

Civil Liberties Review

Virginia General Assembly 2009

Contents

Free Expression/Right to Petition	1
Religious Liberty	3
Restoration of Voting Rights	4
Privacy Rights.....	5
Equal Rights.....	6
Immigrants' Rights	8
Reproductive Rights	9
Death Penalty	10
Criminal Justice and Due Process	11
Voting Rights	13
Open Government	16



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About the Virginia Civil Liberties Review

The *Civil Liberties Review* summarizes the legislative actions of the Virginia General Assembly that affect civil rights and civil liberties in the state. The ACLU of Virginia encourages all Virginia voters to become involved in the legislative process by participating in our grassroots lobbying program. If you are interested in up-to-the-minute information on the actions of the General Assembly and are inclined to call, write or e-mail elected officials to express your opinion on pending legislation, please contact the ACLU of Virginia at (804) 644-8080 or lobby@acluva.org, or sign up on our website at www.acluva.org.

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For more details about bills, including legislative history and text, visit the State of Virginia's legislative information website at <http://leg1.state.va.us/lis.htm>.

Free Expression/Right to Petition

A Gloucester County judge prompted unusually quick and decisive action from the General Assembly when he ordered 40 voters to pay \$80,000 in fees after they unsuccessfully attempted to “remove” four elected officials from office under a seldom-used Virginia law. Concerned that such sanctions would unduly discourage citizens from using the courts in the future, legislators amended the law to prohibit judges from assessing court or attorney’s fees against the individuals who bring removal actions against public officials. Lawmakers also amended the law to prevent judges from dismissing such cases on minor technicalities, another issue that surfaced in the Gloucester case when the judge found that the petitioners had made minor mistakes in their paperwork. (Note: The ACLU is providing legal assistance to the Gloucester residents who are appealing the judge’s decision to sanction them. That case continues despite the new law, because the judge’s ruling took place before the new law took effect.)

Legislators protect citizens who attempt to remove public officials from office and establish right to wear political apparel to the polls. ‘Choose Life’ license plate may create legislative dilemma.

Legislators also reacted quickly and decisively to fix an election law being challenged in federal court by the ACLU of Virginia. Last fall, shortly before the November elections, the State Board of Elections officially interpreted existing Virginia law to prohibit voters from wearing campaign apparel at the polls. The move prompted a lawsuit seeking to have the ban struck down as a violation of free speech. Siding with the ACLU, legislators passed a law stating unequivocally that voters may wear campaign buttons or other political paraphernalia while voting. The new law does not affect Virginia’s ban on actively soliciting votes for a candidate within 40 feet of a polling place, which the ACLU does not oppose.

Lawmakers may have unwittingly grabbed a tiger by the tail in passing a law authorizing a “Choose Life” specialty license plate. Because most courts, including the Fourth Circuit Court of Appeals, have held that specialty license plates are public forums where viewpoint discrimination is not permitted, the General Assembly must now approve a specialty plate with a pro-choice message, if such a bill is introduced in an upcoming session. To fail to do so would almost certainly invite a lawsuit on free speech grounds. (The ACLU of Virginia believes that the process for issuing license plates should be moved from the General Assembly to a state agency, such as DMV, that will be required to issue specialty plates without regard to viewpoint. See note in bill listing for more information.)

Passed

HB 2049(Gear), HB 2465 (Morgan), SB 1394 (Norment) Prohibition of Dismissal of Citizen’s Petition or Sanctions in Removal Cases. Provides that an error or omission on the petition for removal or in the statement of the grounds or reasons for removal shall not suffice to dismiss the petition unless the error or omission is material in determining whether statutory requirements have been met. Provides further that no person who signs or circulates a petition for the removal of an official shall be liable for any costs associated with removal proceedings

conducted pursuant to the petition, including attorney fees incurred by any other party or court costs, or shall have sanctions imposed against him. *HB 2049 incorporated into HB 2465. HB 2465 passed House (93-Y, 3-N); amended by Senate (39-Y, 0-N). Amended version agreed to by House (94-Y, 0-N). Governor amended bill to allow for court sanctions in limited situations. House rejected amendment (40-Y, 57-N); signed by Governor. SB 1394 passed Senate (40-Y, 0-N); amended by House (95-Y, 4-N). Amended SB 1394 rejected by Senate (2-Y, 37-N). Conference report agreed to by House (95-Y, 1-N) and Senate (39-Y, 0-N). Governor recommended amendments to SB 1394 (same as for HB 2465). Senate rejected amendment (7-Y, 32-N). Governor signed SB 1394. The ACLU supported these bills.*

Note: HB 2466 (Morgan) and SB 1393 (Norment) were also introduced and are nearly identical to aspects of HB 2465 and SB 1394. HB 2466 was left in House Privileges & Elections Committee. SB 1393 was stricken at the request of the patron in Senate Courts of Justice Committee (15-Y, 0-N).

HB 1610 (Shuler), HB 1878 (Cosgrove), SB 1188 (Blevins), SB 848 (Edwards) Omnibus Bill, Including Right to Wear Political Apparel at Polling Places. These bills are omnibus election bills that address several issues related to voting rules and procedures. Of particular interest to the ACLU is the following provision that election officials may not “prohibit a person who approaches or enters the polling place for the purpose of voting from wearing a shirt, hat, or other apparel on which a candidate's name or a political slogan appears or from having a sticker or button attached to his apparel on which a candidate's name or a political slogan appears.”
Note: The voting history of these bills is simply too long to reproduce, but they passed by overwhelming majorities. Go to <http://leg1.state.va.us/lis.htm>, select “bills and resolutions” under “2009 session” and type in the number of any or all of these bills.

