

COURT OF APPEALS OF VIRGINIA

Record No. 1191-25-2

THE SIERRA CLUB, ET AL.

v.

VIRGINIA BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Present: Judges Callins, Duffan and Senior Judge Clements

Argued at Richmond, Virginia

Opinion Issued August 25, 2026

FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND

C. N. Jenkins, Jr., Judge

Evan Dimond Johns (Claire Marie Horan; Appalachian Mountain Advocates, on briefs), for appellants.

Justin I. Bell, Assistant Attorney General, for appellee.

PUBLISHED OPINION BY **JUDGE DOMINIQUE A. CALLINS**

The Sierra Club, Don Burke, Judith Sandler Gayer, and William Penniman (collectively, Sierra Club) appeal the circuit court’s judgment sustaining the Board of Housing and Community Development’s demurrer. Sierra Club argues that the circuit court erred by concluding it did not have “affected by” standing under the Virginia Administrative Process Act (VAPA). We hold that the circuit court misconstrued the VAPA’s “affected by” standing, reverse the circuit court’s judgment, and remand for further proceedings.

BACKGROUND¹

Concluding its 2021 development cycle, the Board adopted amendments to the Uniform Statewide Building Code in 2023. By statute, the Board must promulgate regulations for the “construction and rehabilitation of buildings and structures” and the maintenance thereof. Code § 36-99(A); *see also* Code § 36-98 (mandating the promulgation of such regulations). The Board also regulates the enforcement of the Building Code. Code § 36-99(A). The General Assembly has vested the Board with discretion to “modify, amend or repeal” the Building Code “from time to time.” Code § 36-102. Accordingly, the Board updates the Building Code triennially based on amendments to the International Code Council’s model standards. Code Development Process, Va. Dep’t of Hous. & Cmty. Dev., <https://perma.cc/F2EB-TBW2>; 2024 Code Development Cycle, Va. Dep’t of Hous. & Cmty. Dev., <https://perma.cc/XG34-G9FT>. In fact, the Board must give “due regard” to “standards of the International Code Council.” Code § 36-99(B). The General Assembly strengthened this requirement in 2021, requiring the Board to “consider adopting Building Code standards that are at least as stringent as those contained in” subsequent versions of the International Energy Conservation Code (IECC). 2021 Va. Acts Spec. Sess. I ch. 425.

The Sierra Club “was an active participant throughout the Board’s 2021 Code Development Cycle.” It is an advocacy organization interested in “enhancing public health and the environment and practicing and promoting the responsible use of the Earth’s ecosystems and resources.” To advance its interest in energy efficiency, the Sierra Club “advocates for robust

¹ We review the facts pleaded in the light most favorable to the complainants. *Coward v. Wellmont Health Sys.*, 295 Va. 351, 358 (2018). We take as true facts alleged in the pleadings and reasonable inferences to be had. *Harris v. Kreutzer*, 271 Va. 188, 195 (2006). But we disregard inferences that are “strained, forced, or contrary to reason” and conclusions of law contained in the pleadings. *Coward*, 295 Va. at 359 (quoting *County of Chesterfield v. Windy Hill, Ltd.*, 263 Va. 197, 200 (2002)).

building codes.” It also conducts business out of buildings subject to the Building Code in Virginia. Absent heightened energy-efficiency standards, the Sierra Club avers it shoulders “higher utility bills and difficulty in finding energy-efficient housing and commercial space.” In support of its interests, the Sierra Club presented testimony and submitted technical comments and 16 separate amendment proposals for the Board’s consideration in its development cycle.

Consistent with the Board’s statutory mandates and discretion and following the promulgation of the 2021 IECC, the Board issued a Notice of Intended Regulatory Action on November 22, 2021. Alongside other proponents, the Sierra Club submitted three proposals for the Board’s consideration. First, it proposed adopting the 2021 IECC standards in full, which would have resulted in cost savings for consumers but marginally increased the burden on builders. Then, in two separate proposals, it proposed updated wall insulation and air leakage standards to comply with the 2021 IECC standards that had been frozen since 2012 at the benchmark set by the 2009 IECC standards. Builders opposed the proposals, citing costs. The Board ultimately rejected all three proposals for a lack of unanimous support. In their place, the Board adopted a non-consensus proposal that would reduce certain energy-efficiency standards to reflect the requirements of the 2006 IECC. After a public hearing, the Board adopted its final regulation, reflecting rolled-back energy-efficiency standards.

