

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 24.2-125 through 24.2-130 of the Code of Virginia and to amend the Code of*
 3 *Virginia by adding sections numbered 24.2-126.1 and 24.2-126.2, relating to elections; Voting Rights Act*
 4 *of Virginia.*

5 [H 967]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That §§ 24.2-125 through 24.2-130 of the Code of Virginia are amended and reenacted and that the**
 9 **Code of Virginia is amended by adding sections numbered 24.2-126.1 and 24.2-126.2 as follows:**10 **§ 24.2-125. Short title; definitions.**11 *A. This chapter may be cited as the "Voting Rights Act of Virginia."*12 *B. For purposes of this chapter,*13 *"~~protected~~Protected class" means a group of citizens protected from discrimination based on race or color*
 14 *or membership in a language minority group.*15 *"Racially polarized voting" means the extent to which the candidate preferences of members of a*
 16 *protected class and other voters in the jurisdiction have diverged in elections for the office at issue and other*
 17 *offices in which the voters have been presented with a choice between candidates who are members of the*
 18 *protected class and candidates who are not members of the protected class.*19 **§ 24.2-126. Voter suppression prohibited.**20 *A. No voting qualification or prerequisite to voting ~~or, law, ordinance, rule, standard, practice, or~~*
 21 *procedure shall be ~~imposed or applied~~ enacted or implemented by the state or any locality in a manner that*
 22 *results in, is likely to result in, or is intended to result in a denial or abridgement of the right of ~~any citizen of~~*
 23 *the United States members of a protected class to vote ~~based on race or color or membership in a language~~*
 24 *minority group.*25 *B. A violation of subsection A is established if, on the basis of the totality of circumstances, it is shown*
 26 *that ~~the political processes leading to nomination or election in the state or a locality are not equally open to~~*
 27 *participation by members of a protected class in that its members have less opportunity than other members*
 28 *of the electorate to participate in the political processes or to elect representatives of their choice ~~the~~*
 29 *challenged qualification, law, ordinance, rule, standard, practice, or procedure results in, is likely to result*
 30 *in, or is intended to result in a material disparity between members of a protected class and other eligible*
 31 *voters in regards to voter participation, access to voting opportunities, or the opportunity or ability to*
 32 *participate in the political process. ~~The extent to which members of a protected class have been elected to~~*
 33 *office in the state or locality is one circumstance that may be considered.*34 *C. Nothing in this section shall be construed to establish a right to have members of a protected class*
 35 *elected in numbers equal to their proportion in the population.*36 **§ 24.2-126.1. Vote dilution prohibited.**37 *A. The governing body of any locality shall not impose or apply any method of election in a manner that*
 38 *has the effect of impairing the equal opportunity or ability of members of a protected class to nominate or*
 39 *elect candidates of their choice or to influence the outcome of an election as a result of diluting or abridging*
 40 *the vote of members of that protected class.*41 *B. A violation of subsection A is established when it is shown that either (i) local elections exhibit racially*
 42 *polarized voting that disparately impairs the equal opportunity or ability of members of a protected class to*
 43 *nominate or elect candidates of their choice or to influence the outcome of an election or (ii) based on the*
 44 *totality of the circumstances, the equal opportunity or ability of members of a protected class to nominate or*
 45 *elect candidates of their choice or to influence the outcome of an election is impaired.*46 *C. The fact that members of a protected class are not geographically compact or concentrated shall not*
 47 *preclude a finding of racially polarized voting or a violation of subsection A but may be a factor in*
 48 *determining whether an appropriate remedy exists to mitigate the impairment.*49 *D. Where there is evidence that the members of more than one protected class are politically cohesive in*
 50 *the locality, members of each of those protected classes may be combined and the court shall consider only*
 51 *the combined electoral preferences of those protected classes in determining whether racially polarized*
 52 *voting exists in the locality or if a violation of subsection A has occurred. Evidence that sub-groups within a*
 53 *protected class have different voting patterns shall not be considered.*54 *E. Evidence concerning the cause of, or reason for, the occurrence of racially polarized voting is not*
 55 *relevant to the determination of whether it exists, and evidence that voting patterns and election outcomes*
 56 *could be explained by factors other than racially polarized voting shall not be considered.*

