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HOUSE BILL NO. 220

Offered January 13, 2010

Prefiled January 11, 2010

A BILL to amend and reenact §§ 24.2-101, 24.2-310, and 24.2-604 of the Code of Virginia, relating to polling places; campaigning activities.

Patrons—Watts, Kory, Plum, Scott, J.M. and Surovell; Senator: Ticer

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101, 24.2-310, and 24.2-604 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Person with a disability" means a person with a disability as defined by the Virginians with Disabilities Act (§ 51.5-1 et seq.).

"Polling place" means the *structure that contains the* one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be

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59 served by one polling place.

60 "Primary" or "primary election" means an election held for the purpose of selecting a candidate to be
61 the nominee of a political party for election to office.

62 "Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and
63 who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or
64 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers
65 to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified
66 voter unless his civil rights have been restored by the Governor or other appropriate authority. No
67 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as
68 provided by law.

69 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
70 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
71 voter.

72 "Referendum" means any election held pursuant to law to submit a question to the voters for
73 approval or rejection.

74 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
75 registered voters shall be maintained on the Virginia voter registration system with active status unless
76 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For
77 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine
78 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election
79 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,
80 and determining the number of signatures required for candidate and voter petitions, "registered voter"
81 shall include only persons maintained on the Virginia voter registration system with active status.

82 "Registration records" means all official records concerning the registration of qualified voters and
83 shall include all records, lists, applications, and files, whether maintained in books, on cards, on
84 automated data bases, or by any other legally permitted record-keeping method.

85 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
86 both domicile and a place of abode. To establish domicile, a person must live in a particular locality
87 with the intention to remain. A place of abode is the physical place where a person dwells.

88 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to
89 hold a referendum.

90 "State Board" or "Board" means the State Board of Elections.

91 "Virginia voter registration system" or "voter registration system" means the automated central
92 record-keeping system for all voters registered within the Commonwealth that is maintained as provided
93 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

94 § 24.2-310. Requirements for polling places.

95 A. The polling place for each precinct shall be located within the county or city and either within the
96 precinct or within one mile of the precinct boundary. The polling place for a county precinct may be
97 located within a city if the city is wholly contained within the county election district served by the
98 precinct. The polling place for a town precinct may be located within one mile of the precinct and town
99 boundary. For town elections held in November, the town shall use the polling places established by the
100 county for its elections.

101 B. The governing body of each county, city, and town shall provide funds to enable the electoral
102 board to provide adequate facilities at each polling place for the conduct of elections. Each polling place
103 shall be located in a public building whenever practicable. If more than one polling place is located in
104 the same building, each polling place shall be located in a separate room or separate and defined space.

105 C. Polling places shall be accessible to qualified voters as required by the provisions of the
106 Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and
107 Handicapped Act (42 U.S.C. § 1973ee et seq.), and the Americans with Disabilities Act relating to
108 public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local
109 electoral boards and general registrars to assist the localities in complying with the requirements of the
110 Acts.

111 D. If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide
112 an alternative polling place and give notice of the change in polling place, subject to the prior approval
113 of the State Board. The electoral board shall provide notice to the voters appropriate to the
114 circumstances of the emergency.

115 E. It shall be permissible to distribute campaign materials on the election day on the property on
116 which a polling place is located and outside of the building containing the ~~polling place room where the~~
117 *election is conducted* except as (i) specifically prohibited by law including, without limitation, the
118 prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within 40 feet of ~~the any~~
119 *entrance to a the polling place or (ii) upon the approval of the local electoral board, inside the structure*
120 *where the election is conducted, provided that a reasonable person would not observe any campaigning*

activities while inside the polling place. The local electoral board may approve campaigning activities inside the building where the election is conducted pursuant to clause (ii) when an entrance to the building is from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

§ 24.2-604. Prohibited activities at polls; notice of prohibited area; electioneering; presence of representatives of parties or candidates; simulated elections; observers; news media; penalties.

A. During the times the polls are open and ballots are being counted, it shall be unlawful for any person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a qualified voter in entering or leaving a polling place.

B. Prior to opening the polls, the officers of election shall post, in the area within 40 feet of any entrance to the polling place, sufficient notices which state "Prohibited Area" in two-inch type. The notices shall also state the provisions of this section in not less than 24-point type. The officers of election shall post the notices within the prohibited area to be visible to voters and the public.

