

Common Good for the Commonwealth:
The Virginia Attorney General's
Power of *Parens Patriae* for Civil Rights

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Abstract: *The doctrine of parens patriae empowers states to sue on behalf of their citizens when quasi-sovereign interests are at stake. While state attorneys general across the United States generally possess this common law authority, the Commonwealth of Virginia presents unique ambiguity. A provision in the Virginia Code suggests that the Virginia attorney general may lack full parens patriae authority over non-economic “rights and interests” of Virginians. There is also limited case law affirming the attorney general’s parens patriae authority in civil rights contexts. However, this Note argues that the Virginia attorney general possesses robust parens patriae authority over the enforcement of Virginians’ civil rights, including in suits against the federal government. It conducts a historical analysis of the parens patriae doctrine’s English and American foundations, examines Virginia statutes and relevant case law, and considers contemporary policy implications of this authority. It also traces the apparent underdevelopment of jurisprudence on the Virginia attorney general’s parens patriae authority to Virginia’s Confederate history, as well as addresses concerns about future over-expansion of the authority. Ultimately, this Note provides a doctrinal roadmap for the Virginia attorney general’s office to fulfill its role as guarantor of Virginians’ civil rights in an era of federal retrenchment.*

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INTRODUCTION

The doctrine of *parens patriae*, Latin for “parent of the nation,” is a foundational principle in public law. It empowers the state to step in and protect the interests of its citizens when they are unable to do so themselves. Lawsuits in federal court normally require a plaintiff to show direct and concrete injury to themselves as part of establishing standing under Article III of the United States Constitution. *Parens patriae* is a mechanism for

states to establish such injury and assert Article III standing when a significant portion of their citizens are injured by the federal government's actions. Initially used to justify state intervention in areas related to the welfare of children and the incapacitated, this doctrine's scope has expanded greatly. Today, states may invoke Article III standing under *parens patriae* to protect their people when the state's "quasi-sovereign interests" are at stake, and when there is no specific statute whose violation provides for standing otherwise. It is generally accepted that state attorneys general have *parens patriae* authority under common law, and the doctrine is often used in state suits against the federal government that seek to remedy collective harm to a state's population.

However, the Commonwealth of Virginia deserves special attention with respect to its attorney general's *parens patriae* authority. A statutory quirk in the Virginia Code appears to suggest that the Virginia attorney general may not have the full scope of this authority when it comes to Virginians' non-economic "rights and interests." There is also limited case law affirming that the Virginia attorney general has such authority around civil rights. This ambiguity may lead to under-enforcement of these rights, which is particularly troubling during the current moment of erratic behavior by the federal government against states, including, but not limited to, the recent deployment of Immigration and Customs Enforcement (ICE) in Minnesota.¹

This Note argues that the Virginia attorney general possesses *parens patriae* authority over civil rights, including in suits against the federal government. Part I provides a historical overview of *parens patriae* authority's English and American foundations, including the concept of the "quasi-sovereign interest." Part II discusses the creation of the office of the state attorney general and the origin of their *parens patriae* authority. Part III introduces the unique statutory ambiguity surrounding the Virginia attorney general's *parens patriae* authority, the limited case law addressing that ambiguity, and its current implications for Virginians' civil rights. Part IV argues that a careful review of the doctrine's history, state statutes, key case law, and policy implications collectively underscore that the Virginia attorney general is indeed authorized to assert standing under this doctrine. Finally, Part V explores the historical reasons why the Virginia attorney general's *parens patriae* authority remains underdeveloped in civil rights

¹ Joseph Gedeon, Minneapolis Court Considers Whether Trump's Deployment of ICE Agents Violates Constitution, *The Guardian* (Jan. 26, 2026, at 17:48 ET), <https://www.theguardian.com/us-news/2026/jan/26/minneapolis-trump-ice-immigration-court>.

contexts and argues that—despite concerns about its boundaries—clarifying and fortifying this authority is more crucial than ever. Ultimately, this Note provides a doctrinal roadmap for the Virginia attorney general’s office to fulfill its protective role as the guarantor of civil rights in an era of federal retrenchment.

I. UNDERSTANDING *PARENS PATRIAE* AND THE QUASI-SOVEREIGN INTEREST: A HISTORICAL OVERVIEW OF RELEVANT ENGLISH AND AMERICAN LEGAL FOUNDATIONS

The doctrine of *parens patriae* allows a state to establish Article III standing in a lawsuit against the federal government on its citizens’ behalf. Article III standing controls potential plaintiffs’ access to the federal courts. Standing doctrine requires a plaintiff to show (1) a “concrete and particularized” injury that is (2) traceable to the defendant and (3) redressable by the court.² The standing requirement “make[s] certain that a party who asserts a particular position has the legal right to do so and that his rights will be affected by the disposition of the case.”³ This ensures that federal courts are resolving actual “cases [or] controversies”⁴ rather than improperly encroaching on the legislative or executive branch’s authority.⁵

The requirement that a potential plaintiff’s injury be “concrete and particularized” means that generalized or widespread injury is insufficient to confer Article III standing.⁶ Still, state attorneys general may invoke *parens patriae* authority to establish standing. This allows the state to sue in federal court on behalf of its citizens against private or public parties,

² *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (listing the elements of Article III standing).

³ *Goldman v. Landside*, 262 Va. 364, 371 (2001).

⁴ *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 102 (1998) (“Article III, § 2, of the Constitution extends the ‘judicial Power’ of the United States only to ‘Cases’ and ‘Controversies.’ We have always taken this to mean cases and controversies of the sort traditionally amenable to and resolved by the judicial process.”).

⁵ *Allen v. Wright*, 468 U.S. 737, 750 (1984) (“[T]he case or controversy requirement defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded. The several doctrines that have grown up to elaborate that requirement are founded in concern about the proper—and properly limited—role of the courts in a democratic society.” (citations omitted)).

⁶ See generally *United States v. Richardson*, 418 U.S. 166, 176–77 (1974) (distinguishing a general interest from a concrete injury); *Valley Forge Christian Coll. v. Americans United*, 454 U.S. 464, 483 (1982) (stating just the assertion of a personal right to certain government conduct does not satisfy Article III requirements); *Allen*, 468 U.S. at 754 (recounting the right to have the government act in accordance with the law is not sufficient to create standing); *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990) (asserting a generalized constitutional interest of all citizens is an inadequate basis for standing); *Lujan*, 504 U.S. at 573–77 (describing cases where plaintiffs raised only general grievances and failed to state Article III cases or controversies).

including the federal government. Knowing how the doctrine has evolved since its inception is fundamental to understanding modern debates about the authority's scope.

A. English Origins

Parens patriae originates from English common law's *Prerogative Regis*, or royal prerogative, where "the king was understood to be personally sovereign and have pre-eminence over all within the realm."⁷ One way the sovereign exercised this prerogative authority was *parens patriae*. In addition to responsibilities like administering charitable trusts, the Crown was seen as the ultimate guardian of those unable to care for themselves—primarily children and the mentally incapacitated:

The King is in legal contemplation the guardian of his people; and in that amiable capacity is entitled . . . to take care of such of his subjects, as are legally unable, on account of mental incapacity, whether it proceed from 1st. nonage [youth]: 2., idiocy: or 3. lunacy: to take proper care of themselves and their property.⁸

The first cases to crystallize the English *parens patriae* authority dealt with children who became wards of the state, albeit those from families with estates of financial interest to the king.⁹ English common law did not give the sovereign or his chancery court authority over political issues or criminal matters.¹⁰ *Parens patriae* later extended to juvenile delinquent rehabilitation in developing urban areas in English colonies like New York, Philadelphia, and Boston.¹¹ These reforms continued even after the colonies were no longer under English rule. Efforts to reform "little vagrants"¹² justified creating the juvenile courts¹³ and revealed *parens patriae*'s moral and social power.¹⁴ Ensuing cases invoking *parens patriae* under the Anglo-Saxon system largely balanced individual liberty with the need to detain certain

⁷ George B. Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DePaul L. Rev. 895, 896 (1976).

⁸ Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown* 155 (1820).

⁹ Curtis, *supra* note 7, at 897–98.

¹⁰ *Id.* at 898.

¹¹ *Id.* at 900.

¹² Society for the Prevention of Pauperism in the City of New York, *Report on the Subject of Erecting a House of Refuge for Vagrant and Depraved Young People*, reprinted in *Society for the Reformation of Juvenile Delinquents, Documents Relative to the House of Refuge* 81 (1832).

¹³ Curtis, *supra* note 7, at 897–98.

¹⁴ Society for the Prevention of Pauperism, *supra* note 12, at 81.

juveniles and the mentally ill. It later extended to adjacent matters such as balancing compulsory school attendance with religious freedom.¹⁵ However, the American judicial system ultimately extended *parens patriae* far beyond its English origins.

