

Model Code for a State-Level Voting Rights Act

March 2021

VOTING
RIGHTS
PROJECT



UCLA

UCLA VOTING RIGHTS PROJECT AND
LATINO POLICY AND POLITICS INITIATIVE

**Model Code for
State Level Voting Rights Protection**

By: UCLA Voting Rights Project

About the Authors

This report was authored by the UCLA Voting Rights Project and students from the David J. Epstein Program in Public Interest Law & Policy. Student authors are Ronak Patel, Aaliya Kapadia, Sophie Kosmacher, and Alton Wang. UCLA Voting Rights Project authors include Chad W. Dunn, Sonni Waknin, and Alana Friedman.

About the UCLA Voting Rights Project

The UCLA Voting Rights Project (VRP) is the marquee advocacy project of the UCLA Latino Policy and Politics Initiative (LPPi) at the University of California, Los Angeles and is focused on voting rights litigation, research, policy, and training. The UCLA VRP addresses monumental and overlooked gaps in the field of voting rights, including how to train young lawyers and researchers, the development of new legal and methodological theories for voting rights cases, and how to guarantee that all citizens have equal and fair access to our democracy. The project was founded by Chad W. Dunn, J.D. and Matt Barreto, Ph.D. The UCLA Voting Rights Project is located within the Luskin School of Public Affairs.

I. Introduction

For decades, the federal Voting Rights Act of 1965 (VRA)¹ protected the right to vote across the country. The Supreme Court, however, gutted one of the most significant portions of the VRA in 2013 when it struck down the preclearance formula in Section 4(b) in *Shelby County v. Holder*.² In the last few decades federal court decisions have watered down the remaining portions of the VRA. Elimination of preclearance has decimated voting rights protections in jurisdictions that were covered under the formula and has led to a swift rise in anti-voter laws that have restricted the elective franchise.³ In the rest of the country, the nationwide protections of the VRA are proving less and less effective. Despite a weakened VRA, individual states have been slow to adopt legislation to preserve the right to vote, and few states currently enshrine state level causes of action that enable individual voters or groups representing voters to challenge voting and election laws or schemes.⁴

It is clear that state level voting rights protections are necessary. More than half a century after the VRA was passed, voter suppression and the impacts of vote dilution remain and continue to perpetuate inequality.⁵

The goal of this model legislation is to provide states with policy options for each can adopt to ensure the right to vote is protected under state law. This is particularly important because additional protections at the state level will safeguard from actions at the federal level that may weaken voting rights. In addition, proposals introduced in Congress after *Shelby County* that seek to restore and expand the VRA, including the Voting Rights Advancement Act (VRAA), have yet to pass in both houses of Congress and it remains to be seen whether federal courts will continue to vigorously enforce the right to vote.⁶

This Model Voting Rights Act, as explained below, will serve as a foundation for state legislators, advocates, and those committed to voting rights protections on the state level to implement their own state-level voting rights acts. The code builds on the existing acts that have passed or have been introduced in states including California, Washington, and New York. This report outlines the model code and provides policy justifications for each section.

¹ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 439 (codified as amended at 52 U.S.C. § 10301 et seq.) [hereinafter Federal VRA].

² See *Shelby Cty. v. Holder*, 570 U.S. 529 (2013). Section Five required specific jurisdictions with a history of voter suppression to seek federal preclearance from the Attorney General of the United States or the District Court for the District of Columbia to amend its election procedures and laws. See VRA § 5.

³ See, e.g., Thomas Lopez, *Shelby County: One Year Later*, (Brennan Ctr. for Justice, 2014), available at https://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf.

⁴ See Michael Li & Yuriy Rudensky, *Rethinking the Redistricting Tool Box*, 62 HOW. L.J. 713, 730-32 (2018); See also Paige A. Epstein, *Addressing Minority Vote Dilution Through State Voting Rights Acts* (U. Chi. L. Sch. Pub. L. & Legal Theory Working Papers, Working Paper No. 474, 2014), available at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1918&context=public_law_and_legal_theory.

⁵ See, e.g., Brad Epperly et al., *Rule by Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S.*, 18 PERSP. ON POL. 756, 764-65 (2020).

⁶ See Mario Q. Fitzgerald, *A New Voting Rights Act for a New Century: How Liberalizing the Voting Rights Act's Bailout Provisions Can Help Pass the Voting Rights Advancement Act of 2017*, 84 BROOK. L. REV. 223, 245-47 (2018).

II. Developing a Model Code

The authors extensively researched state voting rights bills across the country, including both proposed and enacted legislation. To do so, authors combed through the legislative record to search for introduced bills that relate to voting rights. Then, the bills were broken down and sorted into spreadsheets, where authors compared language and effect across them. This research primarily focused on states that, on one end, have a history of voting rights violations, and on the other, have a history of strong voting rights protections. The states analyzed in this report include: California; Colorado; Florida; Georgia; Hawaii; Illinois; Maine; Michigan; Minnesota; Mississippi; New Hampshire; New Jersey; New York; North Carolina; Oregon; South Carolina; Texas; Vermont; Virginia; Washington; and Wisconsin.

This model code is intended to serve as a starting point for discussions moving forward. It is designed to be flexible in order to accommodate the varying needs of advocates and states.

III. Model Legislation

The model code, as drafted, is presented below. Each section of the model code is accompanied by a policy rationale explaining the role of each section, how it is meant to be implemented, and the impact it has on other voting rights legislation at the state level.

§ I ESTABLISHING RIGHTS

- a. It shall be guaranteed to all citizens of this State the right to vote. The right to vote shall not be denied regardless of race, income level, gender, disability, national origin, language ability, age, sexual orientation, or religion.
- b. It shall be guaranteed to all persons in this State and all persons within any political subdivision or special district within the State has the right to equal political representation. The right to representation shall not be denied regardless of age, citizenship status, race, income level, gender, disability, national origin, language ability, status as a property owner, sexual orientation, or religion.
- c. All voters who are members of racial, ethnic, and language-minority groups shall have an equal opportunity to participate in the political processes as all other voters in this State, and especially to exercise the elective franchise.
- d. No method of electing the governing body of any political subdivision may be imposed or applied in a manner that impairs the ability of a protected class or classes to have an equal opportunity to elect candidates of their choice as the result of the dilution or abridgment of the rights of voters who are members of a protected class or classes.

