWS (Sept. 23, 2021), <https://www.wavy.com/news/education/all-virginia-school-districts-open-full-time-for-in-person-learning-gov-northam-says/>.

<sup>66</sup> *Id.*

<sup>67</sup> STATE HEALTH COMM’R ORDER OF PUB. HEALTH EMERGENCY, STATEWIDE REQUIREMENT TO WEAR MASKS IN K-12 SCHOOLS 2 (2021).

<sup>68</sup> *Id.*

<sup>69</sup> Kate Masters, *Virginia Teachers are Going to be Assessed on ‘Cultural Competency.’ What Does That Mean?*, VA. MERCURY (Apr. 1, 2021), <https://www.virginiamercury.com/2021/04/01/virginia-teachers-are-going-to-be-assessed-on-cultural-competency-what-does-that-mean/>.

historically failed to include Native Americans outside of the context of early American settlers and westward expansion.<sup>70</sup> The state has also struggled with outdated curricula that have often mischaracterized important moments in African-American history, and many teachers have struggled to incorporate African-American history in the classroom at all.<sup>71</sup>

HB 1904 attempts to remedy this problem by requiring that teacher, principal, and superintendent evaluations include an evaluation of cultural competency.<sup>72</sup> Every person seeking initial licensure or a renewal with the Board of Education must (1) complete instruction or training in cultural competency and (2) instruction in African American history, as prescribed by the Board.<sup>73</sup> School boards must also adopt policies for cultural competency training, in accordance with the Board's guidance, at least every two years.<sup>74</sup> By recognizing their lack of knowledge on certain topics, teachers can actively work on improving and incorporating their source materials to include figures and perspectives that have often been excluded.<sup>75</sup>

### *C. Criminal History Irrelevant in College Admissions*

College applicants with criminal records can no longer be discriminated against thanks to the passage of HB 1930, which prohibits public institutions of higher education from asking about a person's criminal record during the application process.<sup>76</sup> Colleges and universities are also prohibited from denying admissions based on criminal history.<sup>77</sup> The bill specifically states that, as of January 1, 2022, no public institution of higher education shall utilize an institution-specific admissions application that contains questions about the criminal history of the applicant or deny admission to any applicant solely on the basis of any criminal history information provided by the applicant on any third-party admissions application accepted by the institution.<sup>78</sup> These requirements do not apply to Virginia Military Institute or any public institutions of higher education that require students to enroll in ROTC as an inquiry into criminal history is required to determine eligibility to accept a commission in the Armed Forces of the United States.<sup>79</sup>

According to Fran Bradford, a deputy secretary for education, there are 70 million people in the country with a criminal history and two-thirds of them

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> H.D. 1904, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Masters, *supra* note 70.

<sup>76</sup> H.D. 1930, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

will not complete an application if there is a criminal history question.<sup>80</sup> She also pointed out that a person convicted of a crime is 40% less likely to recidivate if that person has a college degree.<sup>81</sup> Delegate Lashrecse Aird, who sponsored the bill, said that there is no evidence that removing criminal history from a school application has an effect on crime on campus.<sup>82</sup> This new law will ensure that students are not intimidated by seeing that question.<sup>83</sup>

### III. LABOR AND COMMERCE

#### A. Worker's Compensation for COVID-19

In addition to the patients they have treated, health care workers on the front lines of the COVID-19 pandemic have had to battle COVID-19 themselves. According to the Kaiser Family Foundation, 200,000 health care workers had been infected with COVID-19 as of November 2020.<sup>84</sup> This number is undoubtedly higher now, but that data show how much health care workers suffered in the first couple of months of the pandemic. HB 1985 establishes a presumption that when COVID-19 causes the death or disability of a health care provider, that is considered an “occupational disease” compensable under the Workers’ Compensation Act.<sup>85</sup> The factors that must be met are a positive diagnostic test for COVID-19, an incubation period consistent with the disease, and signs and symptoms that require medical treatment.<sup>86</sup> To get the full protection of the bill, health care workers must be vaccinated against COVID-19 unless their physician asserts in writing that immunization would pose a significant health risk.<sup>87</sup>

The timing of this new presumption is tricky. The bill applies to the death or disability caused by infection from COVID-19 occurring on or after March 12, 2020, and prior to December 31, 2021.<sup>88</sup> Making this retroactive presents some legal challenges, which is why retroactive laws are not common in Virginia, or any state for that matter. Workers’ compensation attorneys are scratching their heads and are unsure if the current law as passed is

