



December 13, 2019

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House Clerks Office
P. O. Box 406
Richmond, Virginia 23218
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RE: FOIA request for records regarding Senate Joint Resolution No. 2 or any other effort to amend the Virginia Constitution to recognize any right to abortion and communications with abortion advocates

To Whom It May Concern:

This letter is a request ("Request") in accordance with the Virginia Freedom of Information Act (FOIA), §2.2-3704, *et seq.* This Request is submitted by the American Center for Law and Justice (ACLJ)'s office located in Virginia Beach, Virginia, and its undersigned attorneys include attorneys who reside in Virginia, and one who is licensed to practice law in Virginia.

The Request is made by the ACLJ¹ on behalf of itself and over 7,400 of its members residing in Virginia who are concerned about efforts to amend the Virginia Constitution to recognize a right to abortion.

To summarize, this Request seeks records regarding drafting or in any way advancing Senate Joint Resolution No. 2 (prefiled November 18, 2019, and marked as offered January 8, 2020, of which the patron is Senator Richard L. Saslaw), or otherwise attempting to amend the Virginia Constitution to recognize any right to abortion, which are in the custody of the Office of the Governor or any part of division thereof, the Virginia Lt. Governor or any part of division thereof, the Virginia Department of Health or any part of division thereof, the Virginia Senate or the Virginia House of Delegates.

Background

As published on the Senate of Virginia's official website, Senator Richard L. Saslaw prefiled on November 18, 2019, a measure entitled "Senate Joint Resolution No. 2," which would amend the Virginia Constitution to add a provision as follows, "That an individual's right to personal reproductive autonomy is central to the enjoyment of life and liberty and shall not be denied or infringed upon unless justified by a compelling interest of the Commonwealth and achieved by the least restrictive means."² As set forth on the Virginia Senate's website:

SENATE JOINT RESOLUTION NO. 2

Offered January 8, 2020

Prefiled November 18, 2019

Proposing an amendment to the Constitution of Virginia by adding in Article I a section numbered 18, relating to personal reproductive liberty.

Patron-- Saslaw

Referred to Committee on Privileges and Elections

RESOLVED by the Senate, the House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend the Constitution of Virginia by adding in Article I a section numbered 18 as follows:

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity concerning abortion and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

² Virginia LIS, <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SJ2> (last viewed Nov. 20, 2019).

ARTICLE I
BILL OF RIGHTS

Section 18. Personal Reproductive Liberty.

That an individual's right to personal reproductive autonomy is central to the enjoyment of life and liberty and shall not be denied or infringed upon unless justified by a compelling interest of the Commonwealth and achieved by the least restrictive means.³

As one media source recently observed:

Just because Virginia Democrats have a new majority in the state, doesn't mean pro-choice supporters can sit back and relax. If they want to meet their ultimate goal of codifying the right to abortion in the state constitution, they'll have to move fast: Virginia law says that if legislators want to amend the state constitution they'll have to pass the amendment in the general assembly, wait for a new gubernatorial election, and then pass it in the general assembly once again. That means if reproductive rights advocates want to cement abortion rights in Virginia's constitution, they'll have to make sure Northam's successor is also pro-choice. (Governors in Virginia are only allowed to serve one term.)⁴

REQUESTS

For purposes of this Request, all terms used herein have the meaning given pursuant to the Virginia Freedom of Information Act. Specifically:

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.⁵

Further, for purposes of each request described herein, the records requested includes, but is not limited to, any text messages, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, state-operated electronic mail or message accounts, non-state-operated electronic mail or message accounts, personal electronic mail or message accounts,

³ *Id.*

⁴ Marie Sollis, *Virginia Could Become a 'Safe Haven' for Abortion Access in the South*, VICE.COM (Nov. 6, 2019), https://www.vice.com/en_us/article/43km8n/virginia-2019-election-virginia-could-become-safe-haven-for-abortion-access-in-the-south.

⁵ Virginia Freedom of Information Act, 22 VA. CODE § 2.2-3701 (2018).

agency servers, or non-agency servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 1, 2019, through the date of receipt of this Request.