The United States Constitution does not include an express provision protecting the right to vote. There are four amendments to the U.S. Constitution that expressly prohibit discrimination in voting. The Fifteenth Amendment to the Constitution provides that the right to vote “shall not be denied or abridged,” on account of race,⁷ the Nineteenth Amendment extends the same

⁷ U.S. CONST. amend. XV.

protections on the basis of sex,⁸ and the Twenty-Sixth Amendment extends this language to citizens over the age of eighteen.⁹

State constitutions often include an affirmative right to vote. Forty-nine states explicitly confer the right to vote through language that proscribes their citizens, “shall be qualified to vote,” “shall be entitled to vote,” or are, “a qualified elector.”¹⁰ Twenty-six states further expand this right to vote by enshrining a right to “free,” “free and equal,” or “free and open” elections.¹¹ Many of these provisions, as interpreted by state courts, do not go far enough to expressly guarantee the right to vote, which this section of the Act intends to address.

The first Clause of this section not only affirmatively extends the right to vote to all citizens. Clause (a) ensures that the right to vote shall not be denied regardless of demographic characteristics, covering not only race and gender, but also disability, language proficiency, and sexual orientation. This expands the rights found in the Fifteenth, Nineteenth, and Twenty-Sixth Amendments and makes clear that no discriminatory ground is available to restrict the right to vote.

The second Clause of this section codifies the right to political representation, regardless of ability to cast a ballot, to all persons residing in the state or political subdivision. Clause (b) provides that those who currently do not have the ability to cast a ballot, including children and/or those who are not citizens of the United States, have the right to political representation through an equal right to be counted. This Clause is directly aimed at addressing the use of vote dilution devices including possible alternative population basis for state-level and local-level districting that would exclude children or non-citizens.

Finally, the language in Clauses (c) and (d) ensure that members of underrepresented and non-Anglo communities have an equal opportunity to participate in the political process, which is a right that dovetails into the enshrined enforcement mechanisms found in Section III. These Clauses are necessary to establish the basic right under which causes of action may be brought by affected voters. These clauses ensure that communities who are considered protected classes can elect candidates of their choice without being outvoted by the majority bloc in any given election.

§ II DEFINITIONS

- a. "At large election" means any of the following methods of electing members of the governing body of a political subdivision:
 1. One in which all voters of the entire political subdivision elect the members to the governing body;
 2. One in which the candidates are required to reside within given areas of the political subdivision and all voters of the entire jurisdiction elect the members to the governing body; or

⁸ U.S. CONST. amend. XIX.

⁹ U.S. CONST. amend. XXVI.

¹⁰ Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 VAND. L. REV. 89, 101 (2014).

¹¹ *Id.* at 103.

3. One that combines the criteria in (1) and (2) of this subsection or one that combines at large with district-based elections.
- b. "District-based elections" means a method of electing members to the governing body of a political subdivision in which the candidate must reside within an election district that is a divisible part of the political subdivision and is elected only by voters residing within that election district.
- c. "Polarized voting" means voting patterns for a political subdivision show voters in one portion of the electorate in that political subdivision exhibit different candidate and electoral preferences than voters in another portion of the electorate in that political subdivision exhibit.
- d. "Political subdivision" means a geographic area of representation created for the provision of government services, including but not limited to this State or any county, city, town, school district, or any other district organized pursuant to state or local law.
- e. "Protected class" means a class of voters identified in Section I.
- f. "Representational participation" means the right for all persons living in a political subdivision or State to be able to influence elected officials and be included in population basis for elected representation, regardless of ability to cast a ballot for elected officials.
- g. "Unforeseen Circumstance" and "Emergency" mean an abrupt event that effects an election that was neither created nor directly or indirectly causes by the State or political subdivision. Monetary concerns and concerns of voter fraud are not unforeseen circumstances.

With any piece of legislation, definitions outline how the mechanisms of the law are meant to work. Here, the definitions in Section II seek to define terms that are used as terms of art throughout this Act and terms that are not necessarily self-explanatory.

In particular, "polarized voting" is a key term that is used throughout this Act, and its definition here focuses attention on not only the differences in candidate or electoral preferences, but where and how such differences arise. Polarized voting takes place in "political subdivision" and through "voting patterns." The definition of "political subdivision" here is significant, since it differs from the commonly used definitions for this term; "political subdivision" under this code includes states themselves, while "political subdivision" in state codes generally only applies to jurisdictions subdivided within a state. This new, more encompassing definition ensures that the actions of a state cannot escape future enforcement.

Another definition that differs from pre-existing statutes and state codes is "protected class." Under Clause (e) of this model code, "protected class" refers to the classifications outlined in Section I, Clause (b). Often, state codes define "protected class" narrowly, following the less expansive approach of the federal law. However, this Act ensures that the broader, more inclusive language found in Section I is applicable throughout this Act. The definitions found in this section apply to the entirety of this Act and may be amended or adjusted as this draft Act undergoes further development.

Clause (f) is likewise unique because it expressly defines what it means for a person to have the ability to participate in politics through representation.

§ III ENFORCING THE RIGHT TO VOTE¹²

- a. Standing: Any member of a protected class and who resides in a political subdivision where a violation of this Act is alleged, an organization whose membership includes or is likely to include a member of a protected class and who resides in a political subdivision where a violation of this Act is alleged, or the state's attorney general may bring a civil action to enforce that section.
- b. Right of Action for the Violation of the Right to Vote:¹³ The right to vote is a fundamental right. The state may not deny, abridge, or restrict a citizen's right to vote.
 1. Any state action that has the impact of denying or abridging a citizen's right to vote and is not the least restrictive means of advancing a compelling government interest is a violation of a citizen's right to vote under this Act.
 2. A person whose right to vote has been denied or restricted by this state, its political subdivisions, any private or public entity, or private person in violation of this subsection may assert such violation as a claim under this Act.
- c. Right of Action Against Vote Suppression: A violation is established if, based on the totality of the circumstances, members of a protected class have less opportunity than other members of the electorate to participate in the political process or elect candidates or electoral choices preferred by members of the protected class.
 1. Circumstances that may be considered as part of the totality include, but are not limited to, the extent to which members of a protected class have been elected to office in the state or political subdivision and the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate; or
 2. For political subdivisions where either the primary or general election is held on a date different than the primary or general election dates for the presidency of the United States or the Congress of the United States, there shall be a presumption that the date of election results in the denial or abridgement of the right to vote.
 3. In political subdivisions in which, for three consecutive general elections where, there is at least one contested race for an office, the number of actual voters in each contested election is less than twenty-five percent of the total number of votes cast in the most recent general election for the presidency of the United States by voters in the political subdivision or for any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise of at least ten percent of the citizen voting age population, the percent of members of that protected class that are actual voters is at least twenty-five percent lower than the percent of citizens of voting age that are not members of that protected class that are actual voters.

