



# ***COMMONWEALTH of VIRGINIA***

*Office of the Governor*

## **Commission to Examine Racial Inequity in the Law**

### **AGENDA**

Thursday, June 3, 2021

1:00-3:00pm

*Via Webex*

1. Call to Order & Roll Call
2. Public Comment
3. Administrative Items
  - a. Approval of the Meeting Minutes – May 11th meeting
4. Discussion on Economic Injustice Recommendations
5. Adjournment

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# MEMORANDUM

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**TO:** The Commission to Examine Racial Inequity in Virginia Law

**FROM:** Julia Eger, Joe Aldridge, and Andrew Block<sup>1</sup>

**RE:** Economic Injustice Recommendations for Commission

**DATE:** June 3, 2021

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## INTRODUCTION

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This memorandum supplements the presentation by the UVA State and Local Government Clinic to the Commission on June 3, 2021.

The Commission has now been in existence for two years. While its first year was spent analyzing old, expressly racist Acts of Assembly, during its second year the Commission focused on addressing current racial disparities in the areas of education, health, housing, criminal justice, voting, environmental justice, and agricultural inequities. This year, the Commission has resolved to continue its focus on current racial disparities by digging into the systemic disparity in economic opportunity for too many people of color in Virginia.

Black people in Virginia are more likely to be at the bottom rungs of the economic ladder, more likely to rely on public benefits, and less likely to own homes or have accumulated wealth. Yet, wealth is important because it forms a safety net that helps families to avoid accumulating large amounts of debt when they encounter unexpected financial issues,<sup>2</sup> and can provide for intergenerational transfers of wealth which can help fund critical ladders out of poverty like higher education, a down payment for a home, or capital for a business.<sup>3</sup> Because people of color are less likely to receive money from family members to make these types of investments, the wealth gap has persisted from generation to generation.<sup>4</sup>

While subsequent meetings and subsequent memos will focus on other important aspects of economic opportunity, this memorandum focuses on the issues of Consumer Protection and

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<sup>1</sup> Law students Juliet Buesing Clark and Lukus Freeman also contributed to the early research on this memo.

<sup>2</sup> <https://www.demos.org/research/racial-wealth-gap-why-policy-matters>

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

<sup>4</sup> *Id.*

Paid Family and Medical Leave. It reflects the views of the authors and not those of the University of Virginia, or the University of Virginia School of Law.

The policy recommendations below are by no means exhaustive. We encourage Commission members to view these policy recommendations as worthy of serious consideration in their own right, but also as illustrative of the kinds of changes that the Commission might propose the Northam administration consider supporting. Indeed, given the subject area expertise of members of the Commission we expect and hope that these recommendations will generate other policy proposals from the Commission members themselves that may go well beyond what is proposed here.

## PAID FAMILY AND MEDICAL LEAVE

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### BACKGROUND:

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

In 2020, the General Assembly requested that the Administration conduct a study about Paid Leave and what implementation could look like in Virginia.<sup>5</sup> That study was published by the office of Governor Northam's Chief Workforce Advisor, Dr. Megan Healy, and Secretary of Commerce and Trade Brian Ball. The study provides a thorough review of options and underpins the legislative proposals discussed later in this document.

A Virginia Paid Family and Medical Leave program would improve upon the federal FMLA protection in two ways. First, it would be available to more workers than FMLA, which does not apply to all types of businesses or employees and is inaccessible to 55% of Virginia workers.<sup>6</sup> Second, because FMLA only provides for *unpaid* time off, a Virginia Paid Leave program would protect workers from having to make the hard choice between caring for a loved-one or themselves and earning an income. It is also worth noting that while employers can elect to

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<sup>5</sup> [https://www.governor.virginia.gov/media/governorvirginiagov/workforce/pdf/PFML-Study\\_final.pdf](https://www.governor.virginia.gov/media/governorvirginiagov/workforce/pdf/PFML-Study_final.pdf)

