



New York Senate
Elections Committee
March 13, 2020

Testimony of Campaign Legal Center in Support of Senate Bill 7528

On behalf of Campaign Legal Center (“CLC”) and More Equitable Democracy (“MED”), we are pleased to offer this testimony in support of Senate Bill 7528, the New York Voting Rights Act (“S.7528”).

CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on redistricting and voting rights, CLC seeks to ensure that every United States resident receives fair representation at the federal, state, and local levels. CLC is currently working with partner organizations in Washington and Oregon to help implement those states’ new voting rights acts. CLC strongly supports S.7528 because it will allow communities of color across the state of New York to participate equally in the election of their representatives.

MED is a nonprofit intermediary that works with communities of color to advance electoral system reforms that increase representation for underrepresented communities. MED is actively supporting community organizations in Washington and Oregon seeking protections under their newly-enacted state-based voting rights acts and is promoting the concept of these acts in other states. MED is strongly supportive of S.7528 and believes it serves as a model for effectively codifying voter protections at the state level.

I. Background

The federal Voting Rights Act of 1965, 52 U.S.C. § 10301 *et seq.* (“VRA”), has been one of the most transformative pieces of civil rights legislation ever passed. Section 2 of the VRA (“Section 2”) “prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in [a]

language minority group.”¹ The 1982 amendments to Section 2, which allowed litigants to establish a violation of the VRA without first proving invidious intent, created a “sea-change in descriptive representation” across the country.² Despite this success, “litigating Section 2 cases [is still] expensive and unpredictable.”³ Under Section 2, a plaintiff must show that: (1) the minority group is sufficiently large and geographically compact to form the majority of voters in a single-member district; (2) there is racially polarized voting; and (3) white bloc voting usually prevents minority voters from electing their candidates of choice. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If these three conditions are met, the court then considers whether, under the totality of the circumstances, the practice or procedure in question has “the result of denying a racial or language minority group an equal opportunity to participate in the political process.”⁴

In light of the shortfalls of Section 2 of the VRA, in 2002 California expanded protections for communities of color by enacting the California Voting Rights Act, Cal. Elec. Code § 14025 *et. seq.* (“CVRA”). The CVRA streamlined the burden of proof for plaintiffs alleging minority vote dilution. Plaintiffs filing suit under the CVRA must still show racially polarized voting, but unlike the federal VRA, plaintiffs are not required to prove that a minority community is sufficiently residentially segregated to be able to constitute a majority in a single member district. Further, the volume of evidence necessary for a “totality of circumstances” analysis under the federal VRA is not required to prove a case under the CVRA. As a result of the CVRA, dozens of communities across the state have improved representation for communities of color.⁵

In 2018, the State of Washington went a step further by enacting the Washington Voting Rights Act (“WVRA”), R.C.W. 29A.92.050 *et seq.* The WVRA contains many of the innovations of the CVRA, but also specifically allows for the imposition of remedies for vote dilution other than districts (e.g., ranked choice or cumulative voting). CLC represents One America⁶ and community members in Yakima County, who are using the process outlined in

¹ *Section 2 of the Voting Rights Act*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/crt/section-2-voting-rights-act>

² Michael J. Pitts, *The Voting Rights Act and the Era of Maintenance*, 59 ALA. L. REV. 903, 920-22 (2008).

³ Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the VRA After Shelby County*, 115 COLUMBIA L. REV. 2143, 2157 (2015).

⁴ *Section 2 of the Voting Rights Act*, *supra* note 1.

⁵ *See Updated Counts of CVRA-Driven Changes*, NATIONAL DEMOGRAPHICS CORPORATION, <https://www.ndcresearch.com/updated-counts-cvra-driven-changes> (reporting that 195 California jurisdictions have reformed or are reforming their elections as a result of the CVRA).