¹² *Adapted from* New York VRA, *supra* note 9, at § 17-206 and H.B. 2429 § 5.007, 84th Reg. Sess. (Tx. 2019) [hereinafter Texas VRA].

¹³ *Adapted from* SB 1442 § 97.0111, 2015 Leg. Sess. (Fl. 2015).

- d. Right of Action Against Vote Dilution: A method of election, including at-large, district-based, or other alternative, shall not have 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 the dilution or the abridgment of the rights of members of the protected class.
1. A violation of this subdivision shall be:
 - A. Established if a political subdivision uses an at-large method of election and it is shown that either:
 - i. Voting patterns of members of the protected class within the political subdivision are polarized; or
 - ii. Under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.
 - B. Established if a political subdivision uses a district-based or alternative method of election and it is shown that candidates or electoral choices preferred by members of the protected class would usually be defeated, and either:
 - i. Voting patterns of members of the protected class within the political subdivision are polarized; or
 - ii. Under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.
 - C. Presumptively established if it is shown that the political subdivision used race, ethnicity, language-minority group, or another characteristic that serves as a proxy for race, ethnicity, or language minority group, for the purpose of apportionment. A political subdivision shall only rebut this presumption by showing that race, ethnicity, or language-minority group, or another characteristic that serves as a proxy for race, ethnicity, or language-minority group, was used to the extent necessary to comply with this title, the federal voting rights act, a state constitution, or the Constitution of the United States.
 - D. The use of partisanship or characteristics associated with partisanship, including, but not limited to party registration, cannot be used as a defense for a vote dilution claim.
 2. In assessing whether voting patterns of members of the protected class within the political subdivision are polarized or whether candidates or electoral choices preferred by members of the protected class would usually be defeated, factors that may be considered shall include, but are not limited to:
 - A. Elections conducted prior to the filing of an action pursuant to this subdivision are more probative than elections conducted after the filing of the action;
 - B. Evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections;
 - C. Statistical evidence is more probative than non-statistical evidence;

- D. Where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined;
 - E. Evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required;
 - F. Evidence that voting patterns and election outcomes could be explained by factors other than polarized voting, including but not limited to partisanship, shall not be considered;
 - G. Evidence that sub-groups within a protected class have different voting patterns shall not be considered;
 - H. Evidence concerning whether members of a protected class are geographically compact or concentrated shall not be considered, but may be a factor in determining an appropriate remedy; and
 - I. Evidence concerning projected changes in population or demographics shall not be considered, but may be a factor, in determining an appropriate remedy.
3. In assessing whether, under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired, factors that may be considered shall include, but are not be limited to the following. No factor is dispositive or necessary to establish a violation. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered:
- A. The history of discrimination in the political subdivision, geographic region, or the state;
 - B. The extent to which members of the protected class have been elected to office in the political subdivision;
 - C. The use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme;
 - D. Denial of access of either eligible voters or candidates who are members of the protected class to those processes determining which groups of candidates will receive access to the ballot, financial support, or other support in a given election;
 - E. The extent to which members of the protected class contribute to political campaigns at lower rates;
 - F. The extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate;
 - G. The extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection;
 - H. The extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process;

- I. The use of overt or subtle racial appeals in political campaigns;
 - J. A lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and
 - K. Whether the political subdivision has a compelling policy justification for adopting or maintaining the method of election.
- e. Right of Action to Enforce Obligations of Political Subdivisions Covered Under Section IX
- 1. A violation is established if a covered political subdivision:
 - A. Fails to provide any or all voting materials in compliance with Subpart 1 of Section IX (b) of this Act (“Obligations of covered political subdivisions”); and
 - B. Does not cure this failure within 3 hours of written notice of the failure from a Plaintiff seeking to enforce Section IX (b).
 - 2. A separate violation is established if a covered political jurisdiction:
 - A. Fails to provide election officials in compliance with subpart 2 of Section IX (b) of the Act; and
 - B. Does not cure this failure:
 - i. Within 48 hours of written notice of the failure from a Plaintiff seeking to enforce Section IX (b) in advance of an election;
 - ii. Within 24 hours of written notice of the failure from a Plaintiff seeking to enforce Section IX (b) on any day in which voting in an election occurs; or
 - iii. Notwithstanding Section III (e) (2) (B) (i), within 1 hour of written notice of the failure from a Plaintiff seeking to enforce Section IX (b) on the last day in which voting in an election occurs.
 - 3. Additional penalty for violations of Section IX (b). In addition to any fees owed under Section IV (“Attorneys’ Fees”), a political subdivision against whom any party prevails on a claim to enforce the requirements of Section IX (b) must pay a penalty of \$5,000 per affected voter, up to \$250,000. This penalty is without regard to any finding of a Defendant’s intent to violate Section IX (b). If the assigned judge or judges find a Defendant intentionally violated Section III (b), the judge, at the judge’s discretion, can enter a penalty for that Defendant in excess of \$250,000.
- f. Remedies: Upon a finding of a violation of any provision of this Act, the court shall implement appropriate remedies that are tailored to remedy the violation if not otherwise prohibited by the state constitution.
- 1. Remedies may include, but shall not be limited to:
 - A. a district-based method of election;
 - B. an alternative method of election;
 - C. new or revised apportionment plans;
 - D. elimination of staggered elections so that all members of the governing body are elected on the same date;
 - E. increasing the size of the governing body;
 - F. moving the dates of elections to be concurrent with the primary or general election dates for state, county, or city office as established in