<sup>6</sup> <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-virginia.pdf>

provide Paid Leave, only 15% of U.S. workers in 2017 had access to employer-sponsored paid family leave.<sup>7</sup>

In addition, paid family leave would benefit and protect the most vulnerable members of our workforce, who disproportionately consist of people of color. For example, white workers are twice as likely to have access to paid parental leave as their Latinx counterparts.<sup>8</sup> Access to paid leave is also strongly correlated to income.<sup>9</sup> Black and Latinx workers are less likely to have access to even unpaid leave under the current system.<sup>10</sup>

And even those workers who have access to unpaid leave might not be able to take it for financial reasons. Leave is often needed at times when expensive medical services are required, and many families cannot forego their income, especially during those times. In the context of childbirth, this presents a difficulty for any new mother. However, it is worse for mothers of color as 74% of Black mothers and 47% of Latinx mothers are the key or sole breadwinners for their families, compared to 45% of white mothers nationally.<sup>11</sup> Compound that fact with the many facets of the racial wealth gap and it is easy to see why many mothers of color are not able to take advantage of the unpaid leave.

This lack of time off may have negative health and developmental effects. In Virginia, Black women are 1.9 times more likely to die during pregnancy or within one year of pregnancy than white women.<sup>12</sup> The infant mortality rate of Black infants is more than double that of white infants nationally.<sup>13</sup> Paid Leave would allow new mothers more time to attend postpartum health visits and recover from childbirth. Leave would also give new mothers time to better meet their children's needs. A Paid Leave program could help reduce the disparities in maternal and infant mortality.<sup>14</sup>

Nine states<sup>15</sup> and Washington, D.C. have adopted a Paid Leave program. All of these programs are funded through payroll deductions made by employees, employers, or both. In California, where such a program has been in place the longest, the average time taken off for parental

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<sup>7</sup> <https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm>

<sup>8</sup> <https://www.americanprogress.org/wp-content/uploads/2012/11/GlynnWorkingParents-1.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> <https://thecommonwealthinstitute.org/statewide-pfml-a-critical-step-toward-racial-economic-and-health-equity/>

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

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

<sup>13</sup> <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm>

<sup>14</sup> <https://thecommonwealthinstitute.org/statewide-pfml-a-critical-step-toward-racial-economic-and-health-equity/>

<sup>15</sup> California, New Jersey, Rhode Island, New York, Washington, Massachusetts, Connecticut, Oregon, and Colorado.

leave between Black and white mothers has equalized.<sup>16</sup> Before the state's program, Black women took an average of just one week of parental leave and white women took four weeks. After implementation of the program, Black and white mothers both took an average of seven weeks of leave.<sup>17</sup> Understandably, existing Paid Leave programs have been shown to also improve infant health, with Black children showing the biggest improvements.<sup>18</sup>

Two demographic shifts punctuate the need for Paid Leave. The first of these is the aging population. The percentage of the state's population aged 65 and older will grow by nearly one-sixth in the next twenty years.<sup>19</sup> As the population ages, the average age of a Virginia worker goes up and so do their average care needs. Further, the need to care for elder family members will increase. Black and Latinx families will likely experience greater elder care demands as households of color are more likely to be multi-generational.<sup>20</sup> Second, more children are growing up in households where all parents are working than ever before.<sup>21</sup> No parent in these households can serve as a floating resource to meet a child's care needs without taking time off work. Black and Latinx households, where mothers are more likely to be both the sole or key breadwinners and caregivers, experience this problem more acutely than white households.<sup>22</sup> These two trends exacerbate the need for Paid Leave and demonstrate how the absence of Paid Leave harms families of color most.