57 *F. Evidence concerning projected changes in population or demographics shall not be considered in the*
 58 *determination if a violation of subsection A has occurred but may be a factor in determining whether an*
 59 *appropriate remedy exists to mitigate the impairment.*

60 **§ 24.2-126.2. Determining whether a violation has occurred; factors to consider.**

61 *A. In determining whether, under the totality of the circumstances, a violation of § 24.2-126 or 24.2-126.1*
 62 *has occurred with respect to a protected class, a court may consider one or more of the following factors: (i)*
 63 *the history of discrimination affecting members of the protected class; (ii) the extent to which members of the*
 64 *protected class are disadvantaged or otherwise bear the effects of past public or private discrimination in*
 65 *education, employment, housing, criminal justice, or other areas that hinder the ability of members of the*
 66 *protected class to participate effectively in the political process; (iii) the extent to which members of the*
 67 *protected class have been elected to office; (iv) the extent to which candidates who are members of the*
 68 *protected class have faced barriers to accessing the ballot, receiving financial support, or receiving any*
 69 *other support for campaigns for elective office; (v) the extent to which members of the protected class vote at*
 70 *lower rates than other eligible voters; (vi) the use of overt or subtle racial appeals in political campaigns or*
 71 *by government officials; (vii) the lack of responsiveness by elected officials to the particularized needs of*
 72 *members of the protected class; (viii) the use of any voting qualification, law, ordinance, rule, standard,*
 73 *practice, or procedure that may enhance the dilutive effects of the challenged action; (ix) whether the*
 74 *challenged qualification, law, ordinance, rule, standard, practice, or procedure was designed to advance,*
 75 *and does materially advance, a compelling governmental interest that is substantiated and supported by*
 76 *evidence; and (x) any other factors the court may deem relevant. No one factor is dispositive or necessary to*
 77 *establish that a violation of § 24.2-126 or 24.2-126.1 has occurred, nor shall any specified number or*
 78 *combination of factors be required to establish such a violation.*

79 *B. In determining whether a violation of § 24.2-126 or 24.2-126.1 has occurred with respect to a*
 80 *protected class, a court shall not consider (i) the number of members of the protected class who are not*
 81 *burdened by the challenged qualification, law, ordinance, rule, standard, practice, or procedure; (ii) the*
 82 *degree to which the challenged qualification, law, ordinance, rule, standard, practice, or procedure was in*
 83 *widespread use at an earlier date or is currently in use in other states and jurisdictions; (iii) the availability*
 84 *of other forms of voting that are not impacted by the challenged qualification, law, ordinance, rule, standard,*
 85 *practice, or procedure to all eligible voters, including members of the protected class; and (iv) mere*
 86 *invocation of governmental interests in voter confidence or prevention of fraud.*

87 *C. Evidence concerning the intent of voters, elected officials, or the political subdivision to discriminate*
 88 *against members of a protected class is not required for a finding that a violation of § 24.2-126 or 24.2-126.1*
 89 *has occurred.*

90 **§ 24.2-127. Interpretation of chapter.**

91 *All statutes, rules and regulations, and local laws and ordinances relating to the right to vote shall be*
 92 *construed or applied liberally in favor of protecting the right of voters to have their ballot cast and counted,*
 93 *ensuring that eligible voters are not impaired in registering to vote, and ensuring that voters who are*
 94 *members of a protected class have equitable access to opportunities to exercise the right of suffrage. Nothing*
 95 *in this chapter shall be construed to deny, impair, or otherwise adversely affect the right to vote of any*
 96 *registered voter.*

97 **§ 24.2-128. Minority language accessibility.**

98 *A. The State Board shall designate a county, city, or town as a covered locality if it determines, in*
 99 *consultation with the Director of the Census, on the basis of the 2010 American Community Survey census*
 100 *data and subsequent American Community Survey data in five-year increments, or comparable census data,*
 101 *that (i) more than ~~five~~ three percent of the citizens of voting age of such county, city, or town are members of*
 102 *a single language minority and are unable to speak or understand English adequately enough to participate in*
 103 *the electoral process; (ii) more than ~~10,000~~ 5,000 of the citizens of voting age of such county, city, or town*
 104 *are members of a single language minority and are unable to speak or understand English adequately enough*
 105 *to participate in the electoral process; or (iii) in the case of a county, city, or town containing all or any part of*
 106 *an Indian reservation, more than ~~five~~ three percent of the American Indian citizens of voting age within the*
 107 *Indian reservation are members of a single language minority and are unable to speak or understand English*
 108 *adequately enough to participate in the electoral process.*