SB 817 (multiple patrons) Omnibus Specialty License Plate Bill, Including “Choose Life” Plate. Provides for the enactment of several specialty license plates, including a “Choose Life” license plate. *SB 817 passed Senate (33-Y, 5-N); passed House with a substitute (68-Y, 31-N). Substitute passed Senate (35-Y, 3-N); signed by the Governor.*

The ACLU of Virginia opposes the process by which members of the General Assembly are allowed to vote on the issuance of specialty license plates, recommending instead that the DMV administer the specialty license plate program following rules that prohibit viewpoint discrimination when deciding which specialty license plates will be approved. A legislature that has the power, by majority rule, to decide which political or controversial messages will be placed on license plates and which messages will not, violates the free speech rights of its citizens every time it votes to authorize a specialty license plate. A non-legislative entity, such as the Department of Motor Vehicles, could properly administer the specialty license plate program so long as it operates under a viewpoint neutral policy with reasonable rules and regulations including an appeal process for citizens whose request for a license plate is rejected. If the process is moved to the DMV and properly administered, it could promote the free speech rights of all citizens.

Religious Liberty

When the Fourth Circuit Court of Appeals ruled last summer that the Fredericksburg City Council could not open its meeting with sectarian prayers, the State Superintendent of Police immediately told members of his chaplaincy corps that in accord with the ruling, they should refrain from delivering sectarian prayers at events sponsored by the state police. Delegate Charles Carrico and Senator Stephen Martin reacted by introducing bills intended both to thwart the Superintendent of Police and to circumvent the court's ruling.

Delegate Carrico's bill explicitly prevented the Superintendent of Police from regulating the content of prayers being offered by police chaplains at police-sponsored events. While not expressly authorizing government-sponsored sectarian prayers, the bill was an obvious backdoor attempt to permit such prayer. Despite our opposition, including a threat to mount a legal challenge, the bill easily passed the House of Delegates. Fortunately, the Senate Courts of Justice Committee killed the bill, albeit by a narrow 8-7 vote.

Bills attempting to establish state-sanctioned sectarian prayers fail in Senate.

Senator Martin's bill was mostly legislative nonsense whose only purpose seemed to be to create confusion about sectarian prayers at government events. SB 1072 would have prevented government officials from banning prayers at government events except when the prayers are "used to advance a particular religion or disparage another faith or belief." Since by most definitions sectarian prayers always advance particular religions, it was conceivable that the bill could be interpreted as a prohibition against sectarian prayers, in which case it would be completely unnecessary. On the other hand, by prohibiting prayer that alludes to a particular religion only when stated in a manner that explicitly promotes that particular religion, the bill seems to set up situations in which sectarian prayers without explicit proselytizing content might be allowed at government events. The Senate Courts of Justice Committee members seemed as confused by the bill as the ACLU, and voted it down.

Failed

HB 2314 (Carrico) State Police Volunteer Chaplaincy Program. Allows the Superintendent of State Police to establish a Voluntary Chaplaincy Program. The Superintendent may establish guidelines regarding the selection, conduct, and supervision of volunteers, but may not regulate the volunteers' expression of religious beliefs. *Passed House (66-Y, 30-N), then voted down by Senate Courts of Justice Committee (8-Y, 7-N). The ACLU opposed this bill.*

SB 1072 (Martin) Prayer at Government-Sanctioned Events. Provides that no government agency may regulate the content of prayer at a government-sanctioned event unless the prayer is used to advance a particular religion or to disparage another faith or belief. *Passed by indefinitely (9-Y, 6-N) by Senate Courts of Justice Committee. The ACLU opposed this bill.*

Restoration of Voting Rights

In recent months, Virginia's felon disfranchisement law has come increasingly under fire from the ACLU and other human rights groups, as well as a growing number of elected officials. In a last-place tie with Kentucky for having the nation's most punitive disfranchisement law, Virginia places a lifetime voting ban on every person convicted of a felony, requiring an act of the Governor for voting rights to be restored. More than 300,000 Virginia residents are unable to vote due to this law, the majority of whom are African-American.

Although no bill passed this year, restoration of voting rights finally took a front seat in the Virginia General Assembly. A record number of voter restoration bills were introduced -- eight in all -- and the Senate easily passed a resolution to amend the Virginia Constitution that would allow the General Assembly to regulate restoration of rights for non-violent felons. The House of Delegates, however, has typically been the greatest barrier to voter restoration reform, and that was true again this year. Although the House Privileges and Elections Committee was more receptive than in the recent past, in the end it failed to send a bill to the House floor on a 12-10 vote.

Advances made, but Virginia's felon disfranchisement law remains unchanged.

(Note: The ACLU of Virginia launched the Virginia Voter Restoration Project in 2008. For more information on our efforts to reform Virginia's felon disfranchisement law, go to www.restoreourvote.org.)

