April 10, 2025

Submitted electronically

House State, Civic, Military and Veterans Affairs Committee
Colorado General Assembly
200 E Colfax Avenue
Denver, CO 80203

Re: Support for SB25-001 – The Colorado Voting Rights Act

Dear Chair Willford, Vice Chair Clifford, and Members of the House State, Civic, Military and Veterans Affairs Committee:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") writes to convey our strong support for the SB25-001, the Colorado Voting Rights Act.

Founded in 1940 under the leadership of Thurgood Marshall, who would later become the United States Supreme Court's first Black justice, LDF is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

For 85 years, LDF has prioritized its work protecting the right of Black Americans to vote—representing Dr. Martin Luther King, Jr., and other marchers in Selma, Alabama in 1965, advancing the passage of the federal Voting Rights Act of 1965 ("federal VRA") and litigating seminal cases interpreting its scope,[1] and working in communities across the nation to protect and strengthen the ability of Black voters to participate in the political process free from discrimination.

Justice Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,[2] which set in motion the end of legal apartheid in this country 70 years ago this month and transformed the direction of American democracy—referred to *Smith v. Allwright*,[3] the 1944 case ending whites-only primary elections in Texas, as his most consequential case. He held this view because he believed that the right to vote, and the opportunity to access political power, were critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

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1 LDF was lead counsel in the landmark 2023 federal VRA case *Allen v. Milligan*, 599 U.S. 1 (2023).

2 347 U.S. 483 (1954).

3 321 U.S. 649 (1944).

In recent years, as the Supreme Court has undercut the federal Voting Rights Act's protections[4] and that landmark law faces further threats in the lower courts, LDF has prioritized state voting rights acts ("State VRAs") as a key strategy to protect Black voters from increasing attacks on their freedom to vote. LDF has worked with partners to successfully advocate for the enactment of State VRAs across the country, including the John R. Lewis Voting Rights Act of New York in 2022, the John R. Lewis Voting Rights Act of Connecticut in 2023, and the Minnesota Voting Rights Act in 2024.[5]

We are working with robust coalitions of civil and voting rights advocates seeking to advance similar laws nationwide, always working to tailor the legislation to the particular needs and circumstances in each unique state.

This work has taken on new urgency as we experience attacks, not progress, on voting rights at the federal level. The Trump Administration's Project 2025 agenda includes plans to undermine enforcement of protections against voting discrimination. Instead of strengthening these protections by enacting the John Lewis Voting Rights Advancement Act, leadership in Congress is pushing anti-voter legislation that will add more barriers to the ballot.

I. The Supreme Court has Upended or Eroded Key Protections of the Federal Voting Rights Act

Although the individual and collective provisions of the federal Voting Rights Act have been effective at combatting a wide range of barriers and burdens,[6] federal courts have weakened many of the federal VRA's protections in recent years, making it increasingly challenging for voters to vindicate their rights under the law. As a result, despite the federal VRA's importance, Black voters and other voters of color often face significant barriers to participate in the political process and elect candidates of their choice.

For nearly 50 years, Section 5 of the federal VRA 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.[7] However, in *Shelby County, Alabama v. Holder*, the United States Supreme Court rendered Section 5's "preclearance" process inoperable by striking down Section 4(b) of the VRA, which identified the places where Section 5 applied.[8] Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section

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4 *See, e.g., Shelby Cty., Ala. v. Holder*, 570 U.S. 529 (2013); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).

5 N.Y. Elec. L. §§ 17-200–222; Conn. Gen. Stat. §§ 9-368i–q; Minn. H.F. 4772.

6 Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Ctr. for Just. (June 30, 2009), https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-act-legacy-15th-amendment.

7 52 U.S.C. § 10304.

