

March 20, 2023

Submitted electronically

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

Re: Support for Senate Bill No. 1226, An Act Concerning State Voting Rights in Recognition of John R. Lewis

Dear Senator Flexer, Representative Blumenthal, Ranking Members Sampson and Mastrofrancesco, and distinguished members of the Government Administration and Elections Committee:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to convey our strong support for S.B. 1226, An Act Concerning State Voting Rights in Recognition of John R. Lewis (“Connecticut Voting Rights Act” or “CTVRA”).¹

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. 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 and transformed the direction of American democracy—referred to *Smith v. Allwright*,³ the 1944 case ending whites-only primary elections, as his most consequential case. He often shared that he held this view because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

For more than 80 years, LDF has prioritized its work protecting the right of Black citizens 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,⁴ and working in communities across the nation to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Currently, Black voters face the greatest threat of discrimination and disenfranchisement since the Jim Crow era. As many states move to further restrict

¹ Conn. Gen. Assembly, Raised Senate Bill No. 1226 (2023) (“S.B. 1226”).

² 347 U.S. 483 (1954).

³ 321 U.S. 649 (1944).

⁴ LDF is currently lead counsel in a federal VRA case pending before the Supreme Court this term. *Merrill v. Milligan*, 595 U.S. ___ (2022).

the franchise,⁵ it is critical that states like Connecticut prioritize bills like S.B. 1226 and meet the urgent need to protect Black voters and other voters of color from discrimination. In 2022, we worked with partners to successfully advocate for the enactment of the John R. Lewis Voting Rights Act of New York (“NYVRA”). Currently, we are working with robust coalitions of civil and voting rights advocates to advance similar laws here in Connecticut and in Maryland and New Jersey.⁶

We commend you for considering this landmark legislation, which honors the legacy of John Lewis by enshrining comprehensive protections for the “sacred, almost precious” right to vote.⁷ S.B. 1226 will make Connecticut a national leader on voting rights and equal democracy. In addition to addressing critical needs in Connecticut, S.B. 1226 will place this state at the forefront of a national movement, building on the success of the NYVRA and similar laws in Virginia, Oregon, Washington, and California.⁸

I. The Need for Strong Voting Rights Protections in Connecticut

The importance of the right to vote cannot be overstated. The United States Supreme Court has long described voting as a fundamental right, because it is preservative of all other rights.⁹ Voting is “the citizen’s link to his laws and government”¹⁰ and “the essence of a democratic society.”¹¹ If the right to vote is undermined, the Court has cautioned, other rights “are illusory.”¹² Thus, in a democracy, safeguarding the right to vote “is a fundamental matter.”¹³

The State of Connecticut long denied this fundamental right to its Black citizens and other citizens of color. From its founding through the recent past, Connecticut has a troubling history of racial discrimination in voting. This history includes the use of

⁵ Brennan Center for Justice at NYU School of Law, *Voting Laws Roundup: February 2023* (Feb. 22, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>

⁶ See LDF, *Civil Rights Organizations and Connecticut Legislators Call for Passage of a State Voting Rights Act* (Jan. 31, 2023), <https://www.naacpldf.org/press-release/civil-rights-organizations-and-connecticut-legislators-call-for-passage-of-a-state-voting-rights-act/>; *New Jersey Voting Rights Act*, NJVRANOW (2023), <https://njvra.org/>; LDF, *Maryland Needs Its Own Voting Rights Act* (2023), <https://www.naacpldf.org/case-issue/maryland-voting-rights-act/>.

⁷ *Rep. John Lewis: ‘Your Vote is Precious, Almost Sacred’*, PBS NewsHour (Sept. 6, 2021), <https://www.pbs.org/newshour/show/rep-john-lewis-your-vote-is-precious-almost-sacred>.

⁸ See N.Y.S. Senate Bill S1046E / N.Y.S. Assembly Bill A6678E (enacted June 20, 2023), <https://www.nysenate.gov/legislation/bills/2021/A6678> (“NYVRA”); Va. House Bill No. 1890 (2021 Session), <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1395>; Ore. Rev. Stat. § 255.400 et seq.; Wash. Rev. Code Ann. § 29A.92.900 et seq.; Cal. Elec. Code, California Voting Rights Act of 2001, § 14027 (2002); see also Testimony of Professor J. Morgan Kousser Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the U.S. House Comm. on the Judiciary, Legislative Proposals to Strengthen the Voting Rights Act (Oct. 17, 2019), at 2, <https://docs.house.gov/meetings/JU/JU10/20191017/110084/HHRG-116-JU10-Wstate-KousserJ-20191017.pdf> (noting the “striking success of minorities in using the state-level California Voting Rights Act”).

⁹ See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

¹⁰ *Evans v. Cornman*, 398 U.S. 419, 422 (1970).

¹¹ *Harman v. Forssenius*, 380 U.S. 528, 537 (1965).

¹² *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

¹³ *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).

explicitly racist constitutional provisions regarding who could and could not vote,¹⁴ English-only literacy tests,¹⁵ discriminatory local redistricting plans,¹⁶ and voter purges that disproportionately targeted voters of color.¹⁷ And, as discussed below, unequal barriers to the franchise persist in Connecticut today, manifesting in long lines at the polls in predominantly Black and Latino neighborhoods and other evidence of disparities in access to the franchise between white voters and voters of color.

A. Connecticut’s History of Voting Discrimination

For most of the nineteenth century, Connecticut restricted the right to vote to white men.¹⁸ The state enshrined this racial exclusion in its constitution in 1818, at a time when several other New England states allowed some Black men to vote.¹⁹ Subsequently, the people of Connecticut twice voted down proposed amendments to the state constitution to strike the word “white” from the provision setting forth the qualifications of electors.²⁰ Only in 1876—six years *after* the ratification of the Fifteenth Amendment to the U.S. Constitution outlawed racial discrimination in voting—did Connecticut finally amend its Constitution to remove this explicitly racist language.²¹

Connecticut was the first state to enact a literacy test as a requirement for voting, and one of the last to abandon it.²² Literacy tests like Connecticut’s long functioned as racially discriminatory means of exclusion, because they interacted with language barriers and socioeconomic disparities, including unequal access to education, to produce discriminatory effects—and because election officials often administered them discriminatorily.²³ Furthermore, in 1897, when Connecticut’s literacy

¹⁴ Mary M. Janicki, *OLR Research Report: The Rights to Vote and Hold Office* (Oct. 29, 1998), <https://www.cga.ct.gov/PS98/rpt%5Colr%5Chtm/98-R-1215.htm> (explaining that a “race restriction” in the Connecticut Constitution requiring voters to be white remained in place until 1876).