The COVID-19 pandemic has also highlighted the importance of paid leave programs. One study found that states with Paid Leave programs already in place were able to provide help to workers more quickly and reduce the burden of the pandemic on employers.<sup>23</sup>

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

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<sup>16</sup> <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>

<sup>17</sup> *Id.*

<sup>18</sup> [https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm#\\_edn5](https://www.bls.gov/opub/mlr/2019/article/racial-and-ethnic-disparities-in-access-to-and-use-of-paid-family-and-medical-leave.htm#_edn5). See also <https://voxeu.org/article/paid-family-leave-and-breastfeeding> (showing that California's paid family leave increases overall breastfeeding duration, which may lead to health improvements for mothers and children, particularly among disadvantaged families).

<sup>19</sup> <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-virginia.pdf>

<sup>20</sup> <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-family-and-medical-leave-racial-justice-issue-and-opportunity.pdf>

<sup>21</sup> <https://www.pewresearch.org/social-trends/2017/03/23/americans-widely-support-paid-family-and-medical-leave-but-differ-over-specific-policies/>

<sup>22</sup> <https://thecommonwealthinstitute.org/statewide-pfml-a-critical-step-toward-racial-economic-and-health-equity/>

<sup>23</sup> [https://www.urban.org/sites/default/files/publication/102325/state-paid-family-and-medical-leave-programs-helped-a-surge-of-workers-affected-by-the-covid-19-pandemic\\_0.pdf](https://www.urban.org/sites/default/files/publication/102325/state-paid-family-and-medical-leave-programs-helped-a-surge-of-workers-affected-by-the-covid-19-pandemic_0.pdf)

**PROPOSAL 1: Endorse Paid Family & Medical Leave Program for Virginia (Previously SB 1330, HB 2016 (2021)).** These companion bills, while failed during the 2021 session, are modeled after successful Paid Leave programs in other states and would require employers and employees to contribute to a common fund through a payroll tax. The fund would be administered by the Virginia Employment Commission and would act as a social insurance program where workers can make a claim to the Commission if they need to stop working for up to 12 weeks.<sup>24</sup> Workers could make a claim to care for themselves or a family member and would receive 80% of their wages during leave.<sup>25</sup> The bills incorporate feedback coming out of the 2020 Paid Family Medical Leave study published jointly by Dr. Healy's and Secretary Ball's offices.<sup>26</sup> Such a bill would extend the protection of Paid Leave to more Virginians who need it than would other options.<sup>27</sup> It would especially lift up workers and families of color, who have less access to paid and unpaid leave as of today.<sup>28</sup>

## CONSUMER PROTECTION

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### Background

Vast disparities in wealth exist between white and Black/Latinx households. According to the U.S. Census Bureau, in 2020, the median white household had over \$139,000 in wealth holdings, while the median Black household had less than \$13,000 and the median Latinx household had \$20,000.<sup>29</sup> Former Congressman Tom Perriello, citing data from the LEAD Center, noted that in Virginia, the average white household has more than eleven times the wealth of the average Black household (as measured by net worth—assets minus liabilities).<sup>30</sup> One of the main factors driving the racial wealth gap is the low rate of homeownership among

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<sup>24</sup> This is modelled after Washington's successful Paid Leave program which is administered through the Washington State Employment Security Department. See <https://paidleave.wa.gov/>.

<sup>25</sup> 80% of the state average weekly wage is the maximum amount a worker can receive during leave. <https://lis.virginia.gov/cgi-bin/legp604.exe?211+ful+SB1330>.

<sup>26</sup> [https://www.governor.virginia.gov/media/governorvirginiagov/workforce/pdf/PFML-Study\\_final.pdf](https://www.governor.virginia.gov/media/governorvirginiagov/workforce/pdf/PFML-Study_final.pdf)

<sup>27</sup> While alternative strategies to secure Paid Leave are available, these do not guarantee universal coverage and thus are generally insufficient in terms of the people covered, or the extent of the benefit. Options include encouraging employers to create their own Paid Leave program with tax incentives, but in such a system many smaller employers would still not be able to afford to create a comparable program of their own. Another option would allow employees to make contributions to a savings account through pre-tax payroll deductions, similar to a Health Savings Account, that they could pull from when needed, but that proposal lacks the scale and opportunity for cost spreading presented in a universal program, and thus precludes lower wage earners from being able to access the paid leave. The cost spreading model of a public insurance system like the one proposed improves access for smaller employers and lower wage earners alike.