<sup>80</sup> Eric Kolenich, *Va. Senate Approves Higher Education Bills that Ban the Box, Identify Enslaved Laborers and Require Greater Transparency From Boards*, RICHMOND TIMES-DISPATCH (Feb. 22, 2021), [https://richmond.com/news/local/education/va-senate-approves-higher-education-bills-that-ban-the-box-identify-enslaved-laborers-and-require/article\\_f83772a4-a144-50cf-bb1e-6fd1b97554fd.html](https://richmond.com/news/local/education/va-senate-approves-higher-education-bills-that-ban-the-box-identify-enslaved-laborers-and-require/article_f83772a4-a144-50cf-bb1e-6fd1b97554fd.html).

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

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> Samantha Artiga et al., *COVID-19 Risk and Impacts Among Health Care Workers by Race/Ethnicity*, KAISER FAM. FOUND. (Nov. 11, 2020), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/covid-19-risks-impacts-health-care-workers-race-ethnicity/>.

<sup>85</sup> H.D. 1985, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

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

<sup>87</sup> Kolenich, *supra* note 81.

<sup>88</sup> H.D. 1985, *supra* note 85.

constitutional in its implementation.<sup>89</sup> When claims are filed under HB 1985, it is presumed that workers contracted the virus on the job unless an insurer can provide clear and convincing evidence that they did not, which is a very difficult standard to meet.<sup>90</sup> Case Ariail, chair of the workers' compensation sections for the Virginia Trial Lawyers Association, says that this bill "flips the burden."<sup>91</sup> She says that "[t]ypically, for the person bringing any kind of claim, it's on them to prove it. And that's why these laws are important--the presumption flips the burden of proof to the employer."<sup>92</sup>

In Virginia, contested claims of workers' compensation are settled by a deputy commissioner with the state's Workers' Compensation Commission and appealed to the full commission before going to the Court of Appeals of Virginia.<sup>93</sup> Of the 16,000 workplace infections through July 2021, only 1,463 resulted in filed claims, a low number when compared to the total number of COVID-19 cases.<sup>94</sup> Only 35% of those claims were awarded benefits.<sup>95</sup>

### *B. State Employees See Bigger Paychecks*

Gov. Northam froze more than \$2 billion in newly adopted spending on March 12, 2020, when he declared a public health emergency.<sup>96</sup> Since then, the state has moved forward, and it has done so in a way that is very beneficial for the state's workers.<sup>97</sup> Under the new budget deal, state employees, including faculty and staff at public colleges, universities, and community colleges, as well as state-supported local employees such as sheriff's deputies, received a 5% raise.<sup>98</sup> The budget includes money for the state's share of a 5% raise for teachers, subject to localities paying their share, and an extra 3% raise for Virginia State Police officers.<sup>99</sup> Virginia officials and lawmakers are hopeful that these raises will help recruit new employees and retain existing ones.<sup>100</sup> The state employed approximately 106,000 full-time workers last year and roughly 19,000 part-time workers.<sup>101</sup>

<sup>89</sup> Kate Masters, *Experts Expect Legal Battle Over COVID-related Workers' Compensation in Virginia*, VA. MERCURY (Sept. 7, 2021), <https://www.virginiamercury.com/2021/09/07/experts-are-expecting-a-legal-battle-over-covid-related-workers-compensation-in-virginia/>.

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

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

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

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> Michael Martz, *State Workers' Next Checks Will Include 5% Raises*, RICHMOND TIMES-DISPATCH (June 29, 2021) [https://richmond.com/news/state-and-regional/govt-and-politics/state-workers-next-checks-will-include-5-%20raises/article\\_6c248d48-8b8d-5005-90c6-d8a4f2b8b089.html](https://richmond.com/news/state-and-regional/govt-and-politics/state-workers-next-checks-will-include-5-%20raises/article_6c248d48-8b8d-5005-90c6-d8a4f2b8b089.html).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