109 *B. Whenever a covered locality provides any voting or election materials, it shall provide such materials*
 110 *in the language of the applicable minority group as well as in the English language. Such materials shall be of*
 111 *an equal quality to the corresponding English-language materials, produced at the same time as the*
 112 *corresponding English-language materials, and convey the intent and essential meaning of the original*
 113 *English language text or communication. Materials that are translated solely by an automated translation*
 114 *service are presumed to be insufficient to completely convey intent and essential meaning. For purposes of*
 115 *this requirement, "voting or election materials" means registration or voting notices, forms, instructions,*
 116 *assistance, voter information pamphlets, ballots, sample ballots, candidate qualification information, and*
 117 *notices regarding changes to local election districts, precincts, or polling places. For purposes of this*
 118 *requirement, "registration notices" means any notice of voter registration approval, denial, or cancellation*

119 required by the provisions of Chapter 4 (§ 24.2-400 et seq.). A covered locality may distribute such materials
 120 in the preferred language identified by the voter.

121 C. The Attorney General, or any qualified voter who is a member of a language minority group for whom
 122 a covered locality is required to provide voting or election materials in such language, *or any organization*
 123 *that assists members of the language minority group or whose membership includes members of the language*
 124 *minority group* may institute a cause of action in the circuit court of the covered locality to compel the
 125 provision of the voting or election materials in the language of the applicable minority group. In such action,
 126 the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such
 127 plaintiff is the prevailing party.

128 **§ 24.2-129. Covered practices; actions required prior to enactment or administration.**

129 A. For the purposes of this section:

130 "Certification of no objection" means a certification issued by the Attorney General that there is no
 131 objection to the enactment or administration of a covered practice by a locality because the covered practice
 132 neither has the purpose or effect of denying or abridging the right to vote based on race or color or
 133 membership in a language minority group nor will result in the retrogression in the position of members of a
 134 racial or ethnic group with respect to their effective exercise of the electoral franchise.

135 "Covered practice" means:

136 1. Any change to the method of election of members of a governing body or an elected school board by
 137 adding seats elected at large or by converting one or more seats elected from a single-member district to one
 138 or more at-large seats or seats from a multi-member district;

139 2. Any change, or series of changes within a 12-month period, to the boundaries of the locality that
 140 reduces by more than five percentage points the proportion of the locality's voting age population that is
 141 composed of members of a single racial or language minority group, as determined by the most recent
 142 American Community Survey data;

143 3. Any change to the boundaries of election districts or wards in the locality, including changes made
 144 pursuant to a decennial redistricting measure;

145 4. Any change that restricts the ability of any person to provide interpreter services to voters in any
 146 language other than English or that limits or impairs the creation or distribution of voting or election
 147 materials in any language other than English; or

148 5. Any change that reduces the number of or consolidates or relocates polling places in the locality, except
 149 where permitted by law in the event of an emergency.

150 "Voting age population" means the resident population of persons who are 18 years of age or older, as
 151 determined by the most recent American Community Survey data available at the time any change to a
 152 covered practice is published pursuant to subsection B.

153 B. Prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any
 154 standard, practice, or procedure with respect to voting, that is a covered practice, the governing body shall
 155 cause to be published on the official website for the locality the proposed covered practice and general notice
 156 of opportunity for public comment on the proposed covered practice. The governing body shall also publicize
 157 the notice through press releases and such other media as will best serve the purpose and subject involved.
 158 Such notice shall be made at least 45 days in advance of the last date prescribed in the notice for public
 159 comment.

160 Public comment shall be accepted for a period of no fewer than 30 days. During this period, the governing
 161 body shall afford interested persons an opportunity to submit data, views, and arguments in writing by mail,
 162 fax, or email, or through an online public comment forum on the official website for the locality if one has
 163 been established. The governing body shall conduct at least one public hearing during this period to receive
 164 public comment on the proposed covered practice.

