



2016 General Assembly – Pre-Session Report

The 2016 General Assembly Session will be a long session of 60 days beginning on Wednesday, Jan. 13, 2015, and adjourning sine die (if on schedule) on Saturday, March 12, 2016.

The 2015 House and Senate elections are expected to have little impact on the legislative outlook for the coming session. Every incumbent in both the House and the Senate was re-elected. Republicans retained their 21-19 majority in the Senate, and lost just one seat in the House to retain a 66-34 majority.

Below is a summary of key issues we will be under active consideration by the legislature in 2016.

Criminal Justice Reform

Serious Mental Illness & the Death Penalty

Legislation has been introduced to eliminate the death penalty for defendants who have a serious mental illness. The Eighth Amendment already prohibits the execution of juveniles, the intellectually disabled, and defendants who are not competent to understand the punishment about to be inflicted on them. The Constitution also prohibits executing a defendant if that person cannot distinguish right from wrong or if the accused's mind was so impaired by disease that he is totally deprived of the mental power to control or restrain his act. But for those defendants who do not meet any of these strict criteria and yet have serious mental illnesses, the death penalty is permissible. The legislation represents recommendations made by the American Bar Association during its assessment of Virginia's capital punishment system. *While the ACLU of Virginia continues to advocate for death penalty repeal, we also support legislation designed to ensure better procedural safeguards for seriously mentally ill defendants accused of a capital offense.*

Civil Asset Forfeiture

Legislation has been introduced that would require a criminal conviction before an individual's property could be forfeited to the Commonwealth. Additionally, legislation may be introduced that would expand law enforcement reporting requirements around seizures of money and property, such as whether the person involved was charged with a crime. *The ACLU of Virginia supports legislation that would require a criminal conviction before an individual's property can be forfeited to the Commonwealth.*

Felony Larceny Threshold

Legislation has been introduced that would raise Virginia's larceny threshold from \$200 to \$500. Since 1980, when the threshold was raised from \$100 to \$200, theft of property valued at \$200 or more has been grand larceny, a felony punishable by up to 20 years in prison. This is the lowest larceny threshold in the United States. *The ACLU of Virginia supports raising the felony larceny threshold to \$1,500.*

Marijuana Decriminalization

Legislation has been introduced to decriminalize the possession of marijuana, establishing a civil fine rather than criminal punishment. Under current law, possession of any amount of marijuana is a misdemeanor punishable by up to 30 days in jail and a \$500 fine, as well as a mandatory six-month driver's license suspension. A second offense is punishable by up to 12 months in jail and a \$2,500 fine. A 2014 ACLU report showed that in 2010, African-Americans were 2.8 times more likely to be arrested for marijuana possession and the associated racial disparities have increased in Virginia since 2010. *The ACLU of Virginia supports legislation that would decriminalize the possession of marijuana.*

Equality for All

Protecting Public Employees from Discrimination

We expect Equality Virginia will sponsor legislation that would protect all state and local government workers from discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, or status as a special disabled veteran or other veteran covered by the Veterans Readjustment Assistance Act of 1974. State employees are currently protected by an Executive Order that is subject to revision at any time by the sitting governor and provides no private right of action. Local employees can use grievance procedures to complain of discrimination in some instances, but there is no state law prohibiting discrimination in local government workplaces. *The ACLU of Virginia supports legislation that will codify for the first time protections against discrimination in state and local government for all employees, including LGBT employees.*

Repealing Statutes Banning Same-Sex Marriages and Civil Unions.

We anticipate that legislation will be introduced to repeal the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions are no longer valid due to the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. ___ (June 26, 2015). In addition, the Code Commission may recommend legislation to ensure that terms describing marriage and its responsibilities and benefits are inclusive of all people who have the freedom to marry. *The ACLU of Virginia supports legislation that will ensure successful implementation of the freedom to marry.*

Protecting LGBT Rights

It is sad to see the number of bills introduced this session targeted at ensuring that schools and other governmental agencies can purposely discriminate against transgender adults and children in Virginia. At a time when we should be working to end discrimination against all LGBT Virginians, and in a state where the overwhelming majority of Virginians agree that such discrimination should end, these bills are nothing more than ineffective, mean-spirited efforts to deny LGBT people in Virginia their constitutional and human rights. *The ACLU of Virginia will be working with Equality Virginia and other advocates for the LGBT community to ensure that bills granting licenses to discriminate aren't passed and that legislation prohibiting discrimination is enacted and signed by the Governor.*