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

4(b).[9] This onslaught accelerated in the years since the 2020 election, which saw historic levels of participation by voters of color (albeit with persistent racial turnout gaps).[10] Following that election, in 2021, state lawmakers introduced more than 440 bills with provisions that restrict voting access in 49 states, and 34 such laws were enacted.[11] This wave of harmful legislation shows no signs of abating: In the 2024 legislative sessions, at least 10 states enacted 19 restrictive voting laws, which represents more new restrictive voting laws enacted in 2024 than in any year in the last decade except for 2021.[12]

Section 2 of the federal VRA offers a cause of action—which means that a person is legally entitled to file a lawsuit—regarding 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."[13] This protects voters against election systems that weaken or drown out voters' voices based on race (known as "racial vote dilution") as well as discriminatory barriers to the ballot ("voter suppression"). However, both vote dilution[14] and voter suppression[15] claims under Section 2 impose a high bar for plaintiffs. Section 2 cases are expensive, can take years to reach resolution, and often require multiple expert witnesses for both plaintiffs and defendants.[16] Section 2 cases could require six- or seven-figure expenditures

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9 *See* NAACP Legal Def. & Educ. Fund, *Democracy Diminished* (Oct. 6, 2021), https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf.

10 Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Ctr. for Just. (Aug. 6, 2021), https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election.

11 Brennan Ctr. for Just., *Voting Laws Roundup: December 2021* (Dec. 21, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021.

12 Brennan Ctr. for Just., *Voting Laws Roundup: 2024 in Review* (Jan. 15, 2025), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2024-review.

13 52 U.S.C. § 10301. The U.S. Court of Appeals for the Eighth Circuit recently held that voters and organizations that represent them can no longer bring lawsuits directly under Section 2 of the federal Voting Rights Act (VRA). *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023). The Eighth Circuit's opinion flies in the face of six decades of decisions in hundreds of cases under Section 2 of the federal Voting Rights Act.

14 As recently reaffirmed by the Supreme Court in *Allen v. Milligan*, 599 U.S. 1 (2023), vote dilution cases under Section 2 are governed by the test set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986). Under this test, plaintiffs must first prove three preconditions before showing that, under the totality of the circumstances, that voters of color have less opportunity to participate in the political process and elect candidates of choice. *Id*. Over the course of nearly 40 years of litigation under this standard, federal courts across the country have applied this test in increasingly limited ways, *see, e.g., Bartlett v. Strickland*, 556 U.S. 1 (2009), leading to costly and prolonged litigation when voters of color seek to vindicate their rights.

15 The Supreme Court has never provided a legal standard to govern voter suppression or vote denial claims under Section 2. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2325 (2021) ("the Court declines in these cases to announce a test to govern all VRA § 2 challenges to rules that specify the time, place, or manner for casting ballots."). In *Brnovich*, the Supreme Court announced a flawed set of "guideposts" to help guide courts in evaluating these claims, but the guideposts have little relevance to the core question of whether the challenged act or practice has a discriminatory effect on voters of color, and have only served to increase the burden and complexity for voters who seek to use Section 2 to vindicate their rights in the face of racial discrimination in voting.

16 *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: H'rg Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005), https://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0f.htm ("Two to five years is a rough average" for the length of Section 2 lawsuits).

by plaintiffs, posing a significant challenge to voters facing discrimination, who may lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.[17] Due to these challenges, many potential Section 2 violations are never identified, addressed, or litigated in court.[18]

Section 2 claims are also expensive for jurisdictions to defend, regularly costing states and localities considerable amounts of taxpayer money. For example, in a recent Section 2 case challenging the at-large elections used by a school district in upstate New York, the district paid its lawyers more than $7 million for unsuccessfully defending a lawsuit brought by the local NAACP branch—and, after the NAACP branch prevailed, was ordered to pay over $4 million in plaintiffs' attorneys' fees and costs as well.[19] In *Veasey v. Abbott*, the federal lawsuit in which LDF challenged the State of Texas's voter ID law with other civil rights groups and the U.S. Department of Justice, the district court and the Fifth Circuit Court of Appeals required Texas to pay more than $6.7 million toward the non-DOJ plaintiffs' documented litigation costs.[20]