B. The Creation of the Quasi-Sovereign Interest: American Parens Patriae

At the turn of the twentieth century, the concept of *parens patriae* in the U.S. evolved. Rather than being limited to the government's power to protect dependent individuals, it came to encompass a broader authority, allowing states to sue private parties or other states to protect "quasi-sovereign" interests.¹⁶ Quasi-sovereign interests are those that benefit the general public broadly (rather than special or individual interests) and whose violations produce such a substantial harm to the state's citizens that it results in independent harm to the state's own sovereign interests.¹⁷ This expansion began with early Supreme Court cases like *Missouri v. Illinois* (1901)¹⁸ and *Kansas v. Colorado* (1907), which upheld the state's ability to represent and defend public health and natural resources from pollution and depletion "if the health and comfort of the inhabitants of a state are threatened."¹⁹ In *Georgia v. Tennessee Copper Co.* (1907), the Court firmly established that a state could act as *parens patriae* to protect the air and environment for its citizens.²⁰ Courts later considered relevant for purposes of this framework states' interests in continuing the prosperity of their economies,²¹ including the ability to sue in *parens patriae* capacity for antitrust violations.²²

¹⁵ See generally *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925) (arguing that the state's interest in educating youth must be balanced with parents' interests in their child). This balance would later be discussed again in the context of *parens patriae* in *State v. Yoder*, 49 Wis. 2d 430, 440 (1971) (determining that "[w]hen a[n] [Amish] child reaches the age of judgment, he can choose for himself his religion, but prior to that time the state in its capacity of *parens patriae* ought not to enforce educational requirements which will directly influence or destroy that choice).

¹⁶ Minn. L. Rev. Ed. Bd., Federal Jurisdiction: State *Parens Patriae* Standing in Suits against Federal Agencies, 61 Minn. L. Rev. 691, 691–92 (1977).

¹⁷ *Id.* at 692.

¹⁸ *Missouri v. Illinois*, 180 U.S. 208, 241 (1901).

¹⁹ *Kansas v. Colorado*, 206 U.S. 46, 99–105 (1907); see also *New York v. New Jersey*, 256 U.S. 296, 301–02 (1921) (holding that New York had the inherent power to bring a suit about sanitation because it was in the interest of the health and comfort of their citizens).

²⁰ *Georgia v. Tenn. Copper Co.*, 206 U.S. 230 (1907); see also Curtis, *supra* note 7 at 908 (discussing the Court's holding in *Georgia v. Tenn. Copper Co.*).

²¹ Minn. L. Rev. Ed. Bd., *supra* note 16, at 694 (citing *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923)).

²² *Georgia v. Pennsylvania R.R.*, 324 U.S. 439, 451 (1945) (stating in the antitrust suit that "[t]hese are matters of grave public concern in which Georgia has an interest apart from that of particular individuals who may be affected. Georgia's interest is not remote; it is immediate. If we denied Georgia as *parens patriae* the right to invoke the original jurisdiction of the Court in a matter of that gravity, we

The scope of *parens patriae* standing in federal suits was later temporarily curtailed by *Massachusetts v. Mellon* (1923). *Mellon* held that a state could not sue the federal government to protect its citizens from federal statutes, and only the federal government could represent their interests in such a context:

It cannot be conceded that a State, as *parens patriae*, may institute judicial proceedings to protect citizens of the United States from the operation of the statutes thereof. While the State . . . may sue in that capacity for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field, it is the United States, and not the State, which represents them as *parens patriae*²³

This principle, commonly referred to as the *Mellon* bar, initially placed a doctrinal limit on states' ability to act as *parens patriae* against the federal government. However, the *Mellon* bar began to erode as the administrative state grew and courts encountered increasingly complex federal-state conflicts.²⁴ One of the most important cases in this line of jurisprudence is *Alfred L. Snapp & Son v. Puerto Rico* (1982), in which the Court clarified that a state may sue based on "quasi-sovereign interests . . . in the well-being of its populace."²⁵ Notably, the Court defined quasi-sovereign interests as distinct from "sovereign interest, or proprietary interests, or private interests."²⁶ While *Snapp* did not directly overrule *Mellon* because it involved a private party, it did fully develop the concept of "quasi-sovereign interests," laying critical groundwork for the modern *parens patriae* doctrine.

The doctrinal shift away from the *Mellon* bar in suits against the federal government was finalized in *Massachusetts v. EPA* (2007). The Court distinguished *Mellon* by granting the state standing to sue a federal agency for failing to regulate greenhouse gas emissions.²⁷ Recognizing the state's

would whittle the concept of justiciability down to the stature of minor or conventional controversies. There is no warrant for such a restriction."); see also Curtis, *supra* note 7, at 909–10.

²³ *Massachusetts v. Mellon*, 262 U.S. 447, 485 (1923) (citations omitted).

²⁴ David M. Howard, *State Parens Patriae Standing to Challenge the Federal Government: Overruling the Mellon Bar*, 11 N.Y.U. J.L. & Liberty 1089, 1107 (2018).

²⁵ *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 602 (1982).

²⁶ *Id.*

²⁷ *Massachusetts v. EPA*, 594 U.S. 497, 526 (2007).

“special solicitude” in the standing analysis, the Court affirmed that states may challenge unlawful federal action or inaction where their own quasi-sovereign interests are at stake.²⁸ The majority distinguished *Massachusetts v. EPA* from *Mellon*, noting that *parens patriae* authority applied where a state challenged a federal statute on behalf of citizens generally—not where the state itself had a protected interest under federal law.²⁹

Just as Georgia’s independent interest “in all the earth and air within its domain” supported federal jurisdiction a century ago, so too does Massachusetts’ well-founded desire to preserve its sovereign territory today. . . . That Massachusetts does in fact own a great deal of the “territory alleged to be affected” [by greenhouse gas emissions] only reinforces the conclusion that its stake in the outcome of this case is sufficiently concrete to warrant the exercise of federal judicial power.³⁰

This culminates in our modern understanding of the *parens patriae* authority. To fulfill their role as protectors of their people’s collective welfare, states must still overcome the *Mellon* bar to establish standing as *parens patriae*, even where the federal government is a defendant.

II. THE STATE ATTORNEYS GENERAL AND THEIR *PARENS PATRIAE* AUTHORITY

Like much of the U.S legal system, the office of the state attorney general in the United States finds its roots in English legal tradition. In that system, the attorney general served as “the chief legal adviser of the Crown” and was charged with “the management of all legal affairs and the prosecution of all suits, civil and criminal, in which the Crown was interested.”³¹ Over

²⁸ *Id.* at 520.

²⁹ *Id.* at n.17 (arguing that “[i]n any event, we held in *Georgia v. Pennsylvania R.R. Co.* . . . that there is a critical difference between allowing a State ‘to protect her citizens from the operation of federal statutes’ (which is what *Mellon* prohibits) and allowing a State to assert its rights under federal law (which it has standing to do)”).

³⁰ *Id.* at 519 (citing *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)).

³¹ *State ex rel. Cartwright v. Georgia-Pacific Corp.*, 663 P.2d 718, 720 (Okla. 1982) (citing 7 Am. Jur. 2d Att’y Gen. § 9).

time, the role evolved from simply fulfilling the king's wishes to defending the public good.³²

This transformation was mirrored in the United States context, where each state retains "the dignity . . . of sovereignty" while having ceded certain powers to the federal government.³³ As executive authority was shifted from the Crown to elected American governors, the public conviction became stronger that states' attorneys general's primary allegiance was to "the People"³⁴ rather than to other branches or officials of government.³⁵ Under U.S. common law, a state attorney general is empowered to bring actions necessary to protect the state's interest and has discretionary control over both civil and criminal legal affairs.³⁶ State statutory provisions further define the attorney general's duties. These include representing the state in court, advising state officials, and prosecuting violations of state laws. Additionally, the attorney general's role often includes supervising legal matters to ensure consistency and efficiency in the state's legal affairs.³⁷ While some states' statutory frameworks have eliminated their attorney general common law powers, the majority have retained these powers.³⁸

The foundational responsibility to protect "the public's legal interest" lies at the heart of a state attorney general's common law authority and is the basis for their power to act in *parens patriae*. This doctrine enables state attorneys general to bring actions not merely on behalf of individual citizens, but to defend the "quasi-sovereign" interests of the state itself. Courts have repeatedly affirmed that state attorneys general may typically exercise common law powers "as broad as the protection and defense of the property and revenue of the state . . . and the public interest requires"³⁹ and that they

³² See generally Emily Myers, Common Law Powers, in *State Attorney's General: Powers and Responsibilities* 44 (Emily Myers 3d ed., 2013).

³³ *Alden v. Maine*, 527 U.S. 706, 715 (1999).

³⁴ Brief for Alabama et al. Amicus Curiae at 4–5, *State ex rel. Hunter v. Johnson & Johnson*, 2021 OK 54 (Okla. 2020) (citing *State v. Gleason*, 12 Fla. 190, 212 (Fla. 1868) ("The Attorney-General is the attorney and legal guardian of the people, or of the crown, according to the form of government.")).

³⁵ *Hancock v. Terry Elkhorn Mining Co.*, 503 S.W. 2d 710, 715 (Ky. Ct. App. 1973) (stating that "[a]lthough presently the Attorney General is vested with those powers he had under the common law, the source of his authority and his consequent obligations have been materially changed. . . . [The] source of authority of the Attorney General is the people who establish the government, and his primary obligation is to the people.").

³⁶ See generally *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982); *Moore v. State*, 309 So. 3d 7 (Miss. Ct. App. 2020).

³⁷ See generally Myers, *supra* note 32.

³⁸ See *infra* Section III.A (discussing Maryland).

