



Robert Karabinchak, Chair
Lisa Swain, Vice Chair
New Jersey General Assembly, State and Local Government Committee
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Testimony in Support of Assembly Bill 4083

Campaign Legal Center (“CLC”) offers this testimony in strong support of Assembly Bill 4083, the John R. Lewis Voter Empowerment Act of New Jersey (“A4083” or the “NJVRA”).

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. As part of our mission to advance democracy through law, CLC supported the enactment of state voting rights acts in Washington, Oregon, Virginia, New York, and Minnesota, brought the first-ever lawsuit under the Washington Voting Rights Act in Yakima County, Washington, and submitted friend-of-the court briefs defending the constitutionality of the New York Voting Rights Act.

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 mark a new era of voter protections for the people of New Jersey, building upon the model of the federal Voting Rights Act (“VRA”) with several key improvements, discussed below. CLC’s testimony will discuss the robust, pro-voter causes of action the NJVRA would provide to allow New Jerseyans to protect their civil rights.

I. A4083 Codifies Strong Protections Against Voter Suppression and Vote Dilution

The NJVRA ensures that New Jersey citizens have powerful, affirmative legal tools to combat racial discrimination in voting. Sections 5 and 6 of the NJVRA establish causes of action—the specific circumstances allowing someone to sue—to challenge voter suppression and vote dilution, respectively. Analogous causes of action exist under the federal VRA, but federal courts have narrowed and weakened over the years. The standards under the NJVRA are broader and stronger, and better protected against attacks from federal courts.

A. Voter Suppression

The voter suppression cause of action, found in Section 5 of the NJVRA, enables voters of color to challenge practices that create racially discriminatory barriers to the ballot. That includes, among other things, inaccessible or insufficient polling locations in communities of color, wrongful voter purges that disproportionately harm voters of color, and improper election administration decisions that lead to longer lines in communities of color.

The NJVRA codifies the same types of protections against voter suppression that are covered by Section 2 of the federal VRA. Section 2 of the federal VRA, however, has been weakened over time. This provision clarifies and strengthens the legal test that applies to voter suppression claims.

Under the NJVRA, voters will be able to challenge law and policies that create disparities in voter participation and access. And certain policies that typically suppress turnout, such as closing polling places in nonwhite neighborhoods or holding elections off of the state- or federal-election calendar, are presumed to violate the NJVRA unless the government proves otherwise. These provisions would make the NJVRA the strongest voting-rights law in the country, making it more efficient for New Jerseyans to pursue and prove meritorious claims and reducing costs to localities by encouraging resolution without a lawsuit.

B. Vote Dilution

The vote dilution cause of action, found in Section 6 of the NJVRA, empowers voters to challenge district maps or methods of election that weaken or drown out the voices of Black voters and other voters of color. Local elections might

be vote dilutive if a racial, ethnic, or language-minority group cannot elect candidates of their choice, either through an at-large system that allows a local majority to win every seat or through districts that crack communities across multiple districts or pack them into just one. The vote dilution cause of action enables challenges to these systems when they deny voters an equal opportunity to participate in the political process.

Again, Section 6 codifies into New Jersey law the same types of protections against vote dilution that are covered by Section 2 of the federal VRA but strengthens the legal standard. Over nearly 40 years, federal courts have applied an increasingly complex standard for federal vote-dilution claims that has made litigation exceedingly complex, unpredictable, and costly. The NJVRA, by contrast, 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. The NJVRA provides detailed guidance on the relevant evidence for this inquiry. Together, these provisions rebuff the federal courts' weakening of the federal VRA.

II. A4083 Empowers Voters to Resolve Disputes Without Litigation and Protects Plaintiffs from Anti-Voter Courts

Other NJVRA provisions further protect and empower voters beyond the strong causes of action discussed above. First, the NJVRA's notice-letter and safe harbor provisions allow jurisdictions to remedy potential violations without litigation. Should court be unavoidable, however, the NJVRA instructs courts to interpret election laws in favor of the right to vote. And if the court finds a violation, the NJVRA prioritizes remedies that enable historically disenfranchised communities to equally participate in the franchise.

A. A4083 encourages voters and local governments to work together to resolve voting-rights issues.

The NJVRA builds on its federal counterpart by requiring a notice-and-remedy procedure that encourages good-faith collaboration before a lawsuit may be filed. Under the NJVRA, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 50 days before suing. That allows both parties time to work together towards a solution to the alleged violation. The

jurisdiction may also remedy a potential violation on its own initiative and gain safe harbor from litigation for at least 90 days.

The NJVRA recognizes that many localities will seek to enfranchise communities of color by remedying potential violations. Such notice and safe-harbor provisions enable them to do so without the costs and delay of litigation. No such pre-suit provisions exist in the federal VRA. As a result, voters often spend considerable time and money to investigate potential violations of the federal VRA, the cost of which is later borne by the taxpayer.

B. A4083 provides guidance to New Jersey judges as they interpret laws and policies that affect voting.

The NJVRA specifies that judges should interpret New Jersey state and local election laws in favor of protecting the right to vote. This bolsters existing protections found in the New Jersey Constitution, which recognizes that “all political power is inherent in the people” and protects every person’s rights to free speech, equal protection, and free association.¹

The NJVRA’s instruction to courts provides a default pro-voter rule for judges interpreting rules that affect voting. Similar provisions are in the New York Voting Rights Act and Connecticut Voting Rights Act. The NJVRA’s bill would go further, however, extending that pro-voter rule to decisions about court procedure, discovery, the admissibility of evidence, and remedies. This makes it less likely that voting-rights plaintiffs will be thwarted by procedural hurdles that are common in federal VRA cases.

C. A4083 expands the remedies New Jersey voters can seek to ensure fair voting rules.

Under the NJVRA, if a voting-rights violation is found, the court must order a remedy tailored to address the violation, prioritizing the full and equitable participation of protected-class voters. This provision recognizes that vote suppression and dilution tactics take many forms and are not limited to traditional methods of discrimination. Examples of such remedies include replacing a discriminatory at-large system with a district-based or alternative

¹ N.J. CONST. art. I, §§ 2, 5, 6, 18.

method of election; new or revised local districts; adjusting the election calendar to increase turnout; and adding voting hours, days, or polling places.

The NJVRA also departs from federal voting-rights law by specifying that courts may not defer to a proposed remedy simply because it is proposed by the local government. This directly responds to an egregious flaw in the federal VRA, under which federal courts grant government defendants the “first opportunity to suggest a legally acceptable remedial plan.”² This often leads to remedies that only minimally address a discriminatory voting practice rather than fully enfranchising voters. For example, in *Baltimore County Branch of the NAACP v. Baltimore County*, the district court accepted the defendant county’s proposed map, over plaintiffs’ objections and their alternative map.³

Deferring to government preferences is antithetical to the concept of remedying racial discrimination; courts should not defer to the very body that has been found to violate anti-discrimination laws. The NJVRA avoids this problem by allowing the court to consider remedies offered by *any* party to a lawsuit and prioritize those that will not protect the voters’ ability to participate in the political process.

Conclusion

We strongly urge you to enact A4083. New Jersey voters deserve the strong, state-level tools and resources the NJVRA provides to defend against discriminatory voting practices. New Jersey should enact the NJVRA and join the growing number of states that have similarly empowered their voters.

Respectfully submitted,
/s/ Michael Ortega
Michael Ortega, Legal Fellow
Brent Ferguson, Senior Legal Counsel
Lata Nott, Senior Legal Counsel
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

² *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994).

³ *Baltimore Cnty. Branch of NAACP v. Baltimore Cnty., Maryland*, No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).