- section eight of article three or section eight of article thirteen of the constitution;
- G. additional voting hours or days;
 - H. additional polling locations;
 - I. additional means of voting such as voting by mail;
 - J. ordering of special elections;
 - K. requiring expanded opportunities for voter registration;
 - L. requiring additional voter education;
 - M. modifying the election calendar; or
 - N. the restoration or addition of persons to registration lists.
2. The court shall only adopt a remedy that will not diminish the ability of minority groups to participate in the political process and to elect their preferred candidates to office. The court shall consider proposed remedies by any parties and interested non-parties and shall not provide deference or priority to a proposed remedy because it is proposed by the political subdivision. This title gives the court authority to implement remedies notwithstanding any other provision of state or local law.
 3. The court shall provide the political subdivision an opportunity to propose an appropriate remedy tailored to the needs of the subdivision where the election is more than 90 days away. If the proposed remedy can demonstrably resolve the violation, the court shall accept the proposal as the remedy. Where the proposed remedy is inadequate or the election is within 90 days, the court shall use its discretion to fashion and order an appropriate remedy for the violation.

The fundamental purpose of this Act is to empower voters to bring claims against actions that deny or abridge their right to vote. Clause (a) explicitly gives all residents of a subdivision covered under the Act standing to bring suit under the right of actions described herein. Realizing that many successful voting rights challenges brought against governments rely on organization plaintiffs, the Act grants standing to organizations as representatives of their individually and collectively harmed members.

The first cause of action listed in the Act is the right of action for the violation of the right to vote, Clause (b). This right of action is the core power to enforce voters' rights enshrined in this Act under Section I. The language used in this Clause specifically denotes an impact or effects based test for voting rights along the lines of the 1982 Voting Rights Act Amendments.¹⁴ This is to avoid any future ambiguity that could result in the courts applying an intent requirement as the U.S. Supreme Court did with the original Federal Voting Rights Act in *Mobile v. Bolden*.¹⁵

Furthermore, the Act is designed to force courts to analyze state actions through a strict scrutiny-like lens or the appropriate state-level strict scrutiny-like analysis, instead of anything that is overly flexible or similar to the *Anderson-Burdick*¹⁶ balancing test. To withstand review, the

¹⁴ Voting Rights Act Amendments of 1982, Pub. L. No. 97- 205, 96 Stat. 131 (1982).

¹⁵ 446 U.S. 55 (1980)

¹⁶ The *Anderson-Burdick* test is derived from the U.S Supreme Court's decisions in *Anderson v. Celebrezze* and *Burdick v. Takushi*. 460 U.S. 780 (1983); 504 U.S. 428 (1992). It first asks if there is any categorical denial of the

state's action must further a compelling government interest, *and* the means of doing so must be the least restrictive possible, which ultimately prioritizes the rights of voters over convenience for the state. In the post-*Shelby County* world, courts have repeatedly allowed state and local governments to use pretext, such as unsubstantiated claims of voter fraud, to deny voters their right to vote. Under this Clause, the political subdivision would have to prove that such measures in order for a voting regulation to survive review.

The second and third causes of actions of this Act, stated in Clauses (c) and (d), focus on vote suppression and vote dilution, respectively. Vote suppression and dilution encompass the two sides of the vote-minimization coin. When political subdivisions are unable to deny the right to vote outright, they suppress the vote by attempting to create circumstances in which the ability of the targeted voters to exercise their right to vote is disproportionately difficult. Likewise, political subdivisions limit the ability of the targeted voters to elect candidates of choice through gerrymandering. Suppression and gerrymandering may occur together or separately.

Courts have not applied a consistent standard when determining whether, under the totality of the circumstances, a political jurisdiction is engaging in forms of voter suppression. Instead, a myriad of factors have been applied. The lack of bright line rules in the VRA and state laws has permitted larger and larger gaps to grow between protected class voters' turnout and the general population's voter turnout. Subclause (c)(3) creates a strong bright line rule by stating voter suppression is present where there is disproportionately lower voter turnout (25%) among voters of the protected class than the rest of the population. This forms a statutory floor that, while not necessary to prove a voter suppression claim under this Act, creates a presumption that the claim is valid.

Clause (d) enumerates the right of action against vote dilution, a process typically done by "packing" targeted voters into a small number of districts or "cracking" them by dividing their population between many districts in which they do not represent a sizable enough portion of citizen voting age population to elect candidates of choice.¹⁷ Subclause (d)(1) first separates out the two types of ways the redistricting process can be used to dilute voters' ability to elect candidates of choice—at-large elections and districting itself. The next Clause states that intentional discrimination based on protected class status creates the presumption that the vote has been diluted. Even an action brought without proof of intent can succeed if, under the totality of circumstances, the plaintiff can show their protected class' voting is polarized versus the

right to vote for a class of citizens based on invidious discrimination, in which case the state action would be facial unconstitutional. Otherwise, it essentially asks the reviewing court to balance the government's asserted interest in the state action against the harm to individual voters. Due to a split decision in *Crawford v. Marion Cty. Elec. Bd.*, the determination of whether the balancing test is more deferential to the government or to the voter has been open to interpretation. 553 U.S. 181 (2008). For a more in-depth discussion outlining the *Anderson-Burdick* test see SCOTUS BLOG, *The Anderson-Burdick Doctrine: Balancing the Benefits and Burdens of Voting Restrictions* (2000), <https://www.scotusblog.com/educational-resources/the-anderson-burdick-doctrine-balancing-the-benefits-and-burdens-of-voting-restrictions/>.

¹⁷ Olga Pierce, Jeff Larson and Lois Beckett, *Redistricting, a Devil's Dictionary*, PROPUBLICA (Nov. 2, 2011 9:08 a.m.), <https://www.propublica.org/article/redistricting-a-devils-dictionary>; see also PRINCETON GERRYMANDER PROJECT, <https://gerrymander.princeton.edu/>.

remainder of the electorate and that the protected class of voters is unable to elect candidates of their bloc's choice.¹⁸

These conditions come from the current required preconditions as declared by the U.S. Supreme Court in *Thornburg v. Gingle*.¹⁹ Unlike the *Gingles* factors, however, the Clauses under this Act do not require the protected class to be sufficiently geographically compact in order to prevail on this claim. By removing the geographic compactness precondition, this Act enables large yet dispersed members of a protected class to bring a claim, forces a political subdivision to act proactively, and requires the courts to seek remedial measures to incorporate members of the protected class into the political process even if they do not live in concentrated hubs.