³⁹ *Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 271 (5th Cir. 1976) (quoting *State ex rel. Landis v. Kress*, 155 So. 823, 827 (Fla. 1934)).

have “wide discretion in making the determination as to [what is in] the public interest.”⁴⁰

State attorneys general typically do not need to invoke their *parens patriae* authority where violation of a clear statutory enforcement scheme provides standing. In major civil rights areas such as housing, employment, and voting, federal statutes such as the Fair Housing Act,⁴¹ Title VII of the Civil Rights Act,⁴² and the Voting Rights Act⁴³ provide explicit enforcement mechanisms. Virginia supplements these federal protections with its own laws, including the Virginia Fair Housing Law (VFHL)⁴⁴ and the recently amended Virginia Human Rights Act (VHRA).⁴⁵ However, *parens patriae* authority becomes essential when federal action causes widespread harm to a state’s population and no right of action confers standing. In such cases, the *parens patriae* doctrine provides an important basis for the attorney general to assert standing in federal court and protect quasi-sovereign interests.

III. UNIQUE AMBIGUITY SURROUNDING THE VIRGINIA ATTORNEY GENERAL’S *PARENS PATRIAE* AUTHORITY IN CIVIL RIGHTS CONTEXTS

Given the longstanding common law authority of state attorneys general to act in the public interest illustrated above, one might assume that Virginia’s attorney general inherently possesses *parens patriae* authority in civil rights matters, even in contexts involving litigation against the federal government. Indeed, this is the ultimate argument of this Note; courts have long recognized that “absent a constitutional or statutory limitation, the attorney general has broad discretion to determine what legal matters fall within the public interest and require its attention.”⁴⁶ Yet the Virginia attorney general has *not* historically asserted its *parens patriae* authority in civil rights contexts. This is due to two distinct but related reasons: (1) ambiguity in Virginia’s statutory framework about the division of *parens patriae* authority between Virginia’s governor and attorney general and (2) a limited body of case law of the Virginia attorney general asserting such

⁴⁰ *Shevin*, 526 F.2d at 268–69.

⁴¹ U.S.C. §§ 3601–31.

⁴² 42 U.S.C. §§ 2000e–2000e-17.

⁴³ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445.

⁴⁴ Va. Code §§ 36-96.1–8.

⁴⁵ Va. Code Ann. §§ 2.2-3900–09.

⁴⁶ Brief for Terry Goddard et al. as Amicus Curiae at 8–9, *State ex rel. Brnovich v. Ariz. Bd. of Regents*, 250 Ariz. 127 (2020).

authority. The following discussion addresses each of these elements in turn and their implications for enforcement of Virginians' civil rights.

A. The Statutory Quirk in the Virginia Attorney General's Parens Patriae Authority

While the doctrine of *parens patriae* is central to the role of many state attorneys general, the Virginia Code explicitly grants this authority—to protect the general welfare of Virginians—not to the attorney general, but to the governor. Under Virginia Code § 2.2-111(B), the governor is empowered to “institute any action, suit, motion or other proceeding on behalf of [the Commonwealth’s] citizens, in the name of the Commonwealth acting in its capacity as *parens patriae*,” when existing legal procedures fail to “adequately protect their existing rights and interests.”⁴⁷ Although it might be assumed that this authority passes through the governor to the attorney general as the state’s chief legal officer, the legislature can grant *parens patriae* authority directly to the attorney general when it intends to do so. In fact, the only other time the doctrine is mentioned in the Code is in § 59.1-9.15(D), which explicitly permits the attorney general to bring civil actions “as *parens patriae* respecting injury to the general economy of the Commonwealth.”⁴⁸ The legislature, it seems, chose to treat the attorney general’s standing in cases of *economic* interest differently than cases of *civil rights* interest.

This distinction raises important questions about the scope and independence of the Virginia attorney general’s powers in the civil rights context. A close reading of § 2.2-111 suggests that, in at least some cases where the governor does not agree to initiate litigation with respect to Virginians’ non-economic “rights and interests,” the attorney general may lack authority to act unilaterally in the name of protecting the general welfare of Virginia’s citizens. Virginia’s statutory structure may therefore appear to limit the attorney general’s capacity to fulfill traditional *parens patriae* functions in civil rights cases unless they align with the governor’s decisions. Given that the Virginia governor and attorney general are elected independently, scenarios in which their views diverge in significant ways are entirely plausible. Recent examples from Pennsylvania and Maryland illustrate the potential consequences of such a divided statutory structure.

In February 2025, Pennsylvania Governor Josh Shapiro filed a federal lawsuit challenging a freeze on more than two billion dollars in federal funds

⁴⁷ Va. Code § 2.2-111(b).

⁴⁸ Va. Code § 59.1-9.15(d).

while the Pennsylvania Attorney General Dave Sunday, declined to participate. Sunday's office issued conflicting statements about whether he had delegated authority to the governor.⁴⁹ Pennsylvania law permits the governor to initiate legal action independently under certain circumstances. The Pennsylvania Supreme Court has affirmed that the governor, or another executive official, may request that the attorney general step aside and allow the Office of General Counsel to represent the state agency. If the attorney general refuses, the governor may authorize intervention "as a matter of right."⁵⁰ This underscores how statutory frameworks, even those in which the attorney general is constitutionally empowered as the "chief law officer," can limit or bypass the attorney general's common-law *parens patriae* role when executive officials are not aligned. In Virginia, where statutory ambiguity, albeit in a different form, also exists, the governor's express authority under § 2.2-111 may likewise allow them to bypass the attorney general's office in civil rights enforcement situations.

In the neighboring state of Maryland, "the Attorney General . . . possesses no common law powers."⁵¹ Instead, absent statutory authorization, the Maryland attorney general is required to seek permission from the governor before suing the federal government.⁵² On February 1, 2017, then-Attorney General Brian Frosh asked Governor Larry Hogan's permission to challenge President Trump's executive order issuing a travel ban on certain travelers from majority-Muslim countries ("the Muslim ban").⁵³ Hogan never responded.⁵⁴ Frosh then turned to the legislature, and two weeks later, on February 15, 2017, the General Assembly enacted Joint Resolution 1 (the "Maryland Defense Act").⁵⁵ The Resolution expressly empowers the attorney general to "take certain actions" in both civil and criminal suits as well as "actions that are based on the federal government's action or inaction that threatens the public interest and welfare of the

⁴⁹ Tom Reise, Shapiro sues Trump administration over impact of funding freeze on Pennsylvania, 90.5 WESA (Feb. 13, 2025, at 11:11 ET), https://www.wesa.fm/politics-government/2025-02-13/shapiro-lawsuit-trump-funding-freeze?utm_source.

⁵⁰ *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 860 (Pa. 2023) (citing Pa. Const. art. IV, § 4.1).

⁵¹ *State ex rel. Att'y Gen. v. Burning Tree Club, Inc.*, 481 A.2d 785, 797 (Md. 1984).

⁵² Emily Myers, Recent Powers and Duties Decisions, Nat'l Ass'n State Att'ys Gen. (May 4, 2017), <https://www.naag.org/attorney-general-journal/state-attorney-general-powers-and-duties-decisions-05-17/>.

⁵³ Brooks DuBose, Frosh's Broad Legal Power: Partisanship or 'Long Overdue'?, CNS Md. (Oct. 12, 2018), <https://cnsmaryland.org/2018/10/12/froshs-broad-legal-power-partisanship-or-long-overdue/>.

⁵⁴ *Id.*

⁵⁵ *Id.*

residents of the State.”⁵⁶ It also allows the attorney general to protect “as *parens patriae*, the State’s interest in the general health and well-being of its residents.”⁵⁷ While Virginia courts have not denied the Virginia attorney general’s common law authority, there is an important connection between Maryland’s Joint Resolution 1 and the Virginia Code. The powers of public “interest and welfare” discussed in Joint Resolution 1⁵⁸ echo the “rights and interests” *parens patriae* authority that the Virginia Code explicitly provides the Virginia governor.⁵⁹ On its face, this suggests the possibility of a future interpretation of the Virginia Code such that the Virginia attorney general cannot file an independent *parens patriae* civil rights lawsuit absent gubernatorial approval.

B. Limited Virginia Case Law

Beyond the statutory weeds of the Virginia Code, case law affirming that the Virginia attorney general has broad *parens patriae* authority in the civil rights context is sparse. While courts in other states have clearly recognized their attorney general’s common law authority to bring civil rights litigation on behalf of the public, Virginia’s courts have seldom articulated a similar endorsement.⁶⁰ This is notable given the growing importance of state-level enforcement of civil rights, particularly when federal officials fail to deliver on such protections.⁶¹

The limited judicial precedent in Virginia that affirms the attorney general’s common law authority to act on behalf of the public under the *parens patriae* seems to pull from the office’s generally inherent powers from the English legal system. In *Tauber v. Commonwealth* (1998), the Virginia Supreme Court cited cases dating back to the nineteenth century that recognized the attorney general’s role in overseeing matters involving charitable assets.⁶² *Tauber* acknowledges both the historical roots and

⁵⁶ J. Res. 1, 2017 Leg., Reg. Sess. (Md. 2017).

⁵⁷ *Id.*

⁵⁸ J. Res. 1, 2017 Leg., Reg. Sess. (Md. 2017).

⁵⁹ Va. Code § 2.2-111(b).

⁶⁰ See generally Emily Myers, Common Law Powers, in *State Attorneys General: Powers and Responsibilities* 44 (Emily Myers 3d ed. 2013).

⁶¹ Mark C. Miller, State Attorneys General, Political Lawsuits, and Their Collective Voice in the Inter-Institutional Constitutional Dialogue, 48 J. Legis. 1, 29 (2021).