### *C. Minimum Wage Increase Takes Effect*

In 2020, the General Assembly passed legislation to raise the minimum wage to \$15.00 per hour and to eliminate minimum wage exemptions.<sup>102</sup> The increase was scheduled to be gradual, with the \$15 rate in full force by 2026.<sup>103</sup> The first increase, from \$7.25 to \$9.50 per hour, was scheduled to take effect on January 1, 2021, but that was delayed until May 1, 2021, in order to give businesses more time for pandemic recovery.<sup>104</sup> The bill set the next increase to \$11 an hour for January 1, 2022, followed by an increase to \$12 an hour on January 1, 2023.<sup>105</sup> In this year's session, HB 2270 was proposed to postpone the effective date of the scheduled increase of Virginia's minimum wage yet again, from May 1, 2020, to January 1, 2022.<sup>106</sup> The bill also called for postponing the effective dates of the other scheduled increases by a year.<sup>107</sup> Although this bill did not make it out of committee, it highlighted some of the disagreement among lawmakers surrounding minimum wage increases, as the push to increase the national minimum wage to \$15 an hour has intensified.<sup>108</sup>

As it stands now, the state rate could increase to \$13.50 on January 1, 2025, and then to \$15 an hour on January 1, 2026, but those increases will require the General Assembly's approval by July 1, 2024.<sup>109</sup> If lawmakers decide not to act by then, the annual minimum wage will be adjusted to reflect increases in the consumer price index beginning January 1, 2025.<sup>110</sup>

### *D. Overtime Wage Act*

HB 2063, otherwise known as the Virginia Overtime Wage Act, was signed into law by Gov. Northam on March 31, 2021.<sup>111</sup> The bill requires that an employer compensate certain employees at a rate not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek.<sup>112</sup> An employee's regular rate of pay is calculated in the bill as follows:

<sup>102</sup> H.B. 395, 2020 Gen. Assemb., Reconvened Sess. (Va. 2020).

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

<sup>104</sup> See VA. CODE ANN. § 40.1-28.10 (2021); see also John Reid Blackwell, *Pay Raise: Virginia's Minimum Wage Goes to \$9.50 Per Hour on Saturday, With More Increases in the Next Two Years*, RICHMOND TIMES-DISPATCH (Apr. 30, 2021), [https://richmond.com/business/pay-raise-virginias-minimum-wage-goes-to-9-50-per-hour-on-saturday-with-more/article\\_9e439130-a099-5290-a942-dd5954a7bbe7.html](https://richmond.com/business/pay-raise-virginias-minimum-wage-goes-to-9-50-per-hour-on-saturday-with-more/article_9e439130-a099-5290-a942-dd5954a7bbe7.html).

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

<sup>106</sup> H.B. 2270, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>107</sup> *Id.*

<sup>108</sup> See generally Blackwell, *supra* note 104.

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

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

<sup>111</sup> H.B. 2063, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

<sup>112</sup> *Id.*

(1) For employees paid on an hourly basis, the regular rate is the hourly rate of pay plus any other non-overtime wages paid or allocated for that workweek divided by the total number of hours worked in that workweek. (2) For employees paid on a salary or other regular basis, the regular rate is one-fortieth of all wages paid for that workweek.<sup>113</sup>

The bill includes provisions for calculating overtime pay for certain public-sector employees, such as firefighters and law enforcement officers.<sup>114</sup> The penalties for an employer's failure to comply with the bill's provisions, including civil and criminal penalties, are the same as currently provided for failure to pay wages.<sup>115</sup> For employees who want to bring claims for violation of this new law, the statute of limitations is three years.<sup>116</sup>

This bill represents a significant change in Virginia employment law because the state had previously relied on the overtime pay requirements set out in the Fair Labor Standards Act ("FLSA").<sup>117</sup> One of the biggest differences between the Overtime Wage Act and the FLSA is the liability that employers face for misclassifying employees.<sup>118</sup> Under the FLSA, employers could argue that a misclassified employee's salary covered the employee's "straight-time" wages for all hours worked, meaning that only the additional "half-time" amount was owed for hours in excess of 40.<sup>119</sup> HB 2063 makes it so that all salaried employees are entitled to one and a half times their regular rate for any hours worked over 40.<sup>120</sup> The potential liability for employers is significant, so employers will need to review their overtime pay policies and make sure they are in compliance with both the FLSA and the Overtime Wage Act.<sup>121</sup>

#### IV. HOUSING

##### *A. Virginia Fair Housing Law*

The General Assembly passed HB 2046, which prohibits localities from discriminating in the application of local land use ordinances or the permitting of housing developments on the basis of race, color, religion, national origin, sex, age, familial status, source of funds, sexual orientation, gender