¹⁵ Steve Thornton, *Literacy Tests and the Right to Vote*, ConnecticutHistory.org (Sept. 15, 2022), <https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/> (detailing Connecticut’s discriminatory use of an English-only literacy test to disenfranchise Puerto Rican voters until stopped by federal legislation).

¹⁶ See *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, No. 3:93-CV-1476(PCD), 1993 WL 742750, at *6 (D. Conn. Oct. 27, 1993).

¹⁷ ACLU of Connecticut, *Voters in Hartford Still Need Federal Court’s Protection* (July 11, 2013), <https://www.acluct.org/en/press-releases/voters-in-hartford-still-need-federal-courts-protection> (describing the *Santa v. Cimiano* litigation, arising from a Hartford voter purge process in which Latino voters were twice as other voters to be removed from canvassing lists).

¹⁸ Conn. Const. of 1818, art. VI, § 2 (listing an elector’s qualifications, including that the individual in question must be a “white male citizen of the United States”); *Crandall v. State*, 10 Conn. 339, 360 (Conn. 1834) (confirming that “none other than white male citizens can be made electors” and approving “this distinction of colour”).

¹⁹ Elizabeth Normen, *Our Hard-Won Right to Vote*, Conn. Explored (Spring 2016), <https://www.ctexplored.org/our-hard-won-right-to-vote/>.

²⁰ Rebecca Furer, *Who Gets to Vote? History of Voting Rights in Connecticut and the United States*, Connecticut Humanities, <https://teachitct.org/lessons/who-gets-to-vote-history-of-voting-rights-in-connecticut-and-the-united-states/>.

²¹ See Ramin Ganeshram and Elizabeth Normen, *The battle for black suffrage in Connecticut gives perspective on today*, Hartford Courant (Feb. 23, 2020), <https://www.courant.com/opinion/op-ed/hc-op-ganeshram-normen-black-suffrage-0223-20200223-dqovvu2lobggjcoq4jqtf2ufey-story.html>.

²² Thornton, *supra* note 15.

²³ *Id.*; see also John E. Filer, Lawrence W. Kenny, Rebecca B. Morton, *Voting Laws, Educational Policies, and Minority Turnout*, 34 J. L. & Econ. 371, 374 (Oct. 1991) (noting that “the African-American literacy rate did not equal the literacy rate of whites after the Civil War until 1940”).

requirement was amended to specify that only English literacy counted, the test effectively disenfranchised U.S. citizens who were fluent in other languages but not English, including many eligible Puerto Rican voters who had been educated in Spanish. The literacy test also stood as a barrier for some eligible Black voters who came to Connecticut during the Great Migration from southern states like Georgia and Virginia, where they had been denied an equal education under Jim Crow laws.²⁴

Connecticut only began allowing Puerto Rican voters to cast ballots without passing the literacy test in August of 1965—and only because the state had no choice after the enactment of the federal VRA, which included a provision drafted specifically to prevent northern states’ use of literacy tests to disenfranchise Puerto Rican voters.²⁵ Yet, for other Connecticut voters, the literacy test remained in place until 1970.²⁶ That year, responding to “a long history of the discriminatory use of literacy tests to disfranchise voters on account of their race,” Congress enacted a five-year, nationwide suspension on all such tests.²⁷ Even then, Connecticut waited until 1976—a year after Congress made the ban permanent—to amend its constitution and finally relinquish its literacy test.²⁸

B. Continued Obstacles and Discrimination in Voting

Connecticut has made progress recently with respect to voting rights, but serious gaps remain in the state’s protection of the rights of Black voters and other voters of color. With no access to early voting, as of yet, and limited absentee voting, Connecticut has been described as “home to some of the most restrictive voting laws in

²⁴ Kurt Schlichting, Peter Tuckel & Richard Maisel, *Great Migration of African Americans to Hartford, Connecticut, 1910–1930: A GIS Analysis at the Neighborhood and Street Level*, 39 Soc. Science Hist. 287, 297 n.7 (Summer 2015) (noting that, according to the 1920 census, Black Hartford residents who were born in Connecticut had far higher literacy rates than Black Hartford residents who were born in Georgia or Virginia).

²⁵ See David Holmberg, *Puerto Ricans Literate in Spanish to Get Vote: Opinion is Given by Mulvey*, Hartford Courant (Aug. 25, 1965); Juan Cartagena, *Puerto Ricans and the 50th Anniversary of the Voting Rights Act* (Aug. 14, 2015), <https://centropr-archive.hunter.cuny.edu/centrovoices/current-affairs/puerto-ricans-and-50th-anniversary-voting-rights-act>; see also *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966) (describing Section 4(e) of the federal VRA as “a measure to secure for the Puerto Rican community . . . nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services”).

²⁶ Thornton, *supra* note 15.

²⁷ *Oregon v. Mitchell*, 400 U.S. 112, 132 (1970) (Op. of Black, J.); see also U.S. Comm’n on Civil Rights, Summary and Text of the Voting Rights Act (Sept. 1971), <https://www2.law.umaryland.edu/marshall/usccr/documents/cr11032.pdf>.

²⁸ Connecticut State Library, The Connecticut Constitution, 1965-2008: Legislative History of Amendments, *Legislative History for Amendment Article IX, Constitutional Article VI, Sec. 1, HJR 48 of 1975 (adopted Nov. 24, 1976)*, http://libguides.ctstatelibrary.org/ld.php?content_id=30248233&_ga=2.14239671.182397562.1677450643-167704479.1674852581&_gl=1*i7vw68*_ga*mtY3nza0ndc5lje2nzq4ntilode.*_ga_x4e5txlnv4*mtY3nZq1mdy0my4zljEumty3nZq1mdy0my4wljauma (“The Amendment would also abolish the literacy test, which has been suspended by the Federal Voting Rights Act until August 5th, 1975 and will probably be suspended again temporarily, or permanently.”); Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat. 400 (describing the purposes of 1975 amendments to the federal VRA as, inter alia, “to make permanent the ban against certain prerequisites to voting”).

