



February 26, 2019

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**RE: Renewed FOIA Request for: Records Regarding Communications Concerning Delegate Kathy Tran's Repeal Act (HB 2491) Between the Office of the Governor, the Lt. Governor, the Attorney General, the Department of Health, Virginia Legislators and/or Repeal Act Advocates**

Dear Ms. Killeen, Mr. Hilbert, Ms. O'Brien, and to Whom it May Concern at the Office of the Lt. Governor:

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 ACLJ<sup>1</sup> on behalf of itself and over 4,000 of its members residing in Virginia who object to, and demand accountability for, Delegate Kathy Tran's recent attempt to advance her Repeal Act (HB 2491), which would have allowed unrestricted abortion up through the end of the third trimester, as well as Governor Ralph Northam's public comments in support of the Repeal Act, explaining how the Repeal Act would allow infanticide.

To summarize, this Request seeks records regarding Delegate Kathy Tran's Repeal Act (HB 2491) of which any part or division of the Office of the Governor is custodian; and, records of or regarding communications between the Office of the Governor or any part of division thereof, the Department of Health, Virginia legislators, and Repeal Act advocates.

### Background

As is being reported in the news, "Virginia Democratic Del. Kathy Tran is the sponsor of The Repeal Act, which seeks to repeal restrictions on third-trimester abortions. The bill -- which was tabled in committee this week -- has the support of top Democrats in the state, including Gov. Ralph Northam."<sup>2</sup>

Delegate Tran made national headlines "after a video surfaced showing the Democratic sponsor of a Virginia abortion proposal acknowledging it could allow women to terminate a pregnancy up until the moment before birth, for reasons including mental health."<sup>3</sup> As reported by one national news outlet:

Todd Gilbert, the Republican House majority leader, questioned Tran about the bill during a hearing Monday. He asked Tran if a woman who has physical signs she is about to give birth could request an abortion if a physician said it could impair her "mental health."

"Where it's obvious that a woman is about to give birth. She has physical signs that she is about to give birth. Would that still be a point at which she could request an abortion if she was so-certified -- she's dilating," he asked.

"Mr. Chairman, that would be ... a decision that the doctor, the physician and the woman would make at that point," Tran replied.

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<sup>1</sup> 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.

<sup>2</sup> Alex Pappas, *Outrage as Video Shows Virginia Abortion Bill Sponsor Saying Plan Would Allow Termination Up Until Birth*, FOX NEWS (Jan. 31, 2019), <https://www.foxnews.com/politics/outrage-after-virginia-abortion-bill-sponsor-admits-pregnancies-could-be-terminated-up-until-birth>.

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

“I understand that,” Gilbert replied. “I’m asking if your bill allows that.”

Tran replied: “My bill would allow that, yes.”<sup>4</sup>

Then, Governor Ralph Northam generated even greater public outcry when he made public comments on WTOP in support of Delegate Tran’s Repeal Act, explaining “exactly what would happen” – then describing a scenario where a living, born child’s life is left up to “a discussion” that would then “ensue between the physicians and the mother”:

So in this particular example if a mother is in labor, I can tell you exactly what would happen, the infant would be delivered. The infant would be kept comfortable. The infant would be resuscitated if that’s what the mother and the family desired, and then a discussion would ensue between the physicians and the mother.<sup>5</sup>

According to Governor Northam, this could be “done in cases where there may be severe deformities or there may be a fetus that’s not viable.”<sup>6</sup>

Governor Northam’s comments were met with scathing rebukes, including this statement from United States Senator Marco Rubio: “I never thought I would see the day that America had government officials who openly support legal infanticide.”<sup>7</sup> United States Senator Ben Sasse described Governor Northam’s comments as “morally repugnant.”<sup>8</sup>

Delegate Tran’s Repeal Act was defeated in a House of Delegate subcommittee by a vote of 5 – 3.<sup>9</sup>

After the public uproar, Delegate Tran later attempted to “correct herself.”<sup>10</sup> She told the media in an interview, “I should have said: ‘Clearly, no, because infanticide is not allowed in Virginia.’”<sup>11</sup> One of the bill’s co-patrons, Delegate Dawn Adams, apologized in an email to her constituents for failing to exercise “due diligence” before signing on to the bill:

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<sup>4</sup> *Id.*; see also Grace Carr, *Virginia Governor Asked About Abortion Until Birth. He Floats Infanticide*, DAILY CALLER (Jan. 30, 2019), <https://dailycaller.com/2019/01/30/virginia-governor-northam-abortion/>.

