

February 5, 2019

Rep. Mike Freiberg
Chair, House Government Operations Committee
c/o Amanda Rudolph, Committee Administrator
503 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Re: Testimony in Support of HF 94

Dear Chair Freiberg,

Please accept this letter as written testimony in support of HF 94, a bill to remove the numerical limit on the number of voters an individual may assist in marking a ballot. We ask that members vote in favor of HF 94, not only because the legislature must guarantee the right of all eligible citizens to vote, but also because the legislature has a duty to ensure state law complies with federal law.

The League of Women Voters is proud to be nonpartisan, neither supporting nor opposing candidates or political parties at any level of government, but always working on vital issues of concern to members and the public. We envision a democracy where every person has the desire, the right, the knowledge and the confidence to participate.

Because the League of Women Voters believes every citizen should be protected in the right to vote, it has continually supported the reauthorization and expansion of the Voting Rights Act of 1965. In 1975, the League was part of a coalition effort to extend the act and expand its coverage to language minorities. In 1982, the League fought to strengthen the act and extend its major provisions. In 1992, the League and its partners sought reauthorization of the language assistance provision for an additional 15 years. And in 2006, it cosponsored a major initiative to support the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

We have supported these reauthorizations and expansions of the Voting Rights Act because we believe **voting is a fundamental citizen right that must be guaranteed**. And Minnesota's current law conflicts with not only that right, but also the Voting Rights Act.

When Congress passed the Voting Rights Act, it explicitly found that “citizens of language minorities have been effectively excluded from participation in the electoral process.” 52 U.S.C. § 10503(a). In response to that finding, Congress declared that “in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination” through “remedial devices.” *Id.* Those remedial devices are many, and one is Section 208 of the Voting Rights Act.

Section 208 of the Voting Rights Act

Section 208 states, “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 52 U.S.C. § 10508. This section of the Voting Rights Act was added during the 1982 expansion of protections for language minorities and voters with blindness or other disabilities. The chief author of the bill in the Senate was Senator Charles Mathias (R-MD), and other cosponsors included several members of both parties, including both of Minnesota’s Senators, Dave Durenberger and Rudy Boschwitz. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131.

When Section 208 was considered by the Senate Judiciary Committee, Senator Strom Thurmond (R-SC) chaired the Committee at the time. Senator Thurmond had vociferously opposed the Voting Rights Act during its original passage, and continued to oppose it in subsequent years, including during the hearings for the 1982 amendments. Despite this, the Senate Judiciary Committee not only held hearings on the bill, but also reported it out of committee favorably.

In its report, the Committee described that Section 208 was necessary to ensure that voters who were blind, disabled, or illiterate could not be manipulated:

To limit the risks of discrimination against voters in these specific groups and avoid denial or infringement of their right to vote, the Committee has concluded that they must be permitted to have the assistance of a person *of their own choice*. The Committee concluded that this is the *only* way to assure meaningful voting assistance and to avoid possible intimidation or manipulation of the voter. To do otherwise would deny these voters the same opportunity to vote enjoyed by all citizens.

S. Rep. 97-417, 62 (1982) (emphasis added). The Committee further clarified that state provisions would be preempted where they “unduly burdened the right recognized in this section.” *Id.* This aligns with the “fundamental principle of the

Constitution [] that Congress has the power to preempt state law.” *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 372 (2000). *See also* U.S. Const. art. VI, cl. 2 (stating that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”). The judicial branch has affirmed that the Voting Rights Act specifically preempts conflicting state laws. *See, e.g., Katzenbach v. Morgan*, 384 U.S. 641, 646 (1996) (holding that the Voting Rights Act preempted New York state election law). And courts have specifically held this when states have attempted to create additional limitations on who may assist a voter.

Examples of Section 208 Preemption of State Limits on Assistance to Voters

In 2016, one federal court held that the Voting Rights Act preempted and invalidated a Texas election law that placed limits on who could assist a voter. The court was explicit: “Section 208 does not impose an affirmative obligation on states. It operates instead as a negative obligation—*states must not limit voters’ right to assistance by a person of their choice.*” Order, *OCA-Greater Houston v. Texas*, No. 15-CV-00679-RP (W.D. Tex. Aug. 12, 2016), ECF No. 60 (emphasis added). That court’s decision was then affirmed when appealed. “It should go without saying that a state cannot restrict this federally guaranteed right [of a voter’s assistor of choice] by enacting a statute tracking its language, then defining terms more restrictively than as federally defined. [Texas law] impermissibly narrows the right guaranteed by Section 208.” *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017).