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> See Kristina H. Vaquera & Shaun M. Bennett, *Virginia Enacts Overtime Wage Law*, JACKSONLEWIS (Apr. 7, 2021), <https://www.jacksonlewis.com/publication/virginia-enacts-overtime-wage-law>.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

identity, status as a veteran, or disability.<sup>122</sup> Discrimination is also prohibited if the housing developments contain affordable housing units occupied or intended for occupancy by families or individuals with incomes at or below 80% of the median income of the area where the housing development is located.<sup>123</sup> Prohibiting or imposing conditions upon the rental or sale of dwelling units is also banned, provided that the provisions of this subsection are not construed to prohibit ordinances related to short-term rentals.<sup>124</sup> It is not a violation if there are decisions made regarding the use of the land, such as land use ordinances from localities that limit the high concentrations of affordable housing in a particular area.<sup>125</sup> If the Fair Housing Board determines that there has been an unlawful discriminatory housing practice, they must immediately refer the matter to the Attorney General.<sup>126</sup>

### *B. Virginia Housing Opportunity Tax Credit*

Virginia has a new opportunity tax credit thanks to the passage of HB 2050.<sup>127</sup> Starting in taxable year 2021, the bill establishes a Virginia housing opportunity tax credit.<sup>128</sup> This credit is equal to the amount of the federal low-income housing tax credit allocated by the Virginia Housing Development Authority to a low-income building that is eligible for the federal credit.<sup>129</sup> It is non-refundable and can be carried forward for up to five years.<sup>130</sup> The program's goal is to address a shortage of affordable housing in Virginia, which according to the National Low Income Housing Coalition, was around 400,000 units as of 2018.<sup>131</sup> The Virginia Housing Development Authority will have the authority to promulgate regulations and guidelines that guide the administration of the program, including the imposition of application, allocation, certification, and monitoring fees designed to allow it to recoup its administrative costs.<sup>132</sup> Any guidelines or regulations would not take effect

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<sup>122</sup> H.B. 2046, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

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

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

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

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

<sup>127</sup> S. 1197, 2021. Gen. Assemb., 1st Spec. Sess. (Va. 2021).

<sup>128</sup> *Id.*

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

<sup>130</sup> *Id.*

<sup>131</sup> Alyssa Carducci Dangler et al., *New Virginia Opportunity Tax Credit Program*, JDSUPRA (Apr. 5, 2021), <https://www.jdsupra.com/legalnews/new-virginia-opportunity-tax-credit-9623372/>.

<sup>132</sup> *Id.*

before January 1, 2023, and would not apply to credits awarded before that time.<sup>133</sup> \$15 million annually will be earmarked for the program.<sup>134</sup>

Brian Koziol, the executive director of the Virginia Housing Alliance, called this bill a “game-changer” as it will lead to a lot more units per year, which we will see the impact of over time.<sup>135</sup> Virginia joins 18 other states who have similar tax-credit programs, and it could not come at a better time.<sup>136</sup> In addition to owing back rent, thousands of Virginia households faced eviction at the beginning of 2021.<sup>137</sup> The housing crisis persists despite the state handing out more than \$83 million in rent and mortgage relief as of February 2021.<sup>138</sup>

### *C. Being a Good Neighbor*

HB 2072, passed this year, created the “Virginia Good Neighbor Next Door Program.”<sup>139</sup> This program mirrors the Good Neighbor Next Door Program administered by the U.S. Department of Housing and Urban Development.<sup>140</sup> That program allows law enforcement officers, teachers, firefighters, and emergency medical technicians to contribute to community revitalization while becoming homeowners through the program.<sup>141</sup> HUD offers a 50% discount on the list price of the home as an incentive, as long as the buyer commits to making it their principal residence for at least 36 months.<sup>142</sup> The Virginia program essentially creates the same program, but at the state level.<sup>143</sup> By offering financial incentives to the same class of people, the goal is for them to help revitalize the areas in the localities in which they are employed.<sup>144</sup>

<sup>133</sup> *Id.*

<sup>134</sup> Mark Robinson, *Virginia Lawmakers Approve New Affordable Housing Tax Credit Program*, RICHMOND TIMES-DISPATCH (Mar. 1, 2021), [https://richmond.com/news/state-and-regional/govt-and-politics/virginia-lawmakersapprove-new-affordable-housing-tax-credit-program/article\\_614a0997-42fc-59e3-ba91-73ec14b3e198.html](https://richmond.com/news/state-and-regional/govt-and-politics/virginia-lawmakersapprove-new-affordable-housing-tax-credit-program/article_614a0997-42fc-59e3-ba91-73ec14b3e198.html).