Subclause (d)(1)(D) specifically states that partisan discrimination is not a valid defense against the right of action. This can prevent courts from upholding gerrymanders that have the effect of protected class discrimination when they are created under the pretext of partisan gerrymandering. This is especially important given the U.S. Supreme Court's decision in *Rucho v. Common Cause*,²⁰ which held that partisan gerrymander claims are a non-justiciable and present a political question.

Clause (e) outlines the right of action for the violation by a political subdivision of its obligations to its language-minority voters outlined in Section IX. Using the VRA's penalty provisions for violations of Section 203 as a starting point, Clause (e) goes further by creating a sliding scale of penalties based on when the violation occurred. This is important because the timing of the violation influences the scale of the impact it had on language-minority voters. The Clause also imposes a per-voter-effected fine in place to discourage a political subdivision to do a cost-benefit analysis. The provision contains a \$250,000 statutory maximum for violations under this right of action but also gives judges the ability to impose steep fines where the facts of the case justify such increases.

Clause (f) outlines the remedial abilities of courts for when they find that a political subdivision violated any of the rights guaranteed by this Act. The Clause begins by enumerating several means by which the court may remedy a violation which state and federal courts have successfully used in the past to deal with these violations covered under this Act. Further it allows the parties, and importantly, non-parties, to offer potential solutions to the violation in order to give the court the as broad a view as possible in crafting its remedy.

Finally, the Act allows for the political subdivision to offer its own remedy, subject to court approval, if an election is not held within the next 90 days. This is vital for two reasons. First, it allows the elected representatives to create a solution before the unelected courts do so. Second, the 90-day election rule allows for the election rules to not change and confuse voters and officials leading up to an election.

¹⁸ Factors used to determine if voting is "polarized" and if the protect class has "the ability to elect candidates of their choice" are outlined in Subclauses d.2 and d.3. These factors and prohibitions were derived from the New York VRA, and from the plethora of court challenges to state actions post-*Shelby Cty*.

¹⁹ 478 U.S. 30 (1986)

²⁰ 588 US _ (2019).

Section IV: ENFORCING THE RIGHT OF REPRESENTATION

- a. Standing: Any person who resides in a political subdivision where a violation of the right to representation is alleged, an organization whose membership includes or is likely to include members of a protected class and who resides in a political subdivision and who resides in a political subdivision where a violation of this Act is alleged, or the state's attorney general may bring a civil action to enforce this section.
- b. Right of Action Against Representational Dilution: The right to political representation is a fundamental right. The state may not deny, abridge, or restrict a person who resides in the political subdivision's right to equal representation.
 1. A violation is established if a political subdivision or the state:
 - A. Uses a population basis for elections, apportionment, or districting other than total population.
- b. Remedies: Upon a finding of a violation of any provision of this Act, the court shall enjoin the use of the current map and order a new district map based on total population apportionment base.
 1. The court shall only adopt a remedy that will not diminish the political representation of all persons in the challenged body. The court shall consider proposed remedies by any parties and interested non-parties, and shall not provide deference or priority to a proposed remedy because it is proposed by the political subdivision. This title gives the court authority to implement remedies notwithstanding any other provision of state or local law.

This Section creates a right for all persons living in a state and political subdivision; the right to be equally represented by elected officials. This section was crafted in direct response to *Evenwel v. Abbott*, where the United State Supreme Court held, “that a State *may* draw its legislative districts based on total population.”²¹ The drawing of elected districts based on an apportionment base other than total populations denies a resident's ability to influence their elected officials and their right of political association because these persons literally do not count towards the elected officials' district.

Clause (a) gives standing to bring a claim under this Section to all persons living in a political subdivision and to organizations whose membership includes members of the protected class and who resides in the political subdivision.

Clause (b) addresses *Evenwel* by explicitly legislating that neither the state nor a political subdivision is permitted to use any population basis for districting other than total population.

²¹ *Evenwel v. Abbott*, 136 S. Ct. 1120, 1123 (2016).

Under Clause (c), the remedy available to courts is to order the state or political subdivision to use total population for the apportionment of districts.

Section V: ELECTION LAW CHANGES

- a. Right of Action Against Election Law Changes: A voter has a right to vote that cannot be abridged or denied through election law, scheme, rule, or regulation changes.
 1. A violation of this subdivision will be established if:
 - (1) There is a change or implementation of regulation, scheme, devise, restriction, movement or closing of a polling location(s), or administrative rule during the 90-day period before any state or federal election.
 - a) There is a presumption that any change that modifies, establishes, or abolishes a regulation, law, scheme, devise, or rule within the 90-day period, including placement and availability of polling locations and ballot drop boxes, is in violation of the act.
 - (2) Remedy for Emergency Circumstances: The State or political subdivision may rebut this presumption by receiving a trial court an order which is affirmed by an appeals court that the change was necessary due to emergency or unforeseen circumstances as defined by this act.
- b. Remedies: Upon a finding of a violation of any provision of this Act, the court shall enjoin the change.

Voters should be affirmatively protected and should have the ability to challenge voting regulations that abridge or deny the right to vote before the harm, the disenfranchisement or burden on the right to vote, has occurred. Section V does just this; Section V prohibits changes to any election law, scheme, rule, regulation, or administrative procedure from being made less than 90 days before an election. This section is necessary to ensure that the State or political subdivisions are not passing restrictive voting laws or removing polling locations right before an election.

Further, this section is designed to address the *Purcell* principal, which stems from the Court's ruling in *Purcell v. Gonzalez*.²² Under *Purcell*, election law changes enacted, initiated, or enforced through the judicial are disfavored when an election is imminent. This ruling has resulted in subsequent courts deferring to states and political subdivisions over election changes. This deference by the judiciary has prevented voters from enjoining injurious rules. Additionally, the lack of an intelligible standard for how to determine when an election is imminent provides unchecked discretion to courts as to when *Purcell* applies. Under this Section, courts are given clear standards as to when an election law or rule change is prohibited.

