

March 25, 2021

Sent via email

Government Administration and Elections Committee
Connecticut General Assembly
Legislative Office Building, Room 2200
Hartford, CT 06106

Re: Support for the Connecticut Voting Rights Act (S.B. 820)

Dear Chair Flexer, Chair Fox, Ranking Member Sampson, Ranking Member Mastrofrancesco, and Members of the Government Administration and Elections Committee:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to express our strong support for the Connecticut Voting Rights Act (“CTVRA”) (S.B. 820). We commend you for considering this critical legislation which, if enacted, would make Connecticut a national leader in protecting the right to vote for communities of color and other voters. The CTVRA presents an important opportunity for Connecticut to build on the success of state VRAs in California, Washington, and Oregon, and emulate current efforts in New York and Virginia, by establishing comprehensive state-level protections against racial discrimination in voting.

Our written testimony will focus on the current limitations in the federal Voting Rights Act (“federal VRA”), and the ways in which two important provisions of the CTVRA—private rights of action and preclearance—can help augment federal legislation to protect voters of color. LDF has also prepared a White Paper with more extensive discussion of all provisions in the CTVRA, which we have submitted with this letter and have made available online here: <https://naacpldf.org/wp-content/uploads/2021.03.25-CTVRA-White-Paper.pdf>.

I. Limitations in the Federal Voting Rights Act.

The individual and collective provisions of the federal Voting Rights Act of 1965 (“federal VRA”) has been effective at combatting a wide range of barriers

and burdens that have excluded voters of color from the political process.¹ However, in the decades since its passage, federal courts have eliminated or weakened some of the federal VRA's protections, making it increasingly burdensome for litigants to vindicate their rights under the law. As a result, despite the importance of the federal VRA, voters of color often still lack an equal opportunity to participate in the political process and elect candidates of their choice.

Section 2 of the federal VRA offers a private right of action—which means that a person is legally entitled to file a lawsuit—against any voting practice or procedure that “results in a denial or abridgment of the right of any citizen of the United States to vote on account of race.”² But Section 2 claims impose a heavy burden on plaintiffs. Section 2 lawsuits are labor intensive and generally require multiple expert witnesses for both plaintiffs and defendants.³ Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 litigations.⁴ Individual plaintiffs, even when supported by civil rights organizations, lack the resources and expertise to effectively prosecute Section 2 claims.⁵ Due to these challenges, some potential Section 2 violations go unnoticed and are never resolved or litigated in court.⁶

Section 2 claims are also expensive for jurisdictions to defend, regularly costing states and localities considerable amounts of taxpayer money. Bridgeport, Connecticut bore this burden in 1994 when Black and Latino residents challenged Bridgeport's redistricting plan under Section 2.⁷ As part of a settlement agreement, Bridgeport agreed to pay plaintiffs \$175,000 for legal

¹ Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, BRENNAN CENTER FOR JUSTICE (June 30, 2009), <https://bit.ly/3cjDezF>.

² 52 U.S.C. § 10301.

³ *Id.* (citing Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, YAKIMA HERALD (Aug. 10, 2014) <https://bit.ly/3ckou3C>).

⁴ LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation 2* (Feb. 2021) <https://bit.ly/2QCUvvh> (citing Br. of Joaquin Avila, et al. as *Amici Curiae* in Supp. of Resp'ts at 16, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

⁵ *Voting Rights and Election Administration in the Dakotas: Hearing Before the Subcomm. on Elections*, 116th Cong. 64 (2019).

⁶ *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Testimony of Professor Justin Levitt).

⁷ *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, No. CIV. 3:93-1476(PCD), 1993 WL 742750, at *6 (D. Conn. Oct. 27, 1993).

expenses and court costs.⁸ More recently, in New York State, East Ramapo Central School District paid its lawyers in excess of \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch, and have been ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs as well.⁹ States can amass even more exorbitant costs. In *Veasey v. Perry*, which LDF litigated alongside other civil rights groups and the U.S. Department of Justice (DOJ), the district court ordered Texas to pay more than \$6.7 million in the (non-DOJ) plaintiffs’ documented costs.¹⁰

For nearly 50 years, Section 5 of the federal VRA, the core provision of this legislation, protected millions of voters of color from racial discrimination in voting, by requiring certain states and localities to obtain approval from the federal government *before* implementing a voting change.¹¹ In *Shelby County, Alabama v. Holder*, the Supreme Court rendered Section 5 inoperable by striking down Section 4(b) of the VRA, which identified the places in our country where Section 5 applied.¹² The *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b) (“covered jurisdictions”).¹³ In 2021 alone, state lawmakers have carried over, prefiled, or introduced 253 bills with provisions that restrict voting access in 43 states.¹⁴ The *Shelby County* decision may also have profound ramifications for

⁸ Edmund Mahoney, *Bridgeport’s Redistricting Suit Settled*, HARTFORD COURANT, Mar. 10, 1995, <https://bit.ly/3smiHzM>.