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

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> H.B. 2072, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>140</sup> *About Good Neighbor Next Door*, U.S. DEP’T OF HOUS. & URB. DEV., [https://www.hud.gov/program\\_offices/housing/sfh/reo/goodn/gnndabot](https://www.hud.gov/program_offices/housing/sfh/reo/goodn/gnndabot) (last visited Jan. 5, 2022).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> H.B. 2072, *supra* note 139.

<sup>144</sup> U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 140.

## V. IMMIGRATION

*A. In-State Tuition Regardless of Immigration Status*

All students in the Commonwealth of Virginia who meet the criteria to be deemed eligible for in-state tuition, regardless of their citizenship or immigration status, are now afforded the same benefits as any other individual who is eligible for in-state tuition.<sup>145</sup> Benefits include financial assistance programs administered by the State Council of Higher Education for Virginia, the State Board for Community Colleges, or a public institution of higher education.<sup>146</sup> To be eligible, a student must have spent at least two years at a Virginia high school, graduated from that high school, and submitted a FAFSA form.<sup>147</sup> Delegate Sally Hudson said that “[c]ollege is a wonderful bridge to opportunities for so many students, and we just want to make sure that it’s there for everyone.”<sup>148</sup> Delegate Hudson, and many of her colleagues, believe that future students should be able to attend college no matter how they arrive in the country or who their families are.<sup>149</sup> The bill will go into effect on August 1, 2022 and directs the State Council of Higher Education to promulgate regulations, in coordination with higher education institutions in the state, to implement the bill’s provisions.<sup>150</sup>

Delegate Alfonso Lopez, who sponsored the bill, said that the issue of Dreamers and Deferred Action for Childhood Arrivals (“DACA”) eligible students has been incredibly important to him for most of his life.<sup>151</sup> “My father was undocumented and came here when he was eighteen from Venezuela with a dream of a better life.”<sup>152</sup> He said it ultimately comes down to fundamental fairness: “You can’t put a stop sign up to thousands of amazing students who don’t have an avenue to move forward, especially since they were brought here through no fault of their own by parents trying to give them a better life.”<sup>153</sup>

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<sup>145</sup> H.B. 2123, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

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

<sup>147</sup> Riley Wyant, *Virginia Senate, House Pass Bills to Grant Undocumented Immigrants In-State Financial Aid*, NBC12, <https://www.nbc12.com/2021/02/03/virginia-senate-house-pass-bills-grant-undocumented-immigrants-in-state-financial-aid/> (last updated Feb. 2, 2021).

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Danner Evans, *Undocumented Students Now Eligible for In-State Tuition in Virginia*, ABC13 (Mar. 12, 2021), <https://wset.com/news/local/undocumented-students-now-eligible-for-in-state-tuition-in-virginia>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

*B. Driver's Licenses*

The issue of driver's licenses and driver privilege cards has been an important topic in the illegal immigration debate. HB 2163 addresses this issue by limiting the release of Department of Motor Vehicles ("DMV") privileged information to government entities and law-enforcement agencies for the purpose of civil immigration enforcement.<sup>154</sup> Unless the subject of information provides consent or the requesting agency presents a lawful court order, subpoena, or warrant, the release of this information is prohibited.<sup>155</sup> The DMV is required to notify the subject of the request that it was made and the identity of the entity who made the request.<sup>156</sup> Further, any entity that receives the privileged information from the DMV must enter into a written agreement with the DMV prior to the release.<sup>157</sup> Unless explicitly permitted to do so in the entity's agreement with the DMV, the release of the information to a third party is banned.<sup>158</sup> A big win for immigration activists is that Immigration and Customs Enforcement ("ICE") will have a much harder time accessing this information as a result of this bill.<sup>159</sup>

The General Assembly also approved identification privilege cards. Identification privilege cards, better known as driver privilege cards, became available because of legislation passed during the 2020 General Assembly Session. They are for non-citizens who are not eligible for a driver's license or identification card.<sup>160</sup> The card is valid for two years, and there is a \$50 application fee.<sup>161</sup> HB 2138, passed by the General Assembly this year, authorizes the DMV to issue identification privilege cards to applicants who hold citizenship or legal presence status.<sup>162</sup> Applicants must have reported income from Virginia sources or been claimed as a dependent on an individual tax return filed within the state in the last twelve months.<sup>163</sup> The cards will be treated as special identification cards under the Virginia Code, and there is a delayed effective date of January 1, 2022.<sup>164</sup>

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<sup>154</sup> H.D. 2163, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

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

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Matthew Delany, *Virginia Privilege Cards Help Noncitizen Drivers, But Could Invite Scrutiny*, WTOP NEWS (Dec. 26, 2020), <https://wtop.com/virginia/2020/12/virginias-driver-privilege-cards-give-noncitizens-access-to-roads-but-could-invite-federal-scrutiny/>.