the country.”²⁹ There is no civil right of action in Connecticut state courts for individual voters who face intimidation at the polls. The minimum language assistance requirements under Section 203 of the federal VRA do not meet the needs of all Connecticut voters with limited English proficiency. And the prevalence of at-large election structures in many of Connecticut’s local government bodies³⁰—a form of election which, when combined with racially polarized voting or other relevant factors, can “operate to minimize or cancel out the voting strength of racial minorities in the voting population”—raises questions about potential vote dilution that may be going unchallenged at present.³¹

These persistent disenfranchising conditions leave voters of color exposed to disproportionate burdens in exercising the right to vote.³² In addition, long lines at polling places in neighborhoods with higher Black and Latino populations continue with unacceptable frequency in Connecticut.³³ Indeed, across the nation, post-election surveys³⁴ and analyses of smartphone data³⁵ have made clear that Black and Latino voters wait in significantly longer lines than white voters to cast their ballots in person. Black voters and other voters of color are also more likely to be unable to take time off work to vote,³⁶ more likely to be asked to vote by provisional ballot,³⁷ and more likely to have those provisional ballots rejected.³⁸

²⁹ Matt DeRienzo, *In Connecticut, Voters Face some of the Biggest Obstacles Outside the South*, Center for Public Integrity (Oct. 7, 2020), <https://publicintegrity.org/politics/elections/us-polling-places/connecticut-voters-face-some-of-the-biggest-obstacles-outside-the-south/>.

³⁰ Based on a preliminary analysis by LDF, 41 Connecticut municipalities appear to use at-large methods of election for their local legislative bodies.

³¹ *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (internal quotations and brackets omitted).

³² For example, studies show that Black voters are more likely to vote early than non-Black voters. Sarah Smith, *Which Voters Show Up When States Allow Early Voting?*, ProPublica (Sept. 22, 2016), <https://www.propublica.org/article/which-voters-show-up-when-states-allow-early-voting>.

³³ See, e.g., *Polling Location in Hartford Had Long Lines on Election Day*, NBC Conn. (Nov. 4, 2020), <https://www.nbcconnecticut.com/news/local/polling-location-in-hartford-had-long-lines-on-election-day/2355523/>; LaSalle Blanks, *Long voting lines cause issues in New Haven*, WTNH (Nov. 6, 2018), <https://www.wtnh.com/news/politics/long-voting-lines-cause-issues-in-new-haven/1577616643/>; Doug Chapin, *Election Day Issues In Hartford Spark Renewed Conversation About role of Conn. Registrars*, Election Academy (Nov. 6, 2014), <https://electionacademy.lib.umn.edu/2014/11/06/election-day-issues-in-hartford/>; *BRIDGEPORT ‘CHAOS’: 21,000 ballots readied for 69,000 registered voters*, Conn. Post (Nov. 3, 2010), <https://www.ctpost.com/news/article/bridgeport-chaos-21-000-ballots-readied-for-787274.php>.

³⁴ Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, Brennan Center for Justice at NYU School of Law (June 3, 2020), https://www.brennancenter.org/sites/default/files/2020-06/6_02_WaitingtoVote_FINAL.pdf.

³⁵ M. Keith Chen et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* (Oct. 30, 2020), <https://arxiv.org/pdf/1909.00024.pdf>.

³⁶ Alex Vandermaas-Peeler et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PRRI (July 17, 2018), <https://www.prrri.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/>.

³⁷ Daron Shaw, *Report on Provisional Ballots and American Elections* (June 21, 2013), http://web.mit.edu/supportthevoter/www/files/2013/08/Provisional-Ballots-Shaw-and-Hutchings.docx_.pdf; Joshua Field et al., *Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots*, Center for American Progress (Oct. 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/10/ProvisionalBallots-report.pdf?_ga=2.111276417.42375908.1621859427-264694957.1618767359.

³⁸ Thessalia Merivaki & Daniel A. Smith, *A Failsafe for Voters? Cast and Rejected Provisional Ballots in North Carolina*, Sage Journals (Sept. 19, 2019).

The restrictive effects of some Connecticut voting laws and practices are further exacerbated by troubling racial disparities in health, housing, employment, education, arrest rates and incarceration, and vehicle ownership.³⁹ As Congress, courts, and academic researchers have recognized, underlying social conditions resulting from past and ongoing discrimination often interact with voting rules to cause or exacerbate disparities in the ability to participate in elections.⁴⁰ For example, courts have long considered “the effects of discrimination in such areas as education, employment, and health” as relevant to analyzing voting rights violations, because such conditions can “hinder [a minoritized group’s] ability to participate effectively in the political process.”⁴¹

One result of these unequal barriers to the franchise, is that Connecticut elections are marked by significant racial disparities in voter registration and turnout. With respect to registration, data published by the U.S. Census Bureau shows that **77.4%** of non-Hispanic white citizens in Connecticut were registered to vote as of the November 2020 election.⁴² By contrast, only **68.6%** of Black citizens, **67.8%** of Latino citizens, and **60.5%** of Asian citizens in Connecticut were registered to vote as of that election.⁴³

With respect to voter turnout, Census data reveal similar disparities. According to the Census Bureau, **71%** of Connecticut’s non-Hispanic white citizens voted in the 2020 election. This compares to only **64.5%** of Connecticut’s Black citizens, **56.6%** of Connecticut’s Asian citizens, and **56.4%** of Connecticut’s Latino citizens.⁴⁴

<https://journals.sagepub.com/doi/10.1177/1065912919875816>; see Joshua Field et al., *Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots*, Center for American Progress (Oct. 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/10/ProvisionalBallots-report.pdf?_ga=2.111276417.42375908.1621859427-264694957.1618767359.

³⁹ See, e.g., Conn. Off. of Policy & Management, *2021 Analysis of Prosecutor Data (PA 19-59)* (July 29, 2021), <https://portal.ct.gov/-/media/OPM/CJPPD/CjResearch/Prosecutor-Data-Analysis/Second-Analysis-of-Prosecutor-Data-PA-1959-2021-Report.pdf> (noting that “[t]he demographic composition of disposed cases is disproportionate to the state resident population”); Arielle Levin Becker, *Health Disparities in Connecticut: Causes, Effects, and What We Can Do*, Connecticut Health Foundation (Jan. 2020); Cynthia Willner, *Racial and Ethnic Disparities in Earnings, Employment, and Education in Connecticut*, CT Data Collaborative (June 16, 2022), <https://www.ctdata.org/acs-racial-and-ethnicity-disparities> (explaining that “marked disparities still exist in educational attainment, employment and earnings across racial and ethnic groups in Connecticut”); Nat’l Equity Atlas, *Car ownership: Connecticut*, https://nationalequityatlas.org/indicators/Car_access#/?geo=02000000000009000 (reporting that 21% of Black households, 18% of Native American households, 17% of Latino households, and 8% of AAPI households lack access to a vehicle—as compared to only 6% of white households).

