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**LOOKING TO THE VOTING RIGHTS ACTS OF NEW YORK,
CALIFORNIA, OREGON, WASHINGTON, AND VIRGINIA AS
MODELS FOR THE ILLINOIS VOTING RIGHTS ACTS**

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I. INTRODUCTION

The objective of this report is to provide an overview of different state approaches to “voting rights acts.” These state voting rights acts often supplement the protections that voters have under the federal Voting Rights Act (federal “VRA”), particularly as it relates to vote dilution of protected classes (based on race, color, or membership in a language minority) during redistricting. In particular, I will examine the voting rights of acts of New York, California, Oregon, Washington, and Virginia. Each of these states have enacted legislation that provide for vote dilution cause of action for voters of color in at-large elections and makes it easier for plaintiffs to prevail in their claims.

Before discussing specific legislation, below are pertinent definitions of election law principles and concepts.

Vote Dilution: when the effectiveness of one’s vote is diminished because of the way their votes are counted; this typically involves redistricting schemes or at-large electoral systems.

At-Large Voting System: A method of electing candidates for office where voters in the entire jurisdiction can cast their vote for any candidate in that jurisdiction.

District-Based Voting System: An at-large voting system is distinguishable from a district-based voting system, a method of voting where candidates for office are selected by individuals residing in their respective districts, as opposed to by all voters city-wide.

Protected Class: A protected class is a group of people who share a common trait such as race, sex and gender who receive legal protection based on a history of discrimination against them. Some laws aimed at addressing discrimination, such as the federal VRA, will identify specific protected classes.

How At-Large Voting Can Dilute the Minority-Community Vote

At-large voting, particularly in large cities, has the tendency to promote voting discrimination affecting minority-community voters.¹ In an at-large election, there are no districts, and everyone votes for every seat. The problem arises where one voting bloc dictates the outcome of the election. In other words, the 50.1% of the voters can control 100% of the outcome. This can deny minority voters a fair election.

At-Large Voting Systems in Illinois

There are some populated cities in Illinois who operate at-large voting systems, including but not limited to: Naperville (city council members are elected at large.²), Champaign³,

¹ The Bias of At-Large Voting, <https://www.nonprofitvote.org/the-bias-of-at-large-elections-how-it-works/>

² <https://www.naperville.il.us/government/meet-your-city-council/>

³ <https://champaignil.gov/finance/city-clerk/elections/>

Waukegan (where mayor is elected on at-large basis for a four-year term)⁴, Elgin⁵, and Wheaton.⁶

II. FEDERAL VOTING RIGHTS ACT of 1965

Currently, when an Illinois voter suffers from vote dilution or discrimination, they will most likely bring a claim under Section 2 of the federal Voting Rights Act of 1965 (“VRA”). Section 2 of the VRA prohibits the “denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”⁷ This prohibition includes a bar on discrimination resulting from vote dilution of protected communities during the process of redistricting. Furthermore, Section 203 of the VRA protects people from language-minority groups by ensuring election-related information accommodates their natural language.⁸ Section 4 of the VRA guaranteed people with from language-minority groups the right to register and vote,⁹ however, in 2013, the Supreme Court held that the coverage formula in Section 4(b) of the VRA was unconstitutional thereby no jurisdictions are subject to such formula as well as Section 5 of the Act (preclearance requirement).¹⁰

For an aggrieved voter to bring a viable claim under the federal VRA, they must prove three preconditions as set forth in the Supreme Court decision *Thornburg v. Gingles*, 478 U.S. 30 (1986): (1) the affected minority group is sufficiently large and geographically compact to constitute a majority in a district; (2) the minority group is politically cohesive; and (3) the majority group votes sufficiently as a bloc.¹¹ Once the aggrieved voter satisfies these threshold requirements, a court will evaluate a vote dilution claim by considering a set of probative factors under a totality of the circumstances standard. These factors include:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. The extent to which voting in the elections of the state or political subdivision is racially polarized;
3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

⁴ <https://www.waukeganil.gov/185/City-Officials>

⁵ <https://www.cityofelgin.org/77/Mayor-and-Council>

⁶ <https://www.wheaton.il.us/1169/Election-Redistricting-Proposals>

⁷ <https://www.justice.gov/crt/section-2-voting-rights-act#sec2>

⁸ Section 203 of the Voting Rights Act, <https://www.justice.gov/crt/language-minority-citizens>

⁹ Section 4 of the Voting Rights Act, [https://www.justice.gov/crt/section-4-voting-rights-act#:~:text=In%20Section%204\(f\)%2C,participation%20in%20the%20electoral%20process.](https://www.justice.gov/crt/section-4-voting-rights-act#:~:text=In%20Section%204(f)%2C,participation%20in%20the%20electoral%20process.)