²² 549 U.S. 1 (2006).

While it is important to prohibit changes to election laws and regulations before an election, it is also important to allow states and political subdivisions to alter the way an election is administered if an emergency arises, such as a pandemic or natural disaster. Subclause (2) provides for such a scenario. This subclause legislates a remedy for states and political subdivisions that permits the jurisdiction to rebut the presumption of violating Section V when an election change is made—the jurisdiction may receive a court order from the appellate court of the jurisdiction that the change was necessary due to an emergency.

§ VI ATTORNEYS' FEES²³

- a. In any action to enforce any provision within this Act, the court shall award the prevailing plaintiff party, other than the state or political subdivision thereof, reasonable attorneys' fees and litigation expenses, including but not limited to expert witness fees and expenses as part of the costs.
- b. A prevailing Plaintiff does not need to achieve judicially sanctioned relief or a favorable judgement if Plaintiff demonstrates that they succeeded in altering the defendant's behavior to correct a claimed harm at the time of the suit for interim attorneys' fees is filed.
- c. A Plaintiff who has prevailed on part of their claim while the case remains pending may also seek an award of interim attorneys' fees for securing the interim relief. The claim supporting Plaintiff's request for interim attorneys' fees need not be a central claim of the case.²⁴
- d. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Granting attorneys' fees to a prevailing party encourages plaintiffs with limited financial means to bring a lawsuit against a State or political group. A plaintiff is assured that if they win, they will not have to pay expenses out of their settlement or out of pocket. The promise of attorneys' fees will also incentivize both smaller organizations and more powerful agencies to evaluate cases on their merits when deciding whether to engage in litigation. Granting attorneys' fees only to the prevailing party instead of any party bringing a suit ensures that plaintiffs are not bringing frivolous suits and clogging the courts.

The current federal standard established in *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*²⁵ defines a "prevailing plaintiff" as someone who has obtained judicially-sanctioned relief for a portion of their claim. This Act adopts a different definition.

Under this Act, a "prevailing plaintiff" is defined as someone who does not need to win a judgment against a defendant if they are able to show that they succeeded in changing the

²³ Adapted from New York VRA, *supra* note 9, at § 17-216.

²⁴ Adapted from *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 489 U.S. 782, 789 (1989); supported by *Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources*, 532 U.S. 598, 604 (2001).

²⁵ 532 U.S. 598, 604 (2001).

defendant's behavior and corrected the harm. A plaintiff should not be required to pay attorneys' fees because the political subdivision fixes harmful behavior and makes the case moot or changes behavior enough to make the plaintiff's claim invalid after the fact. Additionally, the model code's provisions ensure that attorneys will be fairly compensated for their work. Recognizing this deficiency in the federal standard, this Act provides economic relief to parties who do not prevail in court but whose litigation nevertheless improves access to voting rights for the plaintiffs and other parties.

This Act also allows plaintiffs to receive attorneys' fees even when they receive a favorable judgement for a claim that is not central to their case. This follows the standard established in *Texas State Teachers Ass'n v. Garland Indep. School Dist.* and allows plaintiffs to be compensated as often as possible while litigating a breach of their voting rights established in this Act.

§ VII CIVIL PROCEDURES

- a. Mootness.²⁶ Any action commenced under this Act shall not be rendered moot or otherwise affected by the conclusion of the election cycle during which the action was brought if the case is capable of repetition..
- b. Courts may exercise jurisdiction over a challenge to the electoral franchise if
 1. The challenged action is too short in its duration to be fully litigated prior to its cessation or expiration, and
 2. There is a reasonable expectation that the same complaining party would be subjected to the same action again.
- c. Venue. All actions brought under this Act shall be filed in [*the highest trial court of the state*] in the political subdivision where the violation occurs or is proposed to occur. If the action is against a county, the action may be filed in [*the highest trial court of the state*] of such county, or in [*the highest trial court of the state*] of either of the two nearest judicial districts. The action shall be heard and determined by a court of three judges including the one assigned at case filing, one appointed by the assigned judge and one appointed by the Chief Justice of the state supreme court, and any appeal shall lie to [*the highest court of the state*].²⁷
- d. Schedule. Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials,²⁸ it shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited,²⁹ including through granting the case automatic calendar preference.³⁰

²⁶ Adapted from *Meyer v. Grant*, 486 U.S. 414 (1988).

²⁷ Adapted from S.B. 640, 2009-2010 Leg. Sess. (Wi. 2009) [hereinafter Wisconsin VRA].

²⁸ Adapted from New York VRA, *supra* note 9.

²⁹ Adapted from Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 439 (codified as amended at 52 U.S.C.A. § 10301 et seq.) [hereinafter "Federal VRA"].

³⁰ Adapted from Washington VRA, *supra* note 12.

- e. Secrecy of vote. The plaintiff's constitutional right to the secrecy of the plaintiff's vote is preserved and is not waived by the filing of an action pursuant to this chapter. The filing is not subject to discovery or disclosure.³¹
- f. No plaintiff bond. In seeking a temporary restraining order or a preliminary injunction, a plaintiff shall not be required to post a bond greater than ten dollars or any other additional security in order to secure such equitable relief.³²
- g. No class action requirement. An action filed pursuant to this chapter does not need to be filed as a class action. Members of different classes may file an action jointly pursuant to this chapter if they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.³³ Whether or not filed as a class action, the court may grant relief to the benefit of the full class.

Clause (a) recognizes that actions brought concerning elections often suffer from the issue of mootness once the election in question has come to a conclusion. To address this issue, the Supreme Court has identified a doctrine of, “capable of repetition, yet evading review,” to prevent such cases from being found to be moot. This Act’s mootness language simply implements this doctrine at the state level. The Act aims to adopt the approach taken in *Meyer v. Grant*³⁴ and subsequent cases like it. Some states, including Oregon, codify this mootness doctrine in state statutes, but there is no such clause at the federal level. Therefore, Clause (a) ensures that this doctrine, which is critical to bringing election-related lawsuits, preserves claims for litigation, even after an election has occurred.

Two main factors common to voting rights suits motivate the form of the remaining procedures: (1) the power differential between plaintiffs and political subdivisions, and (2) the frequency and high stakes of elections.

