March 19, 2024

Submitted electronically

Minnesota House of Representatives
Elections Finance and Policy Committee
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Re: Support for the Provisions of the Minnesota Voting Rights Act in the House Elections Policy Bill

Dear Chair Freiberg and Members of the House Elections Committee:

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") writes to convey our strong support for the inclusion of the provisions of the Minnesota Voting Rights Act ("MNVRA") (HF 3527 / SF 3994) in the House Elections Policy Bill.

Founded in 1940 under the leadership of Thurgood Marshall, who would later become the United States Supreme Court's first Black justice, LDF is America's premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

For more than 80 years, LDF has prioritized its work protecting the right of Black citizens to vote—representing Dr. Martin Luther King, Jr., and other marchers in Selma, Alabama, in 1965, advancing the passage of the federal Voting Rights Act of 1965 ("federal VRA") and litigating seminal cases interpreting its scope,[1] and working in communities across the nation to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Justice Marshall—who litigated LDF's watershed victory in *Brown v. Board of Education*,[2] which set in motion the end of legal apartheid in this country and transformed the direction of American democracy—referred to *Smith v. Allwright*,[3] the 1944 case ending whites-only primary elections in Texas, as his most consequential case. He often shared that he held this view because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

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1 LDF was lead counsel in the landmark 2023 federal VRA case *Allen v. Milligan*, 599 U.S. 1 (2023).
2 347 U.S. 483 (1954).
3 321 U.S. 649 (1944).

Black voters face the greatest threat of discrimination and disenfranchisement since the Jim Crow era. As many states move to further restrict the franchise,[4] it is critical that states like Minnesota prioritize bills like the MNVRA to meet the urgent need to protect Black voters and other voters of color from discrimination. LDF worked with partners to successfully advocate for the enactment of the John R. Lewis Voting Rights Act of New York (the New York Voting Rights Act or "NYVRA") in 2022 and the John R. Lewis Voting Rights Act of Connecticut (the Connecticut Voting Rights Act or "CTVRA") in 2023. Currently, we are working with robust coalitions of civil and voting rights advocates to advance similar laws here in Minnesota, as well as in Michigan, Maryland, New Jersey, and Florida.[5]

We commend you for considering this critical legislation. The MNVRA will affirm Minnesota's place as a national leader on voting rights by building on the success of the NYVRA and CTVRA, as well as similar state VRAs that have been enacted in Virginia, Oregon, Washington, and California.[6]

I. Limitations of the Federal Voting Rights Act

Although the individual and collective provisions of the federal VRA have been effective at combatting a wide range of barriers and burdens,[7] federal courts have weakened some of the federal VRA's protections in recent years, making it increasingly complex and burdensome for litigants to vindicate their rights under the law. As a result, despite the federal VRA's importance, voters of color often face significant barriers to participate in the political process and elect candidates of their choice.

A. Minnesota voters are at risk of losing the ability to sue under the federal Voting Rights Act.

The U.S. Court of Appeals for the Eighth Circuit recently held that voters and organizations that represent them can no longer bring lawsuits directly under Section 2 of the federal Voting Rights Act (VRA).[8] This opinion is binding on seven states,

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4 Brennan Ctr, for Just. at NYU Sch. of L., *Voting Laws Roundup: 2023 in Review* (Jan. 18, 2024), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review.

5 *See* LDF*, Minnesota Voting Rights Act, https://www.naacpldf.org/case-issue/minnesota-voting-rights-act-mnvra/;* LDF*, Michigan Voting Rights Act*, https://www.naacpldf.org/michigan-voting-rights-act/; LDF, *Florida Voting Rights Act*, https://www.naacpldf.org/case-issue/florida-voting-rights-act/; LDF, *New Jersey Voting Rights Act,* NJVRANOW (2023), https://njvra.org/; LDF, *Maryland Needs Its Own Voting Rights Act* (2023), https://www.naacpldf.org/case-issue/maryland-voting-rights-act/.

6 *See* H.B. 1890, 2021 Sess. (Va. 2021), https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB1890; Ore. Rev. Stat. § 255.400 *et seq*.; Wash. Rev. Code Ann. § 29A.92.900 *et seq*.; Cal. Elec. Code, California Voting Rights Act of 2001, § 14027 (2002); *see also Legislative Proposals to Strengthen the Voting Rights Act, Hr'g Before the Subcomm. on the Const., C.R. & C.L. of the U.S. House Comm. on the Judiciary*, at 2 (Oct. 17, 2019), https://docs.house.gov/meetings/JU/JU10/20191017/110084/HHRG-116-JU10-Wstate-KousserJ-20191017.pdf (Test. of Professor J. Morgan Kousser) (noting the "striking success of minorities in using the state-level California Voting Rights Act").

