FOREWORD

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This volume of the *University of Richmond Law Review*'s *Annual Survey of Virginia Law* arrives as our nation celebrates the 250th anniversary of its founding—a milestone that provides a fitting backdrop for the pages that follow. The system of self-government that America's founders bequeathed us is at its most vital when it affects daily life: decisions made in courtrooms resound in classrooms, boardrooms, homes, and offices throughout the Commonwealth. Virginians were at the fore of the founding generation that designed this constitutional system, and Virginians have shaped, tested, and relied upon it in every succeeding generation.

Fittingly, in this year of national reflection on the republic's origins, this *Annual Survey* provides an occasion to pause and consider how the ordinary work of Virginia's courts, legislature, schools, and businesses advances the enterprise begun in 1776. This year's edition provides an invaluable resource for Virginia practitioners and jurists by surveying recent decisions and legislation affecting Virginia civil and criminal practice and procedure. It examines the intersection of local, state, and federal decision making in recent education-law developments placing Virginia at the center of national debates. And it catalogs key changes in Virginia corporate law while asking whether the Commonwealth might be the next great destination for incorporation. An essay commemorates another significant 250th anniversary—that of the Virginia Declaration of Rights—which predated and provided a blueprint for the protections of individual liberty in America's better-known

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foundational documents. A final article examines a trio of recent decisions illustrating the shifting contours of Virginia's distinct doctrine of sovereign immunity.

I. CIVIL PRACTICE AND PROCEDURE

Matters of procedure rarely capture the public's attention, but as students of Virginia civil procedure well know, they often determine a case's outcome. Christopher S. Dadak, a principal at Guynn Waddell, returns this year, alongside current University of Richmond law student R. Sloan Austin, to survey key decisions developing the Commonwealth's law of civil procedure. The authors first consider Supreme Court of Virginia cases addressing retroactive application of statutes affecting when plaintiffs can later bring claims, including a discussion of *Commonwealth v. Mattocks*, which clarifies how Virginia's sovereign-immunity doctrine functions as a facet of a court's subject-matter jurisdiction. Dadak and Austin then consider a variety of Court of Appeals of Virginia decisions. These include rulings addressing that Court's concurrent jurisdiction to address stay conditions during pending appeals—a question assuming increased importance as the Court faces a mounting motions docket in the years since the legislature expanded its jurisdiction—as well as the scope of a circuit court's discretion to dismiss cases for relatively minor procedural defects, the perennially tricky interaction between nonsuits and limitation periods, res judicata and joinder, and misnomer pitfalls. Their discussion illustrates the often costly consequences of procedural missteps in Virginia courts.

Dadak and Austin then turn to recently enacted legislation affecting civil practice, including amendments expanding the civil action for unauthorized commercial use of a person's identity to encompass voice and likeness with accompanying punitive damages, improving the inclusivity of jury-service exemptions for persons with disabilities, and permitting courts to consider mitigating circumstances in assessing a person's willful failure to appear in court. The authors also survey legislation establishing punitive damages for individuals injured in felony hit-and-run offenses, creating new signature requirements in consumer debt-collection actions, and eliminating the appeal-bond requirement for indigent defendants in unlawful-detainer actions. Dadak and Austin then conclude by highlighting several amendments to the Rules of the

Supreme Court of Virginia, including automatic substitution of public officers, an expansion of the circumstances in which the Court of Appeals may dispense with oral argument, a prohibition on serial pleading, and new disclosure requirements in amicus briefs.

II. CRIMINAL LAW AND PROCEDURE

The tension between the government's duty to maintain public order and its obligation to respect the rights of the accused generates a substantial body of significant appellate decisions each year. Alli Mentch, Assistant Attorney General in the Office of the Attorney General's Criminal Appeals Section, returns this year joined by Brett Blobaum, Senior Appellate Attorney with the Virginia Indigent Defense Commission's Appellate Cohort, to discuss these decisions in detail. The collaboration of authors who often stand on opposite sides in the courtroom gives their survey a welcome balance to the benefit of all readers. Mentch and Blobaum cover a host of topics, including speedy trial, jury selection and instructions, sentencing, probation revocation, preservation, evidentiary sufficiency, and contempt. They also discuss in detail not only the more traditional Fourth, Fifth, and Sixth Amendment constitutional issues common in the criminal-law context, but also key decisions addressing the intersection of First Amendment free-speech principles and probation conditions as well as the scope of the Second Amendment's right to bear arms. Finally, as the General Assembly has once again had an active year of revisiting existing statutes and enacting new ones affecting criminal law, the authors survey key legislative developments about which practitioners of criminal law should be aware. Particularly notable among these developments are the addition of four new judges to the Court of Appeals of Virginia, making it a twenty-one-judge Court; abolition of the common-law crime of suicide; expansions to parole eligibility; and reforms to address nonpayment of fines and costs.