Failed

SJ 273 (Miller, Y.), HJ 628 (Ware), HJ 656 (Tyler), HJ 726 (Hall), Restoration of Rights for Non-Violent Felons. These resolutions amend the Virginia Constitution to allow the General Assembly to provide for the restoration of voting rights for persons who have been convicted of non-violent felonies and have completed all the requirements of their sentences. *HJ 628 was tabled in House Privileges & Elections Committee (12-Y, 10-N). HJ 656 incorporated into HJ 628. HJ 726 left in House Privileges & Elections Committee. SJ 273 passed Senate (27-Y, 13-N) but left in House Privileges & Elections. The ACLU supported these resolutions.*

HJ 623 (Dance), HJ 664 (Morrisey) HJ 677 (BaCote) Restoration of Rights for All Felons. These resolutions amend the Virginia Constitution to allow the General Assembly to provide for the restoration of civil rights, including voting rights, for all persons who have been convicted of felonies and have completed all the requirements of their sentences. *HJ 664 incorporated into HJ 623, and then failed in House Privileges & Elections Committee. HJ 677 was left in House Privileges & Elections. The ACLU supported these resolutions.*

SJ 354 (McEachin) Automatic Restoration of Rights for Non-Violent Felons. Provides for the automatic restoration of civil rights to persons convicted of nonviolent felonies (excepting felony drug and election fraud crimes) upon completion of sentence including any term of probation or parole. *Rejected by Senate (19-Y, 19-N, with the chair voting No). The ACLU supported this resolution.*

Privacy Rights

Virginia has joined 21 other states in passing a law or resolution expressing opposition to at least some aspect of the Real ID Act, a federal law that will soon require all citizens who wish to board an airplane or enter federal facilities to have a federally-approved driver's license or other form of identification. Concerned that the Real ID regulations might require the collection of biometric data and extensive financial information, the General Assembly passed a bill that prohibits DMV from implementing any aspect of the law that invades the economic or biometric privacy rights of Virginia citizens. While the law is not an outright rejection of Real ID, it will prohibit any ID or database linked to the ID from containing DNA, fingerprints, retinal scans or invasive financial records, such as tax-returns.

Virginia becomes the 22nd state to question federal Real ID Act.

Passed

HB 1587 (Marshall, R); SB 1431 (Cuccinelli) Non-Compliance with Real ID. Prevent the state from participating in any aspect of the Real ID Act that violates the economic or biometric privacy rights of Virginians. *HB 1587 passed House (88-Y, 10-N); amended by Senate (39-Y, 0-N); amendments agreed to by House (97-Y, 0-N); signed by the Governor. SB 1431 passed by Senate (30-Y, 9-Y); amended by House (96-Y, 3-N). Amended version agreed to by Senate (36-Y, 0-N); signed by the Governor. The ACLU supported these bills.*

SB 1318 (Hanger) Delayed Implementation of SSN Protection Law. Delays for one year implementation of a law prohibiting state agencies from collecting Social Security Numbers except when authorized or required by law. *Passed Senate (40-Y, 0-N); passed House with substitute (99-Y, 0-N). Substitute agreed to by Senate (39-Y, 1-N). Governor's amendments agreed to by House and Senate. The ACLU opposed this bill.*

Failed

HB 2452 (Sickles) Prohibition of Commercial Transfer of Patient Information. Prohibits the selling of prescription records that contain patient-identifiable data. *Stricken from docket by House Health, Welfare & Institutions Committee by a voice vote. The ACLU supported this bill.*

HB 2503 (Pogge) Collection of Juvenile DNA. Permits collection and permanent storage of DNA from juveniles 14 or older whose delinquency charges are deferred and dismissed. *Left in House Courts of Justice Committee. The ACLU opposed this bill.*

SB 841 (Cuccinelli) Non-Compliance with Real ID. Prohibits any state agency from using computer chip or radio-frequency identification on ID cards *Stricken at the request of the patron, but similar to HB 1587/ SB 1431, which passed.*

SB 1023 (Hanger) Creation of Alternative to REAL ID. Requires the state to develop a plan to provide Virginia residents with an ID as an alternative to the requirements of the federal Real ID. *Killed by Senate General Laws & Technology (15-Y, 0-N). The ACLU supported the component of the bill that rejected Real ID.*

Equal Rights

Lawmakers again failed to extend equal rights to LGBT persons, and an attempt to repeal Virginia's anti-gay marriage amendment gained little traction. There were several attempts this year to protect individuals with criminal backgrounds from being unfairly discriminated against when applying for a job, but none of them passed.

Domestic partner insurance bill passes Senate, but fails in House. Bills to extend employment rights to LGBT persons fail.

Failed

HB 1625 (Englin) Local Government Authority to Expand Fair Housing Protections.

Permits localities to extend the ban on discrimination in housing beyond race, religion, national origin, gender and other designated protected classes. *Left in House General Laws Committee. The ACLU supported this bill.*

HB 1726 (Rust); SB 945 (Howell) Group Life Insurance Coverage for Any Class of Persons.

Allows a private employer to purchase group life insurance that extends coverage to insure any class of persons, including domestic partners. *HB 1726 left in House Commerce & Labor Committee. SB 945 passed Senate (32-Y, 7-N); left in House Commerce & Labor Committee. The ACLU supported this bill.*

HB 1812 (Morrissey) Prohibition of Criminal Arrest/Conviction Questions in State Employment.

Prohibits a state agency from asking an existing or prospective employee about the individual's record of arrests or convictions, unless the question refers to an arrest or conviction that occurred within the preceding eight years or was for a violent felony. *Left in House Courts of Justice Committee. The ACLU supported this bill.*

HB 1813 (Morrissey); SB 1289 (McEachin) Expungement of Criminal Record Upon Demonstration of Prejudice.