⁴⁰ See, e.g., *Thornburg v. Gingles*, 478 U.S. 30, 44-47 (1986).

⁴¹ *Id.* at 36-47 (quoting S. Rep. No. 97-417, at 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207); see also, e.g., Justin de Benedictis-Kessner & Maxwell Palmer, *Driving Turnout: The Effect of Car Ownership on Electoral Participation 4* (Aug. 17, 2021), https://scholar.harvard.edu/files/jdbk/files/drivers_turnout.pdf (“Car access has a substantively large impact on voter turnout.”); Amer. Bar Foundation, *Major Empirical Research Effort Finds Incarceration Suppresses Overall Voter Turnout* (Feb. 25, 2014), <https://www.americanbarfoundation.org/news/467>.

⁴² U.S. Census Bureau, *Voting and Registration in the Election of November 2020* (April 2021), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> (Table 4b, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020).

⁴³ *Id.*

⁴⁴ *Id.*

These disparities strongly indicate the presence of unequal barriers in the registration and voting process that impede participation by eligible Black, Latino, and Asian voters in Connecticut.⁴⁵

And turnout is only part of the story. As the Fifth Circuit Court of Appeals has explained, discriminatory barriers to the exercise of the right to vote can constitute an unlawful abridgement of that fundamental right even if some voters overcome the burdens and are able to cast ballots.⁴⁶ As the court observed, “in previous times, some people paid the poll tax or passed the literacy test and therefore voted, but their rights were still abridged.”⁴⁷ Overcoming unequal burdens does not mean those burdens do not exist. Nor is a two-tiered model of access to the franchise acceptable or lawful.

Today, literacy tests and explicit racial classifications are no longer part of Connecticut’s electoral landscape, but discriminatory barriers to the right to vote persist, perpetuating new forms of the same “insidious and pervasive evil” that Congress enacted the federal VRA to combat.⁴⁸ Clearly, there is significant need for S.B. 1226’s comprehensive protections to remove barriers to equal participation and move Connecticut closer to becoming an equitable, racially inclusive democracy.

C. Voting Rights Litigation in Connecticut

Discriminatory practices in local redistricting and election administration in Connecticut have resulted in litigation under the federal VRA by voters of color facing racial vote dilution and wrongful purge practices.

Bridgeport Coalition for Fair Representation v. City of Bridgeport

In Bridgeport, for example, Black and Latino voters in a 1993 lawsuit challenged a redistricting plan for the city council that packed Black and Latino voters primarily into two of the city’s ten council districts.⁴⁹ Bridgeport’s Black and Latino residents were over 50% of the population and could constitute a majority of the voting-age population in five compact districts, yet the city’s plan created only four districts in which Black and Latino voters had an opportunity to elect candidates of their choice. After plaintiffs sued under Section 2 of the federal VRA and the Fourteenth and Fifteenth Amendments to the U.S. Constitution, a federal district court preliminarily enjoined the city’s plan, citing Bridgeport’s long history of racial discrimination, its “markedly racially polarized” voting patterns, and other evidence under “the totality of

⁴⁵ Moreover, recent research indicates that the Census Bureau’s statistics on turnout may overestimate the incidence of voting among communities of color, suggesting that racial turnout disparities may be even greater than Census data reveals. See Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout*, *Journal of Politics* (2021), https://static1.squarespace.com/static/5fac72852ca67743c720d6a1/t/5ff8a986c87fc6090567c6d0/1610131850413/CPS_AFS_2021.pdf.

⁴⁶ See *Veasey v. Abbott*, 830 F.3d 216, 260 (5th Cir. 2016).

⁴⁷ *Id.* at 260 n.58.

⁴⁸ See *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

⁴⁹ *Bridgeport Coal. for Fair Representation*, 1993 WL 742750, at *4 (noting that Black and Latino residents made up 81.7% of the voting-age population in one district and 84.5% of the voting-age population in a second district.).

circumstances.”⁵⁰ As a remedy, the court instructed Bridgeport to redraw the plan with two majority-Latino districts, two majority-Black districts, and one combined majority-minority “coalition” district.⁵¹ Instead of implementing this equitable remedy, Bridgeport appealed. The Second Circuit upheld the district court’s preliminary injunction;⁵² yet Bridgeport appealed again. The U.S. Supreme Court granted certiorari, vacated the decisions below, and instructed the lower courts to consider the case further in light of a recently issued Supreme Court opinion.⁵³ However, the Supreme Court did not call into question any of the lower court’s factual findings regarding the discriminatory effects of Bridgeport’s plan.⁵⁴ The following year, the city finally settled the case, agreeing to pay plaintiffs’ litigation costs and implement the remedy plaintiffs had sought all along—a new redistricting plan for the city council that gave minority voters a fifth opportunity district.⁵⁵

Santa v. Cimiano

In Hartford, Latino voters challenged a racially discriminatory voter purge process in 1991 under the federal VRA and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.⁵⁶ Plaintiffs’ uncontroverted evidence in the case demonstrated that Latino voters were twice as likely to be purged from the voter rolls as other registered voters, and that voters who still lived in Hartford had been wrongfully purged.⁵⁷ The court ordered the city to implement a series of measures to address these issues.⁵⁸ However, Hartford failed to comply with the court’s judgment, continuing its discriminatory practices.⁵⁹ In October of 1993, the district court was forced to intervene again and enjoin the city “from further failure to implement the judgment in this case.”⁶⁰ Two decades later, in 2013, the court denied a motion by Hartford for relief from the judgment, siding with the plaintiffs, who argued that the evidence showed “every indication that this discriminatory disenfranchisement has continued to date and that the Judgment is still sorely needed to ensure that all Hartford residents have equal access to the polls.”⁶¹

⁵⁰ *Id.* at *4-*5.

⁵¹ *Id.* at *7.

⁵² *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 278 (2d Cir. 1994).

⁵³ *City of Bridgeport, Conn. v. Bridgeport Coal. For Fair Representation*, 512 U.S. 1283, 115 S. Ct. 35, 129 L. Ed. 2d 931 (1994) (vacating decisions below and remanding for further consideration in light of *Johnson v. De Grandy*, 512 U.S. 997 (1994)).