Pursuant to the Virginia Freedom of Information Act, the ACLJ requests an opportunity to inspect or obtain copies of the following records:

1. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by anyone from or on behalf of the Office of the Governor, the Office of the Lt. Governor, the Office of the Attorney General, the Department of Health, the Virginia Senate or any Senate Committee or individual member, the Virginia House of Delegates or any House Committee or individual member, including the staff of any such office, that are, or that concern in any way, communications with any person or organization advocating for Senate Joint Resolution No. 2, its passage, or the language of any provision contained in the Act at any stage of its development.
2. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by anyone from or on behalf of the Office of the Governor, the Office of the Lt. Governor, the Office of the Attorney General, the Department of Health, the Virginia Senate or any Senate Committee or individual member, the Virginia House of Delegates or any House Committee or individual member, including the staff of any such office, that are, or that concern in any way, communications with any person or organization advocating amending the Virginia Constitution to recognize any right to abortion.
3. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by anyone from or on behalf of the Office of the Governor, the Office of the Lt. Governor, the Office of the Attorney General, the Department of Health, the Virginia Senate or any Senate Committee or individual member, the Virginia House of Delegates or any House Committee or individual member, including the staff of any such office, that are, or that concern in any way, the impact that Senate Joint Resolution No. 2, could, would, or should have on the health, safety or wellbeing of any woman.
4. **For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is September 1, 2019, through the date of receipt of this Request:** All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by anyone from or on behalf of the Office of the Governor, the Office of the Lt. Governor, the Office of the Attorney General, the Department of Health, the Virginia Senate or any Senate Committee or individual member, the Virginia House of Delegates or any House Committee or individual member, including the staff of any such office, that are, or that concern in any way, communications with anyone from or on behalf of the National Institute for Reproductive Health (NIRH), RHAvotes, Planned Parenthood Virginia, Planned Parenthood Federation of America,

NARAL Pro-Choice America, any organization advocating for abortion rights, or any organization, PAC, entity or person affiliated with any such organization.

Conclusion

If this Request is denied in whole or in part, ACLJ requests that, within the time requirements imposed by the Virginia FOIA, the custodian agency support all denials by reference to specific FOIA exemptions and provide any statutorily or judicially required explanatory information.

As the Virginia legislature has recognized:

By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.⁶

Accordingly, and with the legislatively pronounced spirit of the Virginia FOIA in mind, the ACLJ requests an opportunity to inspect or obtain copies of the public records described herein.

If there are any fees for searching or copying these records, please inform the ACLJ if the cost will exceed \$500. However, the ACLJ respectfully requests a waiver of all fees because the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of the process leading to introduction of the Senate Joint Resolution No. 2, as well as the organizations influencing its language. These matters are unquestionably the subject of significant media reporting nationwide. The ACLJ will disseminate the records requested to the


⁶ *Id.* at § 2.2-3700(B).

public via multiple media platforms and, as such, the records are requested for news gathering purposes. This information is not being sought for commercial purposes.

As you know, the Virginia Freedom of Information Act requires a response within five (5) working days, as set forth in § 2.2-3704(B). If access to the records requested herein by the ACLJ will take longer than the five (5) working days, please contact the undersigned to provide the information required by §§ 2.2-3704(B)(1)-(4).

If you deny any or all of this request, please cite each specific exemption upon which you base the refusal to release the information in whole or in part, and notify me of any specific appeal procedures available by law.

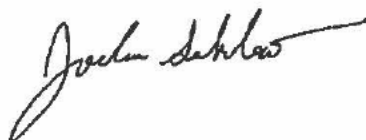
Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Abigail Southerland, Senior Litigation Counsel
Benjamin P. Sisney, Senior Litigation Counsel
Matthew R. Clark, Senior Counsel for Digital Advocacy
American Center for Law and Justice




I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

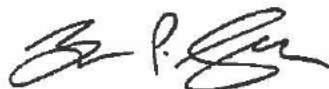
Respectfully submitted,



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Senior Litigation Counsel



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