<sup>28</sup> This program is endorsed by the Campaign for a Family Friendly Virginia and Main Street Alliance. See <https://familyfriendlyeconomyva.org/>; and <https://mainstreetalliance.org/>.

<sup>29</sup> U.S. Census Bureau, <https://www.census.gov/library/stories/2019/08/gaps-in-wealth-americans-by-household-type.html>.

<sup>30</sup> <https://medium.com/tom-for-virginia/tackling-the-racial-wealth-gap-959ff8e0131c>

Black and Latinx people. In the United States in 2011, 73 percent of white households owned homes, while only 47 percent of Latinx households and 45 percent of Black households did.<sup>31</sup> The home ownership statistics in Virginia are similar to the national statistics—according to U.S. Census Bureau data, in 2020, 73 percent of white families in Virginia owned homes, while only 48 percent of Black households did.<sup>32</sup>

Lack of financial security makes people of color vulnerable to a range of predatory and higher risk financial products and tactics, as well as less able to secure the financial gains that they have made. While Virginia has made some real policy progress in establishing protections against predatory lending, more work is needed to protect consumers in a range of different areas.

In this section we offer recommendations in three main issue area that are currently impairing minorities' efforts to build wealth: i) foreclosure, ii) debt collection, and iii) credit reporting. We spoke with attorneys from the Virginia Poverty Law Center in preparing this section, and their expertise has informed many of these recommendations.

It is also worth pointing out that in an effort to protect consumers from predatory lending, the Virginia General Assembly passed the Virginia Fairness in Lending Act (Senate Bill 421), which took effect on January 1, 2021.<sup>33</sup> This law closes loopholes that previously allowed lenders to charge excessive rates for payday and title loans.<sup>34</sup>

## Impact of Foreclosure on Minority Home Buyers

### **BACKGROUND:**

Across the country, the homeownership rates of Black and Latinx people are lower than those of white people.<sup>35</sup> Black and Latinx people are less likely to purchase a home and more likely to lose their homes to foreclosure.<sup>36</sup> This phenomenon contributes to the wealth gap between whites and people of color.<sup>37</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> U.S. Census Bureau, [https://docs.google.com/spreadsheets/d/1on9TBSs7h36df8Z\\_eCuxzV1ThM0LfH\\_mrqtSNQMzZ\\_o/edit#gid=350070766](https://docs.google.com/spreadsheets/d/1on9TBSs7h36df8Z_eCuxzV1ThM0LfH_mrqtSNQMzZ_o/edit#gid=350070766).

<sup>33</sup> <https://www.whsv.com/content/news/Va-lawmakers-approve-amendment-to-anti-predatory-lending-law-569862671.html>

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

<sup>35</sup> <https://www.theatlantic.com/business/archive/2016/02/blacks-hispanics-mortgages/471024/>

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

<sup>37</sup> *Id.*

One of the main reasons for the lower rates of homeownership among Black and Latinx people is that home loans are more expensive for these groups since lenders direct them to higher-risk products such as subprime loans.<sup>38</sup> A study by the National Bureau of Economic Research found that even accounting for differences in financial circumstances, Black Americans are 105 percent more likely than whites to be given a high-cost mortgage, while Latinx Americans are 78 percent more likely.<sup>39</sup> These expensive loans make foreclosure more likely. Between 2007 and 2009, in the midst of the housing market collapse, nearly 8% of African-Americans and nearly 8% of Latinxs, completed foreclosures, while only 4.5% of whites did.<sup>40</sup> As a result of this disparity, Black homeowners experienced a 45% decrease in their wealth following the housing market collapse, while white homeowners' wealth decreased by only 21%.<sup>41</sup>

Virginia employs a nonjudicial foreclosure process,<sup>42</sup> which means that a court does not have to be involved in a foreclosure.<sup>43</sup> As a result, individuals facing foreclosure are not given counsel<sup>44</sup> and, if they want to contest the foreclosure, must go to court on their own in order to assert a defense to the foreclosure.<sup>45</sup> Foreclosure can have far-reaching consequences for individuals and families. In Virginia, when a person's home is foreclosed upon, that person loses all of the equity he or she has accumulated in the home.<sup>46</sup> The investment in homeownership is thus erased.