¹⁰ *Id.*

¹¹ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
6. Whether political campaigns have been characterized by overt or subtle racial appeals;
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.”¹²

Although the federal VRA is landmark legislation, it is difficult to succeed in a vote dilution claim. Failure to prove any of the three preconditions is fatal. *See e.g., Overton v. City of Austin*, 871 F.2d 529, 538 (5th Cir. 1989) (“We need not address all of [the plaintiffs’] contentions, however, because failure to establish any single criterion of [*Gingles*] is fatal to their case.”) Winning a final judgment in federal court can be difficult because plaintiffs carry a heavier burden of proof.¹³ Federal judges expect plaintiffs to produce more substantial evidence than a state judge would. If the prospect of winning a case is low for the aggrieved voter, then the defendant district has no incentive to settle the claim, which in turn, encourages them to take it to trial and incur costly litigation expenses. Further, recent court decisions, including Federal Courts in Illinois, have suggested that the standards are even more difficult to prove today.

¹² *Id.* at 37.

¹³ <https://www.brennancenter.org/our-work/research-reports/debunking-false-claims-about-john-lewis-voting-rights-act>

III. ILLINOIS VOTING RIGHTS ACT

In 2011, Illinois passed its own voting rights act (“Act”).¹⁴ But as currently written, the Act is insufficient to provide adequate legal recourse to aggrieved voters. The Act pales in comparison to the voting rights acts of other states which affords more protections to voters than provided for in the federal VRA. The Act is comprised of two sections: Short Title and Redistricting.

The “Redistricting” section, 10 ILCS 120/5-5 is the most substantial section in the Act. It imposes requirements that are not expressly provided for in the federal Voting Rights Act. For instance, the Act thoroughly defines the types of districts that can be drawn based on Illinois constitutional mandate: crossover districts, coalition districts, or influence districts.

The most blaring shortcomings of the Act are the cause of action and remedies sections, which both appear to be broad and vague. In subsection (d), the Act states the following:

Nothing in this Act shall be construed, applied, or implemented in a way that imposes any requirement or obligation that conflicts with the United States Constitution, any federal law regarding redistricting Legislative Districts or Representative Districts, including but not limited to the federal Voting Rights Act, or the Illinois Constitution.

The section providing the remedy, albeit unclearly, for voting rights violations state the following: “In the event of a violation of this Act, the redistricting plan shall be redrawn to the least extent necessary to remedy the violation.” There is not too much commentary on the Act because it is rarely utilized.

¹⁴ 10 ILCS 120/5

IV. NEW YORK VOTING RIGHTS ACT

Enacted in 2022, New York’s Voting Rights Act (“NYVRA”), popularly known as the John R. Lewis Voting Rights Act, has been heralded as one of the strongest, if not the strongest, piece of state legislation safeguarding the voting power of its people. According to New York’s Lieutenant Governor Antonio Delgado, “By amending the voter laws in New York State, we are providing all people, regardless of the color of their skin or where they live, with an equal opportunity to have their voices heard at the polls.”¹⁵ Andrea Stewart-Cousins, the Majority Leader of the New York Senate, expressed that the NYVRA will “expand and codify voter protections, empower citizens at the ballot box, and promote accountability among elected officials.”¹⁶ Embracing this spirit, the NYVRA’s objective is twofold: (1) encourage voter turnout to the maximum extent possible and (2) ensure that “members of racial, color, or language-minority groups” have “an equal opportunity to participate in the political processes” of New York.¹⁷

I. Cause of Action and Burden of Proof for Vote Dilution

NYVRA entails an express prohibition against vote dilution, specifically: “no board of elections or political subdivision shall use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution.”¹⁸

Although the NYVRA provides relief without resorting to litigation, it has as a provision that expedites judicial proceedings and preliminary relief for voting claims. “Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions” actions brought under the NYVRA shall be subject to expedited proceedings and receive automatic calendar preference.