The Sierra Club, Burke, Gayer, and Penniman timely petitioned the circuit court for review of the Board’s new Building Code. Burke pleaded that he had an economic interest in heightened energy-efficiency standards beyond the advocacy interests he shared with the Sierra Club. Burke suffers from facioscapulohumeral muscular dystrophy and is preparing for a future where he would be wheelchair-bound. In his search for accessible housing, Burke has prioritized energy-efficient features, in part to lower his utility costs, reduce his environmental footprint, and improve resilience to natural disasters. Despite having viewed hundreds of potential homes,

he asserts that Virginia’s outdated Building Code artificially limits his ability to secure housing that meets his accessibility and energy-efficiency needs. Alongside his co-petitioners, Burke argued that the Board acted arbitrarily and capriciously by rejecting Sierra Club’s proposals and by adopting the proposal that the Board did. The petitioners claimed that the Board’s decision lacked evidentiary support. And, separately, they argued that the Board failed to comply with statutory procedural requirements, including that it hold public hearings before publication and that it make certain findings of fact and conclusions of law.

The Board demurred to Sierra Club’s petition, arguing that the petitioners failed to establish standing. The circuit court sustained the Board’s demurrer with prejudice. The court agreed with Sierra Club that “claims arising by statute reduce the question of standing to statutory interpretation,” obviating the need for constitutional standing. But it concluded that Sierra Club and its co-petitioners lacked statutory standing under the VAPA since none of them could allege “a negative departure from their present circumstances.” This appeal follows.

ANALYSIS

Sierra Club argues that the circuit court’s standing ruling runs contrary to the legislature’s intent reflected in the VAPA. Reviewing the matter de novo, *Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 44 (2013), we agree.

Established principles govern our interpretation of statutes. Our objective is to “ascertain and give effect to legislative intent” as determined from the statute’s words. *Berry v. Bd. of Supervisors*, 302 Va. 114, 127 (2023). We prefer “plain, obvious, and rational” interpretations over “curious, narrow, or strained” ones. *Taylor v. Commonwealth*, 298 Va. 336, 342 (2020) (quoting *Lawlor v. Commonwealth*, 285 Va. 187, 237 (2013)). If the statute’s language is clear and unambiguous, we rely “on the plain words, and no interpretation is necessary.” *Tanner v.*

Commonwealth, 72 Va. App. 86, 99 (2020). Dictionary definitions and precedent clarify the plain meaning of a statute’s language. *Perry v. Commonwealth*, 84 Va. App. 165, 170 (2025).

Under Code § 2.2-4026(A), “[a]ny person affected by and claiming the unlawfulness of any regulation” has a “right to the direct review thereof.” The statute’s language is clear and unambiguous. A person is “affected by” a regulation if the regulation “act[s] upon,” “produce[s] an effect upon,” or “produce[s] a material influence upon or alteration in” the person’s interests. *Affect*, *Webster’s Third New International Dictionary* (2002). Virginia appellate courts have not opined on the scope of the VAPA’s “affected by” standing. The most analogous authority interpreting the phrase “affected by” is *Continental Baking Co. v. Charlottesville*, 202 Va. 798 (1961).² There, our Supreme Court considered whether a trial court properly denied more than a thousand residents’ motions to intervene in the City of Charlottesville’s petition to annex territory in Albemarle County. *Cont’l Baking*, 202 Va. at 800. Under the relevant statute, “any persons affected by the proceeding” could appear as “parties defendant” in the action. *Id.* at 804. Because the movants were “residents and taxpayers in areas directly affected by the proposed annexation,” our Supreme Court concluded the trial court erred. *Id.* at 805. That the movants did not own property being annexed was of no moment. *Id.* at 804.

Federal decisions interpreting § 702 of the Administrative Procedure Act provide only limited guidance. True, the General Assembly modeled Virginia’s former General

² Without controlling authority, however, the parties turn to one of our unpublished opinions for guidance. In *Kwiatkowski v. State Board for Community Colleges*, No. 1292-22-4 (Va. Ct. App. Sept. 5, 2023), concerned citizens challenged a regulation directing certain community colleges to consider changing their names in accordance with a naming policy. *Id.*, slip op. at 2-3. Reasoning that “affected by” standing requires more than “generalized grievances,” the Court held the citizens lacked standing since they “failed to allege *any* interest in th[e] suit, even as basic as alumni status.” *Id.* at 4-5. Although unpublished and therefore nonbinding, *Kwiatkowski* correctly recognized that a generalized disagreement with governmental action, untethered from any personal interest, is insufficient to establish that a person is “affected by” a regulation.

Administrative Agencies Act in response to the federal regime, which governed from the 1940s until the VAPA's adoption. *See* Va. Code Comm'n, *Administrative Process Act*, H. Doc. No. 26, at 703 (1975). But the VAPA materially departs from the Administrative Procedure Act's language, reflecting a distinct statutory scheme that achieves similar objectives through comparable procedural frameworks. This matters because the Court presumes "the General Assembly chose, with care, the words it used in enacting the statute." *PKO Ventures, LLC v. Norfolk Redevelopment & Hous. Auth.*, 286 Va. 174, 183 (2013) (quoting *Kiser v. A.W. Chesterton Co.*, 285 Va. 12, 19 n.2 (2013)). The General Assembly certainly is capable of adopting, wholesale, language from federal statutes when doing so is advantageous. *Compare, e.g.*, 18 U.S.C. § 3553(f)(2)-(5) (setting forth fact findings predicate to the invocation of a sentencing safety valve in the Controlled Substances Act), *with* Code § 18.2-248(C)(3)(b)-(e) (providing, nearly verbatim, the same predicate fact findings to invoke the sentencing safety valve to Virginia's Drug Control Act). And when the General Assembly chooses to do so, federal cases may be "highly persuasive." *NAACP (Hanover Cnty. Chapter) v. Commonwealth ex rel. Va. State Water Control Bd.*, 74 Va. App. 702, 716-17 (2022) (per curiam) (quoting *Fernandez v. Comm'r of Highways*, 298 Va. 616, 619 (2020)). Not so here.

