



City of Virginia Beach

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Honorable Members of the Virginia Beach General Assembly Delegation

Dear Senators and Delegates:

The citizens of Virginia Beach are best served when their elected leaders at the state and local level work together to advance their interests. This is especially critical in legislative initiatives that affect Virginia Beach uniquely. Unfortunately, we find ourselves in a position where significant legislation affecting Virginia Beach has been proposed without any collaboration or even advance notice. Two bills sponsored or co-sponsored by a member of our delegation that seek to undermine the existing system of local elections were proposed without public input from local officials, and more importantly, without input from our citizens. As Mayor and Vice Mayor of the City of Virginia Beach, we object.

House Bill 2198

HB 2198 introduced by Delegate Convors-Fowler, seeks to restrict voters' choices by eliminating their ability to vote for all of their Council representatives. Although worded in such a way as to appear a law of general applicability, this bill targets the residency districts created by the Virginia Beach City Charter. Those residency districts ensure that all geographic areas of the City are represented on the City Council, while making all council members responsible and responsive to all voters. Whether the current election system continues to be the best system for the City of Virginia Beach can be fairly debated, but that debate should occur among the citizens of Virginia Beach rather than being arbitrarily decided by lawmakers in Richmond via a bill that effectively changes the City's charter without even making explicit reference to the City of Virginia Beach. The last time the General Assembly considered a change to the City's election system, it required a referendum of the people before affecting that change. The citizens of Virginia Beach voted in favor of electing all of their representatives and the General Assembly made no further changes. A similar process should be required now.

Moreover, it should be noted that the City is currently in federal court defending litigation regarding its election system. Delegate Convors-Fowler was a witness supporting the effort to invalidate the City's system in that litigation. The parties are awaiting the Court's ruling in that case. This legislation should not be considered while that litigation is pending, and we ask you to oppose its adoption for that additional reason.

House Bill 1890¹

HB1890, also co-sponsored by Delegate Convors-Fowler, is equally flawed and we oppose it as well. What we find especially concerning about this bill is its breadth and impact. As currently drafted, HB1890 establishes standards that exceed those contained in the federal Voting Rights Act (VRA) and articulated in applicable caselaw interpreting it.

¹ SB1395 is a companion bill introduced in the Senate.

We are specifically concerned about proposed section 24.2-224.1 contained within this legislation. The provisions in this section fundamentally change the standards for liability and defenses available under current law and it does so at a time while Virginia Beach is litigating the exact issues that this section addresses. Specifically, as proposed section 24.2-224.1 creates a state law cause of action that goes beyond the VRA in at least three ways:

First, this section would allow the invalidation of an at-large election system if a protected class is able to show it has the ability to influence the outcome of an election. Federal caselaw applying the VRA does not allow a vote dilution cause of action based on influence districts, so HB1890 goes beyond existing voting rights caselaw. The bill does not define a threshold for the meaning of “the ability to influence the outcome of an election” for purposes of establishing a violation. This creates uncertainty for any locality with an at-large voting system.

Second, this section seeks to apply the concept of “racially polarized voting” as an independent and sufficient basis upon which to invalidate an at-large election system. This new standard has the likely outcome of invalidating any at-large election system anywhere in Virginia by simply by establishing the existence of “racially polarized voting.”

Third, this section removes the traditional component of a VRA claim that a protected class be geographically compact or concentrated. This geographically compact or concentrated requirement is one of three preconditions established by the United States Supreme Court for any claim under Section 2 of the VRA, and the removal of it effectively eliminates an important voting rights concept.

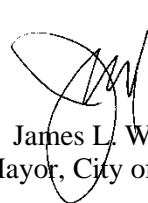
Read together, HB1890 creates serious legal jeopardy for any locality that has an at-large component to its election system. The bill authorizes additional avenues for litigation, and it allows substantial penalties to be imposed upon localities in addition to forcing a change to the applicable election system.

HB2198 and HB1890 do not serve the interests of the citizens of Virginia Beach and we urge you to reject these proposed legislative initiatives.

Sincerely,



Robert M. “Bobby” Dyer
Mayor, City of Virginia Beach



James L. Wood
Vice Mayor, City of Virginia Beach

c: Virginia Beach City Council
Patrick Duhaney, City Manager