Above and beyond its cost, litigation under Section 2 of the federal VRA simply cannot keep up with the urgency of the political process. Because elections occur frequently, discriminatory electoral maps or practices can harm voters almost immediately after rules are changed. Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved.[21] In *Allen v. Milligan*, for example, although the Supreme Court ultimately held that Alabama's congressional map violated the VRA, the state had already selected a class of representatives in Congress using the illegal map in 2022, nearly a year before the decision.[22]

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17 *Voting Rights and Election Administration in the Dakotas: Hr'g Before the Subcomm. on Elections of the Comm. on H. Admin.*, 116th Cong. 64 (2019), https://www.govinfo.gov/content/pkg/CHRG-116hhrg37645/html/CHRG-116hhrg37645.htm.

18 Test. of Prof. Justin Levitt, *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hr'g Before the Subcomm. on the Const., C.R. & C.L. of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) https://www.govinfo.gov/content/pkg/CHRG-116hhrg39700/pdf/CHRG-116hhrg39700.pdf.

19 Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to $1: NAACP Leaders Respond*, Rockland Cnty. Times (Jan. 21, 2020), https://www.rocklandtimes.com/2021/01/21/ercsd-threatens-to-fire-teachers-if-legal-fees-not-cut-to-1-naacp-leaders-respond/; Report & Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central Sch. Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

20 *See* Mike Scarcella, *5th Circuit Upholds $6.7 Mln in Fees For Plaintiffs in Voting Rights Case*, Reuters (Sept. 4, 2021), https://reut.rs/3tN14L7.

21 *See* NAACP Legal Def. & Educ. Fund, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* 2 (Aug. 2024), https://www.naacpldf.org/wp-content/uploads/Section-2-VRA-costs_as-of-8.8.24-final-00246.pdf; *see also Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 572 (2013) (Ginsburg, J., concurring) ("An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.").

22 *Allen v. Milligan*, 599 U.S. 1 (2023). Although the District Court originally preliminarily enjoined the use of the map in the 2022 election, the Supreme Court vacated this order when granting certiorari. *Id.*

II. State Voting Rights Acts Protect the Freedom to Vote and Build a Democracy That Works for All

As Black voters and other voters of color across the country face the greatest assault on their voting rights since the Jim Crow era, a growing number of states are acting to protect the right to vote and safeguard our democracy. With the passage of state VRAs, states can provide key protections to their constituents that prevent and guard against discriminatory voting practices and policies. With a Congress that has yet to strengthen federal voting rights legislation and federal courts continuing to erode the federal Voting Rights Act, states must lead by example to protect our right to vote.

Momentum is growing, as an increasing number of states, including California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), and Minnesota (2024), have enacted state VRAs, with numerous others making progress towards similar legislation. Moreover, state VRAs are extremely popular – a recent survey showed that more than three-quarters (78%) of voters support a voting rights act in their state, with strong majorities across race and party lines.[23] For more information about state VRAs, visit our state VRA landing page at www.naacpldf.org/state-voting-rights-protect-democracy/.[24]

LDF, the nation's oldest and premier civil rights legal organization, fully supports SB 25-001, the Colorado Voting Rights Act. We thank you for the opportunity to provide this testimony.

Sincerely,

/s/ Michael Pernick

Michael Pernick
NAACP Legal Defense and Educational Fund, Inc.
40 Rector Street, 5th Fl.
New York, NY 10006

Adam Lioz
NAACP Legal Defense and Educational Fund, Inc.
700 14th Street N.W., Ste. 600
Washington, DC 20005

[23] *See State VRA Key Findings*, https://www.naacpldf.org/wp-content/uploads/LDF-State-VRA-Poll-Key-Findings-1-30-25.pdf.

[24] *See* NAACP Legal Def. & Educ. Fund, *State Voting Rights Acts*, https://www.naacpldf.org/state-voting-rights-protect-democracy/.