To show a claim for vote dilution, any aggrieved person, organization who membership includes aggrieved persons or members of a protected class, organizations dedicated to ensuring voting access, or the attorney general, must present one of two following circumstances. The individual can show at-large voting system and (1) either a racially polarized voting pattern among members of a protected class or (2) under the totality of the circumstances, the hindering of the ability of members of a protected class to elect candidates of their choice or influence the outcome of an election. Alternatively, the individual can show a district-based or alternative method of election and candidates preferred by members of a protected class would usually be defeated and either (1) racially polarized voting, or (2) under the totality of the circumstances, the hindering of the ability of members of a protected class to elect candidates of their choice or influence the outcome of an election.

¹⁵ <https://www.governor.ny.gov/news/governor-hochul-signs-landmark-john-r-lewis-voting-rights-act-new-york-law>

¹⁶ *Id.*

¹⁷ <https://legislation.nysenate.gov/pdf/bills/2021/S1046E>

¹⁸ <https://legislation.nysenate.gov/pdf/bills/2021/S1046E>

There are multiple factors considered under the totality of the circumstances to evaluate claim for vote dilution. The NYVRA enumerates eleven factors, most of which are adopted from the common federal law (see above for full list of factors). Some of the factors New York courts consider include extent to which members of a protected class are elected to office in the district, use of any voting qualifications or prerequisites that may enhance dilutive effects, extent to which members of a protected class contribute to political campaigns at lower rates, and extent to which members of a protected class are disadvantaged in the areas of health, education, employment, and criminal justice which may hinder their ability to effectively participate in the political process.

II. Remedies for Vote Dilution

The NYVRA provides an extensive, inexhaustive list of remedies state courts can provide to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process. These remedies include, but are not limited to:

1. switching to a district-based method of election;
2. an alternative method of election;
3. new or revised districting or redistricting plans;
4. reasonably increasing size of governing body;
5. transferring authority for conducting the political subdivision's elections to the BOE for the county in which the subdivision is located.
6. Additional voting hours/days and polling locations;
7. Requiring additional voter education.

Moreover, courts can consider proposed remedies by any parties and interested non-parties.

Procedures for implementing new or revised districting or redistricting plans

Aforementioned, New York courts have the power to require the implementation of new or revised districting or redistricting plans ("re/districting") that would replace the jurisdiction's at-large method of election that resulted in voter dilution. NYVRA has enacted an outline for such a procedure. Before drawing a draft of the re/districting plan of the proposed boundaries, the jurisdiction must hold at least two public hearings over a period of no more than thirty days. Before the public is invited to voice their insight, the jurisdiction may conduct outreach to the public, including to non-English-speaking communities to explain the re/districting process and encourage public participation.

After all draft re/districting plans are drawn, the jurisdiction must publish and make available for release at least one draft re/districting plan. Also, the jurisdiction must hold at least two additional public hearings over a period of no more than forty-five days. The draft re/districting plan must be published at least seven days before consideration at a hearing. Any revisions based on comments made at the public hearing must be published and made available to the public for at least seven days before being adopted.

Attorney's Fees

The NYVRA provides that courts shall allow the prevailing plaintiff party a “reasonable attorneys’ fee, including, but not limited to, expert witness fees and expenses as part of the costs.” Prevailing defendant parties shall not recover any costs unless the court deems otherwise.

III. Non-Litigation Mechanisms

In the NYVRA’s “Notification Requirement and safe harbor for judicial actions” provision, before commencing litigation against a jurisdiction for a violation of the NYVRA, a prospective plaintiff must send a written notice to the clerk or governing body of the jurisdiction against which action will be brought, asserting that the jurisdiction may be in violation of the NYVRA. A prospective plaintiff cannot file suit within fifty days of sending the notification letter.

In response, the jurisdiction may pass a resolution affirming (1) its intent to enact a remedy for a potential violation of the NYVRA; (2) specific steps it will undertake to facilitate approval and implementation of such a remedy; and (3) schedule for enacting and implementing such a remedy. Proposed remedies must be submitted to the civil rights bureau and the jurisdiction must hold at least one public hearing. If the civil rights bureau approves the resolution, the jurisdiction and the prospective plaintiff must enter into an agreement providing that the prospective plaintiff will not file suit so long as the jurisdiction complies with the NYVRA.