Virginia has implemented some temporary protections against foreclosures in light of the COVID-19 pandemic. HB340 gave homeowners who had experienced a loss of income due to the pandemic a right to obtain a thirty-day foreclosure stay.<sup>47</sup> The Virginia Rent and Mortgage Relief Program, announced on June 29, 2020, provided a one-time payment to assist with rent and mortgage payments that were past due from April 1, 2020 and onward.<sup>48</sup> Some recipients

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<sup>38</sup> *Id.*

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

<sup>40</sup> <https://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-presentation.pdf>

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

<sup>42</sup> Nat'l Consumer L. Ctr., Foreclosure Report: Survey of State Foreclosure Laws 120 (2009).

<sup>43</sup> See Doug Rendelman, *Foreclosure of a Deed of Trust in Virginia*, 51 U. Rich. L. Rev. 147, 174 (2016); Va. Code Ann. §§ 55.1-320 to 55.1-345.

<sup>44</sup> See Melanca Clark & Maggie Barron, Brennan Ctr. for Just., Foreclosure: A Crisis in Legal Representation 13 (2009).

<sup>45</sup> See Doug Rendelman, *Foreclosure of a Deed of Trust in Virginia*, 51 U. Rich. L. Rev. 147, 174 (2016).

<sup>46</sup> G. Thomas Kingsley et al., The Urb. Inst., The Impacts of Foreclosures on Families and Communities 10 (2009).

<sup>47</sup> Amy Loftsgordon, *Virginia Passes New Law Allowing Homeowners to Delay Foreclosure During the Coronavirus Crisis*, NOLO, <https://www.nolo.com/legal-updates/virginia-passes-new-law-prohibiting-foreclosures-during-the-coronavirus-crisis.html> (last visited Oct. 28, 2020).

<sup>48</sup> Gov. Northam announces extension of Rent and Mortgage Relief Program, WTOP News (Sept. 24, 2020), <https://wtop.com/virginia/2020/09/gov-northam-announces-extension-of-rent-and-mortgage-relief-program/>.



were able to obtain renewal based on need, availability of funding, and continued eligibility.<sup>49</sup> These temporary protections, while important, are not sufficient to resolve racial disparities in foreclosure long-term.

**PROPOSAL 1: Improve Access to Counsel for Homeowners Facing Foreclosure.** One way to provide additional protection to consumers in foreclosure proceedings is to provide counsel in those proceedings. This is especially important in Virginia, where the homeowner has to initiate judicial proceedings in order to challenge a foreclosure.<sup>50</sup> Possible ways to ensure access to counsel include adopting an explicit right to counsel,<sup>51</sup> improving access to and awareness of access to pro bono attorneys and legal clinics that represent homeowners facing foreclosure,<sup>52</sup> and including information about homeowners' options for avoiding foreclosure in notices of foreclosure.<sup>53</sup>

**PROPOSAL 2: Implement a Foreclosure Diversion Program.** The City of Richmond has implemented an Eviction Diversion Program, which creates a payment plan for overdue rent for tenants who have fallen behind on rent payments due to unforeseen circumstances.<sup>54</sup> Virginia could help homeowners who are struggling to make payments by implementing a similar program for foreclosures.<sup>55</sup>