⁶² 255 Va. 445, 451–53, 499 S.E.2d 839, 842–43 (1998). Because charitable trusts benefit the public at large rather than any identifiable individual with a concrete stake in enforcement, the attorney general steps in as the representative of the crown—and later the state—in its *parens patriae* role. *Jackson v. Phillips*, 96 Mass. 539, 579 (1867) (“It is the duty of a court of equity . . . to administer trusts; to protect not the visible owner, who alone can proceed at law, but the individual equitably, though not legally, entitled. From this principle has arisen the practice of administering the trust of a public charity: persons possessed of funds appropriated to such purposes are within the general rule; but, no one being entitled

contemporary relevance of the attorney general's authority.⁶³ Similarly, in *Norfolk Department of Social Services v. Petermore* (2003), a Virginia circuit court emphasized that upon independence, Virginia inherited *parens patriae* powers from the British Crown—including the duty to serve as the general guardian of “incompetents” within the state.⁶⁴ This recognition further strengthens the attorney general's position as a legal representative of the state's public interest.

The clearest articulation of the attorney general's *parens patriae* standing in a civil rights suit against the federal government came as recently as 2017 from the U.S. District Court for the Eastern District of Virginia. In *Aziz v. Trump*, former Virginia Attorney General Mark Herring successfully represented Virginia in a challenge to the “Muslim ban” referenced above,⁶⁵ arguing that the ban harmed Virginia residents and violated constitutional protections.⁶⁶ Herring asserted *parens patriae* standing, arguing that the state had a quasi-sovereign interest in “the well-being of its citizens and residents.”⁶⁷ Specifically, the Commonwealth had an interest in protecting Virginians from discrimination and ensuring that they were not excluded from benefits provided by federal law. The federal government argued that *Massachusetts v. Mellon* categorically barred such suits and that Virginia's alleged injuries were too tenuous to support standing.⁶⁸ But the *Aziz* Court rejected both of the federal government's arguments. It affirmed that *Mellon* does not prevent *parens patriae* suits against the federal government when a state alleges substantial harm to its population and raises significant constitutional questions.⁶⁹ According to the Court, Virginia did both. Attorney General Herring alleged that the Executive Order was causing substantial harm to Virginia's population—including at least 300 directly

to an immediate and peculiar interest to prefer a complaint, who is to compel the performance of these obligations, and to enforce their responsibility? It is the duty of the king, as *parens patri[a]e*, to protect property devoted to charitable uses; and that duty is executed by the officer who represents the crown for all forensic purposes. On this foundation rests the right of the attorney general in such cases”); see also Pension Fund Politics: The Dangers of Socially Responsible Investing 58 (Am. Enterp. Inst., John H. Entine ed., 2005) (“With a few exceptions, enforcement responsibility falls to a state's attorney general . . . to oversee the administration of charitable funds.”).

⁶³ *Tauber*, 255 Va. at 442 (citing *Clark v. Oliver*, 91 Va. 421, 427–28, 22 S.E. 175, 177 (1895)) (“This Court long ago recognized the common law authority of the Attorney General to act on behalf of the public in matters involving charitable assets. Indeed, this authority has received legislative recognition as recently as last year.”).

⁶⁴ *Norfolk Dep't of Soc. Servs. v. Petermore*, 63 Va. Cir. 315, 318, 2003 WL 23573442 at *3 (Cir. Ct. 2003) (citing *O'Connor v. Donaldson*, 422 U.S. 563, 583 (1975)).

⁶⁵ See *supra* Section III.A.

⁶⁶ *Aziz v. Trump*, 234 F. Supp. 3d 724, 724 (E.D. Va. 2017).

⁶⁷ Temp. Restraining Order at 28, *Aziz*, 234 F. Supp. 3d. 724 (No. 17-cv-116 (LMB/TCB)).

⁶⁸ 262 U.S. 447 (1923); see *supra* Section I.B.

⁶⁹ Temp. Restraining Order, *supra* note 67, at 31.

affected residents, disrupted university operations, and potential forfeiture of federal grant money—and raised significant constitutional questions under the First Amendment, Equal Protection Clause, and Religious Freedom Restoration Act.⁷⁰ The *Aziz* Court found that the plaintiffs sufficiently alleged “textbook quasi-sovereign interests”⁷¹ to establish standing at the pleading stage, specifically an interest in securing its residents from the harmful effects of discrimination and ensuring they “are not excluded from the benefits [of] participation in the federal system.”⁷² Notably, Attorney General Herring did not rely solely on *parens patriae* standing here. He also asserted that state had a non-sovereign, pecuniary interest in the case due to the Executive Order’s disruption on the function of the state’s robust university system.⁷³ The court agreed, finding that “even if the Commonwealth did not have standing as *parens patriae*, it would have traditional proprietary standing to challenge the constitutionality of the EO.”⁷⁴ The discussion of pecuniary interest in *Aziz* illustrates how the Virginia attorney general’s statutory authority to protect the state’s *economic* interests can overlap with the broader common-law *parens patriae* power to safeguard the general public welfare, but the two authorities are not equivalent. *Parens patriae* captures the broad public-welfare dimension of the attorney general’s role (here, the quasi-sovereign interest in protecting residents from discrimination and ensuring their access to federal benefits) while proprietary standing anchors that role in the kind of concrete, particularized financial injury to the state itself that federal courts are comfortable adjudicating. At bottom, *Aziz* affirms that *parens patriae* alone is a valid theory of standing for the Virginia attorney general. Where appropriate, it may be strategically beneficial for the attorney general to take a belt-and-suspenders approach that asserts quasi-sovereign interest under *parens patriae* while pointing to more direct economic harm to the state’s own institutions.

However, *Aziz* is effectively the only Virginia case to squarely confront and affirm *parens patriae* standing in this context. At least some Virginia

⁷⁰ *Aziz v. Trump*, 231 F. Supp. 3d 23, 32 (E.D. Va. 2017).

⁷¹ *Id.*

⁷² *Id.* (citing *Snapp*, 458 U.S. at 608).

⁷³ Temp. Restraining Order, *supra* note 67, at 33 (asserting that “[h]ere, the Commonwealth has alleged that the travel ban will disrupt the operations of its public universities, depriving them of some faculty and staff members and potentially requiring other faculty members to forfeit grant money by virtue of their inability to leave the country to fulfill the terms of their grants. This allegation satisfies the requirements of Article III. The injury is pecuniary and particular to the Commonwealth, not shared by the public at large. It is fairly traceable to the challenged EO . . .”).

⁷⁴ *Id.*

jurisprudence appears to cut against the attorney general's *parens patriae* standing in specific civil rights contexts. For instance, in a 2008 case involving alleged unlawful child-support collection practices, the Circuit Court of the City of Richmond ruled that the attorney general lacked standing because "the role of *parens patriae* is not to vindicate the personal rights of citizens."⁷⁵ This reasoning echoes the *Mellon* bar's constraint against the practical use of *parens patriae* in the civil rights realm.⁷⁶ Such precedent, though not binding state-wide and well before *Aziz*, signals some past judicial skepticism that could discourage the attorney general from pursuing aggressive civil rights enforcement under *parens patriae*.

Overall, instead of a line of precedent gradually clarifying or expanding *parens patriae* authority, Virginia case law reflects a sporadic approach. The silence in the courts leaves a doctrinal vacuum that may make it difficult to determine the scope of the attorney general's powers when it comes to civil rights enforcement within the state or against the federal government. Without a body of favorable case law, or even a robust history of judicial endorsement of standing in these matters, current and future attorneys general may be disincentivized from testing the outer bounds of their *parens patriae* authority around civil rights.

C. Current Implications of Ambiguity in Attorney General's *Parens Patriae* Authority for Virginians' Civil Rights

The unsettled scope of the Virginia attorney general's *parens patriae* authority has real consequences for civil rights enforcement in the Commonwealth, especially in today's climate, where legal instability and increasingly fragmented federal protections require state attorneys general to assume a larger role in protecting their state's citizens.⁷⁷ There are federal and state statutes that offer clear avenues for action by the Virginia attorney general in areas like housing, employment, and voting.⁷⁸ But ambiguity in the office's power leaves civil rights gaps unaddressed in other domains, particularly those that fall outside the boundaries of traditional statutory schemes. For instance, widespread environmental harms in low-income or majority-Black communities in Virginia often evade redress via state

⁷⁵ *Commonwealth v. Supportkids, Inc.*, 77 Va. Cir. 155, 158, 2008 WL 8201353 at *3 (Cir. Ct. 2008) (citing *Board of Supervisors of Fairfax County v. United States*, 408 F. Supp. 556, 566 (E.D. Va. 1976)).

⁷⁶ See *supra* Section I.B.

⁷⁷ See Rachel Bluth & Melanie Mason, 23 Dem AGs Think They've Cracked the Code to Fighting Trump, *POLITICO*, (Feb. 27, 2025, at 05:56 ET),

<https://www.politico.com/news/2025/02/27/democrats-taking-trump-musk-winning-00206310>.

⁷⁸ Phone interview with Palmer Heenan, Attorney, Formerly Virginia Attorney General's Office, Charlottesville, VA (Apr. 21, 2025).

challenges because no single state or federal statute clearly authorizes the attorney general to act.⁷⁹ Similarly, federal actions like that in *Aziz* which endanger the civil rights or physical safety of noncitizen Virginia residents may not have a specific statutory hook on which the attorney general may assert standing. In such situations, *parens patriae* is not just *useful* to lawsuits by Virginia against the federal government, but essential because otherwise Virginia is locked out of the federal courts. Yet unless this authority is clarified, the attorney general may be unable to respond effectively to structural or federal harms to its residents.