First, whereas defendants in these cases are frequently governmental bodies and their members who have institutional resources at their disposal and whose jobs include making and justifying election and voting laws, plaintiffs are most often individual citizens from protected classes who are not professional lawmakers or lawyers. Recognizing this power differential, Clauses (a) - (g) protect individual plaintiffs’ right to free expression and right to vote, as affirmed through this Act, while guaranteeing that plaintiffs are not required to sacrifice financial resources – beyond the inevitable costs of litigation including filing fees, lost time, and, potentially, up-front costs for counsel – in order to vindicate their rights.

Second, elections in which the results have a significant impact happen extremely frequently. For example, in the United States, elections happen every year, whether those are the biyearly congressional elections, or local elections for sheriff, school board, judges, etc. The typical election includes both a primary and a general vote.³⁵ Even local elections have high stakes, as

³¹ Adapted from Washington VRA, *supra* note 12.

³² Adapted from Washington VRA, *supra* note 12.

³³ Adapted from Washington VRA, *supra* note 12.

³⁴ 486 U.S. 414 (1988).

³⁵ Charles Lane, *Why Americans should vote less often*, Wash. Post (June 10, 2015) available at https://www.washingtonpost.com/opinions/vote-less-to-vote-more/2015/06/10/12e0d014-0f82-11e5-aded-e82f8395c032_story.html.

was painfully clear in 2020 when, in the absence of a unified federal response to the COVID-19 pandemic, local governments had the responsibility to set rules for social and economic interaction with potentially devastating outcomes for their communities.³⁶

To account for these dueling realities, Clauses (c) - (d) ensure that claims related to voting and elections be taken seriously and are heard at the highest fact-finding court in the state and administered with expediency. Together, these Clauses minimize the harm that the frequency of such high stake elections can have on substantive outcomes for plaintiffs in cases under this Act.

§ VIII DATA COLLECTION AND REQUIRED REPORTING³⁷

- a. Establishment of a statewide database. There shall be established within the state university of [name of state] a repository of the data necessary to assist the state and all political subdivisions with evaluating whether and to what extent existing laws and practices with respect to voting and elections are consistent with the public policy expressed in this title, implementing best practices in voting and elections to achieve the purposes of this title, and to investigate potential infringements upon the right to vote. This repository shall be referred to as the "statewide database" in this title.
- b. Director of the statewide database. The operation of the statewide database shall be the responsibility of the director of the statewide database, hereinafter referred to in this title as the "director", who shall be a member of the faculty of the state university of [name of state] with doctoral-level expertise in demography, statistical analysis, and electoral systems. The director shall be appointed by the governor.
- c. Statewide database staff. The director shall appoint such staff as are necessary to implement and maintain the statewide database.
- d. Data, information, and estimates maintained. The statewide database shall maintain in electronic format at least the following data and records for at least the previous twelve-year period:
 1. Estimates of the total population, voting age population, and citizen voting age population by race, ethnicity, and language-minority group, broken down to the election district level on a year-by-year basis for every political subdivision in the state, based on data from the United States census bureau, American Community Survey, or data of comparable quality collected by a public office.
 2. Election results at the election district level for every state-wide election and every election in every political subdivision.
 3. Contemporaneous voter registration lists, voter history files, election day poll site locations, and early voting site locations, for every election in every political subdivision.
 4. Contemporaneous maps, descriptions of boundaries, and shapefiles for election districts.

³⁶ See, e.g., Richard H. Meagher, *Stakes are high in local elections*, Richmond Times-Dispatch (Sept. 28, 2020) available at https://richmond.com/opinion/columnists/richard-j-meagher-column-stakes-are-high-in-local-elections/article_b4c235c4-606b-53ae-9a9e-b6d4e5dbb2f4.html.

³⁷ Adapted from New York VRA, *supra* note 9

5. Contemporaneous ballot rejection lists, curing lists, and reasoning for ballot rejection for every election in every political subdivision.
 6. Election day or early voting poll sites including, but not limited to, lists of election districts assigned to each polling place, if applicable.
 7. Apportionment plans for every election in every political subdivision.
 8. Any other data that the director deems advisable to maintain in furtherance of the purposes of this title.
- e. Duty to update data. The director shall be under legal duty to update the data in the database 30 days after every election in any political subdivision.
 - f. Public availability of data. Except for any data, information, or estimates that identify individual voters, the data, information, and estimates maintained by the statewide database shall be posted online and made available to the public at no cost.
 - g. Data on race, ethnicity, and language-minority groups. The state-wide database shall prepare any estimates made pursuant to this section by applying the most advanced, peer-reviewed, and validated methodologies.
 - h. Calculation and publication of political subdivisions required to provide assistance to language-minority groups. On or before [date in near future after codified] and every third year thereafter, the statewide database shall publish on its website and transmit to the state board of elections for dissemination to the county boards of elections and for the state education department a list of political subdivisions required pursuant to this section to provide assistance to members of language-minority groups and each language in which those political subdivisions are required to provide assistance. The boards of elections shall transmit the list described herein to all political subdivisions within their jurisdiction.
 - i. Duty to send data and information to statewide databases. Upon the certification of election results and the completion of the voter history file after each election, each election authority shall transmit copies of:
 1. Election results at the election district level;
 2. Contemporaneous voter registration lists;
 3. Voter history files;
 4. Maps, descriptions, and shapefiles for election districts; and
 5. Lists of election day poll sites and early voting sites and lists, shapefiles, or descriptions of the election districts assigned to each election day poll sites or early voting sites.

As used in this subdivision, the term "election authority" refers to the agency primarily responsible for maintaining the records listed in subdivision four of this section and includes any board of election, as well as general purpose local governments or special purpose local governments that administer their own elections or maintain their own voting and election records.
 - j. Technical assistance to political subdivisions. Staff at the state-wide database may provide non-partisan technical assistance to political subdivisions, scholars, and the general public seeking to use the resources of the statewide database.
 - k. Presumption of validity. The data, information, and estimates maintained by the statewide database shall be granted a rebuttable presumption of validity by any court concerning any claim brought pursuant to this title.