⁵⁴ *Id.*

⁵⁵ Edmund Mahoney, *Bridgeport’s Redistricting Suit Settled*, Hartford Courant (Mar. 10, 1995), <https://www.courant.com/news/connecticut/hc-xpm-1995-03-10-9503100390-story.html>; see Stipulation of Dismissal, *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, No. 3:93-cv-01474 (D. Conn. Mar. 9, 1995), ECF No. 151.

⁵⁶ Judgment, *Santa v. Cimiano*, No. 2:91-cv-01005 (D. Conn. May 11, 1992), ECF No. 10.

⁵⁷ ACLU of Conn., *Voters in Hartford Still Need Federal Court’s Protection* (July 11, 2013), <https://www.acluct.org/en/press-releases/voters-in-hartford-still-need-federal-courts-protection>.

⁵⁸ *Id.*

⁵⁹ See Pls.’ Mem. in Opp. to Dfs.’ Mot. For Relief from J., *Santa*, No. 2:91-cv-01005, ECF No. 36, at 2-10 (reciting case history and Hartford’s record of noncompliance).

⁶⁰ Order, *Santa*, No. 2:91-cv-01005, ECF No. 14.

⁶¹ Pls.’ Mem. in Opp. to Dfs.’ Mot. for Relief from J., *Santa*, No. 2:91-cv-01005, ECF No. 36, at 1-2; see Order, *Santa*, No. 2:91-cv-01005, ECF No. 38.

D. Current Limitations of the Federal Voting Rights Act

The existing federal legislation does not fully address the need for voting rights protections in Connecticut and other states. Although the individual and collective provisions of the federal VRA have been effective at combatting a wide range of barriers and burdens,⁶² federal courts have weakened some of the federal VRA's protections in recent years, making it increasingly complex and burdensome for litigants to vindicate their rights under the law. As a result, despite the federal VRA's importance, 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, the core provision of the 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.⁶³ 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.⁶⁴ Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b).⁶⁵ This onslaught accelerated after the 2020 election, which saw historic levels of participation by voters of color (albeit with persistent racial turnout gaps).⁶⁶ 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.⁶⁷ This wave of harmful legislation shows no signs of abating—as of February 2023, lawmakers in 32 states had already introduced or pre-filed at least 150 additional restrictive voting bills to be considered in the current legislative sessions.⁶⁸

Section 2 of the federal VRA offers a private right 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.”⁶⁹ But Section 2 litigation imposes a high bar for plaintiffs.

⁶² Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Center for Justice at NYU School of Law (June 30, 2009), <https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-act-legacy-15th-amendment>.

⁶³ 52 U.S.C. § 10304.

⁶⁴ See *Shelby Cty, Ala. v. Holder*, 570 U.S. 529, 557 (2013).

⁶⁵ See LDF, *Democracy Defended* (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf; see also LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act 1* (Jan. 5, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Sections-2-and-3c-VRA-primer-1.5.21.pdf>.

⁶⁶ Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Center for Justice at NYU School of Law (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

⁶⁷ Brennan Center for Justice at NYU School of Law, *Voting Laws Roundup: December 2021* (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

⁶⁸ Brennan Center for Justice at NYU School of Law, *supra* note 5.

⁶⁹ 52 U.S.C. § 10301.

Such cases are expensive and can take years to reach resolution.⁷⁰ Section 2 lawsuits generally require multiple expert witnesses for both plaintiffs and defendants.⁷¹ Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.⁷² Individual plaintiffs, even when supported by civil rights organizations or private lawyers, often lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.⁷³ Moreover, even when voters ultimately prevail in the lawsuits, several unfair elections may be held while the litigation is pending, subjecting voters to irreparable harm.⁷⁴ Due to these challenges, some potential Section 2 violations are never identified, addressed, or litigated in court.⁷⁵

Section 2 claims are also expensive for jurisdictions to defend, regularly costing states and localities considerable amounts of taxpayer money. Bridgeport experienced these costs first-hand in 1995, when Black and Latino residents prevailed in the challenge to Bridgeport’s redistricting plan discussed above.⁷⁶ As part of a settlement agreement, Bridgeport agreed to pay plaintiffs \$175,000 for legal expenses and court costs.⁷⁷ Since then, the costs of such litigation have risen. In a more recent example, the East Ramapo Central School District in New York State paid its lawyers more than \$7 million for unsuccessfully defending a Section 2 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.⁷⁸ 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 (DOJ), 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.⁷⁹

⁷⁰ Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

⁷¹ LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation 2* (Feb. 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>; see also, e.g., Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, Yakima Herald (Aug. 10, 2014), https://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-against-yakima/article_3cbce20-ee9d-11e4-bfba-f3e05bd949ca.html.

⁷² LDF, *supra* note 71, at 2.

⁷³ Voting Rights and Election Administration in the Dakotas: Hearing Before the Subcomm. on Elections, 116th Cong. 64 (2019).

⁷⁴ *Shelby County*, 570 U.S. at 572 (Ginsburg, J., dissenting) (“An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.”).

⁷⁵ 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).

⁷⁶ Stipulation of Dismissal, *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, No. 3:93-cv-01474 (D. Conn. Mar. 9, 1995), ECF No. 151; see *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir.) (1994), vacated sub nom. *City of Bridgeport, Conn. v. Bridgeport Coal. For Fair Representation*, 512 U.S. 1283 (1994).

⁷⁷ Mahoney, *supra* note 55.

⁷⁸ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, Rockland County 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 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).

⁷⁹ 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>.

Above and beyond its complexity and 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. However, on average, Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved.⁸⁰ Voters of color in Bridgeport experienced this in 1993, when a court held that the city’s redistricting plan violated the federal VRA but still permitted city council elections to proceed under the discriminatory plan that diluted the strength of Black and Latino votes.⁸¹ By 1995, when new lawful districts were drawn, council members elected under the discriminatory plan had been in power for two years.⁸²

II. The CTVRA Provides Comprehensive Protections to Address Discriminatory Barriers to the Franchise.

S.B. 1226 would implement several critical measures to restore and complement protections modeled on the federal VRA and expand the tools available to voters facing discrimination. It would provide efficient, practical ways to identify and resolve barriers to equal participation in local democracy. In addition, it would require local governments with recent records of discrimination to “preclear” certain voting changes *before* they can be implemented, preventing harm to voters. It would also strengthen state-level protections against voter intimidation, deception, and obstruction; expand language assistance for voters with limited English proficiency; and promote transparency by creating a central, publicly accessible hub for election data and information. Each of these provisions is powerful and critically needed in Connecticut.