Several ongoing and emerging challenges illustrate the importance of clarifying the scope of *parens patriae* authority. For example, “New American” communities currently face civil rights violations across the country.⁸⁰ In *New Jersey v. Trump* (2025), states challenged an Executive Order restricting birthright citizenship, arguing it would strip a class of residents of federally recognized citizenship status and thereby reduce the states’ federal funding for healthcare, education, and child welfare programs serving those residents. The First Circuit upheld a preliminary injunction, finding the plaintiff states likely had Article III standing based on those direct fiscal injuries, while sidestepping the issue of *parens patriae* standing.⁸¹ Even with the sidestep, the case presents important strategic takeaways about the utility of *parens patriae*. Where fiscal injuries support standing, a clearly established *parens patriae* authority for suits against the federal government in cases like *New Jersey v. Trump* would provide an independent basis for suit that strengthens the attorney general’s argument in court. It would also ensure that standing does not depend on the availability of any single theory, which is important in situations where it is difficult to tie civil rights violations back to economic harm towards state institutions. Admittedly, Virginia’s then-Republican Attorney General Jason Miyares did not join the *New Jersey v. Trump* suit. But the ability for a future attorney general to do so is vital for protecting the civil rights of the Commonwealth’s immigrant communities, who make up roughly one-

⁷⁹ Id.

⁸⁰ The term “New American” refers to “an immigrant living in the United States who was born outside of the United States to parents who were not United States citizens at the time. This may include naturalized citizens, green card holders, temporary visa holders, refugees, asylees, and undocumented immigrants, among others.” See Virginia Office of New Americans Advisory Board, Off. of the Va. Governor, New Americans in the ONE Virginia Landscape, <https://www.governor.virginia.gov/onaab/#:~:text=New%20Americans%20in%20the%20ONE%20Virginia%20Landscape&text=A%20new%20American%20may%20be,States%20citizens%20at%20the%20time> (last visited May 2, 2025).

⁸¹ 131 F.4th 27, 40 (1st Cir. 2025) (explaining that “*parens patriae* actions against the federal government . . . is not a theory of standing on which the Plaintiff-States rely”).

eighth of Virginians.⁸² Aggressive federal immigration enforcement—such as neighborhood⁸³ and courthouse raids⁸⁴—has heightened their vulnerability and chilled community members’ access to education, healthcare, and housing. This underscores the need for a state legal officer with clear authority to act affirmatively in defense of constitutional rights. While the Supreme Court has recognized that states may have Article III standing to pursue such claims under a *parens patriae* theory (at least where a concrete quasi-sovereign interest is threatened), the Virginia attorney general’s authority to bring such a suit remains uncertain due to the unsettled scope of the office’s statutory mandate. Clarifying that authority would ensure that Virginia’s attorney general can act decisively when the next challenge arises, rather than leaving the Commonwealth’s most vulnerable residents without a state-level advocate.

Another recent example highlights a potential application of clarified *parens patriae* authority. In response to recent executive orders from President Trump, such as *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*⁸⁵ and *Ending Radical Indoctrination in K–12 Schooling*,⁸⁶ military base school libraries have been directed to remove books that the Department of Defense identifies as “potentially related to gender ideology or discriminatory equity ideology topics” for review.⁸⁷ This directive applies to Department of Defense Education Activity (“DoDEA”) schools, two of which operate in the Virginia localities of Quantico and Dahlgren. Critics argue that the directive is “censorship of legitimate views and opinions that violates the First Amendment rights of those who serve our nation and their families.”⁸⁸ This directive strikes at the quasi-sovereign interests of the Commonwealth in two respects that are distinctly non-economic. First, Virginia has an

⁸² Am. Immigr. Council, *Immigrants in Virginia* 1 (Aug. 6, 2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_virginia.pdf.

⁸³ Brad Kutner, ICE Enforcement Rattles Northern Virginia Neighborhoods, Va. Pub. Radio (Mar. 4, 2025), <https://www.wvtf.org/news/2025-03-04/ice-enforcement-rattles-northern-virginia-neighborhoods>.

⁸⁴ Hawes Spencer, Questions and Outrage After ICE Raids at Charlottesville Courthouse, Daily Progress (Apr. 24, 2025), https://dailyprogress.com/news/local/crime-courts/article_c56b230f-68e2-438f-9a7b-02351b284520.html.

⁸⁵ Proclamation No. 14168, 80 Fed. Reg. 8615 (Jan. 20, 2025).

⁸⁶ Proclamation No. 14168, 90 Fed. Reg. 8853 (Feb. 3, 2025).

⁸⁷ Jennifer H. Svan, DODEA Adds Lessons to ‘Do Not Use’ List Sent to Schools Worldwide, Stars & Stripes (Feb. 7, 2025), <https://www.stripes.com/theaters/europe/2025-02-07/dodea-removes-book-pending-review-16753412.html>.

⁸⁸ See Press Release, Am. Libr. Ass’n, ALA, AASL Decry U.S. Defense Department Censorship of Schools and Libraries on Military Installations (Feb. 14, 2025), <https://www.ala.org/news/2025/02/ala-aasl-decry-us-defense-department-censorship-schools-and-libraries-military>.

interest in the education and well-being of the children within its borders, including those attending federally operated schools. Second, Virginia has an interest in the First Amendment rights of all its residents. This scenario presents precisely the kind of population-wide constitutional harms that *parens patriae* authority is designed to address. Yet without clear statutory authority to act, the Virginia attorney general is left without a straightforward basis to challenge a federal directive affecting Virginia schoolchildren and their families. A clarified *parens patriae* authority would give the attorney general the tools to step in and vindicate the constitutional rights of Virginians who have no other state-level advocate.

Ambiguity in the Virginia attorney general's *parens patriae* authority has a potential chilling effect on what litigation is brought and the confidence with which Virginians can expect state protection of their rights. But for reasons discussed in the next Part, the Virginia attorney general *does* have this authority. Clarifying and affirming it, either legislatively or through litigation, is therefore not just a technical legal question but a pressing matter of civil rights infrastructure.

IV. VIRGINIA'S ATTORNEY GENERAL POSSESSES CLEAR *PARENS PATRIAE* AUTHORITY OVER CIVIL RIGHTS

This Note argues that, despite the issues framed above, a thorough examination of Virginia's legal and judicial framework affirms that its attorney general possesses robust *parens patriae* authority in the context of civil rights. This authority emerges from a framework of other areas of statutory authority, recent judicial interpretations, and a preserved common law tradition. Together, these sources reflect a clear intent to empower the attorney general to act not merely as legal counsel to the state, but as the people's representative in matters of significant public concern. It would be doctrinally incomplete to read Virginia law as permitting the attorney general to safeguard economic interests under *parens patriae* while denying that same authority when it comes to fundamental rights and liberties.

A. Statutory Evidence of the Virginia Attorney General's Robust *Parens Patriae* Authority

Elsewhere in the Code, sections of Virginia law demonstrate clear intent to provide for the Virginia attorney general's *parens patriae* authority in the area of civil rights—even without explicit use of the term. Under Virginia Code Section 2.2-507, the attorney general is empowered to “render[] and

perform[] . . . [a]ll legal service in civil matters for the Commonwealth [and] the Governor.”⁸⁹

This provision creates a direct channel through which the governor’s *parens patriae* authority to protect Virginians’ “rights and interests” flows to the attorney general, who can then represent these interests in court. More explicitly, Section 2.2-111(A) authorizes that “the Governor may, by and with the advice of the Attorney General, institute any action, suit, motion or other proceeding, in the name of the Commonwealth, in the Supreme Court of the United States or any other court or tribunal in which such action . . . may be properly commenced and prosecuted.”⁹⁰ This broad grant, combined with specific provisions like the economic interest *parens patriae* authority in Section 59.1-9.15(D),⁹¹ demonstrates the Virginia legislature’s intent to vest the attorney general with comprehensive power to safeguard the public’s collective rights.

But it is the Virginia Human Rights Act (“VHRA”),⁹² amended in 2024,⁹³ that provides perhaps the strongest statutory foundation for the attorney general’s *parens patriae* authority in many civil rights matters. The VHRA prohibits discriminatory practices across employment, housing, and public accommodations. This statute safeguards individuals from unfair treatment based on protected characteristics, including “race, color, religion, ethnic or national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, disability, or military status.”⁹⁴ While not explicitly invoking the doctrine, the VHRA’s structure and enforcement mechanisms embody *parens patriae*’s essential principles to “[f]urther the interests, rights, and privileges of individuals within the Commonwealth.”⁹⁵ Section 2.2-3906(A) grants the attorney general authority to pursue civil action when confronting either “a pattern or practice of resistance to rights granted by the Act” or denials of rights which raise “an issue of general public importance.”⁹⁶ These triggering conditions transcend individual remedies to center the state’s interest in broadly protecting civil rights. The phrase “issue of general public importance”

⁸⁹ Va. Code Ann. § 2.2-507 (2025).

⁹⁰ Va. Code Ann. § 2.2-111(A) (2025).

⁹¹ Va. Code Ann. § 59.1-9.15(D) (2024).

⁹² Va. Code Ann. § 2.2-3900.

⁹³ Katie Lipp, Protected Classes under Virginia Law: A Comprehensive Overview, Lipp Law (Aug. 6, 2024),

<https://www.lippfirm.com/protected-classes-under-virginia-law-a-comprehensive-overview/>.