7 Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Ctr. for Just. at NYU Sch. of L. (June 30, 2009), https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-act-legacy-15th-amendment.

8 *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

including Minnesota, and exposes Black voters and other voters of color in Minnesota to a heightened threat of racial discrimination in voting.

The Eighth Circuit's opinion flies in the face of six decades of decisions in hundreds of cases under Section 2 of the federal Voting Rights Act.[9] Although Minnesota voters may still be able to challenge Section 2 violations under 42 U.S.C. § 1983, which provides an individual the right to sue for civil rights violations, there is limited precedent addressing this alternative approach.[10] In short, these recent rulings leave Minnesota voters vulnerable to further erosion of their rights.

B. Even when the federal Voting Rights Act is available to Minnesota voters, it does not fully address the need for voting rights protections.

The existing federal legislation does not fully address the need for voting rights protections in Minnesota and other states. For nearly 50 years, Section 5 of the federal VRA, the heart of the legislation, protected millions of voters of color from racial discrimination in voting by requiring certain political subdivisions to obtain approval from the federal government *before* implementing a voting change.[11] However, in *Shelby County, Alabama v. Holder*, the United States Supreme Court rendered Section 5's "preclearance" process inoperable by striking down Section 4(b) of the federal VRA, which identified the places where Section 5 applied.[12]

Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b).[13] This onslaught accelerated after the 2020 election, which saw historic levels of participation by voters of color (albeit with persistent racial turnout gaps).[14] Following that election, in 2021, state lawmakers introduced more than 440 bills with provisions that restrict voting access in 49 states, and 34 such laws were enacted.[15] This wave of harmful legislation shows no signs of abating: In 2023 alone, at least 356 restrictive voting bills were considered by lawmakers in 47 states, and 17 restrictive voting laws were actually enacted.[16]

With the exception of states (including Minnesota) covered by the Eighth Circuit's recent ruling described above, Section 2 of the federal VRA offers a private

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9 *Arkansas State Conf. NAACP*, 86 F.4th at 1219 (Smith, C.J., dissenting) ("For decades and throughout hundreds of cases a private right of action has been assumed under § 2.") (internal quotations and citations omitted).

10 *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 91 F.4th 967, 968 (8th Cir. 2024).

11 52 U.S.C. § 10304.

12 *See Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 557 (2013).

13 *See* LDF, *Democracy Defended* (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf; *see also* LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act* 1 (Jan. 5, 2021), https://www.naacpldf.org/wp-content/uploads/LDF-Sections-2-and-3c-VRA-primer-1.5.21.pdf.

14 Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Ctr. for Just. at NYU Sch. of L. (Aug. 6, 2021), https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election.

15 Brennan Ctr. for Just. at NYU Sch. of L., *Voting Laws Roundup: December 2021* (Jan. 12, 2022), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021.

16 Brennan Ctr. for Just. at NYU Sch. of L., *supra* note 5.

right of action to challenge any voting practice or procedure that "results in a denial or abridgment of the right of any citizen of the United States to vote on account of race."[17] But Section 2 litigation imposes a high bar for plaintiffs. Such cases are expensive and can take years to reach resolution.[18] Section 2 lawsuits generally require multiple expert witnesses for both plaintiffs and defendants.[19] Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.[20] Individual plaintiffs, even when supported by civil rights organizations or private lawyers, often lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.[21] Moreover, even when voters ultimately prevail in the lawsuits, several unfair elections may be held while the litigation is pending, subjecting voters to irreparable harm. [22] Due to these challenges, some potential Section 2 violations are never identified, addressed, or litigated in court.[23]

Section 2 claims are also expensive for jurisdictions to defend, regularly costing political subdivisions considerable amounts of taxpayer money. For example, the East Ramapo Central School District in New York State paid its lawyers more than $7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch—and, after the NAACP branch prevailed, was ordered to pay over $4 million in plaintiffs' attorneys' fees and costs as well.[24] In *Veasey v. Abbott*, the federal lawsuit in which LDF challenged the State of Texas's Voter ID law with other civil rights groups and the U.S. Department of Justice (DOJ), the district court and the Fifth Circuit Court of Appeals required Texas to pay more than $6.7 million toward the non-DOJ plaintiffs' documented litigation costs.[25]

Above and beyond its complexity and cost, litigation under Section 2 of the federal VRA simply cannot keep up with the urgency of the political process. Because elections occur frequently, discriminatory electoral maps or practices can harm voters

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17 52 U.S.C. § 10301.

18 *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hr'g Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).

19 LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* 2 (Feb. 2021), https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf; *see also, e.g.*, Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, Yakima Herald (Aug. 10, 2014), https://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-against-yakima/article_3cbcce20-ee9d-11e4-bfba-f3e05bd949ca.html.