A. Preclearance

Section 5 of S.B. 1226 will create a “preclearance” program within the Office of the Secretary of the State (“SOTS”), modeled after the program enacted by New York State in 2022,⁸³ which was based in turn upon the federal VRA—one of the most effective civil rights laws in American history.⁸⁴ Through this program, municipalities with recent civil rights violations or other indicators of discrimination would be required to obtain approval from the Secretary of the State or a state court before making changes to certain election rules or practices.⁸⁵ S.B. 1226 would require these municipalities to demonstrate that changes will not diminish the ability of minority groups to participate in the political process *before* the changes can be implemented. Through this program, SOTS experts would be able to identify changes that would have a discriminatory impact in advance and prevent them from going into effect.

⁸⁰ *Shelby County*, 570 U.S. at 572 (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.”).

⁸¹ *Bridgeport Coal. For Fair Representation v. City of Bridgeport*, No. CIV. 3:93-1476, 1993 WL 742750, at *6 (D. Conn. Oct. 27, 1993).

⁸² Mahoney, *supra* note 55.

⁸³ NYVRA § 17-210.

⁸⁴ 52 U.S.C. § 10303.

⁸⁵ See S.B. 1226 § 5.

As Congress recognized in 1965, case-by-case litigation alone is inadequate—too slow and too costly—to eradicate voting discrimination and prevent its resurgence.⁸⁶ Even if voters of color can muster the resources to sue, the discriminatory practices or procedures they challenge can remain in effect for years while litigation is pending. Preclearance relieves voters facing discrimination of the substantial burdens of litigation by “shifting the advantage of time and inertia” from the jurisdiction to the voters themselves.⁸⁷ Thus, instead of voters having to go to court to prove that new election laws and practices are discriminatory, jurisdictions with a history of discrimination must show that new voting laws and practices are *not* discriminatory. For example, when a polling site in a covered municipality is relocated, preclearance will ensure that local officials first justify the shift and show the change is not harmful to voters of color, instead of requiring voters to sue after the fact.

Preclearance at the federal level was effective at protecting voters of color without unduly burdening local election officials. In fact, some covered jurisdictions appreciated preclearance because the process ensured the use of best practices for fostering political participation, particularly among voters of color.⁸⁸ Covered jurisdictions also made clear that they viewed preclearance as a way to prevent expensive and prolonged litigation.⁸⁹ As Travis County, Texas, wrote concerning its own preclearance obligations in a brief defending the constitutionality of Section 5 of the federal VRA in 2009: “If ever there were a circumstance where an ounce of prevention is worth a pound of cure, it is in the fundamental democratic event of conducting elections free of racially discriminatory actions.”⁹⁰

Three Connecticut towns have experience complying with federal preclearance.⁹¹ Unlike the federal VRA, which required those towns to obtain preclearance for all voting-related changes, S.B. 1226 only requires preclearance for an enumerated set of changes that have been shown to have the potential for discriminatory outcomes.⁹² Where warranted by current conditions, for example, S.B. 1226’s preclearance program would provide expert review of local election administration decisions, including polling-place designations or voting-machine allocations, to ensure they do not lead to long lines and unreasonable wait times.

To determine which jurisdictions are subject to the preclearance requirement, S.B. 1226 sets out a coverage framework consisting of five criteria, or “prongs.”⁹³ Each

⁸⁶ *South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966).

⁸⁷ *Id.*

⁸⁸ *See, e.g.*, Brief for the States of New York, California, Mississippi, and North Carolina as *Amici Curiae* in Support of Respondents, at 3, *Shelby County, Ala. v. Holder*, No. 12-96 (U.S. 2013), (describing preclearance as “a streamlined administrative process” that “fosters governmental transparency” and “provides substantial benefits to covered States and localities”).

⁸⁹ *See, e.g., id.* at 8-10.

⁹⁰ *See, e.g.*, Brief of Appellee Travis County, *Nw. Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009), https://campaignlegal.org/sites/default/files/FINAL_TRAVIS_COUNTY_BRIEF.pdf.

⁹¹ The towns of Groton, Mansfield, and Southbury were covered by Section 5 preclearance from 1970 to 1984. *See* Paul F. Hancock & Lora L. Tredway, *The Bailout Standard of the Voting Rights Act: An Incentive to End Discrimination*, 17 *The Urban Lawyer* 379, 396-97, 414 (Summer 1985).

⁹² S.B. 1226 § 5(b).

⁹³ *Id.* § 5(c). Under this section of the CTVRA, a municipality is covered for preclearance if:

prong is directly tied to past discrimination or assesses other indicia that are relevant to the question of whether the political process is equally accessible. Taken as a whole, the CTVRA’s coverage formula serves to identify jurisdictions where recent violations or other indicia of discrimination substantially increase the risk of current or future problems. Critically, each prong is time-bound, only covering jurisdictions that meet its criteria within a certain number of years. This ensures that the coverage framework responds to current conditions. It also means that jurisdictions are not covered in perpetuity; instead, they can leave coverage automatically after a sustained period of nondiscriminatory voting administration.

While preclearance imposes a small compliance requirement on covered municipalities, it can also save covered municipalities significant time and money by identifying discriminatory policies before they are enacted, thereby avoiding subsequent litigation. Moreover, it will serve as a powerful prophylactic to prevent voting discrimination and promote fairness and equal access to the fundamental right to vote for Connecticut citizens.

B. Causes of Action to Address Vote Suppression and Dilution

Section 2 of S.B. 1226 provides voters of color, as well as organizations that represent or serve them, with a private right of action against municipalities that adopt policies or practices that result in the impairment or dilution of minority voting strength. The bill incorporates common-sense improvements on federal law, modeled on provisions in similar laws in New York and California, to make it more efficient for voters with meritorious claims to prove their cases in Connecticut state courts. S.B. 1226 also allows for additional enforcement of these measures by SOTS.