IV. Preclearance System

One major element of the NYVRA is the preclearance system, which requires certain jurisdictions with a history of past racial discrimination to obtain approval from the New York Attorney General’s office or a local court prior to enacting changes in their electoral system. New York Civil Liberties Union consider the preclearance safeguard as “the crown jewel of the New York Voting Rights Act.”¹⁹ Jurisdictions will be “precleared” only if it shows that their voting mechanisms will not harm voters of color. This safeguard was embodied by Section 5 of the federal Voting Rights Act until the U.S. Supreme Court invalidated it in *Shelby County v. Holder* in 2013. According to New York Senator Zellnor Myrie, one of the bill’s initial sponsors, “. . . the states have a role to play, particularly with a hostile Supreme Court and in some instances a hostile Congress.”²⁰ This statement was made prior to the NYVRA’s enactment when many state lawmakers sought the need to create its own voting rights act after failure at the federal level.

V. Protection against Voter Intimidation

The NYVRA also creates a cause of action against voter intimidation, deception, or obstruction of the right to vote. The NYVRA prohibits interference with access to the polls or

¹⁹ <https://gothamist.com/news/new-york-eyes-its-own-voting-rights-act-after-failure-at-the-federal-level>

²⁰ *Id.*

delays in the voting process. The ban on voter intimidation extends to private individuals, campaigns, law enforcement, and officials.

VI. Coalition Claims

Another unique aspect of the NVYRA is its coalition claims provision. “Members of different protected classes may file an action jointly . . . in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.”

VII. Protections for Language-Minority Voters

In addition to the NVYRA protecting individuals against vote dilution, the NYVRA also requires language assistance to voters with limited English proficiency. New York is one of the most diverse states in the country, thus the NVYRA tries to capture as many languages as possible to reflect that diversity. The NVYRA applies to assistance in Spanish, Asian languages, and Native American or Alaskan Native languages, and also mandates for voting materials in non-English languages to be “of an equal quality” to the corresponding English language materials. These voting materials include voter registration notices and forms, ballots, election instructions, and other materials related to the electoral process. There must be oral assistance at polling sites too.

V. CALIFORNIA VOTING RIGHTS ACT

Enacted in 2001, the California Voting Rights Act (“CVRA”) set out to expand protections for minority voters against vote dilution. New York’s VRA was inspired by the CVRA’s mission to bring voting claims to the state level and afford more protections to minority voters than the federal VRA provided. The CVRA’s purpose is “to address ongoing vote dilution and discrimination in voting as matters of statewide concern, in order to enforce the fundamental rights guaranteed to California voters under Section 7 of Article I and Section 2 of Article II of the California Constitution.”²¹ Furthermore, the CVRA mandates that at-large elections cannot operate “in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.”²² The CVRA expressly takes influence districts into account unlike the federal VRA.

In 2016, the California State Assembly passed Assembly Bill 182 (AB-182) expand on the CVRA’s protections by prohibiting the use of district-based elections that dilute the strength of minority communities’ votes.²³ In a letter prepared by Common Cause to a California lawmaker, AB-182 can help challenge single member district-based elections with gerrymandered districts.²⁴

I. Cause of Action and Proof of Violation

The CVRA provides a cause of action to members of any racial or ethnic group who can establish their votes have been diluted. To establish a vote dilution and discrimination claim, the statute requires the plaintiff to show racially polarized voting.²⁵ Racially polarized voting is defined in the statute as a difference “in the choice of candidates or electoral choices that are preferred by voters in a protected class, and in the choice of candidates or electoral choices that are preferred by voters in the rest of the electorate.”²⁶ The major differences in the burden of proof between the CVRA and the federal VRA is that the CVRA does not require the plaintiff to show the three *Gingles* preconditions. For instance, the *Gingles* precondition of “geographical compactness” is not a requirement, but rather only one of many factors relevant in developing a remedy.

Section 14028 of the CVRA specifies that elections conducted prior to the filing of a voter discrimination claim “are more probative to establish the existence of racially polarized voting” than elections after the filing of the claim.²⁷ In the same section, the CVRA exemplifies racially polarized voting. Section 14028(b) reads in relevant part:

²¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB182

²² Id. at Section 14027

²³ AB-182 added to Chapter 1.5 of Division 14 of the Election Code.

²⁴ <https://www.commoncause.org/california/wp-content/uploads/sites/29/2018/05/ab-182-letter.pdf>

²⁵ Id. at Section 14028(a)

²⁶ https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=ELEC&division=14.&title=&part=&chapter=1.5.&article=

²⁷ Id. at section 14028(a).

The occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.