<sup>5</sup> Adam Shaw, *Virginia Gov. Northam Faces Backlash for Comments on 3rd-trimester Abortion Bill: ‘Morally Repugnant’*, FOX NEWS (Jan. 31, 2019), <https://www.foxnews.com/politics/va-gov-faces-backlash-for-comments-on-controversial-third-trimester-abortion-bill>.

<sup>6</sup> *Id.*

<sup>7</sup> William Davis, *Rubio Rips Virginia Gov. Northam for ‘Infanticide’ Comments*, DAILY CALLER (Jan. 30, 2019), <https://dailycaller.com/2019/01/30/rubio-sasse-rip-northam-abortion-infanticide-advocacy/>.

<sup>8</sup> *Id.*

<sup>9</sup> *2019 Session: HB 2491 Abortion; Eliminate Certain Requirements*, VA. LIS, <http://lis.virginia.gov/cgi-bin/legp604.exe?191+vot+H0804V0002+HB2491> (last visited Feb. 5, 2019).

<sup>10</sup> Paul Crookston, *After Hitting Back at Critics, Virginia State Delegate Claims She ‘Misspoke’ While Defending Abortion Bill*, WASH. FREE BEACON (Jan. 31, 2019), <https://freebeacon.com/issues/virginia-state-delegate-defends-abortion-bill-cutting-medical-regulations/>.

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

“By now you have heard about the abortion bill, or seen the video,” Adams said in the email. “I vaguely remember signing on to this, and I did this in solidarity with my colleague and as a symbolic gesture for a woman’s right to choose.”

Adams said she didn’t know what was in the legislation before adding her name to it. “I did not read a bill I agreed to co-patron and that wasn’t smart or typical. I will work harder and be better for it.”

She added: “I am sorry that I did not exercise due diligence before this explosion of attention; had I done so, I would not have co-patroned.”<sup>12</sup>

Shockingly, however, according to reports, Governor Northam “stood by his remarks” and “doesn’t regret his recent comments on late-term abortions.”<sup>13</sup>

According to reports, Planned Parenthood has donated over \$2 million to Governor Northam’s election campaign, and has donated to Delegate Tran’s campaign as well.<sup>14</sup> Planned Parenthood also gave over \$200,000 to Attorney General Herring,<sup>15</sup> and more than \$179,000 to Lt. Governor Justin Fairfax,<sup>16</sup> who serves as President of the Senate. According to a Planned Parenthood website, “The 2019 Virginia General Assembly session is under way. The Planned Parenthood Advocates of Virginia team and our supporters are playing an active role throughout session to make progress on reproductive health and rights.”<sup>17</sup> One of the bills listed is Delegate Tran’s Repeal Act (HB 2491) and its Senate counterpart, SB 1451.<sup>18</sup>

NARAL Pro-Choice America also contributed to both Governor Northam’s and Delegate Tran’s campaigns.<sup>19</sup>

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<sup>12</sup> Alex Pappas, *Dem Co-sponsor of Late-term Abortion Bill Apologizes, Says She Did Not Read the Text*, FOX NEWS (Feb. 1, 2019), <https://www.foxnews.com/politics/dem-co-sponsor-of-late-term-abortion-bill-apologizes-says-she-did-not-read-the-bill>.

<sup>13</sup> Graham Moomaw, *Northam Says He Doesn’t Regret Abortion Comments, Call Insults Directed at Him ‘disgusting’*, RICH. TIMES-DISPATCH (Jan. 31, 2019), [https://www.richmond.com/news/virginia/government-politics/general-assembly/northam-says-he-doesn-t-regret-abortion-comments-calls-insults/article\\_039dab52-a383-56c6-989e-1189fc40d8b1.html](https://www.richmond.com/news/virginia/government-politics/general-assembly/northam-says-he-doesn-t-regret-abortion-comments-calls-insults/article_039dab52-a383-56c6-989e-1189fc40d8b1.html).