Allows a person convicted of certain criminal offenses to have his conviction expunged after eight years (under HB 1813; but five years under SB 1289) following the conviction if he has demonstrated that his opportunities for employment, education, or professional licensure are prejudiced by his criminal record. *HB 1813 left in House Courts of Justice. SB 1289 passed by indefinitely with a letter to the Crime Commission to study the issue by Senate Courts of Justice Committee (15-Y, 0-N). The ACLU supported these bills.*

HB 1815 (Morrissey) Prohibition of Criminal Arrest/ Conviction Questions. Prohibits any employer from asking an existing or prospective employee about the individual's record of arrests or convictions, unless the question refers to an arrest or conviction that occurred within the preceding eight years or was for a violent felony. *Stricken from the docket by a voice vote in House Courts of Justice Committee. The ACLU supported this bill.*

HB 1933 (Plum) Prohibition of Sexual Orientation Discrimination in Urban County Executive Governments. Adds "sexual orientation" as prohibited discrimination in a county with the urban county executive form of government (Fairfax County). *Left in House Counties, Cities, & Towns Committee. The ACLU supported this bill.*

HB 2385 (Ebbin) Prohibition of Discrimination in Public Employment. Prohibits discrimination in public employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Act of 1974, as amended. The bill defines "sexual orientation" as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. The bill expressly provides that "sexual orientation" shall not include any person's attraction towards persons with whom sexual conduct would be illegal due to the age of the parties. *Left in House General Laws Committee. The ACLU supported this bill.*

HB 2668 (Scott) Prohibition of Sexual Orientation Discrimination. Adds discrimination based on sexual orientation as an unlawful discriminatory housing practice in the Virginia Fair Housing Law. *Left in House General Laws Committee. The ACLU supported this bill.*

HJ 657 (Englin) Repeal of the Marriage Amendment. Proposes to repeal the constitutional amendment approved by referendum at the November 2006 election that defines marriage as "only a union between one man and one woman," and prohibits the state and localities from creating or recognizing other relationships as having the same rights and benefits as marriage. *Left in House Privileges & Elections Committee. The ACLU supported this resolution.*

SB 914 (Stuart) Public Assistance & Substance Abuse Screenings. Requires local departments of social services to conduct a screening of all applicants and participants in the Virginia Initiative for Employment not Welfare Program (VIEW). The bill provides that where a screening indicates probable cause to believe that an individual is using illegal drugs, that person is required to submit to drug testing. Further, if the test indicates that the individual is using illegal drugs, he or she is ineligible for all public assistance (TANF) and payments will be made to a third party payee for the benefit of that individual's household. If a person fails or refuses to participate in a screening without good cause or fails the drug test, that individual is ineligible for public assistance for 12 months. *Left in Senate Rehabilitation & Social Services Committee. The ACLU opposed this bill.*

SB 1297 (Northam) Prohibition of Sexual Orientation Discrimination in Virginia Human Rights Act. Adds sexual orientation to the definition of unlawful discriminatory practice in the Virginia Human Rights Act. The bill also removes the provision that limited private causes of action to where the employers employed more than five but less than 15 persons. *Stricken at the request of the patron in Senate General Laws Committee (15-Y, 0-N). The ACLU supported this bill.*

Immigrants' Rights

After two successive years in which more than 100 anti-immigrant bills were introduced, legislators pulled back in 2009, filing only a fraction of that number and even giving consideration to some bills that protect the rights of Virginia's immigrant population. The decrease in the number of immigrant bills may be a sign that the anti-immigrant sentiment that has gripped the General Assembly and many local legislative bodies is subsiding.

Bill to extend in-state tuition to some non-undocumented students gains traction, but fails in House.

Failed

HB 1689 (Tata) Fraudulently Assisting Undocumented Individuals. Makes it a Class 1 misdemeanor for any person to knowingly assist an undocumented individual in acquiring a benefit or service to which the undocumented individual is not lawfully entitled. *Stricken from the docket by House Courts of Justice Committee. The ACLU opposed this bill.*

HB 2616 (Hull) In-State Tuition Eligibility for Individuals with Visas. Allows individuals holding temporary visas to be eligible for in-state tuition if they have resided in the state for at least five years, received a high school diploma from a Virginia school, paid Virginia state income taxes for at least one year, and filed an application for permanent residency. *Left in House Education Committee. The ACLU supported this bill.*

SB 1037 (Hanger) In-State Tuition for Undocumented Individuals. Permits an undocumented individual to apply for in-state tuition if the person has resided as dependent with a parent or guardian for at least three years while attending high school, and he or she is applying to become a permanent resident of the United States. In addition, the parent or guardian must have filed Virginia income taxes for the last three years. *Passed Senate (31-Y, 9-N); left in House Education Committee. The ACLU supported this bill.*

HJ 729 (Joannou) English as the Official Language. Provides that English is the official language of Virginia. *Left in House Privileges & Elections Committee. ACLU opposed this bill.*

SB 912 (Stuart) Cost of English Interpreter. Requires that the cost of an English interpreter must be paid for by a non-English speaking defendant if the defendant is convicted at trial of a criminal offense. *Passed by indefinitely in Senate Courts of Justice (14-Y, 0-N). The ACLU opposed this bill.*

Reproductive Rights

For the fifth year in a row, legislators failed to pass an anti-choice bill. Two bills – one requiring that a woman be shown an ultra-sound image of the fetus before an abortion and the other requiring abortion providers to offer fetal anesthesia – passed the House, but were voted down by the Senate Education and Health Committee. Under a new law supported by both pro- and anti-choice groups, every parent will now receive a summary of the Family Life Education course taught in their child’s school.