**PROPOSAL 3: Adopt Judicial Foreclosure.** Virginia's current policy of nonjudicial foreclosure offers less protection to homeowners than the alternative of judicial foreclosure. However, 18 states plus the District of Columbia have de jure judicial foreclosure procedures.<sup>56</sup> Additionally, Iowa, Wisconsin, and Hawaii have de facto judicial foreclosure procedures.<sup>57</sup> Judicial foreclosure would give homeowners more time to prepare for an impending foreclosure and an opportunity to reclaim their property after a foreclosure sale.<sup>58</sup> Additionally, judicial foreclosure shifts the burden of suing from the borrower to the lender, which provides a greater chance of

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

<sup>50</sup> Zoom Interview with Jessica Thompson, Senior Staff Attorney, Central Virginia Legal Aid (Oct. 13, 2020), by Taylor Beck and Olivia Seksinsky; *How States Can Help Police Mortgage-lending Practices*, Knowledge@Wharton (June 27, 2019), <https://knowledge.wharton.upenn.edu/article/judicial-foreclosure-mortgage-lending/>.

<sup>51</sup> Taylor Beck and Olivia Seksinsky, *Foreclosure and Due Process: Helping David Fight Goliath*, Public Policy Research and Drafting Fall 2020, University of Richmond School of Law, Pg. 22.

<sup>52</sup> *Id.* at 23.

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

<sup>54</sup> Jeremy M. Lazarus, *HOME to begin eviction diversion program*, Rich. Free Press (Sept. 6, 2019), <http://richmondfreepress.com/news/2019/sep/06/home-begin-eviction-diversion-program/>.

<sup>55</sup> Taylor Beck and Olivia Seksinsky, *Foreclosure and Due Process: Helping David Fight Goliath*, Public Policy Research and Drafting Fall 2020, University of Richmond School of Law, Pg. 25.

<sup>56</sup> Taylor Beck and Olivia Seksinsky, *Foreclosure and Due Process: Helping David Fight Goliath*, Public Policy Research and Drafting Fall 2020, University of Richmond School of Law, Pg. 28, Figure 1.

<sup>57</sup> *Id.*

<sup>58</sup> Amy Loftsgordon, *Virginia Foreclosure Process*, Lawyers.com (Aug. 11, 2020), <https://www.lawyers.com/legal-info/bankruptcy/foreclosures/virginia-foreclosure-process.html>.

the borrower's defenses being heard.<sup>59</sup> Furthermore, judicial foreclosure delays the finality of a foreclosure sale<sup>60</sup> and allows the buyer to remain in possession of their home for longer,<sup>61</sup> which is especially important in Virginia since the time between default and sale under the current law is only fourteen days.<sup>62</sup>

If the Commission determines that this is too expansive a recommendation, it could consider recommending a proposal similar to what is happening in Maryland which employs a quasi-judicial foreclosure that allows for a court process or mediation.<sup>63</sup>

## Debt Collection

### **BACKGROUND:**

According to research done by ProPublica, debt collection suits are primarily concentrated in Black neighborhoods.<sup>64</sup> The disparity remains even after accounting for differences in income.<sup>65</sup> Companies frequently use the courts to sue people over small consumer debts, which enables debt collectors to seize a portion of a debtor's wages.<sup>66</sup>

Resolving racial disparities in debt collection is especially important in Virginia, which is ranked among the top ten states with the highest levels of credit card debt, mortgage debt, and student loan debt.<sup>67</sup> The portion of Virginians living in predominantly white areas who have any debt in collections is 25%, with 16% having medical debt in collections and 1% having student loan debt in collections.<sup>68</sup> However, in predominantly nonwhite areas in Virginia, 43% of people have debt in collections, with 24% having medical debt in collections and 3% having student loan debt in collections.<sup>69</sup> The median amounts of debt in collections for Virginians are \$1,399 for any type of debt, \$582 for medical debt, and \$9,342 for student loan debt.<sup>70</sup>

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<sup>59</sup> Elizabeth Renuart, *Property Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?*, 4 Wm. & Mary Bus. L. Rev. 111, 141 (2013).

<sup>60</sup> Zoom Interview with Kristi Kelly, Attorney, Kelly Guzzo, PLC, by Taylor Beck and Olivia Seksinsky (Oct. 19, 2020).