More recently, and more directly on point, the state of Georgia was subject to litigation for a numerical limit on how many voters an assistor could help. In that case, the court entered a consent order to prohibit the state from enforcing that numerical limit. The court noted that Section 208 “does not limit the number of voters any one person may assist in an election.” Consent Order, *Kwon v. Crittenden*, No. 18-cv-05405 (N.D. Ga. Nov. 29, 2018), ECF No. 8.

Minnesota’s Limits on Assistance to Voters

Minnesota’s current law suffers from the same problem like that of Texas and Georgia: it impermissibly narrows the right guaranteed by Section 208 of the Voting Rights Act. Minnesota Statute § 204C.15, subd. 1, limits the number of voters that an individual may assist to no more than three voters.¹ The

¹ “No person who assists another voter [...] shall mark the ballots of more than three voters at one election.”

legislature originally passed this numerical limit in 1959. *See* Laws of Minnesota 1959, chapter 675.

Minnesota's numerical limit may have been enforceable when it was originally enacted in 1959. But since the enactment of the Voting Rights Act Amendments of 1982, Minnesota may no longer enforce that numerical limit. As described above, legal precedent has made this increasingly clear over the last several years. Minnesota's law adds a qualifier for who may assist a voter. But this narrower, more restrictive qualification is preempted by the Voting Rights Act. Again, "a state cannot restrict [the rights guaranteed by Section 208] by defining terms more restrictively than as federally defined." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017).

Some members of the committee may disagree with this result of the Voting Rights Act. They may believe that additional restrictions on who may assist a voter are necessary for a variety of reasons, perhaps to protect voters or to increase election integrity. And those members may very well have good points and policy rationales. But Congress already weighed those considerations in 1982, and it determined there was an overriding interest in allowing the voter to choose their own assistor. Ultimately the authority of Congress and the Voting Rights Act preempt our state law. Minnesota is required to enforce *only* those limitations on assistance to voters that are specified within the Voting Rights Act *and no others*.

HF 94 Is in the Interests of Both Minnesota's Voters and Finances

Secretary of State Steve Simon testified at the hearing of the Subcommittee on Elections on January 30 that his office had received notice of potential litigation to enforce the Voting Rights Act. We believe that the success of litigation based on the preemption of the Voting Rights Act that has taken place in other states signifies that such litigation would have similar success in Minnesota if the law does not change to comply with the Voting Rights Act.

We also would note that any party that prevails in an enforcement proceeding for the rights guaranteed by the Voting Rights Act may be awarded reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses. 52 U.S.C. § 10310. So not only would Minnesota pay for its own litigation expenses, but it would also pay for the plaintiff's as well.

HF 94 ensures access to the ballot for all eligible voters, including voters who may need assistance due to blindness, disability, or inability to read or write.

According to American Community Survey data from 2013–2017, approximately 4.6% of Minnesotans over the age of 5 self-identify as speaking English less than “very well.” Many of these individuals are in the seven-county metro area, but there are also concentrations in counties like Kandiyohi, Pipestone, Watonwan, Nobles, and Mower. Greater Minnesota also has a greater number of disabled and elderly voters who may need help with their ballots due to vision problems or disability. This bill will ensure those voters needing help in casting their ballots may choose the person they trust to help.

But this bill is not just about ensuring access to the ballot for eligible voters. **This bill is also about abiding by the rule of law and preventing government waste in the form of unnecessary litigation.** For these reasons, we ask that members of the committee please vote in favor of this bill.

Should you or other members of the committee have questions about this testimony, you may contact Nick Harper, Esq., Civic Engagement Director for the League of Women Voters Minnesota at nharper@lwvmn.org.

Sincerely,



Martha Micks, President
LWV Minnesota



Nick Harper, Civic Engagement Director
LWV Minnesota