

## **Section 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.

## **Section 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
  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.

**Section III: ENFORCING THE RIGHT TO VOTE**<sup>1</sup>

- 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<sup>2</sup>: 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 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 that is not concurrent with 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 a political subdivision, 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

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<sup>1</sup> *Adapted from* New York VRA § 17-206 *and* H.B. 2429 § 5.007, 84th Reg. Sess. (Tx. 2019) [hereinafter “Texas Voting Rights Act”].

<sup>2</sup> *Adapted from* SB 1442 § 97.0111, 2015 Leg. Sess. (Fl. 2015).

votes cast in the most recent general election for the presidency of the United States by voters in the political subdivision, or in which, for any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise 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.

- d. Right of Action Against Vote Dilution: A method of election, including at-large, district-based, or 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, or 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, the 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 not be 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 significant 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. No factor is dispositive or necessary to establish the existence of polarized voting. Evidence of these factors concerning the state, private actors, or other political subdivisions in the geographic region may be considered but is less probative than evidence concerning the political subdivision itself.
- 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.

#### **Section IV: ENFORCING THE RIGHT OF REPRESENTATION**

- a. **Standing:** Any persons who resides in a political subdivision where a violation of the right to representation is alleged, an organization whose membership includes of is likely to include members of a protected class and who resides in a political subdivision wand 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.
- c. 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.

#### **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.

#### **Section VI: ATTORNEYS' FEES<sup>3</sup>**

- 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, but not limited to, expert witness fees and expenses as part of the costs.

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<sup>3</sup> Adapted from New York VRA § 17-216.

- b. A prevailing Plaintiff does not need to achieve a judicially sanctioned relief or favorable judgement if Plaintiff demonstrates that they succeeded in altering the defendant’s behavior to correct a claimed harm at the time 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.<sup>4</sup>
- d. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

**Section VII: PROCEDURES**

- a. Mootness.<sup>5</sup> 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*].<sup>6</sup>
- 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,<sup>7</sup> 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,<sup>8</sup> including through granting the case automatic calendar preference.<sup>9</sup>

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<sup>4</sup> 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).

<sup>5</sup> Adapted from *Meyer v. Grant*, 486 U.S. 414 (1988).

<sup>6</sup> Adapted from S.B. 640, 2009-2010 Leg. Sess. (Wi. 2009) [hereinafter Wisconsin VRA].

<sup>7</sup> Adapted from New York VRA, *supra* note 9.

<sup>8</sup> 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”].

<sup>9</sup> 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.<sup>10</sup>
- 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.<sup>11</sup>
- 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.<sup>12</sup> Whether or not filed as a class action, the court may grant relief to the benefit of the full class.

### **Section VIII: DATA COLLECTION AND REQUIRED REPORTING**<sup>13</sup>

- 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 groups, 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.

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<sup>10</sup> Adapted from Washington VRA, *supra* note 12.

<sup>11</sup> Adapted from Washington VRA, *supra* note 12.

<sup>12</sup> Adapted from Washington VRA, *supra* note 12.

<sup>13</sup> Adapted from New York VRA.

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.
  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 identifies 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 site and early voting sites and lists, shapefiles, or descriptions of the election districts assigned to each election day poll site or early voting site.

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 include 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.

## **Section 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
  - 4. The illiteracy rate of a single language minority group is higher than the national illiteracy rate.<sup>14</sup>
- 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

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<sup>14</sup> Adapted from Federal VRA § 203 and New York VRA § 17-210.

subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.<sup>15</sup>

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.<sup>16</sup>
- 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.<sup>17</sup>

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<sup>15</sup> *Adapted from* Federal VRA § 203.

<sup>16</sup> *Adapted from* Wisconsin VRA § 5.25(4)(b)

<sup>17</sup> *Adapted from* Federal VRA § 203.