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Testimony of Campaign Legal Center in Support of Assembly Bill 4083

I. INTRODUCTION

Campaign Legal Center (“CLC”) offers this testimony in support of Assembly Bill 4083, the John R. Lewis Voter Empowerment Act of New Jersey (“NJVRA”). CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive redistricting and voting rights work, CLC seeks to ensure fair representation at the federal, state, and local levels. CLC supported the enactment of state voting rights acts in Washington, Oregon, Virginia, New York, Connecticut, and Minnesota, and it brought the first-ever lawsuit under the Washington Voting Rights Act in Yakima County, Washington.

CLC strongly supports the NJVRA because it will allow historically disenfranchised communities across New Jersey to participate equally in the election of their representatives. Passage of the NJVRA will enable New Jerseyans to vindicate their right to vote by building upon the model of the federal Voting Rights Act (“VRA”), with several key improvements. CLC’s testimony highlights three of those improvements: its protections against voter suppression, its protections against vote dilution, and the pre-suit notice process.

II. REASONS TO SUPPORT THE NJVRA

The NJVRA ensures that New Jersey citizens have powerful legal tools to combat racial discrimination in voting, including by allowing voters to challenge voter suppression and vote dilution. The federal VRA contains analogous provisions, but federal courts have blunted those tools over the years. The standards under the NJVRA are broader and stronger, reaching suppressive and dilutive practices that the federal VRA does not. But even as it enables New Jerseyans to vindicate their civil

rights in court, the NJVRA’s pre-suit notice and safe harbor provisions also allow jurisdictions to remedy potential violations without the need for expensive litigation.

A. The NJVRA codifies strong protections against voter suppression.

The voter suppression cause of action, found in Section 5 of the NJVRA, enables voters to uproot practices that create racially discriminatory barriers to the ballot box—for example, insufficient polling locations in certain neighborhoods, arbitrary voter purges, or discriminatory allocations of election administration resources.

Under the federal VRA, voters can challenge practices that “result[] in a denial or abridgement” of the right to vote on account of race or color.¹ The Supreme Court, however, has greatly limited the kinds of claims that voters can bring under that provision. Specifically, the Supreme Court created five additional “guideposts” for proving voter suppression that have little bearing on whether voter suppression has occurred.² This complex, multi-factor analysis also makes Section 2 claims costly and time-consuming to litigate.

The NJVRA simplifies and strengthens the legal test that applies to voter suppression claims, allowing it to eliminate discriminatory practices that the federal VRA cannot reach. Under the NJVRA, a violation is established by showing either that the challenged practice results in a material disparity in the ability of a protected class to participate in the electoral process compared to other members of the electorate, *or* that, under the totality of circumstances, the practice results in an impairment of the ability of a protected class member to participate in the political process. Under the federal VRA, on the other hand, voters must show both a material disparity *and* an impairment under the totality of the circumstances—in addition to satisfying the host of additional factors courts have engrafted onto Section 2.

Once plaintiffs have made the required showing, the NJVRA affords the jurisdiction the opportunity to avoid liability by proving that the challenged practice is “necessary to significantly further a compelling governmental interest” and that no less suppressive alternative exists. Certain policies that typically suppress turnout, however, such as closing polling places in nonwhite neighborhoods or failing to schedule a special election for a vacant seat, are conclusively presumed to violate the NJVRA if they have a discriminatory effect. Section 5 of the NJVRA would be the strongest voter suppression protection in the country.

B. The NJVRA codifies strong protections against vote dilution.

The vote dilution cause of action, found in Section 6 of the NJVRA, empowers voters to challenge methods of election that give protected class members an unequal opportunity to participate in the political process. Local elections might be vote

¹ 52. U.S.C. § 10301.

² *Brnovich v. DNC*, 594 U.S. 647, 666, 669–72 (2021).

dilutive if a racial, ethnic, or language-minority group lack an equal opportunity to elect candidates of their choice, for example, because of an at-large system that allows a local majority to win every seat or because of a districted plan that cracks communities across multiple districts or packs them into just one.