At bottom, the classes of litigants who may challenge an agency's rulemaking action under the VAPA versus the Administrative Procedure Act differ in scope. Under the Administrative Procedure Act, any "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702. The United States Supreme Court has interpreted this language to confer standing on those who "have suffered a sufficient injury[-]in[-]fact" such that "the interest sought to be protected by the complainant [must be] arguably within the zone of interests to be protected or regulated by the statute." *Nat'l Credit*

Union Admin. v. First Nat'l Bank & Tr. Co., 522 U.S. 479, 488 (1998) (third alteration in original) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)), *superseded by statute on other grounds*, Credit Union Membership Access Act, Pub. L. No. 105-219, 112 Stat. 913, *as recognized in Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 271 F.3d 262, 265 (D.C. Cir. 2001). Whatever the precise source of those federal standing requirements, they arise in a statutory and constitutional framework materially different from the one the General Assembly enacted in Code § 2.2-4026(A).

In contrast, the VAPA grants judicial review to any “person affected by and claiming the unlawfulness of any regulation or party aggrieved by and claiming unlawfulness of a case decision.” Code § 2.2-4026(A). Unlike its federal analogue, the VAPA expressly differentiates between those challenging agency adjudicatory actions from those challenging agency rulemaking actions. *See Va. Marine Res. Comm'n v. Clark*, 281 Va. 679, 688 n.4 (2011), *overruled on other grounds by Woolford v. Va. Dep't of Tax'n*, 294 Va. 377, 390 n.4 (2017). By choosing the phrase “affected by” for regulation challenges while requiring a party to be “aggrieved” to challenge a case decision, the General Assembly established different thresholds for obtaining judicial review in the two contexts. *See Va. Beach Beautification Comm'n v. Bd. of Zoning Appeals*, 231 Va. 415, 419 (1986) (holding that the term “aggrieved” requires “some direct interest in the subject matter of the proceeding that he seeks to attack”). Accordingly, Code § 2.2-4026(A) does not require a challenger to satisfy the federal “injury-in-fact” and “zone-of-interests” tests developed under § 702 of the Administrative Procedure Act. Rather, the statute asks whether the challenged regulation affects the person’s interests. Make no mistake: this requirement nevertheless demands more than a mere ideological disagreement with the regulation; the challenger must allege that the regulation affects some personal interest. Reading

more into the statute would “add a material provision to the statute rather than to give effect to it as written.” *Cont’l Baking*, 202 Va. at 804.

We conclude then that the circuit court applied the wrong standard when evaluating whether Sierra Club had statutory standing under the VAPA. Therefore, we remand this matter to the circuit court for it to consider, in the first instance, whether the Sierra Club petitioners, individually or collectively, meet the “affected by” threshold under the VAPA. *See Commonwealth v. Holland*, 304 Va. 34, 38 (2025) (“Appellate courts are courts of review, not first view.”).

CONCLUSION³

Accordingly, we reverse the judgment of the circuit court and remand for further proceedings consistent with this opinion.

Reversed and remanded.

³ Both parties raise arguments about whether Sierra Club satisfies the strictures of common-law or constitutional standing. Sierra Club analyzes this issue as distinct from statutory standing, maintaining that it need only establish the latter. The Board collapses the inquiry with statutory standing, concluding that Sierra Club’s allegations fail to establish an injury-in-fact. But the circuit court ruled that “claims arising by statute reduce the question of standing to statutory interpretation.” Neither party assigned error to this conclusion. Therefore, because “the scope of argument on appeal is limited by the assignments of error,” *Dudley v. Est. Life Ins. Co.*, 220 Va. 343, 348 (1979), we are not permitted to consider these constitutional standing arguments. *Cf. Amazon Logistics, Inc. v. Va. Emp. Comm’n*, 304 Va. 107, 112 (2025) (holding arguments are waived “when the argument on brief, even if carefully crafted and legally persuasive, nonetheless has little, if anything, to do with the assignment of error” (quoting *AlBritton v. Commonwealth*, 299 Va. 392, 412 n.12 (2021))). We leave open the question of whether a party who satisfies VAPA’s statutory standing requirements must also establish constitutional standing.