165 The governing body may make changes to the proposed covered practice in response to public comment
 166 received. If doing so, the revised covered practice shall be published and public comment shall be accepted in
 167 accordance with this subsection, except the public comment period shall be no fewer than 15 days.

168 C. Following the public comment period or periods prescribed in subsection B, the governing body shall
 169 publish the final covered practice, which shall include a plain English description of the practice and the text
 170 of an ordinance giving effect to the practice, maps of proposed boundary changes, or other relevant materials,
 171 and notice that the covered practice will take effect in 30 days. During this 30-day waiting period, any person
 172 who will be subject to or affected by the covered practice, *or any organization whose membership includes*
 173 *persons who will be subject to or affected by the covered practice*, may challenge in the circuit court of the
 174 locality where the covered practice is to be implemented the covered practice as (i) having the purpose or
 175 effect of denying or abridging the right to vote on the basis of race or color or membership in a language
 176 minority group or (ii) resulting in the retrogression in the position of members of a racial or ethnic group with
 177 respect to their effective exercise of the electoral franchise. In such action, the court may, in its discretion,
 178 allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.

179 D. The governing body of a locality seeking to administer or implement a covered practice, in lieu of
 180 following the provisions of subsections B and C, may submit the proposed covered practice to the Office of

181 the Attorney General for issuance of a certification of no objection. Such practice shall not be given effect
 182 until the Attorney General has issued such certification. A certification of no objection shall be deemed to
 183 have been issued if the Attorney General does not interpose an objection within 60 days of the governing
 184 body's submission or if, upon good cause shown and to facilitate an expedited approval within 60 days of the
 185 governing body's submission, the Attorney General has affirmatively indicated that no such objection will be
 186 made. An affirmative indication by the Attorney General that no objection will be made or the absence of an
 187 objection to the covered practice by the Attorney General shall not bar a subsequent action to enjoin
 188 enforcement of such qualification, prerequisite, standard, practice, or procedure.

189 **§ 24.2-130. Causes of action; standing; remedies.**

190 A. An at-large method of election, including one that combines at-large elections with district- or ward-
 191 based elections, shall not be imposed or applied by the governing body of any locality in a manner that
 192 impairs the ability of members of a protected class, as defined in § 24.2-125, to elect candidates of its choice
 193 or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights
 194 of voters who are members of a protected class.

195 B. A violation of subsection A is established if it is shown that racially polarized voting occurs in local
 196 elections and that this, in combination with the method of election, dilutes the voting strength of members of
 197 a protected class. For purposes of this subsection, "racially polarized voting" refers to the extent to which the
 198 candidate preferences of members of the protected class and other voters in the jurisdiction have differed in
 199 recent elections for the office at issue and other offices in which the voters have been presented with a choice
 200 between candidates who are members of the protected class and candidates who are not members of the
 201 protected class. A finding of racially polarized voting or a violation of subsection A shall not be precluded by
 202 the fact that members of a protected class are not geographically compact or concentrated in a locality. Proof
 203 of an intent on the part of voters or elected officials to discriminate against members of a protected class shall
 204 not be required to prove a violation of subsection A.

205 C. Any voter who is a member of a protected class, as defined in § 24.2-125, and who resides in a locality
 206 where a violation of this section is alleged *individual aggrieved by a violation of this chapter, any*
 207 *organization whose membership includes members of a protected class or individuals aggrieved by a*
 208 *violation of this chapter, any organization whose mission would be frustrated by a violation of this chapter,*
 209 *or any organization that would expend resources in order to fulfill its mission as a result of a violation of this*
 210 *chapter, shall be entitled to initiate a cause of action in the circuit court of the county or city in which the*
 211 *locality where the violation is alleged to have occurred is located.*

212 B. *In an action related to a districting or redistricting plan, any individual with standing to challenge any*
 213 *single district in such plan shall be deemed to have standing to challenge the districting or redistricting plan*
 214 *as a whole.*

215 C. *In such an action brought pursuant to this section, the court may, in its discretion, allow a private*
 216 *plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.*

217 D. Upon a finding of a violation of this ~~section~~ *chapter, the court shall implement appropriate remedies*
 218 *that are tailored to remedy the violation.*