⁹⁴ Va. Code Ann. § 2.2-3900(B)(2).

⁹⁵ Va. Code Ann. § 2.2-3900(B)(4).

⁹⁶ Va. Code Ann. § 2.2-3906(A) (2025).

directly parallels the concept of a quasi-sovereign interest in ensuring equal protection for all Virginians. The VHRA thus effectively codifies the doctrine's established common law principle: the attorney general has the authority to defend citizens' rights when violations constitute matters of general concern. This authority should be interpreted broadly to encompass civil rights suits brought under *parens patriae* standing, including against federal actors when necessary.

B. Developments in Federal Case Law Support Robust Parens Patriae Authority

Recent federal case law sheds important light on the scope of *parens patriae* authority available to state attorneys general, particularly in suits challenging federal action. While Virginia courts have not yet fully clarified the extent of this power in the civil rights context, high-profile cases like *Biden v. Nebraska* (2023) and multistate litigation led by the Maryland attorney general in 2025 over mass federal employee terminations illustrate how federal courts are actively grappling with the limits of state standing. These cases signal when states can pursue legal claims for their residents against federal actions that cause widespread harm, whether by violating a statute, disrupting state-administered programs, or by otherwise threatening states' quasi-sovereign interests in their residents' well-being. They provide crucial insight into the Virginia attorney general's authority to initiate civil rights litigation under *parens patriae* when explicit statutory authorization is lacking but public welfare is threatened.

In *Biden v. Nebraska*, the Supreme Court granted Missouri Article III standing to sue over the Biden Administration's student-loan forgiveness plan.⁹⁷ The majority emphasized that the Missouri Higher Education Loan Authority (MOHELA)—a legally distinct nonprofit authority created by Missouri to advance higher education—is “an instrumentality of Missouri”⁹⁸ that was “created and operated to fulfill a public function”⁹⁹ on behalf of Missouri residents. Because the forgiveness plan would cut MOHELA's revenue and thus impair its mission of aiding Missouri students, the Court found “harm to MOHELA in the performance of its public function is necessarily a direct injury to Missouri itself.”¹⁰⁰ However, the dissent from the Court's three liberal Justices points out that “MOHELA was set up (as corporations typically are) to insulate its creator from such derivative harm”

⁹⁷ 600 U.S. 477 (2023).

⁹⁸ *Id.* at 491.

⁹⁹ *Id.* at 492.

¹⁰⁰ *Id.* at 491.

and the nonprofit maintained “legal and financial independence” from the state.”¹⁰¹ As such, by focusing on a legally distinct nonprofit entity’s injury and connecting that directly to state injury based on the nonprofit’s public function, the majority may not only have avoided the *Mellon* bar on *parens patriae* suits against the federal government in order to find Article III standing but may also have shrunk what remains of it. *Biden* thus appears to endorse an expansive view of states’ *parens patriae* standing, where effectively any state’s suit to vindicate an interest on behalf of the public welfare of its citizens may be understood as a permissible suit to protect a broad public interest.

Biden’s long-term practical implications for state *parens patriae* authority remain uncertain, as the ruling’s precedential weight may be evaluated in light of perceived extralegal motives. Notably, the liberal dissent criticizes the potential motive of the conservative majority’s reasoning, with Justice Kagan going so far as to suggest that standing doctrine was manipulated to achieve a particular political result for the student loan forgiveness plan:

After today, no one will have to go back 50 years for the classic case of the Court manipulating standing doctrine, rather than obeying the edict to stay in its lane. . . . Courts must still ‘function as court’, this one no less than others. And in our system, that means refusing to decide cases that are not really cases because the plaintiffs have not suffered concrete injuries. The Court ignores that principle in allowing Missouri to piggy-back on the ‘legal rights and interests’ of an independent entity. If MOHELA wanted to, it could have brought this suit. It declined to do so. Under the non-manipulable, serious version of standing law, that would have been the end of the matter—regardless how much Missouri, or this Court, objects to the Secretary’s plan.¹⁰²

As such, it is ambiguous whether this is a real doctrinal expansion of *parens patriae* or an unintended case-specific outcome driven by politics. Courts may only be willing to invoke *Biden* to vindicate state interests where a public corporation or statutory benefit is directly impaired, not to create

¹⁰¹ Id. at 522.

¹⁰² Id. at 533 (Kagan, J., dissenting) (citation omitted).

functionally unlimited *parens patriae* authority against the federal government wherever the public good can be invoked. But in practice, *Biden* signals that state attorneys general can press for quite broad civil rights claims against federal policies whenever the federal government harms the interest of its citizens.

A similar dispute arose in *Maryland v. U.S. Department of Agriculture* (2025),¹⁰³ further illustrates both the promise and current limits of Article III standing in state suits against the federal government. In March 2025, Maryland led nineteen states in a suit against the federal government after agencies summarily terminated over 20,000 probationary employees without the sixty-day notice statutorily required by 5 U.S.C. Section 3502.¹⁰⁴ The states sued asserting direct institutional injuries, alleging that “no Plaintiff State received notice of any past or upcoming RIF [(reduction in force)]” and that each state “must now deal with a sudden surge in unemployment without the advance notice required” by law.¹⁰⁵ The District Court of Maryland agreed. Finding that the lack of notice inflicted concrete harm on the states themselves, Judge Bedar issued a nationwide preliminary injunction ordering reinstatement of the affected workers to “alleviate the burdens on the States conducting their mandated rapid-response activities.”¹⁰⁶ In doing so, the District Court applied reasoning that (while framed in direct institutional injury rather than *parens patriae*) shares the same underlying logic as *Biden*: when a federal action forces a state to bear measurable costs in performing its obligations to its citizens, the state has suffered a cognizable injury of its own. On this theory, *Maryland* had a stronger argument for Article III standing than *Biden*. Missouri’s injury in *Biden* ran through a legally independent entity that chose not to sue, whereas the *Maryland* states were themselves the direct bearers of sudden costs connected to federal government action. There was no MOHELA-style intermediary requiring the Court to collapse the distinction between a state and its instrumentalities.

And yet the District Court’s reasoning did not survive appeal. A divided panel of the U.S. Court of Appeals for the Fourth Circuit ruled in favor of

¹⁰³ *Maryland v. U.S. Dep’t of Agric.*, No. JKB-25-0748, 777 F.Supp.3d 432 (D. Md.), *stay of inj. granted*, 2025 WL 1073657 (4th Cir.), *vacated and remanded* 151 F.4th 197 (4th Cir.), and *dismissed* No. JKB-25-0748 (D. Md. Oct. 31, 2025), Dkt. No. 146.

¹⁰⁴ Katie Mettler, Appeals Court Pauses Maryland Judge’s Order to Rehire Federal Workers, Wash. Post (Apr. 9, 2025),

<https://www.washingtonpost.com/dc-md-vi/2025/04/09/maryland-appeal-pause-rehire-workers/>.

¹⁰⁵ *Maryland v. U.S. Dep’t of Agric.*, 777 F.Supp.3d at 449.

¹⁰⁶ Temp. Restraining Order, *Maryland*, 777 F.Supp.3d 432 (D. Md. Mar. 13, 2025), Dkt. No. 44.

the federal government by staying the injunction on standing grounds¹⁰⁷ and remanding with directions to dismiss.¹⁰⁸ The majority held that the plaintiff states were third parties to the federal employer-employee relationship and there lacked Article III standing to challenge the terminations.¹⁰⁹ But the dissent is worth closer examination. Judge DeAndrea Benjamin argued in her dissent that “the Supreme Court has recognized that certain intangible injuries, including an ‘informational injury’, can support standing.”¹¹⁰ She explained that cognizable informational injury requires both that the plaintiff was “legally entitled” to the withheld information and that its denial produced a “real harm with an adverse effect.”¹¹¹ According to her analysis, the government was statutorily required to give sixty days’ notice before any reduction in force and failed to do so, which deprived the states of information they were legally entitled to. That deprivation caused concrete harms: surges in unemployment claims, strained investigative resources, unexpected burdens on rapid response programs, tax revenue losses, and the withdrawal of federal employee support from state agencies. She asserted that “these harms . . . plainly satisfy the concreteness requirement and thus provide the necessary grounds for Article III standing.”¹¹² The District Court dismissed the case on October 31, 2025.¹¹³

The comparison between *Biden* and *Maryland* is striking and practically important for any state attorney general assessing the current landscape and considering how to invoke Article III standing. The two decisions are not easily reconciled, but taken together, they illustrate an evolving standing doctrine in which the lines between direct injury, institutional injury, and state *parens patriae* authority are actively blurring. In the meantime, the evolving state of the doctrine means that creative standing arguments have real prospects, whether grounded in direct injury, institutional impairment, or the functional *parens patriae* reasoning of *Biden*. The Virginia attorney general would be well-advised to treat the issue not as a closed question but as an actively contested one, and to structure any suit against the federal

¹⁰⁷ *Maryland v. United States Dep’t of Agric.*, Nos. 25-1248, 25-1338, 2025 WL 1073657 (4th Cir. Apr. 9, 2025).

¹⁰⁸ *Maryland v. United States Dep’t of Agric.*, 151 F.4th 197 (4th Cir. 2025).

¹⁰⁹ *Mettler*, *supra* note 104.

¹¹⁰ *Maryland v. United States Dep’t of Agric.*, 151 F.4th at 217 (Benjamin, J., dissenting) (citing *Fed. Election Comm’n v. Atkins*, 524 U.S. 11, 24–25 (1998) and *Pub. Citizen v. U.S. Dep’t of Just.*, 491 U.S. 440, 449 (1989)).