Lawful election administration and voting rights law enforcement demand the free availability of election, demographic, and geographical data; in order to comply with the terms of this Act, political subdivisions need to have up-to-date data about their populations, including the voters therein, and parties in suits. To enforce this Act, courts need to be able to distinguish lawful districting decisions from discriminatory districting decisions.³⁸

Many political subdivisions, however, do not currently have a centralized, regularly updated, and widely available access point for this data. For example, in October 2020 the U.S. Election Assistance Commission reported that the price, availability, and type of data in the voter file, the digital database which records who is registered to vote and who casts ballots in a given election, varies state-by-state.³⁹ Accordingly, this Section mandates the creation of a state-wide database run by an expert in statistical analysis with a legal duty to update and maintain the quality of the database. This database will help ensure that accurate, complete, and up-to-date data is reliably available.

By providing free, accurate information, a database can level the playing field. This is because such a resource creates transparency and accountability for parties on both sides of a voting rights lawsuit, since there is no mystery for members of the general public as to the underlying facts of a given case. In addition, such a database speeds up financial and judicial efficiency; neither side will need to go through the expensive process of discovery to uncover relevant data from a political subdivision as that data will already be accessible online.

§ IX LANGUAGE MINORITIES

- a. Covered Political Subdivisions. A political subdivision is a covered political subdivision for the purposes of this section if the [*chief elections officer of the state*] finds that, based on the 2020 American Community Survey census data and subsequent American Community Survey data in 5-year increments, or comparable census data:
 1. More than two percent of the citizens of voting age of the political subdivision are members of a single language minority and speak English "less than very well" according to the American Community Survey; or
 2. More than 4,000 of the citizens of voting age of such political subdivision are members of a single language minority and speak English "less than very well" according to the American Community Survey; or
 3. In the case of a political subdivision that contains all or any part of a Native American reservation, more than two percent of the American Indian or Alaska Native citizens of voting age within the Native American reservation are members of a single language minority and speak English "less than very well" according to the American Community Survey; or

38

See, e.g., Pamela S. Karlan, *Answering Questions, Questioning Answers, and the Roles of Empiricism in the Law of Democracy*, 65 Stan. L. Rev. 1269 (2013) (discussing the tight link between empirical study and voting rights law and litigation).

³⁹ U.S. Election Assistance Comm., *Availability of State Voter File and Confidential Information* (Oct. 29, 2020), available at https://www.eac.gov/sites/default/files/voters/Available_Voter_File_Information.pdf (charting which states make their voter file available, how they do so, and what information their voter file includes).

4. The illiteracy rate of a single language minority group is higher than the national illiteracy rate.⁴⁰
- b. Obligations of covered political subdivisions. Covered political subdivisions shall:
 1. Provide voting materials in the covered language of an equal quality of the corresponding English language materials, including: registration or voting notices; forms; instructions; assistance; or other materials or information relating to the electoral process, including ballots and voting systems. Whenever any such covered political subdivision provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in a covered political subdivision, it shall provide them in the language of the applicable minority group as well as in the English language, provided that where the language of the applicable minority group is oral or unwritten or in the case of some Alaskan Natives and American Indians, if the predominant language is historically unwritten, the covered political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.⁴¹
 2. Ensure that for each single language minority there is at least one election official who serves at each polling place in the covered political subdivision who speaks that single language minority's language fluently.⁴²
- c. Action for declaratory judgment for English-only voting materials: A covered political subdivision which seeks to provide English-only registration or voting materials or information, including ballots may file an action against the State for a declaratory judgment permitting such provision. The court shall grant the requested relief if it finds that the determination of the [chief elections officer of the state] was unreasonable or an abuse of discretion.⁴³

Based on Section 203 of the Federal Voting Rights Act⁴⁴ and the John R. Lewis Voting Rights Act of New York,⁴⁵ Section IX of this Act aims to protect the rights of language minorities to access the voting and electoral processes on equal footing with their English-speaking neighbors. While Section 203 provides a floor of obligations for jurisdictions with large language minority populations, the size of the population needed for said obligations to kick in are quite high. Specifically, Section 203 requires either 5% or 10,000 members of the citizen voting age population to belong to the language minority according to the Census Bureau's American Community Survey (ACS) 5-year estimates.⁴⁶ The Voting Rights Act of New York lessened this requirement to 2% or 4,000 members, which we have chosen to adopt in Clause (a).⁴⁷ This balances the need to expand protection for language minorities with government cost of implementation interests. This Act continues to rely on the American Community Survey's 5-

⁴⁰ Adapted from Federal VRA, *supra* note 1, at § 203, and New York VRA, *supra* note 9, at § 17-210

⁴¹ Adapted from Federal VRA, *supra* note 1, at § 203.

⁴² Adapted from Wisconsin VRA, *supra* note 12, at § 5.25(4)(b)

⁴³ Adapted from Federal VRA, *supra* note 1, at § 203.

⁴⁴ Federal VRA, *supra* note 1, at § 203.

⁴⁵ New York VRA, *supra* note 9

⁴⁶ Federal VRA, *supra* note 1, at § 203.

⁴⁷ *Id.*

year estimates as they are the most accurate and precise yearly estimates available nationwide at the political subdivision level available.

Clause (b) dictates the specific obligations of a covered political subdivision under the Act. Specifically, it requires the political subdivisions to provide all voting and election materials at an equal level to that of the materials they furnish in English. It enumerates precise materials while leaving the door open to include non-enumerated materials that have to do with voting and elections.

Subclause (b)(2) expands on the requirements found in Section 203 and the Voting Rights Act of New York by including the requirement that a poll worker who speaks the language of the language minority group be present at each polling location in the covered political subdivision. This requirement, not found in any prior federal or state voting rights act, fixes a large gap in Section 203 and pushes covered political subdivisions closer toward giving equal access to language minority voters as they give to English-speaking voters.

Finally, Clause (c) enables a political subdivision that was inappropriately categorized as covered under this Section by the state's chief election officer to seek declaratory judgment to avoid needing to furnish materials that would likely not greatly benefit voters.

IV. Conclusion

In our system of dual sovereignty, It is clear that states must offer more robust protections for an individual's right to vote. The enactment of the model code will ensure that adopting jurisdictions provide voting protections that are higher than the federal standard, making fair and equal franchise a reality.