<sup>160</sup> *Id.*

<sup>161</sup> H.D. 2138, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>162</sup> *Id.*

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

<sup>164</sup> H.B. 1786, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

### *C. Farmworkers Still Exempt from Minimum Wage*

This session's minimum wage legislation was important to employees, employers, and activists seeking fair treatment for minorities and immigrants. HB 1786, passed in the House of Delegates, eliminates the exemptions from Virginia's minimum wage requirements for (i) persons employed as farm laborers or farm employees and (ii) certain temporary foreign workers.<sup>165</sup> However, the Senate Committee on Commerce and Labor voted against it.<sup>166</sup> Many Senators said they would support eliminating the exemption currently in place that says that the minimum wage laws do not apply to farmworkers.<sup>167</sup> However, they said that leaving the exemption in place for now was part of an earlier compromise agreement, and they did not want to break that promise.<sup>168</sup> Passing this legislation was one of the top priorities for the Virginia Coalition for Immigrant Rights, who view this as an issue of economic justice for immigrants.<sup>169</sup> The bill's chief sponsor, Delegate Jeion Ward, argued that this exemption is rooted in Jim Crow-era laws and that one out of every five farmworkers in Virginia makes less than minimum wage.<sup>170</sup> This bill is likely to make its way back to the General Assembly in 2022.

## VI. VOTING RIGHTS

### *A. Voting Rights Act of Virginia*

Voting rights and voter suppression have become one of the most salient political topics nationwide. Instead of relying on the federal government, which has failed to produce meaningful protections for voters, Virginia has enshrined its own protections into law. One of those protections is codified in SB 1395, which prohibits any voting qualification, or any standard, practice, or procedure related to voting, from being imposed or applied in a way that results in the denial or abridgment of the right of a U.S. citizen to vote based on race.<sup>171</sup> Prior to enacting a covered practice, as defined in the bill, localities are required to publish the proposed practice and accept public comments for a minimum of 30 days.<sup>172</sup> After that public comment period, a

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<sup>165</sup> Sarah Rankin & Denise Lavoie, *Bill to Make Farmworkers Eligible for Minimum Wage Killed*, AP NEWS (Feb. 22, 2021), <https://apnews.com/article/race-and-ethnicity-minimum-wage-virginia-bills-laws-a470b54a0fd6fb2c130d17c02d708079>.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> 2021 General Assembly Session Priorities, VA. COAL. FOR IMMIGRANT RIGHTS, <https://www.virginiaimmigrantrights.org/2021gapriorities/> (last visited Jan. 5, 2022).

<sup>169</sup> Rankin & Lavoie, *supra* note 165.

<sup>170</sup> S. 1395, 2021 Gen. Assemb. 1st Spec. Sess. (Va. 2021).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

30-day waiting period is required.<sup>173</sup> The bill authorizes the Attorney General to bring civil actions when there is reasonable cause to believe that a violation of an election law has occurred and that a voter's rights or group of voters have been affected by that violation.<sup>174</sup> Delegate Marcia Price, who sponsored the House version of the legislation, said that her aunt and grandparents had to pay poll taxes, so she has understood the importance of voting from an early age, as well as learning that the current system is unfair and unequal.<sup>175</sup> Senator Jennifer McClellan, SB 1395's sponsor, drew on her own family's experience as well in crafting the legislation.<sup>176</sup> "I had a great-grandfather in 1901 who had to take a literacy test and find three white people to vouch for him to be able to register. In January, I found a copy of my dad's receipt for the poll tax he had to pay."<sup>177</sup>

Other provisions in the bill could help expand access to voting in Virginia by requiring local election officials to provide voting materials in languages other than English, as well as create a Voter Education and Outreach Fund where all penalties stemming from voting lawsuits would be put toward educating voters on their rights.<sup>178</sup> The primary purpose of this bill, however, is to protect voters instead of creating new policies.<sup>179</sup> Delegate Price and Senator McClellan said that there had been several recent occurrences that this legislation would have prevented had it been in effect.<sup>180</sup> For example, in September 2020, the Richmond Registrar's office moved from City Hall to a location that was not accessible by public transportation, which caused confusion as early voting was already underway.<sup>181</sup> Instances of voter suppression in other states, especially with new legislation being passed in states like Texas, were also a motivating factor in getting this bill passed.<sup>182</sup>