Anti-choice bills fail for fifth straight year.

Passed

HB 1980 (McClellan) Parents’ Right to Know Family Life Education Curriculum. Requires public schools to send every parent a summary of the FLE curriculum. Under current law, schools are required to distribute FLE curriculum to parents only when requested. *Passed House (98-Y, 0-N), passed Senate (40-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

Failed

HB 1639 (Marshall, R.) Definition of Life. Provides that life begins at the moment of fertilization and the right to enjoyment of life is guaranteed by the Virginia Constitution. *Left in House Courts of Justice Committee. The ACLU opposed this bill.*

HB 1789 (Hull) Medically Accurate FLE Curriculum. Provides FLE instruction be medically accurate. *Left in House Education Committee. The ACLU supported this bill.*

HB 2338 (Amundson) Birth Control Defined. Adds to Va. Code that the definition of birth control is any contraceptive method approved by the U.S. Food and Drug Administration and that it is not an abortion. *Left in the House Court of Justice. The ACLU supported this bill.*

HB 2579 (Byron) Mandatory Ultrasound. Requires that every pregnant woman be given the opportunity to view an ultrasound image of her fetus prior to the abortion. *Passed House (62-Y, 36-N); killed in Senate Education & Health (11-Y, 4-N). The ACLU opposed this bill.*

HB 2634 (Cline) Fetal Anesthesia. Requires doctors to offer to anesthetize a fetus prior to abortion and to state that a fetus at 20 gestational weeks can feel pain. *Passed House (64-Y, 34-N); killed in Senate Education & Health Committee (11-Y, 4-N). The ACLU opposed this bill.*

SB 962 (Obenshain) Reporting Fetal Death. Requires fetal deaths and location of remains to be reported to police. *Stricken from the docket at the request of the patron in Senate Education & Health Committee (14-Y, 0-N). The ACLU opposed this bill.*

SB 1270 (Vogel). Targeted Regulations of Abortion Providers. Requires abortion clinics that annually perform more than 24 first trimester abortions be ambulatory surgery centers. *Voted down by the Senate Education & Health Committee (10-Y, 5-N). The ACLU opposed this bill.*

Death Penalty

For the third year in a row, vetoes by the Governor narrowly thwarted expansion of the death penalty. Bills to eliminate the “triggerman rule” (which, with a few exceptions, limits capital punishment to the actual perpetrator of a murder) and to extend capital crimes to include the killing of auxiliary police officers and fire marshals passed the House and Senate easily. The House overrode the Governor’s vetoes of all three bills, but the Senate fell slightly short of the required two-thirds vote.

Death penalty expansion bills pass House and Senate, but Governor’s vetoes hold.

Failed

HB 1755 (Hargrove) Abolishment of the Death Penalty. Bans the death penalty. *Left in House Courts of Justice Committee. The ACLU supported this bill.*

HB 2358 (Gilbert), SB 961 (Obenshain) Redefinition of the Triggerman Rule. These bills permit accessories before the fact and others to be charged with capital murder by redefining the triggerman rule, which provides, with few exceptions, that only the actual perpetrator of a capital murder is eligible for the death penalty. *HB 2358 passed House (73-Y, 25-N); amended and passed Senate (24-Y, 13-N). Amended version passed House (75-Y, 21-N); vetoed by the Governor. House overrode Governor's veto (69-Y, 30-N). Senate failed to override veto (24-Y, 16-N). SB 961 passed Senate (24-Y, 16-N); passed House (74-Y, 26-N) and vetoed by the Governor. Senate failed to override veto (24-Y, 16-N). The ACLU opposed these bills.*

HB 2638 (Pogge), SB 1409 (Norment), HB 2585 (Poisson) Killing of Auxiliary Police Officers. Allows the death sentence to be imposed for the murder of auxiliary police officers and auxiliary deputy sheriffs. *HB 2585 incorporated into HB 2638. HB 2638 passed House (75-Y, 22-N); passed Senate (29-Y, 11-N); vetoed by Governor. House overrode veto (76-Y, 23-N). Senate failed to override veto (25-Y, 15-N). SB 1409 passed Senate (30-Y, 10-N); passed House (80-Y, 18-N); vetoed by Governor. Senate failed to override veto (23-Y, 15-N). ACLU opposed these bills.*

SB 939 (Watkins) Right to Ex Parte Hearing for Expert Witness for Indigent Capital Defendants. Provides that an indigent defendant who has been charged with a capital offense may move in circuit court for the appointment of experts to assist in the preparation of his defense. The presiding judge shall designate another judge to decide if an expert is to be appointed. *Passed Senate (39-Y, 0-N); left in House Courts of Justice Committee. The ACLU supported this bill.*

SB 1069 (Martin) Eligible for Death Penalty for Killing of Fire Marshals. Allows the death sentence to be imposed on persons convicted of killing fire marshals and assistant fire marshals. *Passed Senate (29-Y, 11-N); passed House (81-Y, 17-N); vetoed by Governor. The Senate failed to override Governor's veto (25-Y, 15-N). The ACLU opposed this bill.*

Criminal Justice and Due Process

The House of Delegates again passed a bill giving police officers the power to make arrests (rather than issue summonses as required by current law) for Class 1 and 2 misdemeanors. Because searches may be conducted upon arrest, the bill would not only significantly increase the number of arrests for minor crimes, but could also dramatically increase the number of searches conducted by police without a warrant. Civil rights advocates fear that the expanded police powers would result in arresting and searching a disproportionate number of racial minorities and persons of foreign origins. Despite overwhelming support in the House, the bill fortunately died in Senate Courts of Justice.