The CVRA adopts the factors evaluated based on the totality of the circumstances test used under the federal VRA, however, Section 14028(e) of the CVRA does not require the consideration of these factors to prove a violation. The balancing of factors are “probative, but not necessary factors to establish a violation” of the CVRA.²⁸

II. Remedies

As for remedies, the CVRA provides several options to fix the effects of vote dilution and discrimination. Under Section 14042,

- (1) courts can implement a district-based voting system to grant the protected class the opportunity to elect candidates of its choice from single member districts;
- (2) increase the size of the governing body;
- (3) Requiring elections of the governing body to be held on the same day as a statewide election;
- (4) Issuing an injunction to delay an election.

Attorney’s Fees

Section 14030 of the CVRA grants a prevailing plaintiff the right to recover reasonable attorney’s fees and litigation expenses such as expert witness fees. Prevailing defendant parties do not have a right to recover any costs unless the court finds the action to be “frivolous, unreasonable, or without foundation.”

III. Impact and Support for the CVRA

Based on a statistical analysis by the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, 21 cases have been filed under the CVRA since 2003 making it the most utilized state voting rights law in the nation.²⁹ Of the 21 cases, 16 of them favorably settled or was won by the plaintiff voters. In 2021, California Attorney General Rob Bonta filed an amicus brief in *City of Santa Monica v. Pico Neighborhood Association*³⁰, an ongoing case initiated by Latino voters from the Pico neighborhood in Santa Monica, California.³¹ These voters allege that the City of Santa Monica’s at-large election of its city council purposefully prevents Latino residents, from achieving fair representation in their local government by diluting Latino voting

²⁸ *Id.* at Section 14028(e)

²⁹ https://lccrsf.org/wp-content/uploads/2014_CVRA_Fact_Sheet.pdf

³⁰ https://www.santamonica.gov/Media/Attorney/Election/20210712.Amicus%20Curiae%20Brief_AG%20Rob%20Bonta.pdf

³¹ <https://www.santamonica.gov/Media/Attorney/Election/Complaint.pdf>

power and abridging right to effective political participation in elections to the Santa Monica City Council.³²

In filing the amicus brief, Attorney General Bonta expressed ardent support towards CVRA:

To truly be able to pursue a more perfect union, we must defend and protect the voting rights of all Californians. For decades, the California Voting Rights Act has been an important tool for doing exactly that. At this critical juncture, we remain committed to upholding and strengthening our democracy. Ultimately, our diversity is our strength — and it is a key factor in what makes us who we are as a state. In California, all of our people are welcome and they all have the right to make their voices heard.³³

The impact of CVRA has touched another local government election in San Ramon Valley. According to an attorney from the Bay Area Voting Rights Initiative, a shift from at-large election to district-based elections is “more critically an opportunity to make local government in the San Ramon Valley more truly representative, to revitalize the engagement of the community in jurisdictions whose elections have been neglected, and to create opportunities for a new generation of political leaders that is as diverse as the growing population of the Valley.”³⁴ The eradication of at-large systems are “not an attempt to displace incumbents, bur rather to make a seat at the table” for minority groups who “have been chronically underrepresented.”³⁵

³² <https://www.santamonica.gov/Media/Attorney/Election/Complaint.pdf>

³³ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-urges-california-supreme-court-protect-voting-rights-all>

³⁴ <https://www.pleasantonweekly.com/news/2019/05/16/draw-the-line-district-based-elections-taking-hold-in-tri-valley>

³⁵ Id.

VI. OREGON VOTING RIGHTS ACT

Passed in June 2019 with bipartisan support, including a unanimous vote in the Oregon senate, the Oregon Voting Rights Act (“OVRA”) was principally designed to give an effective voice to people of color.³⁶ The OVRA’s aim is to give “members of a protected class ... an equal opportunity to elect candidates of their choice or an equal opportunity to influence the outcome of an election as a result of the dilution or abridgement of the rights of electors who are members of that protected class[.]”³⁷ The OVRA is unique in that it specifically targets “board of a qualifying district,” which means a “district school board” according to the definitions provided in the statute. Martha Sonato, the director of the Pineros y Campesinos Unidos del Noroeste (“PCUN”), testified to a growing Latinx electorate in Oregon, but they face longstanding inequities for the communities are often not represented in their decision-making bodies.³⁸

The OVRA provides for both non-litigation and litigation routes to provide relief to voters who claim vote dilution.

I. Non-Litigation Action

Section 255.416 provides for the ability of board of qualifying district to remedy a potential violation of the OVRA without having to resort to litigation. The procedure is like that of the NVYRA. Prior to voting on whether to adopt a proposed new electoral system, the district must provide public notice to residents of the district about the proposed remedy, hold at least two public hearings, and make publicly available revised districting maps and its methodologies.