### *B. Ensuring Voter Safety*

Keeping voters safe while at polling places is crucial in any democracy. The General Assembly addressed this issue by passing HB 2081.<sup>183</sup> The bill prohibits any person from knowingly possessing a firearm within 40 feet of any building used as a polling place, except for law enforcement officers, a

<sup>173</sup> *Id.*

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

<sup>175</sup> Reid J. Epstein & Nick Corasaniti, *Virginia, the Old Confederacy's Heart, Becomes a Voting Rights Bastion*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2021/04/02/us/politics/virginia-voting-rights-northam.html>.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> S. 1395, *supra* note 170.

<sup>179</sup> Epstein & Corasaniti, *supra* note 175.

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

<sup>181</sup> *Id.*

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

<sup>183</sup> H.B. 2081, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

person occupying their own private property that falls within 40 feet of a polling place, or a licensed security officer whose employment duties occur within 40 feet of a polling place.<sup>184</sup> The rule only applies to the 40-foot boundary around the discrete portion of the building being used as a polling place, not the entire building.<sup>185</sup> The bill also prohibits people from possessing a firearm within 40 feet of a meeting place for a local electoral board while the board is convening to ascertain results of an election or a recount.<sup>186</sup> Violators of this bill will be charged with a Class 1 misdemeanor.<sup>187</sup>

Attorney General Mark Herring clarified that the law applies to early voting locations as well.<sup>188</sup> Herring emphasized that “[n]o Virginian should ever feel unsafe when they are voting whether they are voting in person on Election Day or whether they are voting in person early.”<sup>189</sup>

## VII. ENVIRONMENT

### A. *No More Balloons in the Sky*

Releasing balloons into the sky in celebration or mourning is no longer allowed in Virginia. HB 2159 banned the intentional release of balloons by anyone over the age of 16.<sup>190</sup> The law also prohibits anyone 16 years or older from encouraging children to do so.<sup>191</sup> Violators face a fine of \$25 per balloon, and that money will be deposited into the Game Protection Fund.<sup>192</sup> The previous version of this law prohibited a person from knowingly releasing 50 or more balloons within an hour with a penalty of \$5 a balloon.<sup>193</sup> State and wildlife officials say that balloon release can cause hazards to the environment and that countless deflated and tangled balloons end up strangling wildlife and littering beaches and waterways.<sup>194</sup> The hope is that this legislation will bring attention to those issues. “I don’t think people do these balloon releases out of malice; they do it out of ignorance about how dire these

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Dean Mirshahi, *Virginia Law Banning Guns Near Polling Places Applies to Early Voting Locations, AG Herring Says*, WRIC (Sep. 1, 2021, 12:52 PM), <https://www.wric.com/news/politics/capitol-connection/virginia-law-banning-guns-near-polling-places-applies-to-early-voting-locations-ag-herring-says/>.

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

<sup>190</sup> H.B. 2159, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Adrianna Hargrove, *Va. General Assembly Passes Bill Making Balloon Releases Illegal*, NBC12 (Apr. 30, 2021), <https://www.nbc12.com/2021/04/30/va-general-assembly-passes-bill-making-balloon-releases-illegal/>.

impacts can be,” said Delegate Nancy Guy, who introduced the bill and has been a staunch proponent of outlawing balloon releases since 2015.<sup>195</sup> “By having a statute on the book that makes it subject to a fine, it’s now possible for environmental groups to publicize that fact.”<sup>196</sup>

*B. Ordering Takeout? Don’t Expect a Single Use Foam Cup or Takeout Container*

The type of container that your takeout order comes in might look very different starting in 2023. HB 1902 prohibits food vendors from dispensing prepared food to customers using expanded polystyrene food service containers.<sup>197</sup> “Expanded polystyrene food service container” is defined in the bill as a rigid single-use container made primarily of expanded polystyrene that is used for ready-to-consume food and beverages.<sup>198</sup> This includes plates, cups, bowls, trays, and hinged containers but does not include packaging for unprepared foods.<sup>199</sup> The new law will apply to restaurants or similar retail food establishments that are part of a chain with 20 or more locations.<sup>200</sup> By 2025, the law will apply to all food vendors.<sup>201</sup> Violators will be subject to a penalty of up to \$50 a day.<sup>202</sup>