¹¹¹ *Id.* at 218.

¹¹² *Id.*

¹¹³ *Maryland v. U.S. Dep’t of Agric.*, No. JKB-25-0748 (D. Md. Oct. 31, 2025), Dkt. No. 146.

government with multiple, layered theories of standing accordingly—including, though certainly not limited to, *parens patriae*.

C. Virginia Has Not Displaced Historical Common Law Background on Parens Patriae

It is also clear that the Virginia attorney general has robust *parens patriae* authority in the civil rights realm due to the common law jurisprudence outlined in the beginning of this Note.¹¹⁴ As the Supreme Court emphasized in *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, *parens patriae* derives from a state's "inherent" power to serve "the interests of humanity" and prevent "injury to those who cannot protect themselves."¹¹⁵ As evolved from its English common law origins, in the American legal system, *parens patriae* is a vehicle through which states could act to protect quasi-sovereign interests in the health, safety, and civil rights of their people. This expansion from English common law—recognized by the U.S. Supreme Court in cases like *Georgia v. Tennessee Copper Co.*, *Snapp v. Puerto Rico*, and *Massachusetts v. EPA*—affirms that states may have *parens patriae* authority when defending these interests.

The common law principles embedded in the history of *parens patriae* remain fundamental to the full scope of the Virginia attorney general's authority. They matter not only for historical completeness, but also because Virginia has expressly retained this common law baseline. Like the majority of states, Virginia "grant[s] common law authority to an attorney general when not repealed or altered by statute."¹¹⁶ The Virginia Supreme Court has recognized that Virginia law preserves the attorney general's common law powers, unless explicitly limited by the statute.¹¹⁷ As a result, doctrines like *parens patriae* remain active unless explicitly displaced, and the existing ambiguities in the state code do not meet this burden. Both Virginia's incorporation of common law powers and its lack of explicit limitation of *parens patriae* doctrine explains why the attorney general can act in the name of the Commonwealth in civil rights suits, even those against the federal government, over conduct that affects its residents.

¹¹⁴ See *supra* Part I.

¹¹⁵ *Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 600 (1982) (citing *Late Corp. of Church of Jesus Christ v. United States*, 136 U.S. 1, 57 (1890)).

¹¹⁶ *Terry v. Wilder*, 29 Va. Cir. 418, 428, 1992 WL 885093, at *8 (Cir. Ct. Dec. 29, 1992).

¹¹⁷ See *Tauber v. Commonwealth*, 255 Va. 445, 451–52, 499 S.E.2d 839, 842–43 (1998) (reasoning that the attorney general possessed *parens patriae* authority under the common law to bring an action in matters regarding charitable trusts and no relevant Virginia statute expressly limited that authority, standing existed).

Even in the absence of a statute that clearly uses the phrase *parens patriae* for civil rights, courts should recognize that this authority exists for the attorney general. This authority is legislatively preserved, judicially acknowledged, and historically derived. Recognizing the Virginia attorney general's broad *parens patriae* authority in the civil rights realm is both consistent with legal doctrine and necessary to ensure that Virginians' collective rights are meaningfully protected.

V. HISTORICAL CONTEXT AND MODERN BOUNDARIES OF THE VIRGINIA ATTORNEY GENERAL'S *PARENS PATRIAE* AUTHORITY

If the Virginia attorney general has always had *parens patriae* authority in civil rights context, why is there so little on-point case law affirming it? Perhaps it is because Virginia, as home to the former capital of the Confederacy, had historically maintained a vested interest in ensuring the existence of an exploitable class of citizens and thus not applied its full authority to protect the civil rights of all Virginians. Virginia's history reveals a persistent pattern of state-sanctioned hostility to civil rights, with the government—including its attorneys general—often serving as enforcers of inequality rather than protectors of justice. From the 1902 Constitution's systematic disenfranchisement of Black voters through poll taxes, literacy tests, and racially targeted registration regimes,¹¹⁸ to the Commonwealth's leadership in "Massive Resistance" against school desegregation,¹¹⁹ Virginia has repeatedly aligned itself against the tide of civil rights reform.

The attorney general's office is not exempt from this historical legacy. In fact, it actively participated in furthering many of these harms. They often defended discriminatory laws in court, as well as supported discriminatory practices in public. For example, a June 22, 1915 article in the *Alexandria Gazette* assured white Virginians that, while the Supreme Court's decision striking down grandfather clauses in *Guinn & Beal v. United States* may "restore negro domination in some Southern States," it would "not affect

¹¹⁸ Daniel Ortiz, Professor, University of Virginia School of Law Journal of Law and Politics Symposium: Commemorating the 50th Anniversary of the 1971 Virginia Constitution (Sep. 30, 2021), https://www.law.virginia.edu/sites/default/files/transcripts/Law-Politics-9_30_21.pdf.

¹¹⁹ See generally Juliet Buesing Clark, From Massive Resistance to Quiet Evasion: The Struggle for Educational Equity and Integration in Virginia, 107 Va. L. Rev. 1115 (2021) (arguing that Virginia fiercely resisted integration efforts in the years after the *Brown v. Board of Education* decision).

Virginia.”¹²⁰ Then-Virginia Attorney General John Garland Pollard is quoted in the article with the following analysis:

It appears that we have had a very narrow escape The effort [of these measures] was to eliminate the negro from control and at the same time disfranchise as few as possible white men . . . we have now only a literacy test [rather than a grandfather clause]. . . . The real safeguard against negro domination is the poll-tax provision.¹²¹

The Virginia attorney general’s office later faced off against civil rights attorney Thurgood Marshall in two Supreme Court cases, *Morgan v. Virginia* (1946)¹²² and *Boynnton v. Virginia* (1960),¹²³ which together ultimately decided that segregation in interstate travel was illegal. The attorney general’s office also represented the State in *Loving v. Virginia* (1967), which challenged the constitutionality of Virginia’s anti-miscegenation law.¹²⁴ And as recently as 2013, then-Attorney General Ken Cuccinelli filed a formal petition asking the Fourth Circuit to reconsider a panel decision that overturned the Commonwealth’s “Crimes against Nature” sodomy law, which was rendered unconstitutional by the 2003 Supreme Court case *Lawrence v. Texas*.¹²⁵

Perhaps it is no coincidence, then, that there is relatively little case law affirming or testing the Virginia attorney general’s *parens patriae* authority to protect the public interest in civil rights matters. Historically, the office was not used to vindicate the rights of marginalized communities, but rather to preserve the status quo and resist federal mandates for equality. It was not until 2014 that the attorney general’s office broke with its legacy of civil rights opposition, when Attorney General Herring refused to defend the Commonwealth’s ban on same-sex marriage in *Bostic v. Schaefer*.¹²⁶ In

¹²⁰ Opinion Does Not Affect Virginia: Attorney General Pollard Discusses Constitution of the State, Alexandria Gazette (June 22, 1915), <https://www.virginiachronicle.com/?a=d&d=AG19150622.1.1&e=-----en-20--1--txt-txIN-Alexandria+Gazette%2C+June+22%2C+1915.----->.

¹²¹ *Id.*

¹²² 328 U.S. 373, 373 (1946).

¹²³ 364 U.S. 454, 454 (1960).

¹²⁴ 388 U.S. 1, 1 (1967).

¹²⁵ Domenico Montanaro, Top Va. Republican Urges Court to Keep Anti-Sodomy Law on the Books, NBC News (Apr. 3, 2013, 12:46 ET), <https://www.nbcnews.com/news/world/top-va-republican-urges-court-keep-anti-sodomy-law-books-flna1c9199555>.

¹²⁶ *Bostic v. Schaefer*, 760 F.3d 352, 388 (4th Cir. 2014) (explaining that “[a]fter the parties filed cross-motions for summary judgment, Virginia underwent a change in administrations, and the newly elected Attorney General of Virginia, Mark Herring, filed a notice of a change in his office’s legal

doing so, he acknowledged Virginia's shameful civil rights history, stating that "[t]here have been times in some key landmark cases where Virginia was on the wrong side, was on the wrong side of history and on the wrong side of the law."¹²⁷ This decision marked a rare and deliberate use of the Virginia attorney general's office in service of civil rights. Herring later invoked the authority of his office to protect vulnerable communities in *Aziz v. Trump*, furthering this departure from Virginia's historical civil rights posture. While these recent actions suggest a willingness to pursue civil rights causes, the office's historical commitment to status quo explains why there is so little judicial precedent explicitly affirming the attorney general's authority to act in this capacity: For generations, Virginia's top legal officer chose not to defend its citizens' civil rights.

These recent actions also raise an important question: If the Virginia attorney general's *parens patriae* authority has been dormant for so long, what prevents its overuse once awakened? After all, state attorney generals' *parens patriae* authority is not without modern controversy. Critics of expanded state attorney general power warn that the doctrine is inherently "absorptive,"¹²⁸ tending toward expansion because the Commonwealth's self-conception as protector of its citizens provides an almost limitless justification for intervention. Theoretically, unchecked *parens patriae* would allow the doctrine "to assimilate the obvious and latent prejudices of those who employ it," making it as much a tool for government overreach as genuine protection.¹²⁹ Applying these concerns to Virginia, the Commonwealth's limited history of *parens patriae* utilization may mean that, unlike states with robust histories of litigation by their attorneys general using the theory, there is not a line of judicial precedent defining the outer bounds of the authority.