Also, prior to a voter filing suit against a district, the voter must notify the district in writing the potential violation, identify the protected class whose members are being harmed from the electoral system, and include a proposed remedy to cure the alleged violation. If the district passes a resolution outlining its intention to alter its electoral system to comply with OVRA, then the voter will not have to file suit against them.

II. Cause of Action and Proof of Violation

A second pathway for a district to remedy a violation of the OVRA is through state court. Section 4 of the OVRA enumerates the elements that an individual must show to bring a vote dilution claim. The individual must show that: (1) electors in the qualifying district exhibit polarized voting and (2) a protected class does not have an equal opportunity to elect candidates of their choice or otherwise influence the outcome of an election based on the dilution or abridgement of their vote.³⁹ The statute lists factors to further derive a showing of a violation of the OVRA (same factors expressed in *Gingles* and the CVRA) which include history of discrimination, the extent to which a protected class bear the effects of past discrimination in non-voting areas such as education, employment and health that hinders their ability to

³⁶ <https://www.sightline.org/2019/06/13/oregon-voting-rights-act-passes-senate-june-12/>

³⁷ <https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB3310>

³⁸ <https://www.sightline.org/2019/06/13/oregon-voting-rights-act-passes-senate-june-12/>

³⁹ *Id.*

effectively participate in the political process, and use of overt or subtle racial appeals in political campaigns, among others.⁴⁰ Students of color comprise the majority of Oregon school districts, yet the school boards fail to represent this diversity.⁴¹

I. Remedies

Under Section 4(8)(a), if a district is liable for violating the OVRA, the ruling court “may order any remedy the court determines is necessary to cure the violation” such as compel the district to “adopt a new electoral system that is tailored to remedy the violation.”

⁴⁰ *Id.*

⁴¹ <https://www.sightline.org/2019/06/13/oregon-voting-rights-act-passes-senate-june-12/>

VII. WASHINGTON VOTING RIGHTS ACT

The Washington State Voting Rights Act (WVRA)⁴², chapter 29A.92 RCW, was passed in 2018. The WVRA mirrors the CVRA insofar as it expands on voter protection and alleviates the burden of proof for aggrieved voters. Its objective is similar, and that is to prohibit electoral methods “that deny race, color, or language minority groups an equal opportunity to elect candidates of their choice[.]”⁴³ The Washington Legislature recognizes that existing electoral districts in the state result in the “improper dilution of voting power for these minority groups.”⁴⁴ Thus, the Legislature “intends to modify existing prohibitions in state laws so that these jurisdictions may voluntarily adopt changes on their own, in collaboration with affected community members, to remedy potential electoral issues so that minority groups have an equal opportunity to elect candidates of their choice or influence the outcome of an election.”⁴⁵

Most local elections in Washington currently used an at-large voting system.⁴⁶

I. Cause of Action

For an individual to bring a claim of vote dilution or discrimination under the WVRA, they must show proof of:

- (a) “Elections in the political subdivision exhibit polarized voting;” and
- (b) “Members of a protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution or abridgement of the rights of members of that protected class or classes.”⁴⁷

Unlike the Federal Voting Rights Act, an individual does not have to show a proof of discriminatory intent on the part of the voters of elected officials or that members of a protected class are “geographically compact or concentrated to constitute a majority in a proposed or existing district-based election district[.]”⁴⁸

Polarized voting is defined in the statute as a difference in choice of candidates preferred by voters in a protected class versus voters in the rest of the electorate.⁴⁹ To show proof of polarized voting, the court must analyze the following criteria:

1. Elections of the governing body of the political subdivision;
2. Ballot measure elections
3. Elections in which at least one candidate is a member of a protected class;

⁴² WA Voting Rights Act Ch. 29A.92 RCW, <https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92.005>

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ <https://www.aclu.org/news/voting-rights/democracy-just-got-stronger-washington-state>

⁴⁷ <https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92.030>

⁴⁸ *Id.*

⁴⁹ <https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92.010>

4. And other electoral choices that affect the rights and privileges of members of a protected class.⁵⁰

As for the second element of a vote dilution claim, the WVRA lists multiple factors that may prove the dilution or abridgement of minority groups' voting power. These are the same factors prescribed in *Gingles*. The WVRA stresses that "the equal opportunity to elect shall be assessed pragmatically, based on local election conditions, and may include crossover districts."