<sup>14</sup> Carole Novielli, *Planned Parenthood Gave Millions to Virginia’s Extreme Pro-abortion Governor and Delegate*, LIVE ACTION (Feb. 1, 2019), <https://www.liveaction.org/news/planned-parenthood-millions-virginia-governor/>.

<sup>15</sup> Mark Herring’s Campaign Finances, VOTE SMART FACTS MATTER, <https://votesmart.org/candidate/campaign-finance/50846/mark-herring#.XFtiPqeZOCc> (last visited Feb. 5, 2019).

<sup>16</sup> Justin Fairfax’s Campaign Finances, VOTE SMART FACTS MATTER, <https://votesmart.org/candidate/campaign-finance/144484/justin-fairfax#.XFtksKeZOCc> (last visited Feb. 5, 2019).

<sup>17</sup> 2019 General Assembly Priorities, PLANNED PARENTHOOD ADVOC. OF VA., INC., <https://www.plannedparenthoodaction.org/planned-parenthood-advocates-virginia-inc/fight-back-resources/2019-bill-tracker> (last visited Feb. 5, 2019).

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

<sup>19</sup> See Ralph Northam’s Campaign Finances, VOTE SMART FACTS MATTER, <https://votesmart.org/candidate/campaign-finance/90253/ralph-northam#.XFilsqeZOCc> (last visited Feb. 5, 2019);

## **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.<sup>20</sup>

Further, for purposes of each request described herein, the record 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, 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, 2017, 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, or the Department of Health, that are, or that concern in any way, communications with any person or organization advocating for Delegate Kathy Tran’s Repeal Act (HB 2491), its passage, or the language of any provision contained in the Act at any stage of its development in the state legislature.
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,

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*see also Kathy Tran’s Campaign Finances*, VOTE SMART FACTS MATTER, <https://votesmart.org/candidate/campaign-finance/176359/kathy-tran#.XFi3A6eZPOQ> (last visited Feb. 5, 2019).

<sup>20</sup> Virginia Freedom of Information Act, 22 VA. CODE § 2.2-3701 (2018).

the Office of the Attorney General, or the Department of Health, that are, or that concern in any way, communications with anyone from or on behalf of Planned Parenthood Virginia, Planned Parenthood Federation of America, NARAL Pro-Choice America, or any organization, entity or person affiliated with these organizations.

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, or the Department of Health, that regard in any way Governor Northam's public statements on Wednesday, January 30, 2019, on WTOP regarding Delegate Tran's Repeal Act (HB 2491).

4. 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, or the Department of Health, that regard in any way Delegate Tran's January 28, 2019, statements to Virginia House Majority Leader Todd Gilbert during a committee hearing regarding her Repeal Act (HB 2491).

5. 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, or the Department of Health, that regard in any way New York's Reproductive Health Act (RHA) signed into law by New York Governor Andrew Cuomo on January 22, 2019.

6. 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, or the Department of Health, that concern or regard in any way the impact that Delegate Tran's Repeal Act (HB 2491), or any provision thereof, could, would, or should have on the health, safety or wellbeing of any woman.

7. All records prepared, generated, forwarded, transmitted, sent, shared, saved, received, or reviewed by the Office of the Governor, the Office of the Lt. Governor, the Office of the Attorney General, or the Department of Health, that concern or in any way discuss Delegate Tran's Repeal Act (HB 2491), which are not otherwise described in the requests set forth herein.

### **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.<sup>21</sup>

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 \$200. 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 Repeal Act, as well as the organizations influencing its language, and Governor Northam's public statements regarding the Repeal Act. These matters are unquestionably the subject of significant media reporting nationwide. The ACLJ will disseminate the records requested to the 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

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<sup>21</sup> *Id.* at § 2.2-3700(B).

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:

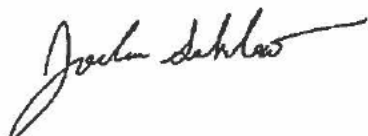
Jordan Sekulow, Executive Director  
Abigail Southerland, Senior Litigation Counsel  
Benjamin P. Sisney, Senior Litigation Counsel  
American Center for Law and Justice

[REDACTED]

[REDACTED]

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

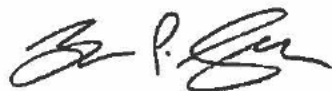
Respectfully submitted,



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