20 LDF, *supra* note 19, at 2.

21 *Voting Rights and Election Administration in the Dakotas: Hr'g Before the Subcomm. on Elections*, 116th Cong. 64 (2019).

22 *Shelby County*, 570 U.S. at 572 (Ginsburg, J., dissenting) ("An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.").

23 *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hr'g Before the Subcomm. on the Const., C.R. & C.L. of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Test. of Professor Justin Levitt).

24 Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to $1: NAACP Leaders Respond*, Rockland County Times (Jan. 21, 2020), https://www.rocklandtimes.com/2021/01/21/ercsd-threatens-to-fire-teachers-if-legal-fees-not-cut-to-1-naacp-leaders-respond/; Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central Sch. Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

25 *See* Mike Scarcella, *5th Circuit upholds $6.7 mln in fees for plaintiffs in voting rights case*, Reuters (Sept. 4, 2021), https://reut.rs/3tN14L7.

almost immediately after rules are changed. However, on average, Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved.[26]

II. Racial Discrimination in Voting in Minnesota

As set forth in the MNVRA's legislative findings, there is a history of racial discrimination in voting in Minnesota, which included, among other things, a state constitution that limited the right to vote to white residents.[27] In addition, evidence of racial discrimination in voting persists in the present day.

Voters of color in Minnesota face substantial racial disparities in voter turnout and voter registration. According to data published by the United States Census Bureau, 84.1 percent of non-Hispanic white citizens in Minnesota were registered to vote as of the November 2020 election, compared to only 79.4 percent of Asian citizens, 74.7 percent of Latino citizens, and 70.5 percent of Black citizens.[28] And in the 2020 election, 79.9 percent of non-Hispanic white citizens in Minnesota voted, compared to only 66.1 percent of Black citizens, 64 percent of Asian citizens, and 62.7 percent of Latino citizens in Minnesota voted in that election.[29] These disparities strongly indicate the presence of unequal barriers in the registration and voting process that impede participation by eligible Black, Latino, and Asian voters in Minnesota.[30]

Voters of color also suffer from systemic underrepresentation on county commissions. Based on a 2020 analysis of the demographic composition of Minnesota's County Commissioners by the Reflective Democracy Campaign, voters of color show signs of potential underrepresentation in 32 counties, where there is a gap between the proportion of people of color within a county's population and the proportion of county commissioners who are people of color that could be addressed if there were at least one additional person of color serving on the commission. Although such descriptive underrepresentation itself is not necessarily unlawful (the relevant metric is the ability of voters of color to elect candidates of choice, regardless of such candidates' race), substantial racial disparities in political participation coupled with signs of systemic underrepresentation are concerning red flags of racial discrimination in voting, and are often associated with racially discriminatory barriers to the franchise, such as insufficient polling places in communities of color that suppress turnout among voters of color, or district maps that crack or pack voters of color to dilute their voting strength. Moreover, in smaller jurisdictions in Minnesota, the prevalence of at-large election

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[26] *Shelby Cnty*, 570 U.S. at 572 (Ginsburg, J., concurring) ("An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.").

[27] MNVRA Sec. 2(a)(2).

[28] MNVRA Sec. 2(3)(i).

[29] MNVRA Sec. 2(3)(ii).

[30] Moreover, recent research indicates that the Census Bureau's statistics on turnout may overestimate the incidence of voting among communities of color, suggesting that racial turnout disparities may be even greater than Census data reveals. *See* Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout*, 84 J. of Pol. 1850 (2021), https://static1.squarespace.com/static/5fac72852ca67743c720d6a1/t/5ff8a986c87fc6090567c6d0/1610131850413/CPS_AFS_2021.pdf.

structures—a form of election which, when combined with racially polarized voting or other relevant factors, can "operate to minimize or cancel out the voting strength of racial minorities in the voting population"—raises questions about potential vote dilution that may be going unchallenged at present.[31]

These red flags of racial discrimination in voting in Minnesota are further exacerbated by troubling socioeconomic racial disparities.[32] For example, 37% of Black Minnesotans are unemployed, compared to just 19% of white Minnesotans.[33] Fourteen percent of Black Minnesotans suffer from a disability, compared to just 6% of white Minnesotans.[34] And 47% of Black Minnesotans live at or near poverty level, compared to just 18% of white Minnesotans.[35] As Congress, courts, and academic researchers have recognized, underlying social conditions resulting from past and ongoing discrimination often interact with voting rules to cause or exacerbate disparities in the ability to participate in elections.[36] For example, courts have long considered "the effects of discrimination in such areas as education, employment, and health" as relevant to analyzing voting rights violations, because such conditions can "hinder [a minoritized group's] ability to participate effectively in the political process."[37]

