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Assembly Appropriations Committee  
New Jersey State House  
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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 (“NJVEA”). 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, Minnesota, and Colorado, and brought the first-ever lawsuit under the Washington Voting Rights Act in Yakima County, Washington, and the Virginia Voting Rights Act in Virginia Beach, Virginia.

CLC strongly supports the NJVEA because it will allow historically disenfranchised communities across New Jersey to participate equally in the election of their representatives, and it will codify important improvements on federal law that save money and time for all parties. Passage of the NJVEA 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 pre-suit notice process, its protections against voter suppression, and its protections against vote dilution.

#### **II. BACKGROUND**

States can offer new hope for voters by adopting state voting rights acts that improve upon their federal counterpart. By passing the NJVEA, New Jersey can reduce the cost of enforcing voting rights and make it possible for traditionally disenfranchised communities to enforce their rights. States can clarify that

government-proposed remedies do not get deference as they might in federal court. Importantly, they can also empower state courts to apply a wider range of locally-tailored remedies that better serve communities of color.

Passage of the NJVEA will mark a new era of voter protections for the people of New Jersey by building upon the model of the federal VRA with several key improvements. CLC's testimony will share highlights of how filing a claim under this state voting rights act rather than the federal VRA is an improvement, specifically with vote dilution and vote suppression claims and available remedies.

The federal VRA is one of the most transformative pieces of civil rights legislation ever passed. Section 2 of the federal VRA prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in [a] language minority group. The 1982 amendments to Section 2, which allowed litigants to establish a violation of the VRA without first proving discriminatory intent, created a “sea-change in descriptive representation” across the country.<sup>1</sup>

Despite this success, “litigating Section 2 cases [is still] expensive and unpredictable.”<sup>2</sup> Plaintiffs must often collect mountains of evidence to support the totality of circumstances inquiry, which means extended discovery periods and long trials. Given the heavy burden of proving a violation of Section 2 of the federal VRA, states serve a vital role in protecting and expanding the rights to vote and participate fully in American democracy by reducing the burdens of bringing these kinds of claims.

Since the U.S. Supreme Court’s 2013 decision in *Shelby County v. Holder*,<sup>3</sup> communities across the country have faced a resurgence of voter suppression tactics. The ruling gutted the preclearance requirement of the federal VRA, enabling states with a history of discrimination to implement restrictive voting laws without federal oversight.<sup>4</sup> As a result, polling place closures, voter roll purges, and new barriers to registration have disproportionately impacted Black, Indigenous, and other communities of color.<sup>5</sup> In *Brnovich v. Democratic National Committee*,<sup>6</sup> the Court further weakened the VRA by making it even harder for voters to challenge discriminatory laws in court. This decision has made it more difficult to prove claims of racial discrimination under Section 2 of the VRA, leaving voters with fewer legal avenues to defend their rights. Meanwhile, Congress has repeatedly failed to restore and strengthen the federal VRA by neglecting to pass the John R. Lewis Voting Rights Advancement Act. These developments have left millions of voters vulnerable to

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<sup>1</sup> Michael J. Pitts, *The Voting Rights Act and the Era of Maintenance*, 59 Ala. L. Rev. 903, 920–22 (2008).

<sup>2</sup> Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 Colum. L. Rev. 2143, 2157 (2015).

<sup>3</sup> 570 U.S. 529 (2013).

<sup>4</sup> *Id.* at 557.

<sup>5</sup> See, e.g., Jasleen Singh & Sara Carter, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, Brennan Ctr. For Just. (June 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights>.

<sup>6</sup> 594 U.S. 647 (2021).

discrimination and suppression. In response to this national landscape, states must step in and ensure their voters have the legal tools necessary to defend their freedom to vote.

As historically disenfranchised communities continue to encounter significant barriers to exercising their rights, more states are stepping up to protect ballot access by passing their own state voting rights acts. These laws equip voters with tools to challenge unfair election policies while enabling local governments to implement proactive safeguards against disenfranchisement. Even if the federal VRA is restored and strengthened, state VRAs will remain crucial tools for addressing the unique needs of each state.

Momentum for state VRAs is growing. California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), Minnesota (2024), and Colorado (2025) have already enacted such protections, while states like Maryland, Florida, Michigan, Arizona, and Alabama are working to follow suit. New Jersey should take advantage of this opportunity and join these other states in ensuring all of its citizens have equal access to the democratic process.

The NJVEA will apply more efficient processes and procedures for enforcing the voting rights of traditionally disenfranchised communities, saving New Jersey time and money during voting rights litigation. It will also make it less costly for historically disenfranchised communities and local governments to collaboratively develop a remedy before resorting to expensive litigation.

### **III. REASONS TO SUPPORT THE NJVEA**

The NJVEA ensures that New Jersey citizens have powerful legal tools to combat racial discrimination in voting at the state and local level, while offering efficient, streamlined provisions that are designed to save litigants time and money in the long run. One of the key ways the NJVEA accomplishes this goal is through pre-suit notice and safe harbor provisions that allow jurisdictions to remedy potential violations without the need for expensive and time-consuming litigation.

The NJVEA also creates a private cause of action to challenge both vote dilution and vote suppression that is a less costly and less burdensome means of enforcing voting rights for historically disenfranchised communities. The federal VRA contains analogous provisions, but federal courts have blunted those tools over the years, making their enforcement more expensive, time-consuming, and resource-intensive.

#### **A. The NJVEA avoids costly and lengthy litigation by allowing jurisdictions to proactively remedy potential violations.**

The NJVEA 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 NJVEA’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.

#### **B. The NJVEA codifies efficient, cost-saving protections against voter suppression.**

The voter suppression cause of action, found in Section 5 of the NJVEA, 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.<sup>7</sup> 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.<sup>8</sup> This complex, multi-factor analysis also makes Section 2 claims costly and time-consuming to litigate.

The NJVEA simplifies and strengthens the legal test that applies to voter suppression claims, allowing it to eliminate discriminatory practices that the federal VRA does not reach. Under the NJVEA, 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 NJVEA 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

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<sup>7</sup> 52. U.S.C. § 10301.

<sup>8</sup> See *Brnovich v. DNC*, 594 U.S. 647, 666, 669–72 (2021).

less suppressive alternative exists. This burden-shifting framework is modeled on a similar framework that is used in nearly all anti-discrimination statutes. This standard is an important way that the NJVEA demonstrates respect for local control of elections. Unlike the Supreme Court's decision in *Brnovich* interpreting the federal VRA, this standard gives a political subdivision an opportunity to justify the change and respond to plaintiffs' claims.

Section 5 of the NJVEA would offer some of the strongest protections against voter suppression in the country. It will also simplify and streamline these claims, saving time and money for plaintiffs, defendants, and courts.

**C. The NJVEA provides a framework for determining vote dilution in a way that is efficient and cost-effective for both voters and jurisdictions.**

The vote dilution cause of action, found in Section 6 of the NJVEA, empowers voters to challenge methods of election that give protected class members an unequal opportunity to participate in the political process. Local methods of election might be vote 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 district 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.<sup>9</sup> 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 NJVEA codifies into state law the same types of protections against vote dilution that are covered by the federal VRA but strengthens and streamlines 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 NJVEA aligns the applicable legal test with the core

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<sup>9</sup> *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

of the vote dilution injury, thus saving time and money by reducing the need to litigate over the proper analysis.

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 NJVEA. 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.<sup>10</sup> 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 NJVEA 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, Minnesota, and Colorado.

#### IV. 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, cost-saving state-level tools and resources the NJVEA 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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<sup>10</sup> See generally Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329 (2016).