Some vendors have praised the new law. Alexandra DySard, for example, is the environment and partnership manager for MOM’s Organic market, a mid-Atlantic grocery chain.<sup>203</sup> DySard said that she thought it was the right thing to do for the environment, communities, and residents.<sup>204</sup> Her company has been using compostable containers since 2005, and she says that the polystyrene alternatives will become more affordable as more businesses are compelled to use them.<sup>205</sup> Delegate Betsy Carr said that polystyrene is the primary plastic seen in litter throughout creeks, rivers, and roadways.<sup>206</sup> Despite the affordability of using plastic foam containers, which cost roughly

<sup>195</sup> Stacy Parker, *Virginia’s New Law Makes it Illegal to Release Balloons*, THE VIRGINIAN-PILOT (June 28, 2021), <https://www.pilotonline.com/news/environment/vp-nw-balloon-release-0629-20210628-j2gh47oorbojbiwqatln3hkhy-story.html>.

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

<sup>197</sup> H.B. 1902, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

<sup>198</sup> H.B. 533, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

<sup>199</sup> *Id.*

<sup>200</sup> H.B. 1902, *supra* note 197.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> David Tran, *Virginia Restaurants Grapple with Plastic Foam Container Ban*, NBC 12 (Mar. 1 2021), <https://www.nbc12.com/2021/03/01/virginia-restaurants-grapple-with-plastic-foam-container-ban/>.

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

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

<sup>206</sup> Sarah Vogelsong, *Virginia General Assembly Agrees to Ban Polystyrene Food Containers by 2025*, DAILY PROGRESS (Feb. 25, 2021), [https://dailyprogress.com/news/state-and-regional/govt-and-politics/virginia-general-assembly-agrees-to-ban-polystyrene-food-containers-by-2025/article\\_c7f94e7c-779b-11eb-b3ef-5b8be34c882b.html](https://dailyprogress.com/news/state-and-regional/govt-and-politics/virginia-general-assembly-agrees-to-ban-polystyrene-food-containers-by-2025/article_c7f94e7c-779b-11eb-b3ef-5b8be34c882b.html).

five cents a container, some vendors say that the change is worth it.<sup>207</sup> Dominic Pham, who owns Pho Luca's, says that the alternatives will cost him about 55 cents more per container, but he thinks that even if he has to charge slightly higher prices for takeout, most of his customers will not mind.<sup>208</sup>

### C. Greenhouse Gases

Addressing climate change has been a big priority for many activists, both at the national level and here in Virginia. A big part of that fight has been over the emittance of greenhouse gases into the atmosphere. SB 1282, introduced by Senator Joe Morrissey, requires the Department of Environmental Quality ("DEQ") to conduct a statewide inventory of all greenhouse gas emissions and update that inventory every four years.<sup>209</sup> The inventory will be published in the annual report by the State Air Pollution Control Board, which will have the authority to adopt necessary regulations to collect the data.<sup>210</sup> According to the DEQ's Deputy Director, Chris Bast, good policy requires good data, and "this legislation gives us the ability to get the data we need to craft good policy going forward."<sup>211</sup> Information about emissions from smaller industrial polluters and building infrastructure that relies on natural gas and oil has not been readily available to the DEQ in the past.<sup>212</sup> Therefore, this should be a huge step forward in allowing the state to meet both current and future climate challenges.<sup>213</sup>

### CONCLUSION

2021 was a strange year for the General Assembly as it navigated being virtual and meeting in the Science Museum of Virginia. Despite the hurdles, the legislation that was debated and passed could not have been more consequential. From abolishing the death penalty, getting students back to school, and addressing a housing crisis, there were changes made that did not seem possible even a year ago. When 2021 started, COVID-19 cases were at an all-time high, and the prospects of returning to normal life seemed as distant as ever. Between the Regular Session and two Special Sessions, the General Assembly contemplated thousands of bills covering areas such as the environment, education, labor and employment law, criminal law and procedure, immigration, and voting rights. It is likely that legislation in these areas will

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<sup>207</sup> Tran, *supra* note 203.

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

<sup>209</sup> S. 1282, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

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

<sup>211</sup> Sarah Vogel song, *General Assembly Commits to Tabulating Virginia's Greenhouse Gas Emissions*, VA. MERCURY: THE BULLETIN (Feb. 26, 2021), <https://www.virginiamercury.com/blog-va/general-assembly-commits-to-tabulating-virginias-greenhouse-gas-emissions/>.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

continue to be introduced in the coming years, but the political trajectory of the Commonwealth remains unknown.