Voter suppression. Section 2(a) of S.B. 1226 provides an efficient framework for prosecuting voter suppression claims. The bill allows voters of color to address practices that create barriers to people of colors’ access to the ballot, including, among other things, inaccessible or insufficient polling locations or wrongful voter purges; or improper election administration decisions or equipment allocations that lead to longer lines.⁹⁴ These provisions are especially important in Connecticut, where voters of color have been routinely and disproportionately affected by long lines at polling places.⁹⁵

Vote dilution. Section 2(b) provides an effective means of identifying and resolving racial vote dilution claims. Modeled on the success of the California Voting Rights Act, as well as measures enacted last year in New York, S.B. 1226 will create a

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- (1) The municipality “has been subject to any court order or government enforcement action” based on a voting rights or civil rights violation within the previous 25 years;
 - (2) The municipality, “within the three immediately preceding years,” it has failed to comply with its duties under S.B. 1226’s Section 3, pertaining to the statewide database;
 - (3) There are substantial racial disparities in arrest rates in the municipality;
 - (4) The municipality has seen significant racial disparities in turnout between registered voters of color and other registered voters; or
 - (5) The municipality, during the prior ten years, “was found to have enacted or implemented a covered policy without obtaining preclearance” when required to do so. *Id.*

⁹⁴ S.B. 1226 § 2(a).

⁹⁵ See sources cited *supra* note 33.

clear and straightforward framework for contesting at-large municipal elections that dilute minority voting strength.⁹⁶ The bill also provides a practical framework for contesting unfair district-based or alternative methods of election, if those methods interact with the presence of racially polarized voting or other circumstances to impair equal voting rights and create a situation “in which the candidates or electoral choices preferred by protected class members would usually be defeated.”⁹⁷ S.B. 1226 will make this type of litigation less time-intensive and less costly than litigation under the federal VRA—not only for plaintiffs, but for jurisdictions and all parties.

Notification and safe harbor. Section 2(g) of S.B. 1226 contains important “safe harbor” and notification provisions that provide protections for municipalities who wish to prevent discrimination and work collaboratively with their constituents to resolve potential violations without litigation.⁹⁸ Prospective plaintiffs under S.B. 1226’s measures are required to notify municipalities in writing of any alleged violation before commencing any action in court, unless they are challenging a newly enacted practice or there is evidence that a notification letter would be futile.⁹⁹ Municipalities are then afforded a “safe harbor” period of 50 days during which they may take steps to cure the alleged violation without exposure to litigation. These provisions incentivize municipalities to resolve violations amicably, collaboratively, and outside of court. In California, a similar notification and safe harbor procedure has proven highly successful at accomplishing these goals—at least 140 California jurisdictions have voluntarily resolved potential voting rights violations since the California Voting Rights Act was enacted.¹⁰⁰

C. Civil Protections against Voter Intimidation

S.B. 1226 also provides Connecticut voters with a civil cause of action in state court against voter intimidation, deception, or obstruction.¹⁰¹ Voter intimidation is re-emerging as a significant problem across the country. Recent elections have seen extremists showing up at polling places heavily armed; truck caravans driving into Black or Latino neighborhoods to intimidate voters; and police presence at several polling places in communities where the relationship with law enforcement is historically fraught.¹⁰² Black voters and other voters of color faced particular threats and bore the brunt of voter intimidation in the 2020 election cycle.¹⁰³ In the Michigan

⁹⁶ S.B. 1226 § 2(b)(2)(A)(i).

⁹⁷ *Id.* § 2(b)(2)(A)(ii).

⁹⁸ *Id.* § 2(g).

⁹⁹ *Id.* § 2(g)(2)(A); *id.* § 2(g)(2)(G).

¹⁰⁰ Lawyers’ Comm. for Civil Rights of the S.F. Bay Area, *Voting Rights Barriers & Discrimination In Twenty-First Century California: 2000-2013* 7 (2014), <https://www.reimaginerpe.org/files/Voting-Rights-Barriers-In-21st-Century-Cal-Update.pdf>.

¹⁰¹ S.B. 1226 § 6.

¹⁰² LDF, *supra* at 65, at 12-14, 21-22.

¹⁰³ *Id.* at 75-76.

cities of Detroit and Flint, for example, Black voters received robocalls with deceptive information about when and where to vote.¹⁰⁴

Connecticut is not immune from this concerning national trend—and should remain vigilant. Accordingly, S.B. 1226 will provide voters with tools to protect themselves against these growing threats. The bill gives any voter the right to sue a person or group engaging in “acts of intimidation, deception or obstruction that interfere with any elector’s right to vote.”¹⁰⁵ This supplements protections in the federal VRA and existing state criminal statutes by providing a civil cause of action—enabling courts to “order appropriate remedies that are tailored to address [the] violation” and resolve the harms caused—that is not currently available in Connecticut courts.¹⁰⁶

D. Language Assistance

Providing adequate election assistance to voters with limited English proficiency has also been a problem in Connecticut, a state that enjoys significant language diversity. Federal law “covers those localities where there are more than 10,000 or over 5 percent of the total voting age citizens in a single political subdivision . . . who are members of a single language minority group, have depressed literacy rates, and do not speak English very well.”¹⁰⁷ Currently, the standard set by federal law only requires 10 municipalities in Connecticut to provide language assistance in voting to Spanish-speaking voters.¹⁰⁸ As other states and localities (including California and New York)¹⁰⁹ have done, Connecticut can and should provide language assistance well above the federal statutory minimum. S.B. 1226 establishes statutory thresholds which cover a broader set of municipalities and enhances language assistance to better enfranchise language-minority voters.¹¹⁰ S.B. 1226 also improves upon federal law by allowing for language assistance in any language where “a significant and substantial need exists,”

¹⁰⁴ Ron Fonger, *Attorney general warns of false robocalls targeting Flint voters*, Michigan Live (Nov. 3, 2020), <https://www.mlive.com/politics/2020/11/attorney-general-warns-of-false-robo-calls-targeting-flint-voters.html>; Sam Gringlas, *Far-Right Activists Charged Over Robocalls That Allegedly Targeted Minority Voters*, Nat’l Pub. Radio (October 1, 2020), <https://n.pr/3sdlk9D>.

¹⁰⁵ S.B. 1226 § 6(a).

¹⁰⁶ *Id.* § 6(d)(1).

¹⁰⁷ *Section 203 of the Voting Rights Act*, U.S. Dept. of Justice, <https://www.justice.gov/crt/language-minority-citizens> (last updated Mar. 11, 2020).

¹⁰⁸ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69.613 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf>. The ten municipalities are Bridgeport, East Hartford, Hartford, Meriden, New Britain, New Haven, New London, Norwalk, Waterbury, and Windham.