Bill to expand arrest and search powers passes House, but fails in Senate.

Passed

SB 1199 (Puckett) Increased Inmate Charges. Increases the amount a locality may charge an inmate to defray the costs associated with an inmate's keep from \$1 to \$3 per day. *Passed House (99-Y, 0-N); amended and passed by Senate (40-Y, 0-N). Amended version adopted by House (94-Y, 4-N). Signed by the Governor. The ACLU opposed this bill.*

HB 2309 (Melvin) Probation Conditions. Provides that no probationer shall be kept under supervised probation solely because of his failure to make full payment of fines, fees, costs, or restitution. *Passed House (99-Y, 0-N); passed Senate (40-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

HB 2312 (Melvin), SB 1381 (Stolle) Expansion of Availability of Writs of Actual Innocence. Extends the ability to petition for a writ of actual innocence based on biological evidence to individuals who pled not guilty and who are not incarcerated. Under current law, an individual must be incarcerated to petition for a writ of actual innocence. *HB 2312 passed House (98-Y, 0-N); passed Senate (40-Y, 0-N); signed by the Governor. SB 1381 passed Senate (39-Y, 0-N); passed House (100-Y, 0-N); signed by the Governor. The ACLU supported these bills.*

SB 1363 (Reynolds) Compensation for Court Appointed Counsel. Provides the same compensation to counsel representing an indigent prisoner under sentence of death in a state habeas corpus proceeding as provided to counsel representing a defendant charged with a Class 1 felony. *Passed Senate (39-Y, 0-N); passed House (97-Y, 2-N, 1-A); signed by the Governor. The ACLU supported this bill.*

SB 1391 (Stolle) DNA Notification Volunteers. Permits the dissemination of Virginia criminal history information to attorneys who volunteer in the identification, location, and notification of individuals convicted of crimes prior to the advent of DNA testing. *Note: This bill permits attorneys to volunteer their services to find individuals who may be innocent of the crimes for which they have been convicted. Previously, it was not clear that the Virginia Board of Forensic Science had the authority to recruit volunteer attorneys to assist in the notification process. Passed Senate (40-Y, 0-N); passed House (99-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

Failed

HB 1695 (Albo) Arrest for Driving Without a Driver's License. Provides that any person who drives without an operator's license may be placed under arrest, fingerprinted and reported to the Central Criminal Records Exchange (CCRE) database if the general district court for the jurisdiction has approved arrest for the offense of driving without an operator's license. The bill also permits the impoundment of the vehicle of a person who drives without an operator's license if he has been previously convicted of the offense. *Passed House (85-Y, 13-N); passed by indefinitely in Senate Courts of Justice Committee (9-Y, 3-N). The ACLU opposed this bill.*

HB 1860 (Shannon), HB 2021 (Rust) Impoundment of Vehicle for Driving without a Driver's License. Provides that a person who is found to be driving a motor vehicle without an operator's license or when his license is suspended for reasons not pertaining to DUI, having been previously convicted of any such an offense, shall have his motor vehicle impounded. *HB 1860 incorporated into HB 2021. HB 2021 passed House (88-Y, 9-N); left in Senate Courts of Justice Committee. The ACLU opposed these bills.*

HB 1919 (Crockett-Stark), HB 2493 (Miller, P.) Inmate Charges. Increases the amount a locality may charge an inmate to defray the costs associated with an inmate's keep from \$1 to \$5. *HB 2493 incorporated into HB 1919. HB 1919 passed House (99-Y, 0-N); amended and passed Senate (40-Y, 0-N). Amendments adopted by House (94-Y, 4-N). The Governor's amendments partially adopted. The Governor vetoed HB 1919. Note: SB 1199, which increased charges from \$1 to \$3, passed.*

HB 2136 (Miller, J.) Arrest & Search Powers for Class 1 & 2 Misdemeanors. Allows law enforcement officers to arrest -- and thus search -- any person stopped for committing a Class 1 or 2 misdemeanor. Under current law, law enforcement officers must release the person on a summons for most Class 1 and 2 misdemeanors. *HB 2136 passed House (69-Y, 25-N); left in Senate Courts of Justice Committee. The ACLU opposed this bill.*

HB 2468 (Morgan) Expungement of Marijuana Charges. Provides that any person who has been convicted of a charge of possession of marijuana or had a charge of possession of marijuana discharged and dismissed more than 10 years prior to his petition for expungement, may file a petition requesting expungement of the police records and the court records relating to the charge. *Left in House Courts of Justice. The ACLU supported this bill.*

SB 1298 (Herring) Deferred Disposition for Juveniles. Allows the court to reduce a felony to a misdemeanor after deferring when a juvenile was placed on probation and fulfills the terms and conditions of his probation. *Passed the Senate (40-Y, 0-N); left in House Courts of Justice Committee. The ACLU supported this bill.*

Voting Rights

By rejecting early voting and no-excuse absentee ballots, legislators failed to significantly improve access to the polls. However, they still managed some forward progress for voting rights. Automatic absentee voting was extended to firefighters and police officers, language assistance opportunities for non-English-speaking voters were expanded slightly, and overseas voters may now receive ballots by email.