C. The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, to remain in the room in which the election is being conducted at all times. A representative may serve part of the day and be replaced by successive representatives. The officers of election shall have discretion to permit up to three authorized representatives of each political party or independent candidate in a general or special election, or up to three authorized representatives of each candidate in a primary election, to remain in the room in which the election is being conducted. The officers shall permit one such representative for each pollbook station. However, no more than one such representative for each pollbook station or three representatives of any political party or independent candidate, whichever number is larger, shall be permitted in the room at any one time. Each authorized representative shall be a qualified voter of the county or city within which the polling place is located. Each representative shall present to the officers of election a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied, and such photocopy shall be as valid as if the copy had been signed. No candidate whose name is printed on the ballot shall serve as a representative of a party or candidate for purposes of this section. Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to be close enough to the process to be able to hear and see what is occurring. Any representative who complains to the chief officer of election that he is unable to hear or see the process may accept the chief officer's decision or, if dissatisfied, he may immediately appeal the decision to the local electoral board. Authorized representatives shall not be allowed in any case to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are authorized to assist voters either inside the polling place or within 40 feet of any entrance to the polling place.

D. It shall be unlawful for any authorized representative, voter, or any other person in the room to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in any manner attempt to influence any person in casting his vote; (iv) hinder or delay any officer of election; or (v) otherwise impede the orderly conduct of the election.

E. The officers of election may require any person who is found by a majority of the officers present to be in violation of this section to remain outside of the prohibited area. Any person violating subsection A or D of this section shall be guilty of a Class 1 misdemeanor.

F. This section shall not be construed to prohibit a candidate from entering any polling place on the day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place per election day, provided that he complies with the restrictions stated in subsections A and D, and K of this section.

G. This section shall not be construed to prohibit a minor from entering a polling place on the day of the election to vote in a simulated election at that polling place, provided that the local electoral board has determined that such polling place can accommodate simulated election activities without interference or substantial delay in the orderly conduct of the official voting process. Persons supervising or working in a simulated election in which minors vote may remain within such polling place. The local electoral board and the chief officer for the polling place shall exercise authority over, but shall

182 have no responsibility for the administration of, simulated election related activities at the polling place.

183 H. A local electoral board, and its general registrar, may conduct a special election day program for
184 high school students, selected by the electoral board in cooperation with high school authorities, in one
185 or more polling places designated by the electoral board, other than a central absentee voter precinct.
186 The program shall be designed to stimulate the students' interest in elections and registering to vote,
187 provide assistance to the officers of election, and ensure the safe entry and exit of elderly and disabled
188 voters from the polling place. Each student shall take and sign an oath as an election page, serve under
189 the direct supervision of the chief officer of election of his assigned polling place, and observe strict
190 impartiality at all times. Election pages may observe the electoral process and seek information from the
191 chief officer of election, but shall not handle or touch ballots, voting machines, or any other official
192 election materials, or enter any voting booth.

193 I. A local electoral board may authorize in writing the presence of additional neutral observers as it
194 deems appropriate, except as otherwise prohibited or limited by this section. Such observers shall
195 comply with the restrictions in subsections A and D of this section and shall not be allowed in any case
196 to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are
197 authorized to assist voters either inside the polling place or within 40 feet of any entrance to the polling
198 place.

199 J. The officers of election shall permit representatives of the news media to visit and film or
200 photograph inside the polling place for a reasonable and limited period of time while the polls are open.
201 However, the media (i) shall comply with the restrictions in subsections A and D of this section; (ii)
202 shall not film or photograph any person who specifically asks the media representative at that time that
203 he not be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way
204 that divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or
205 any other voter record or material at the precinct in such a way that it divulges the name or other
206 information concerning any individual voter. Any interviews with voters, candidates or other persons,
207 live broadcasts, or taping of reporters' remarks, shall be conducted outside of the polling place and the
208 prohibited area. The officers of election may require any person who is found by a majority of the
209 officers present to be in violation of this subsection to leave the polling place and the prohibited area.

210 K. The provisions of subsections A and D shall not be construed to prohibit a person who
211 approaches or enters the polling place for the purpose of voting from wearing a shirt, hat, or other
212 apparel on which a candidate's name or a political slogan appears or from having a sticker or button
213 attached to his apparel on which a candidate's name or a political slogan appears. *This exemption shall*
214 *not apply to candidates, representatives of candidates, or any other person who approaches or enters*
215 *the polling place for any purpose other than voting.*