Privacy and Technology

Police-Worn Body-Cams

Our comprehensive study, "Getting to Win-Win: the Use of Body-Worn Cameras in Virginia Policing," found wide discrepancies in policies among 59 law enforcement agencies using BWCs in Virginia. The study revealed that none of the policies fully address issues including the public's right to know when they are being filmed, the right of data subjects to access the video in which they appear, the right of victims and witnesses and those participating in First Amendment activities not to be filmed, and the data

retention and disclosure practices regarding BWC videos. It is imperative that as use of body-cams continues to proliferate among law enforcement agencies in the Commonwealth, that new, state-wide law (including, possibly, amendments to the Freedom of Information Act) is enacted to govern aspects of their use particularly related to the data they collect and the rights of data subjects. *The ACLU of Virginia supports legislation that would impose certain uniform statewide limits on the use of body-cams, standardize the retention and use of the data they collect and ensure consistency in protecting the privacy of victims of and witnesses to crimes and the First Amendment rights of Virginians.*

Electronic Communications Privacy Act

The ACLU of Virginia is working with a broad coalition to introduce legislation that would better safeguard the electronic information of Virginia residents and support innovation in the digital economy by updating state privacy law to match our expanding use of digital information. The Virginia legislature has made strides in recent years toward implementing enhanced statutory protections of individual privacy, e.g., with respect to law enforcement use of drones and stingrays and with respect to data from real-time cell phone tracking. However, the emergence of new technology has left Virginia's statutory protections behind. This bill will provide needed protection against warrantless government access to mobile devices, email, text messages, digital documents, metadata, and location information, and provide greater protection than currently afforded by analog era interpretations of federal constitutional protections. *The ACLU of Virginia supports legislation that creates 21st century protections for Virginians from unnecessary and unauthorized government surveillance and data acquisition using new and emerging technologies.*

Reproductive Freedom

Women's Rights Under Attack

Women's access to abortion in Virginia has been under constant attack and this will continue in the 2016 legislature. From repeal of abortion funding for low-income women and punishing pregnant women to regulating fetal tissue donation and disposal, we expect abortion rights to be under fire. *The ACLU of Virginia supports everyone's right to make informed decisions free from government interference concerning reproduction and whether and when to become a parent.*

Voting Rights

Restoration of Civil Rights

The ACLU of Virginia supports legislation to amend the state constitution to remove the provision that permanently bans an individual convicted of a felony from voting and restores the civil rights of disenfranchised Virginians. Voting is a fundamental, constitutional right and this Jim Crow-era law permanently bans an estimated 350,000 individuals who live, work, and pay taxes in Virginia from voting. Many of Virginia's disenfranchised citizens are African-Americans, who are disproportionately impacted by the law. In recent years, Virginia governors have made several discretionary, progressive reforms to the restoration of rights process, however, the state constitution needs to be amended to permanently fix this injustice. *The ACLU of Virginia protects the right to register and vote, and promotes racial equality in the electoral process.*

Proof of Citizenship to Vote

The ACLU of Virginia opposes legislation that requires qualified voters to demonstrate proof of citizenship before voting. There is no evidence of non-citizens committing voter fraud in Virginia and worse, this legislation is far more likely to stop qualified voters from accessing the polls than to stopping a non-existent problem. Investigations have failed to uncover non-citizens intentionally registering or voting while aware that they were not eligible to do so. There is a sizeable portion of the electorate for

whom obtaining proof of citizenship may be impossible. Nationally, seven percent of U.S. citizens do not have ready access to proof of citizenship – more than 13 million Americans. Low-income, elderly, women, and people of color living in rural Virginia are the least likely to have proof of citizenship. For example, 32 million women of voting-age do not have ready access to a citizenship document with their current legal name. Naturalized citizens may lose their right to vote if they have lost their proof of citizenship. These citizens must apply for new documentation---a process that takes several months, may require in-person interviews, and is very costly in fees. Proof-of-citizenship legislation is far more likely to disenfranchise qualified Virginia voters than stopping any purported voter fraud. *The ACLU of Virginia protects the right to register and vote, and promotes racial equality in the electoral process.*