III. EDUCATION LAW

The Constitution of Virginia, unlike the United States Constitution, establishes a fundamental right to a public education. Unsurprisingly, few institutions affect the daily lives of Virginians as much as the Commonwealth's public schools, and few are as frequently drawn into the nation's ideological debates. In recent

years, disputes involving public schools around the Commonwealth have led to landmark decisions addressing such fundamental questions as the scope of Virginia's constitutional religious-liberty protections in *Vlaming v. West Point School Board* and the extent of parents' rights to direct their children's upbringing in *Ibanez v. Albemarle County School Board*. After grounding her discussion in the federal and state frameworks governing Virginia's public schools, Vivian E. Hamilton, Chancellor Professor of Law at William & Mary Law School, provides a comprehensive survey of these recent legal developments concerning the rights of students, parents, and teachers. In addition, she explores the potential effects of the Supreme Court of the United States's parental-rights decision in *Mahmoud v. Taylor* on related Virginia precedents, reviews the Commonwealth's evolving model policies on the treatment of transgender students, and concludes with a discussion of recent rulings addressing how Virginia's sovereign-immunity doctrine applies to school boards and school employees.

IV. BUSINESS AND CORPORATION LAW

Delaware's hold on America's corporations is no longer assured. For decades, the decision where to incorporate hardly presented a choice: Delaware, with its well-regarded Court of Chancery and Supreme Court alongside a substantial body of corporate jurisprudence, was the default home for most American corporations. But that assumption is now giving way as several controversial rulings and increasing costs of shareholder litigation have prompted many corporations to reconsider their domicile. Competition among states for corporate charters is now open for the first time in recent memory.

That development makes this a moment of real consequence for Virginia. Allen C. Goolsby, Special Counsel at Hunton Andrews Kurth and one of Virginia's foremost voices on matters of corporate law, and Steven M. Haas, a partner at that firm, bring the same expertise behind their definitive treatise on Virginia corporate law to bear here to ask a question now particularly salient: why has Virginia seldom been considered a leading state in which to incorporate? In answering this question, the authors perform a comprehensive survey of recent amendments to the Virginia Stock Corporation Act, address benefits and challenges to incorporation in Virginia in light of those changes, and consider additional

legislation that could further improve the Commonwealth's attractiveness for incorporation. They conclude with a discussion of the General Assembly's long-overdue comprehensive revision of the Virginia Nonstock Corporation Act.

V. THE VIRGINIA DECLARATION OF RIGHTS

America's semiquincentennial celebrations mark 250 years from the Second Continental Congress's adoption of the Declaration of Independence, the moment most widely perceived as the start of our nation's story. But as with many significant milestones in American history, Virginians paved the way. Weeks before the Declaration of Independence enshrined the Enlightenment principle that governments are instituted to secure the natural rights belonging to all people, the Virginia Constitutional Convention adopted the Virginia Declaration of Rights detailing those inalienable rights that the Declaration of Independence largely left undefined. In his essay celebrating the 250th anniversary of that occasion, Justice Stephen R. McCullough of the Supreme Court of Virginia argues that the Virginia Declaration of Rights deserves to be celebrated alongside the more famous Declaration of Independence.

Justice McCullough describes George Mason's role in the Declaration of Rights' expedited drafting process, including James Madison's key replacement of Mason's language regarding religious "toleration" with more expansive protection for free exercise of religion. This substitution remains unchanged to this day in the Constitution of Virginia, and, as the Supreme Court of Virginia explained in *Vlaming*, is a key part of why Virginia's religious-liberty protections are among the strongest in the nation. Justice McCullough surveys the Declaration of Right's core principles and traces their influence to the United States Constitution's Bill of Rights and beyond. He does not shy away from the document's imperfections, including its proclamation of equality in a society that accepted slavery. Such shortcomings, Justice McCullough explains, demonstrate that securing the blessings of liberty is an ongoing project that each successive generation must take up, and he calls for improvements in civics education to ensure that future Virginians are prepared to shoulder the responsibility of perfecting their tremendous inheritance.

VI. SOVEREIGN IMMUNITY

The contours of Virginia's doctrine of sovereign immunity remain one of the most frequently litigated subjects in Virginia's appellate courts, and the topic surfaces in several of the articles in this *Annual Survey*. Philip L. Hatchett, an attorney and lecturer at Christopher Newport University, concludes this year's edition with a focused discussion of three recent Supreme Court of Virginia decisions applying the doctrine. Together, he explains, the Court's analyses in *Sentara Medical Group v. Klena*, *Ellis v. Jolley*, and *Newport News School Board v. Z.M.* confirm the continuing vitality of sovereign immunity for the Commonwealth and its political subdivisions while progressively limiting liability protections for agencies, local governments, and government employees along a sliding scale. Hatchett situates the three rulings within the doctrine's long history in the Commonwealth, and he surveys related decisions addressing statutory waivers of immunity as well as the varied applications of the *James v. James* factors for assessing government employees' entitlement to immunity. Hatchett discusses questions that the precedent in this area leave open, including the challenging issue of discerning when a government employee's exercise of discretion begins and ends. His analysis provides a helpful reference for readers grappling with an area of law whose bounds remain in flux.