To bring a vote dilution claim under Section 2 of the federal VRA, a plaintiff must show that: (1) the minority group being discriminated against is sufficiently large and geographically compact to constitute 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.³ 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.

As with its voter suppression provisions, the NJVRA codifies into state law the same types of protections against vote dilution that are covered by the federal VRA but strengthens the legal standard. It requires plaintiffs to prove two things: a harm and a remedy. Plaintiffs must show that either racially polarized voting or the totality of circumstances combine with a locality's method of election to impair a racial, ethnic, or language-minority group's ability to nominate or elect the candidates of their choice. Plaintiffs must also show that a change to the current method of election would likely mitigate that impairment. By streamlining the increasingly complex standard for federal vote-dilution claims that federal courts have developed over four decades, the NJVRA aligns the applicable legal test with the core of the vote dilution injury.

Importantly, unlike under the federal VRA, a protected class does not need to be residentially segregated—that is, be sufficiently large and geographically compact to constitute the majority in a district—to receive protections under the NJVRA. Following the passage of civil rights legislation, residential segregation has decreased in some parts of the United States, but racially polarized voting and underrepresentation of minority communities persist.⁴ Thus, many communities that do not face residential segregation may still lack equal opportunities to elect candidates of choice to their local government. By not requiring minority communities to be segregated to prove minority vote dilution, the NJVRA addresses vote dilution in all its forms. That critical innovation is also a central feature of state voting rights acts passed in California, Washington, Oregon, Virginia, New York, Connecticut, and Minnesota.

C. The NJVRA encourages voters and local governments to work together to resolve voting-rights issues.

³ *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

⁴ See generally Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329 (2016).

The NJVRA also innovates upon its federal counterpart by requiring a notice-and-remedy procedure before plaintiffs can file a lawsuit, encouraging good-faith collaboration to avoid the need for litigation altogether. Under that requirement, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 50 days before suing. During that time, both parties can work together towards a solution to the alleged violation. The jurisdiction can also indicate its intent to remedy a potential violation on its own initiative and, in so doing, gain safe harbor from litigation for at least 140 days while it enacts and implements that remedy. These provisions reflect a recognition that many localities will seek to remedy potential violations on their own, and the NJVRA's notice and safe-harbor provisions enable them to do so without the costs and delay of litigation.

By contrast, no such pre-suit notice and safe-harbor provisions exist in Section 2 of the federal VRA. As a result, voters often spend considerable time and money investigating potential violations of the federal VRA, the cost of which is later borne by New Jersey taxpayers.

The NJVRA also provides for limited cost reimbursement to plaintiffs for pre-suit notices, in recognition of the fact that notice letters often require community members to hire specialized experts to perform statistical analysis, and to ensure that such expenses do not prevent people from enforcing their civil rights. Similar provisions are already part of state voting rights acts in California, Oregon, New York, Connecticut, and Minnesota.

The current NJVRA language caps these fees at \$50,000, but that cap is inadequate and undermines the NJVRA's aims. First, given the costs that pre-suit investigations entail, a fee cap—and especially one set as low as \$50,000—will disincentivize plaintiffs from pursuing NJVRA violations because they know they may not recoup their costs, as they would if they had prevailed in litigation. The result will be reduced enforcement, undercutting the effectiveness of the NJVRA's strong voting rights protections. Second, thorough investigations by plaintiffs ultimately benefit jurisdictions—and taxpayers. Being able to identify violations at the pre-suit stage allows plaintiffs and jurisdictions to seek solutions without the need for litigation, which would be far costlier than plaintiff's pre-suit investigation costs. More thorough investigations also improve the remedies that jurisdictions adopt, allowing detailed research and analysis to inform the jurisdiction's changes and best address the violation. For these reasons, CLC urges this committee to remove the fee cap. If a fee cap of some kind is necessary, CLC recommends the cap be raised to at least \$80,000.

III. CONCLUSION

We strongly urge you to pass Assembly Bill 4083 out of this committee, adding New Jersey to the growing list of states that have passed their own state voting rights acts. New Jersey voters deserve the strong, state-level tools and resources the NJVRA

provides to defend against discriminatory voting practices and serve as a bulwark against federal attacks on the right to vote.

Respectfully submitted,

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