Voluntary Change to Electoral System

To avoid costly litigation, the WVRA empowers districts to voluntarily implement a district-based election system. It must follow a public hearing procedure like that outlined in Oregon's and New York's VRAs. If the district implements a district-based system, the plan must be:

1. reasonably equal in population as possible to each and every other such district comprising the political subdivision.
2. Reasonably compact
3. Consist of geographically contiguous area
4. Coincide with existing recognized natural boundaries and to the extent possible, preserve existing communities of related and mutual interest
5. Not be drawn that creates or perpetuates dilution of votes of protected class members

Good Faith Effort to Remedy – Safe Harbor

The WVRA states that the jurisdiction must work in good faith with the individual intending to seek action against them for potential violations of the WVRA. Such work in good faith to implement a remedy may include the consideration of relevant electoral data, demographic data, recent census data, and any other information that would be relevant to implementing a remedy. All proposed remedies must be brought before a court, and all materials will be viewed in the light most favorable to those opposing the jurisdiction's proposed remedy. Lastly, there is a rebuttable presumption that the court will decline the jurisdiction's proposed remedy at this stage. But if the court approves the proposed remedy, then no action can be brought against the jurisdiction for four years by any party so long as the jurisdiction does not deviate from the remedy during the four-year period.

Joint Action in Court

The WVRA provides the ability for members of different protected classes to file an action jointly if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.

II. Remedies

⁵⁰ <https://app.leg.wa.gov/RCW/default.aspx?cite=29A.92.030>

In finding that a jurisdiction has violated the WVRA, a court may order the imposition of a district-based election system. District lines can be redrawn by appointed individuals or panel. Implementation of a district-based system is not precluded by the fact that members of a protected class do not comprise a numerical majority of a district. The court may approve a district-based election system that allows the protected class the chance to join in a coalition of two or more protected classes to elect candidates of their choice if there is “demonstrated political cohesion” among the classes.

III. Impact of WVRA

To showcase the impact of the WVRA, consider a voting dispute in Franklin County, Washington.⁵¹ Prior to bringing a claim under the WVRA, Franklin County had an at-large election system which had never elected a Latino candidate despite the County’s almost 50% Latino population.⁵² Three Latino voters sought protection under the WVRA. As a result, Franklin County will switch to a single-member district-based system in 2024.⁵³

⁵¹ <https://www.naacpldf.org/wp-content/uploads/NYVRA-Fact-Sheet-At-Large-Elections.pdf>

⁵² *Id.*

⁵³ *Id.*

VIII. VIRGINIA VOTING RIGHTS ACT

The Virginia Voting Rights Act (“VVRA”)⁵⁴ is the first comprehensive voting bill of its kind in the South.⁵⁵ The VVRA aims to grant protections against voter discrimination based on race, color, or language. After former President Donald Trump’s loss in 2020, many GOP officials across the South have restricted voting access, but Virginia seeks to cease the trend.

“What Virginia is doing is really creating a model for the entire country about what states can do in this environment where the federal Voting Rights Act is partially eviscerated,” said Kadeem Cooper, counsel at the Lawyers’ Committee for Civil Rights Under Law in Washington D.C.

The general layout of the VVRA consists of definitions, what constitutes a vote denial or dilution, minority language accessibility, “covered practices” or a method of voting, at-large voting system, voter education, assistance or certain voters, intimidation of voters and officers, and communication of false information to registered voter.⁵⁶

Section 24.2.129 addresses the concept of “covered practice.” Covered practice does not harbor a single definition under VVRA, but the statute is replete with illustrative examples among them being “any change to the method of election of members of a governing body ... by adding seats elected at large[.]” Another example of covered practice is “any change, or series of changes within a 12-month period, to the boundaries of the covered jurisdiction that reduces by more than five percentage points the proportion of the jurisdiction’s voting age population that is composed of members of a single racial or language minority group[.]” The common denominator among these definitions of covered practice is “any change” to the district’s voting system.

Prior to the enactment of a covered practice, the governing body must publish on the official website of the district the proposed covered practice and allow for an opportunity for public comment on such proposed covered practice. Subsequently after, the governing body must publish the final covered practice and notice that the covered practice will take effect in 30 days. During the 30-day waiting period, any person subject to the covered practice may challenge the in the circuit court of the locality where the covered practice is to be implemented as (a) having the purpose or effect of denying or abridging the right to vote on the basis of race, color, or membership in a language minority group or (b) resulting in the retrogression in the position of a racial or ethnic group in the exercise of the vote. The proposed covered practice must be submitted to the Office of the Attorney General for issuance of a certification of no objection.