⁹ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, ROCKLAND COUNTY TIMES, Jan. 21, 2020, <https://bit.ly/39dKvij>; Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central School Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

¹⁰ Order on Motions for Attorney’s Fees, *Veasey v. Abbott*, No. 2:13-00193 (S.D. Tex. May 27, 2020); *see also* Spencer Mestel, *Revealed: US spends millions of taxpayer dollars on ineffective voting restrictions*, THE GUARDIAN, July 22, 2020, <https://bit.ly/3rjJUSz>.

¹¹ 52 U.S.C. § 10304.

¹² *See Shelby Cty v. Holder*, 570 U.S. 529, 557 (2013).

¹³ *See LDF Testifies Before Congress on Voter Suppression Crisis Post Shelby*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND (June 25, 2019), <https://bit.ly/2NVvkDe>; *see also* LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, 1 (2021), <https://bit.ly/39csLUt>.

¹⁴ *State Voting Bills Tracker 2021*, BRENNAN CENTER FOR JUSTICE (Feb. 24, 2021) <https://bit.ly/3tK7rOa>.

redistricting, because for the first time in five decades of map drawing, people of color in covered jurisdictions will not be protected by Section 5.¹⁵

II. CTVRA's Private Right of Action Against Voter Suppression and Vote Dilution

The CTVRA provides voters of color, as well as private organizations that represent or serve voters of color, with a private right of action against municipalities that adopt policies or practices that suppress minority votes or dilute minority voting strength.

Voter suppression. The CTVRA provides an efficient and predictable framework for prosecuting voter suppression claims. The CTVRA allows voters of color to address practices that suppress minority turnout, including, among other things, inconvenient or insufficient polling locations; wrongful voter purges; lack of availability of drop boxes; or improper election administration decisions that lead to longer lines.¹⁶ These provisions are especially important in Connecticut, where voters of color have routinely been affected by long lines at polling places.¹⁷

Vote dilution. The CTVRA provides an effective means of prosecuting racial vote dilution claims. Modeled off the success of the California Voting Rights Act, the CTVRA will create a clear and straightforward framework for contesting at-large municipal elections that dilute minority voting strength.¹⁸ The CTVRA also provides a clear framework for contesting district-based and alternative methods of election that dilute minority voting strength.¹⁹ The CTVRA will make this type of litigation less time-intensive and less costly for all parties as compared to the federal VRA.

Notification and safe harbor. The CTVRA contains important safe harbor provisions that provide protection for municipalities seeking to resolve

¹⁵ Michael C. Li, *The Redistricting Landscape 2021–22* 11 (BRENNAN CENTER FOR JUSTICE, Feb. 11, 2021), <https://bit.ly/2P6bUMf>.

¹⁶ CTVRA § 2(a).

¹⁷ Matt DeRienzo, *In Connecticut, Voters Face some of the Biggest Obstacles Outside the South*, CENTER FOR PUBLIC INTEGRITY, Oct. 7, 2020, <https://bit.ly/3faZWvs>.

¹⁸ CTVRA § 2(b).

¹⁹ *Id.*

potential violations. Prospective plaintiffs are required to notify municipalities in writing of any alleged violation *before* commencing any action in court. Municipalities are then afforded a “safe harbor” period during which it may take steps to cure the alleged violation without exposure to litigation. These provisions incentivize municipalities to resolve CTVRA violations outside of court.²⁰ Indeed, in California, the notification and safe harbor procedure has proven highly successful at accomplishing precisely this goal – one study identified 140 California jurisdictions that voluntarily resolved potential voting rights violations after the California Voting Rights Act was enacted.²¹

III. CTVRA’s Preclearance Program

The CTVRA establishes a preclearance program that requires certain municipalities with a history of civil rights abuses or other indicators of historical racial discrimination to obtain approval from the Attorney General or a state court before making changes to its election rules or practices. The CTVRA requires these municipalities to demonstrate that changes will not diminish the ability of minority groups to participate in the political process before they can be implemented.²² Unlike the federal VRA, which required covered jurisdictions to obtain preclearance for *all* voting-related changes, the CTVRA only requires preclearance for an enumerated set of changes.²³ While preclearance would impose a small compliance requirement on covered municipalities, it would save covered municipalities significant time and money by identifying discriminatory policies before they are enacted, thereby avoiding subsequent litigation.

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Please feel free to contact Michael Pernick at (917) 790-3597 or by email at mpernick@naacpldf.org with any questions or to discuss these issues in more detail.

²⁰ *Id.* at § 2(g).

²¹ Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, VOTING RIGHTS BARRIERS & DISCRIMINATION IN TWENTY-FIRST CENTURY CALIFORNIA: 2000- 2013, 7 (2014), <https://bit.ly/3chJRIO>.

²² CTVRA § 5.

²³ *Id.* at § 6.

Sincerely,

/s/ Michael Pernick

Lisa Cylar Barrett, Director of Policy

Leah C. Aden, Deputy Director of Litigation

Deuel Ross, Senior Counsel

Michael Pernick, Redistricting Counsel

NAACP Legal Defense & Educational Fund,
Inc.

40 Rector Street, 5th Fl.

New York, NY 10006

NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.