Bills to establish the right of college students to register to vote where they live while attending school failed, but lawmakers did mandate that the State Board of Elections issue new regulations on voter residency requirements. That led to the formation of a statewide task force (on which the ACLU serves) that is addressing the voting rights of college students.

Major voting reforms fall short, but Board of Elections is ordered to address Virginia's confusing residency requirement. Right to wear political apparel at the polls is protected.

Virginia voters are now allowed to wear campaign buttons and other political statements while voting. (See Free Expression section for details.)

Passed

HB 1610 (Shuler), HB 1878 (Cosgrove), SB 1188 (Blevins), SB 848 (Edwards) Political Apparel at Polling Places/Rules for Residency. These are omnibus election bills that address several issues related to voting rules and procedures. Of particular interest to the ACLU is the inclusion of the explicit right of voters to wear campaign apparel and the requirement that the State Board of Elections issue uniform guidelines on residency and voting. *HB 1610 incorporated into HB 1878. After numerous revisions, HB 1878, SB 1188 and SB 848 became identical, and all passed by overwhelming majorities. Note: SB 867 (Edwards), which is identical to HB 1610 was also introduced. Passed Senate (40-Y, 0-N); left in House Privileges & Elections Committee. The ACLU supported these bills.*

HB 1643 (Englin) Conduct of Elections. As introduced, the bill, among other election conduct provisions, provided that individuals may wear political apparel inside a polling place. The bill was amended during the committee process and the provision of the bill permitting political apparel inside a polling place was taken out and dealt with separately in other bills (*see HB 1878/SB 1188*). *HB 1643 passed House (98-Y, 0-N) and passed Senate (40-Y, 0-N). The ACLU supported this bill as originally introduced.*

HB 1712 (Janis), SB 993 (Miller, J.) Elimination of Witness Address Requirement for Mail-In Absentee Ballots. Removes the requirement that a federal write-in absentee ballot must contain both the signature of a witness and his printed name and address. The bill provides that the envelope need only contain the signature of the witness in order for the ballot to be considered valid. *HB 1712 passed House (98-Y, 0-N); amended and passed Senate (40-Y, 0-N). Amended HB 1712 was agreed to by House (96-Y, 0-N); signed by the Governor. SB 993 passed Senate (40-Y, 0-N); amended and passed by House (99-Y, 0-N); amendment rejected by Senate (5-N, 33-Y). Conference report agreed to by House (97-Y, 0-N) and Senate (38-Y, 0-N); signed*

by Governor. Note: HB 1672 (Dance) and HB 2614 (Watts) were also introduced and provided for the removal of the witness address requirement but were left in House Privileges & Elections Committee. The ACLU supported all of these bills.

HB 1877 (Cosgrove) Absentee Voting for Firefighters & Law Enforcement. Provides that law-enforcement officers, firefighters, and other first responders are entitled to vote absentee. *Passed by House (97-Y, 0-N, 1-A); amended and passed by Senate (40-Y, 0-N); amendment adopted by House (96-Y, 0-N, 1-A); signed by the Governor. The ACLU supported this bill. Note: SB 1070 (Martin) as passed by the Senate (39-Y, 0-N) and House (100-Y, 0-N) was identical to HB 1877. However, the Governor amended the bill to provide that all voters were eligible to vote absentee. The Senate concurred with the Governor's amendments (22-Y, 18-N) but the Speaker of the House ruled that the Governor's amendment was not germane to the bill and ultimately, the Governor's amended version failed to pass the House. The ACLU also supported SB 1070.*

HB 1881 (Miller, P.) Email Absentee Ballots for Individuals under the Uniformed & Overseas Citizens Absentee Voting Act. Permits absentee ballots to be sent by email to voters entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act who live or are stationed outside the Commonwealth; however, the voted ballot must be returned by regular mail. *Passed by House (99-Y, 0-N); passed by Senate (40-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

HB 2197 (Watts) Voting Assistance for Non-English Speaking Voters. Allows non-English speaking voters to be assisted by volunteer political party observers of their choosing. *Passed by House (97-Y, 0-N); passed by Senate (40-Y, 0-N); amended by Governor. The House concurred with the Governor's amendments (98-Y, 0-N); Senate concurred (40-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

Failed

HB 1607 (Poisson) Online Voter Registration. Permits individuals who already have a Virginia driver's license or ID to register to vote online through the DMV's website. *Left in House Privileges & Elections Committee. The ACLU supported this bill.*

HB 1620 (Dance), HB 1644 (Ware, O.), HB 2110 (Spruill), HB 2307 (Melvin), SB 819 (Lucas) Early In-Person Voting. Allows any qualified voter to vote in-person from fourteen to three days (under HB 1620; nineteen to three days under HB 1644; seventeen to three days under HB 2110 and HB 2307; fifteen to three days under SB 819) before the election at specified times and at the sites provided in the locality. The bills did not affect absentee voting by mail. *HB 1620 and HB 1644 were left in House Courts of Justice. HB 2110 and HB 2307 were left in House Privileges & Elections. SB 819 passed Senate (29-Y, 11-N); left in House Privileges & Elections. The ACLU supported all these bills.*

HB 1621 (Dance), HB 2301 (Caputo), SB 1010 (Miller, J.C) Absentee Voting. These bills allow all voters to vote absentee for any reason. The bills eliminated the current list of specific reasons a person must offer to vote by absentee ballot. *HB 1621 and HB 2301 were left in House*

Privileges & Elections Committee. SB 1010 passed by Senate (31-Y, 8-N); left in House Privileges & Elections Committee. The ACLU supported these bills.