<sup>61</sup> Patrick B. Bauer, *Judicial Foreclosure and Statutory Redemption: The Soundness of Iowa's Traditional Preference for Protection Over Credit*, 71 Iowa L. Rev. 1, 9 (1985).

<sup>62</sup> Va. Code Ann. § 55.1-321 (2020).

<sup>63</sup> Md. Code Ann., Real Property § 7-105.1(e) (West 2020); Jeffrey Miller, *The Maryland Foreclosure Process Explained*, Dependable Homebuyers (July 2, 2017), <https://www.dependablehomebuyers.com/blog/the-maryland-foreclosure-process-explained/>.

<sup>64</sup> <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>

<sup>65</sup> *Id.*

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

<sup>67</sup> <https://www.debt.org/faqs/americans-in-debt/consumer-virginia/>

<sup>68</sup> [https://www.nclc.org/images/pdf/debt\\_collection/fact-sheets/Virginia.pdf](https://www.nclc.org/images/pdf/debt_collection/fact-sheets/Virginia.pdf)

<sup>69</sup> *Id.*

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

**PROPOSAL 1: Lower the Percentage of Wages That Debt Collectors Can Garnish.** Virginia's wage garnishment laws align with the federal law<sup>71</sup> limiting wage seizures to 25 percent of after-tax income,<sup>72</sup> except in the case of defaults on student loans, for which there is a limit of 15 percent.<sup>73</sup> However, some states have implemented a lower limit on wage garnishment for all types of debt, and four states (Texas, Pennsylvania, North Carolina, and South Carolina) completely prohibit wage garnishment for most types of debts.<sup>74</sup> These policies benefit low-income workers, many of whom are minorities, who cannot afford to lose 25 percent of their pay.<sup>75</sup>

**PROPOSAL 2: Prohibit Debt Buyers from Bringing Debt Collection Lawsuits After the Statute of Limitations Has Expired.** Virginia law requires defendants in civil lawsuits to affirmatively raise the statute of limitations defense.<sup>76</sup> This requirement is problematic in debt collection suits because the defendants often are not represented by counsel and therefore do not know that this defense exists.<sup>77</sup> Furthermore, according to the Federal Trade Commission, debt buyers often abuse the court system by suing beyond the statute of limitations.<sup>78</sup> This phenomenon is especially concerning given that debt buyers are increasingly relying on litigation to collect debts as opposed to other methods.<sup>79</sup> Two of the largest publicly traded debt buyers, Encore Capital and Portfolio Recovery Associates, grew their legal collections 184 percent and 220 percent, respectively, from 2008 to 2018.<sup>80</sup> This data indicates a need to implement specific rules governing debt buyers' conduct in order to protect minority consumers.

California has enacted a statute that provides a good example of restrictions on debt collection lawsuits that protect consumers. This statute prohibits debt buyers from bringing a debt collection lawsuit after the statute of limitations has expired.<sup>81</sup> It also provides that if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of the statute, including ensuring that the action is brought within the statute of limitations, the court

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<sup>71</sup> <https://www.nolo.com/legal-encyclopedia/virginia-wage-garnishment-law.html#:~:text=Virginia%20law%20limits%20the%20amount,on%20a%20defaulted%20student%20loan.>

<sup>72</sup> <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>

<sup>73</sup> <https://www.nolo.com/legal-encyclopedia/virginia-wage-garnishment-law.html#:~:text=Virginia%20law%20limits%20the%20amount,on%20a%20defaulted%20student%20loan.>

<sup>74</sup> <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>

<sup>75</sup> *Id.*

<sup>76</sup> Va. Code § 8.01-235.