In the context of civil rights suits, these concerns translate into a worry about manufacturing Article III standing for purely political litigation—that if *parens patriae* standing is available whenever a state can articulate some effect on its citizens' welfare, the doctrine becomes little more than a political instrument. Such a scenario could allow a Virginia attorney general of any persuasion to challenge virtually any policy simply by identifying

position on behalf of [the defendant]. His notice stated that because, in his view, the laws at issue were unconstitutional, his office would no longer defend them.").

¹²⁷ Lauren Fox, Virginia AG Won't Defend Gay Marriage Ban in Court, U.S. News & World Report (Jan. 23, 2014, at 09:58 ET),

<https://www.usnews.com/news/articles/2014/01/23/virginia-ag-wont-defend-gay-marriage-ban-in-court>.

¹²⁸ Curtis, *supra* note 7, at 915.

¹²⁹ *Id.*

affected state residents; for example, a Republican attorney general could invoke *parens patriae* to challenge federal clean water regulations on behalf of Virginia framers and manufacturers burdened by compliance costs, whereas a Democrat Attorney General could challenge rollbacks of those same regulations on behalf of Virginia residents whose drinking water would be degraded. Such concerns, however, exaggerate how far a robust *parens patriae* authority extends.

The doctrine already has limits as applied to Virginia. This includes the limit articulated in *Virginia v. Sebelius*, where Virginia challenged the Affordable Care Act's ("ACA") individual mandate by invoking its recently enacted Virginia Health Care Freedom Act ("VHCFA")—a law passed the day after the ACA was signed, declaring that no Virginian could be compelled to purchase health insurance.¹³⁰ Virginia asserted standing under *parens patriae*, arguing that the federal mandate conflicted with the state law and therefore harmed its sovereign interests.¹³¹ However, the Fourth Circuit rejected this argument, holding that the VHCFA "regulate[d] nothing and provide[d] for the administration of no state program."¹³² Instead, it "simply purport[ed] to immunize Virginia citizens from federal law."¹³³ As a result, the Fourth Circuit found that Virginia lacked standing because the ACA's individual mandate did not impose any direct obligations on the state itself.¹³⁴

The court was equally direct about the *Mellon* problem lurking beneath Virginia's theory. The opinion emphasized that "the action of a state legislature cannot render an improper state *parens patriae* lawsuit less invasive of federal sovereignty,"¹³⁵ and adopting Virginia's theory would allow any state to "becom[e] a roving constitutional watchdog of sorts"¹³⁶ because it would be able to manufacture standing to challenge any federal law simply by enacting a symbolic statute opposing it. The court gave a hypothetical to illustrate this point: Virginia could just as well "enact a statute declaring that 'no Virginia resident shall be required to pay Social Security taxes'" and use that declaration as a springboard for federal

¹³⁰ Const'l Accountability Ctr., Appeals Court Dismisses Virginia's Challenge to Obama Health Care Law (Sep. 8, 2011), <https://www.theconstitution.org/news/appeals-court-dismisses-virginias-challenge-to-obama-health-care-law/>.

¹³¹ *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 268–69 (4th Cir. 2011).

¹³² *Id.* at 270.

¹³³ *Id.* at 270.

¹³⁴ *Id.* at 268 (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982) in asserting that "[a] state possesses an interest in its 'exercise of sovereign power over individuals and entities within the relevant jurisdiction', which 'involves the power to create and enforce a legal code.'").

¹³⁵ *Id.* at 271.

¹³⁶ *Id.* at 271–72.

litigation.¹³⁷ The court refused to accept a standing theory that would effectively convert the federal judiciary into a forum for states' generalized political objections to federal law. *Sebelius* thus supplies a key limiting principle to Virginia's *parens patriae* authority: courts will examine whether a state's asserted sovereign interest is real—tied to actual programs, laws, or institutional costs—or merely a pretext for advancing political preferences or individual rights. The doctrine does not support the latter. For Virginia's attorney general, this means that Article III standing must rest on concrete state interests, not mere popular sentiment or declaratory opposition to a specific policy. Far from opening the door to unlimited litigation, *Sebelius* confirms that the *parens patriae* doctrine carries its own internal check.

Decisions like *Sebelius* raise legitimate questions about the scope of the Virginia attorney general's authority and whether it should extend to all public interest matters. However, these questions serve not as a rejection of *parens patriae* authority in civil rights, but rather a clarification of its boundaries. Addressing these concerns may require further statutory refinement or judicial clarification, especially to ensure that the Virginia attorney general's powers remain constitutionally grounded while also responsive to evolving public needs. In the interim, a more robust interpretation of the *parens patriae* doctrine that enables and encourages the Virginia attorney general to vigorously pursue civil rights enforcement is warranted. Continued ambiguity regarding the contours of this authority risks failing to adequately protect the civil rights of Virginians. This concern is made even more acute by the current moment, as the federal government increasingly retreats from—or actively undermines—established civil rights protections.

CONCLUSION: VIRGINIA ATTORNEY GENERAL HAS *PARENS PATRIAE*
AUTHORITY TO ENFORCE VIRGINIANS' CIVIL RIGHTS

The Virginia attorney general holds meaningful *parens patriae* authority to bring civil rights suits on behalf of the Commonwealth's residents, including against the federal government. Quirks in state code and gaps in on-point case law only superficially suggest otherwise. Such authority is doctrinally sound and well-supported when both Virginia statutes and evolving judicial precedent are understood through the lens of common law principles and historical analysis. Moreover, gaps in case law likely exist

¹³⁷ Id.

because the attorney general's *parens patriae* authority has historically gone underutilized by past administrations who rarely chose to defend Virginians' civil rights. But shifts in the political climate may provide the Virginia attorney general with fresh opportunities to exercise this power. Recent litigation such as *Biden v. Nebraska* and *Maryland v. United States Department of Agriculture* signal a potential expansion of states' *parens patriae* standing in federal court on civil rights matters. In this evolving landscape, the Virginia attorney general may be positioned to play an even more significant role in civil rights enforcement than attorneys general in most other states due to its unique demographics. The state ranks second in the nation in the ratio of federal civilian workers to total workforce,¹³⁸ with Northern Virginia and Hampton Roads home to the largest concentrations of federal workers in the state.¹³⁹ In localities from northern Virginia to the Roanoke Valley, all or nearly all population growth since 2020 is attributable to immigration¹⁴⁰—communities that are disproportionately exposed to the current administration's civil rights retrenchments. Whether and how the attorney general's role develops will depend not only on judicial interpretations, but also on the office's political will to test its long-standing but underutilized *parens patriae* authority in contemporary contexts. In an era where federal civil rights enforcement is inconsistent¹⁴¹ and sometimes even hostile to marginalized communities,¹⁴² the capacity of

¹³⁸ Levi Goren, Virginia's Federal Jobs Landscape Amid a Potential Federal Shutdown, The Commonwealth Inst., (last updated Jan. 19, 2026), https://thecommonwealthinstitute.org/tci_blog/virginias-federal-jobs-landscape-amid-a-potential-federal-shutdown/ (stating that "1 in every 13 civilian workers" in Virginia works a civilian federal job, making for the "2nd highest ratio of any state").

¹³⁹ Charlotte Rene Woods, As Trump Cuts Federal Jobs, Virginia Lawmakers Race to Respond, Va. Mercury (Feb. 22, 2025), <https://virginiamercury.com/2025/02/22/as-trump-cuts-federal-jobs-virginia-lawmakers-race-to-respond/> ([w]hile Northern Virginia and Hampton Roads are home to the largest concentrations of federal workers . . . federal job losses will ripple across the entire state").

¹⁴⁰ Dwayne Yancey, ODU Report: Without Immigration, Virginia's Population Growth Would Be Almost Flat, Cardinal News (Jan. 26, 2026), <https://cardinalnews.org/2026/01/26/odu-report-without-immigration-virginias-population-growth-would-be-almost-flat-and-much-of-northern-virginia-would-have-lost-population/>.

¹⁴¹ For example, on April 6, 2026, the Trump administration announced that it terminated agreements protecting the civil rights of transgender students at five U.S. school districts and a college. The decision marks a retreat away from requirements negotiated by previous administrations. Annie Ma & The Associated Press, Trump Administration Terminates Agreements to Protect Transgender Students in Several Schools, 12 On Your Side (Apr. 6, 2026, at 19:12 ET), <https://www.12onyourside.com/2026/04/06/trump-administration-terminates-agreements-protect-transgender-students-several-schools/>.

¹⁴² For example, in October 2025, the Department of Justice (DOJ) reached an agreement with the University of Virginia requiring the university to eliminate Diversity, Equity, and Inclusion (DEI) programming and certify quarterly compliance with the administration's anti-discrimination guidance, at which point the DOJ would close its pending civil rights investigations into the university. Press Release, U.S. Dep't of Justice, Off. of Pub. Affs., The Justice Department Announces Agreement with University

state actors to intervene is increasingly consequential. Virginia's legal infrastructure, though shaped by a complex and often contradictory history, nonetheless provides a viable and substantive basis for the Virginia attorney general to protect the civil rights of its citizens through *parens patriae* standing. Recognizing and deploying this authority remains essential for advancing Virginians' civil rights and the Commonwealth's collective welfare.

of Virginia (Oct. 22, 2025), <https://www.justice.gov/opa/pr/justice-department-announces-agreement-university-virginia-0>.