⁶ *About OneAmerica*, ONEAMERICA, <https://weareoneamerica.org/who-we-are/about-oneamerica>.

the WVRA to enfranchise the local Latino community, which constitutes 32.5% of the County’s Citizen Voting-Age Population (“CVAP”). We sent a notice letter to the Yakima County Commission on January 15, 2020, and are now working in good faith with the County to resolve minority vote dilution in County elections during the required 180-day notice period.⁷ As set out in that letter, the Latino community is seeking ranked choice voting as a remedy to enfranchise their community. Another notice letter has been sent under the WVRA to the Ferry County Commission, on behalf of the Confederated Tribes of the Colville Reservation.⁸

In 2019, Oregon also adopted the Oregon Voting Rights Act (“OVRA”), which applies to school districts and certain educational districts. Or. Rev. Stat. Ann. Ch. 449, §§ 2-6 (West). The OVRA also allows for violations to be found where the protected class is not residentially segregated and reduces the evidentiary burden of proving a violation. As with the WVRA, the OVRA also allows for remedies that include, “but [are] not limited to,” districts. *Id.* § 4.

II. Reasons to Support S.7528

- A. S.7528 will ensure that integrated as well as segregated communities of color are able to influence elections and elect their candidates of choice.

The CVRA, WVRA, and OVRA all innovate on the federal VRA in that they do not require communities of color to be residentially segregated to receive protections under the statutes. S.7528 also makes this key change. Following the passage of civil rights legislation, residential segregation has decreased in some areas of the United States, yet racially polarized voting and underrepresentation of communities of color remains. Thus, even if voters of color are less segregated within a community, they may still not have an equal opportunity to elect candidates of choice to their local government. By not requiring minority communities to be segregated to prove minority vote dilution, S.7528 takes this reality into account.

- B. S.7528 expands the remedies that communities of color can seek to ensure their electoral enfranchisement.

⁷ *Yakima Notice Letter – WVRA*, CAMPAIGN LEGAL CENTER (Jan. 15, 2020), <https://campaignlegal.org/document/yakima-notice-letter-wvra>.

⁸ *See Notice Letter RE: Washington State Voting Rights Act*, The Confederated Tribes of the Coleville Reservation (Jan. 9, 2020), https://www.ferry-county.com/Commissioners_Calendars/Misc/Certified%20Letter%20from%20CCT.pdf.

Unlike some other state VRAs, the NYVRA will explicitly allow for the imposition of multiple types of electoral changes, in addition to the use of districts and ranked choice voting, to enfranchise communities of color and give protected classes a real chance to elect candidates of their choice. These novel remedies are set out in § 17-206(4) and include changes to the size of the governing body, moving the dates of elections, eliminating staggered elections, and a variety of election administration changes. These remedies will help groups that have historically been disenfranchised and are now unable to rely on the federal VRA for protection.

C. S.7528 avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.

As set forth in § 17-206(6), a prospective plaintiff must send a jurisdiction written notice of a violation and wait at least 50 days before bringing a lawsuit. During that time or before receiving any notice, the jurisdiction may remedy a potential violation on its own initiative and gain safe harbor from litigation for at least 90 days. § 17-206(6)(b)-(d). The NYVRA recognizes that many jurisdictions will seek to enfranchise communities of color by remedying potential violations. These notice and safe-harbor provisions will enable them to do so without having to endure lengthy litigation.

D. S.7528 includes important preclearance requirements.

Since the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), civil rights advocates have struggled to keep up with the deluge of vote suppression legislation and regulations in formerly covered jurisdictions. The preclearance requirements set out in § 17-212 will fundamentally alter the balance of power between historically disenfranchised communities of color and jurisdictions with a history of voting rights violations.

Compliance with the preclearance provisions will not be onerous, especially when jurisdictions seek to make electoral changes that do not disparately impact communities of color. The preclearance provisions will ensure that jurisdictions with a track record of disenfranchisement will have to consciously consider the communities they have historically ignored as they make changes to their electoral system. And the bill will empower the Civil Rights Bureau to provide an additional layer of protection by proactively identifying concerns and preventing any discriminatory practice from being implemented.

III. Conclusion

S.7528 represents an opportunity for New York to be a national leader in protecting voting rights for communities of color. Not only will it provide

strengthened protections beyond Section 2 of the federal VRA, including, importantly, the opportunity to use ranked choice voting as a remedy to enfranchise communities of color, but it will also set up a state preclearance system to ensure that jurisdictions with a history of disenfranchisement consider the racial impacts of their electoral changes before implementing them.

We strongly support S.7528 and urge you to enact it.

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Respectfully submitted,

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