HB 1630 (Shuler), HB 1978 (McClellan) Voter Registration Requirements for College Students. As introduced, the bills clarified that students who have established a physical presence and a place of abode in Virginia and who are enrolled full-time at a Virginia institution of higher education are presumed to have established a domicile and may register to vote in the locality where they live while attending college. However, the bills were stripped of their college voter registration protection provisions when they were incorporated into HB 1878, which in its passed form does not clarify college voter registration law. *HB 1630 and HB 1978 were incorporated into HB 1878 by a vote voice in the House Privileges & Elections Committee, but without the student registration provisions.*

HB 1795 (Brink) Provisional Ballots Counted for Jurisdiction. Provides that a provisional ballot cast by a voter whose name did not appear in the poll book for the precinct where he voted on election day may be counted after election day if the voter is entitled by law to vote in that county or city and in one or more of the election districts on the provisional ballot. Under current law, a provisional ballot is only counted if it was cast by a voter qualified to vote in his specific precinct. *Left in House Privileges & Elections. The ACLU supported this bill.*

HB 1894 (Dance), SB 810 (Howell) In-Person Absentee Voting. These bills permit any qualified voter to vote absentee in-person without providing an excuse or reason for not being able to vote in-person on Election Day. The bill retains the present list of specific reasons entitling a voter to cast an absentee ballot by mail. *HB 1894 left in House Privileges & Elections Committee. SB 810 passed Senate (24-Y, 16-N) but left in House Privileges & Elections. The ACLU supported these bills.*

HB 1896 (Watts), HB 1988 (Miller, P.), HB 2113 (Spruill), SB 1091 (Miller, J.C.) Absentee Voting for Individuals with Disabilities and Age 65 and Older. These bills allow persons who are disabled or age 65 and older to vote by absentee ballot. *HB 1896, HB 1988, and HB 2113 left in House Privileges & Elections Committee. SB 1091 was stricken at the request of the patron (15-Y, 0-N) in Senate Privileges & Elections. The ACLU supported these bills.*

HB 2496 (Alexander) Early Voting Pilot Projects. Authorizes the State Board of Elections to establish early voting pilot projects for general elections in 2010 and 2011 in counties or cities choosing to participate. Provides that any registered voter may vote in person from 17 to three days before the election at specified times and at the sites provided in the locality. *Left in House Privileges & Elections Committee. The ACLU supported this bill.*

HB 2509 (Marshall, R.) Government Photo ID, Proof of Citizenship Required to Vote & Voting Rules Posted. Requires a voter to show a government photo ID to vote. Removes the option of signing an affirmation of identity and requires that when a voter cannot provide an ID, the voter will be given a provisional ballot. Requires the posting of voter qualifications and penalties, titled "*ILLEGAL VOTING*," on a sign at every polling place in at least two languages. Requires proof of citizenship, such as a birth certificate, to register to vote. *Passed by House Privileges & Elections Committee with substitute (17-Y, 5-N); failed in House (3-Y, 95-N). The ACLU opposed this bill.*

SB 829 (Smith) Student Voter Registration. Provides that a person attending an accredited public or private institution of higher education physically located in the Commonwealth may choose to be registered to vote either at his residence prior to his attendance or at his residence during his attendance at that institution. *Passed Senate (40-Y, 0-N); left in House Privileges & Elections Committee. The ACLU supported this bill.*

SB 876 (Martin), SB 963 (Obenshain) Elimination of Affirmation of Identity. Eliminates the affirmation of identity form and requires that voters who cannot provide IDs vote provisionally until they can provide proof of identification. The bill also revises the list of items that a voter may show to prove identification at the polls and adds items to the list such as a copy of a current utility bill, bank statement, government check, or paycheck that shows the name and address of the voter. *SB 876 was incorporated into SB 963 by Senate Privileges & Elections Committee then passed by indefinitely (9-Y, 6-N). The ACLU opposed these bills.*

SB 1230 (Barker) Emergency Extension of Polling Place Hours. Provides for a court-ordered extension of polling hours in emergency situations and situations that interfere with the ability of voters to travel to the polls. The bill provides that no extension shall exceed three hours. *Passed Senate (22-Y, 17-N); left in the House Privileges & Elections. The ACLU supported this bill.*

Open Government

Access to public records should be improved significantly by a simple amendment to the Freedom of Information Act that requires every state agency to publish a “general description, summary, list, or index of the types of public records maintained by such state public body.”

Passed

SB 1316 (Houck) Access to Public Records. Requires state public bodies to publish a general description of records it maintains and a list of any lawful exemptions that can be withheld from release. The changes ensure that the public can easily find public records and exemptions. *Passed Senate (40-Y, 0-N); passed House (99-Y, 0-N); signed by the Governor. The ACLU supported this bill.*

SB 1319 (Houck) Meeting Minutes Required to be in Writing. Clarifies in the law that the minutes of public meetings must be in writing. *Passed Senate (40-Y, 0-N); passed House (99-Y, 0-N); signed by the Governor. The ACLU supported this bill.*