Additionally, the VVRA addresses ways to aid voters with certain qualities such as age and disability under Section 24.2-649. For instance, the statute provides that “any voter age 65 or older or physically disabled may request and then shall be handed a printed ballot by an offer of election outside the polling place but within 150 feet of the entrance to the polling place.”

⁵⁴ VA Elec. Code Title 24.2, Ch. 1.1

⁵⁵ <https://www.npr.org/2021/02/26/971366621/virginia-is-poised-to-approve-its-own-voting-rights-act>

⁵⁶ <http://www.democracydocket.com/wp-content/uploads/2021/03/legp604.exe-2.pdf>

Another provision states that “any qualified voter who requires assistance to vote by reason of physical disability or inability to read or write, if he so requests, be assisted in voting.”

Language minority groups are subject to assistance as well: “If the voter requires assistance in a language other than English and has not designated a person to assist him, an officer of election may assist as an interpreter[.]” Emphasized in the statute is the provision that “the local electoral board shall ensure that interpretation services in the language of the applicable minority group are available and easily accessible to voters needing assistance[.]”

There is a penalties provision for anyone who willfully violates the sections providing certain voters who request for assistance.

Cause of Action and Proof of Violation

Within the at-large section is the cause of action provision: “any voter who is a member of a protected class . . . and who resides in a locality where a violation of this section is alleged shall be entitled to initiate a cause of action in the circuit court of the county or city in which the locality is located. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.”

The VVRA prohibits the application of at-large voting systems that hinders the ability of a protected class from electing the candidate of their choice, or to influence the outcome of an election by diluting their vote. To prove a claim of vote dilution, the individual must show racially polarized voting occurs in the local election that dilutes the voting strength of members of a protected class. The VVRA does not affirmatively describe the ways racially polarized voting can be shown, however, it expressly states that voters who bring a dilution claim do not necessarily have to show members of a protected class are compact or concentrated in a locality, or discriminatory intent of elected officials against members of a protected class.

Remedies

The remedies section of the VVRA is brief and couched within Section 24.2-130: At-large method of election; limitations; violations; remedies. In its entirety, the remedy for a finding of a violation of the VVRA is for the court to “implement appropriate remedies that are tailored to remedy the violation.”

IX. CONCLUSION

Compared to the voting rights acts of New York, California, Oregon, Washington, and Virginia, Illinois lags significantly behind when it comes to granting the ability for voters to bring a vote dilution claim in state court. California blazed a trail by becoming the first state to create a cause of action for vote dilution in state court. Unlike Illinois's VRA, California's VRA used strong, vehement language in the statute to express their mission to prohibit at-large elections from operating "in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class."⁵⁷ New York, Oregon, Washington, and Virginia followed suit by incorporating language just as energetic in their purposes section of their VRAs.

One of the most enticing aspect of the other states' VRAs is the requirement for districts to cure a potential violation of a state's VRA by resolving it without resorting to costly litigation. New York provides a model example because it clearly outlines the steps that a district must take from a prospective plaintiff sending a written notice to the clerk or governing body of the jurisdiction against which action will be brought to the district having to gain approval for their proposed remedy from the civil rights bureau. The Washington VRA also offers compelling language in its Good Faith-Safe Harbor provision which stipulates that the jurisdiction must work in good faith with the individual intending to seek action against them for potential violations of the WVRA. Such work in good faith to implement a remedy may include the consideration of relevant electoral data, demographic data, recent census data, and any other information that would be relevant to implementing a remedy. This process highlights community collaboration, and a system of checks and balances to ensure that government authorities are held accountable for their decision-making.

If litigious action is warranted, then each states' VRA clearly alleviates the burden of proof imposed on a voter by eliminating the *Gingles* prerequisites and allowing a voter to show racially polarized voting, which can be demonstrated by assessing the inexhaustive list of factors discussed in *Gingles*. When a state court finds a violation of the states' VRAs, then the court can depend on the remedies provided for in the statutes, which are expressly and clearly written as well. The ideal model comes from New York's VRA because it grants an extensive, inexhaustive list of remedies state courts can provide to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process such as switching to a district-based method of election and adopt a new or revised districting or redistricting plans.

Illinois's VRA can look to New York, California, Washington, Oregon, and Virginia as models to bolster its own statute and guarantee Illinois voters protections against electoral systems that dilute their vote and essentially make their voice unheard.

⁵⁷ Cal. Elec. Code Section 14027