¹⁰⁹ See Ca. Sec’y of State, *Language Requirements for Election Materials*, <https://www.sos.ca.gov/elections/voting-resources/language-requirements>; NYVRA § 4; NYC Civic Engagement Commission, *Language Access Plan*, <https://www1.nyc.gov/site/civicengagement/about/language-access-plan.page>.

¹¹⁰ S.B. 1226 § 4. Under the CTVRA’s language-assistance provisions, a municipality is covered if more than 4,000 or more than 2% of its total voting age citizens, but no fewer than 100 individuals, speak a language other than English and have limited English proficiency, or if the Secretary of the State finds a “significant and substantial need” for such assistance based on public input or other evidence.

even if the language for which assistance is needed is not one of the languages identified for potential coverage in the federal VRA.¹¹¹

E. Public Database of Election and Voting Rights Information

Finally, Section 3 of S.B. 1226 will establish a statewide, publicly accessible database of election information and demographic data, housed in the Office of the Secretary of the State.¹¹² This database will provide voters with public information that is critical for voting rights analysis but can often be difficult to access, including redistricting maps in electronic format, Census and American Community Survey data on racial demographics, locations of polling places, anonymized voter files, and district-level election results.¹¹³

Making this information easily accessible will foster unprecedented transparency in Connecticut's elections and facilitate evidence-based practices across the state. In concert with S.B. 1226's other measures, the CTVRA's database will empower Connecticut voters and community groups to identify and resolve potential voting rights problems, while also helping election administrators and local officials to understand and address such issues proactively.

III. Equitable Voting Rights Protections Have Concrete Benefits.

By enacting S.B. 1226's measures, Connecticut can turn the page on its discriminatory past and pave the way for a more equal future. Equitable voting rights protections, like those in the federal VRA and state-level voting rights acts, have had powerful effects in making the democratic process fairer, more equal, and more inclusive. These effects include reducing racial turnout disparities,¹¹⁴ making government more responsive to the needs and legislative priorities of communities of color,¹¹⁵ and increasing diversity in government office,¹¹⁶ so that elected representatives more fully reflect the communities they serve.

There is also evidence that measures like those in S.B. 1226 can have powerful, downstream benefits in economic equality and health. For example, researchers have concluded that the federal VRA's preclearance program, by making elected officials more accountable to Black voters, brought about improvements in governmental policy and hiring practices that "reduced the wage gap between [B]lack and white workers by

¹¹¹ *Id.* § 4(a); see Hansi Lo Wang, *A federal law requires translated voting ballots, but not in Arabic or Haitian Creole*, NPR (June 26, 2022), <https://www.npr.org/2022/06/24/1083848846/bilingual-ballots-voting-rights-act-section-203-explained>.

¹¹² S.B. 1226 § 3.

¹¹³ *Id.* § 3(c).

¹¹⁴ Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California* (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf.

¹¹⁵ Sophie Schllit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 *Amer. J. of Pol. Sci.* 513 (July 2017).

¹¹⁶ Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 *Urban Affairs Rev.* 731, 757 (2021), https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf; see Pei-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 *Pol. Sci. and Politics* 489 (July 2007) <https://www.jstor.org/stable/20452002>; Paru R. Shah et al., *Are We There Yet? The Voting Rights Act and Black Representation on City Councils, 1981-2006*, 75 *J. Pol.* 993 (2013).

around 5.5 percentage points” in covered counties.¹¹⁷ Recent analyses show that incremental improvements in diversity in local representation translate into more equitable educational and policy outcomes.¹¹⁸ And Professor Thomas A. LaVeist of Tulane University, in a landmark study, identified the federal VRA as a causal factor in reducing infant mortality in Black communities where the law’s protections had led to fairer representation.¹¹⁹ For these reasons, the American Medical Association has recognized voting rights as a social determinant of health and declared support for “measures to facilitate safe and equitable access to voting as a harm-reduction strategy to safeguard public health.”¹²⁰

In short, S.B. 1226 can have significant, potentially transformative benefits for democracy and society in this state.

* * *

LDF, the nation’s oldest and premier civil rights legal organization, is dedicated to the full and equal participation of all people in our democracy, and fully supports S.B. 1226. We thank you for the opportunity to provide this testimony. If you have any questions, or to discuss the Connecticut Voting Rights Act further, please feel free to contact Steven Lance at (347) 947-0522 or slance@naacpldf.org.

Sincerely,

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¹¹⁷ Abhay P. Aneja & Carlos F. Avenancio-León, *The Effect of Political Power on Labor Market Inequality: Evidence from the 1965 Voting Rights Act* 3, Wash. Center for Equitable Growth, Working Paper Series (Oct. 2020), <https://equitablegrowth.org/working-papers/the-effect-of-political-power-on-labor-market-inequality-evidence-from-the-1965-voting-rights-act/>; see also Abhay P. Aneja & Carlos F. Avenancio-León, *Disenfranchisement and Economic Inequality: Downstream Effects of Shelby County v. Holder*, 109 AEA Papers & Proceedings 161 (May 2019).

¹¹⁸ See, e.g. Vladimir Kogan et al., *How Does Minority Political Representation Affect School District Administration and Student Outcomes*, EdWorkingPapers (June 19, 2020), <https://www.edworkingpapers.com/ai20-244> (discussing “evidence that increases in minority representation lead to cumulative achievement gains . . . among minority students”); Brett Fischer, *No Spending Without Representation: School Boards and the Racial Gap in Education Finance* (Mar. 20, 2020), <https://ssrn.com/abstract=3558239> (presenting “causal evidence that greater minority representation on school boards translates into greater investment in minority students”).

¹¹⁹ Thomas A. LaVeist, *The Political Empowerment and Health Status of African-Americans: Mapping a New Territory*, 97 Amer. J. of Sociology 1080 (Jan. 1992).

¹²⁰ American Medical Association, *Support for Safe and Equitable Access to Voting H-440.805* (2022), <https://policysearch.ama-assn.org/policyfinder/detail/voting?uri=%2FAMADoc%2FHOD.xml-h-440.805.xml>; see also Anna K. Hing, *The Right to Vote, The Right to Health: Voter Suppression as a Determinant of Racial Health Disparities*, 12 J. of Health Disparities Research & Practice 48 (2019), <https://digitalscholarship.unlv.edu/jhdrp/vol12/iss6/5>.

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NAACP Legal Defense and Educational Fund, Inc.

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 voting 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.