<sup>77</sup> <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>

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

<sup>79</sup> <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>

<sup>80</sup> *Id.*

<sup>81</sup> TITLE 1.6C.5. Fair Debt Buying Practices [1788.56].

may not enter a default judgment for the plaintiff and may dismiss the action entirely.<sup>82</sup> Additionally, a debt buyer that violates any provision of the statute with respect to any person is liable to that person for both actual damages and statutory damages, unless the debt buyer demonstrates that the violation was unintentional.<sup>83</sup>

## Credit Reporting

### **BACKGROUND:**

Several systemic factors result in Black and Latinx people having lower credit scores than whites. As explained previously, these communities experience much higher rates of foreclosure, which greatly harms their credit scores.<sup>84</sup> These groups' credit histories are also affected by discriminatory practices with an economic impact, including racial profiling/law enforcement bias, employment discrimination, housing segregation, and the re-emergence of redlining.<sup>85</sup> Furthermore, Black and Latinx individuals are disproportionately affected by municipalities discriminatorily imposing fees and fines in order to raise revenue.<sup>86</sup>

Auto insurance is one of the specific areas in which lower credit scores harm minority communities. For example, auto insurance companies often charge people with lower credit scores higher premiums.<sup>87</sup> Auto insurance is required for driving in every state except New Hampshire.<sup>88</sup> The higher premiums can also result in reduced access to vehicles, which is a major barrier to employment opportunities.<sup>89</sup>

**PROPOSAL 1: Create More Loan Programs That Enable People Who Have Low Credit Scores to Buy Homes.** The Rural Housing program has been successful in helping people to obtain low-cost loans to buy homes.<sup>90</sup> This program helps low-income applicants obtain housing in rural areas by providing payment assistance to improve the applicants' repayment abilities.<sup>91</sup> However, it is infrequently used and limited to rural housing.<sup>92</sup> Virginia could enable more Black and Latinx people to own homes by creating a program that is not limited by geography or community type.

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<sup>82</sup> TITLE 1.6C.5. Fair Debt Buying Practices [1788.60].

<sup>83</sup> TITLE 1.6C.5. Fair Debt Buying Practices [1788.62].

<sup>84</sup> [https://www.nclc.org/images/pdf/credit\\_discrimination/Past\\_Imperfect050616.pdf](https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf)

<sup>85</sup> *Id.*

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

<sup>87</sup> [https://consumerfed.org/press\\_release/systemic-racism-in-auto-insurance-exists-and-must-be-addressed-by-insurance-commissioners-and-lawmakers/](https://consumerfed.org/press_release/systemic-racism-in-auto-insurance-exists-and-must-be-addressed-by-insurance-commissioners-and-lawmakers/)

<sup>88</sup> *Id.*

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

<sup>90</sup> <https://www.rd.usda.gov/programs-services/single-family-housing-direct-home-loans/va>

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

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

## **PROPOSAL 2: Prohibit Insurance Companies from Charging Higher Premiums for People with Lower Credit Scores.**

Insurance companies claim that they are justified in charging higher premiums to people with lower credit scores because those people are likely to make more insurance claims.<sup>93</sup> However, several studies have demonstrated that this is not the case.<sup>94</sup> As a result, several states, including California, Hawaii, Maryland, Massachusetts, Michigan, Oregon, and Utah,<sup>95</sup> have passed legislation to put a stop to such practices.<sup>96</sup>

## **CONCLUSION**

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As the work of this Commission has illuminated, the State of Virginia has taken active steps throughout its history to suppress the economic opportunities of people of color. This memorandum outlines only a few areas where proactive policy could help to reorient the system away from intentionally disadvantaging Black people and other people of color. Many things can affect economic opportunity, and people at lower income levels know that any number of things could be the difference between being above and below water. We respectfully submit these policy proposals to help the Commission develop its own set of recommendations for the Governor's consideration.

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<sup>93</sup> <https://www.nclc.org/images/pdf/pr-reports/report-insurance-scoring-2007.pdf>

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

<sup>95</sup> <https://www.experian.com/blogs/ask-experian/which-states-prohibit-or-restrict-the-use-of-credit-based-insurance-scores/>

<sup>96</sup> *Id.*