III. The MNVRA Codifies, Clarifies, and Simplifies the Protections of Section 2 of the Voting Rights Act into Minnesota Law

The MNVRA will codify, clarify, and simplify the protections of Section 2 of the federal Voting Rights Act into Minnesota law. It will provide efficient, practical ways to identify and resolve barriers to equal participation in local democracy, including both voter suppression and vote dilution. And it will establish procedures to incentivize out-of-court resolution by providing a safe harbor for political subdivisions to voluntarily remedy violations without the risk and expense of litigation. This will ensure that, regardless of how the federal courts construe the federal VRA, Minnesotans will have strong tools to protect themselves from voting discrimination.

These provisions, as discussed in more detail below, are core elements of a comprehensive state VRA.[38] We appreciate that the State of Minnesota recently updated its laws regarding two other aspects of LDF's recommended model state

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31 *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (internal quotations and brackets omitted).

32 *See, e.g.*, Minnesota State Demographic Ctr., *The Economic Status of Minnesotans 2023* (March 2023), https://mn.gov/admin/assets/Economic%20Status%20of%20Minnesotans%202023_tcm36-569572.pdf.

33 *Id*. at 37.

34 *Id*. at 43.

35 *Id*. at 50.

36 *See, e.g.*, *Gingles*, 478 U.S. at 44-47.

37 *Id.* at 36-47 (quoting S. Rep. No. 97-417, at 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207)*; see also, e.g.*, Justin de Benedectis-Kessner & Maxwell Palmer, *Driving Turnout: The Effect of Car Ownership on Electoral Participation* 4 (Aug. 17, 2021), https://scholar.harvard.edu/files/jdbk/files/drivers_turnout.pdf ("Car access has a substantively large impact on voter turnout."); Am. Bar Found., *Major Empirical Research Effort Finds Incarceration Suppresses Overall Voter Turnout* (Feb. 25, 2014), https://www.americanbarfoundation.org/news/467.

38 *See* LDF, *State Voting Rights Acts: Building a More Inclusive Democracy*, https://www.naacpldf.org/ldf-mission/political-participation/state-voting-rights-protect-democracy.

VRA: language access and voter intimidation.[39] We look forward to the opportunity to work with this Committee in a future legislative session to explore additional core state VRA provisions that require funding allocations. These include (1) a "preclearance" program to require political subdivisions with a history of discrimination or other indicia of racial discrimination in voting to obtain pre-approval before making changes to key voting rules or practices; and (2) a statewide election database that supports enforcement and best practices and saves jurisdictions the burden of responding to information requests by centralizing relevant election information. In addition, we encourage the legislature to explore protections for Native voters on tribal lands, modeled after the federal Native American Voting Rights Act.[40]

A. Cause of Action to Address Voter Suppression

Section 5, subd. (1) of the MNVRA provides voters of color, and organizations that represent or serve them, with a private right of action to challenge policies or practices that result in racial disparities in voter participation. The MNVRA codifies into Minnesota law the same protections against voter suppression that have long been covered by Section 2 of the federal Voting Rights Act,[41] but adopts a clarified and streamlined legal standard for these claims.[42] The legal standard for the MNVRA's private right of action against vote dilution is based on similar protections against voter suppression that have been adopted in recent years in states including New York[43] and Connecticut.[44]

The MNVRA's protections against voter suppression will enable voters of color to address practices that create barriers to the ballot, including, among other things, inaccessible or insufficient polling locations in communities of color, wrongful voter purges that disproportionately harm voters of color without justification, the holding of local elections on unusual off-cycle dates that disproportionately suppresses turnout among voters of color when compared to on-cycle elections, or improper election administration decisions or equipment allocations that lead to longer lines.[45]

B. Cause of Action to Address Vote Dilution

Section 5, subd. 1 of the MNVRA provides voters of color, and organizations that represent or serve them, with a private right of action to challenge dilutive election structures or district maps, which weaken or drown out Black and brown voters' voices. The MNVRA codifies into Minnesota law the same protections against racial vote

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39 *See* H.F. 3, 93rd Leg., 24th Sess. L. Chapter (Minn. 2023), https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF0003&ssn=0&y=2023.

40 *See* H.R. 5008, 117th Cong. (2021), https://www.congress.gov/bill/117th-congress/house-bill/5008.

41 Section 2 of the federal VRA prohibits political subdivisions from taking action with "the purpose or with the effect of denying or abridging the right to vote on account of race or color." 52 U.S.C. § 10303.

42 MNVRA Sec. 5, Subd. 1. The MNVRA's legal standard for voter suppression claims rejects recent federal cases interpreting Section 2 that impose severe barriers to plaintiffs seeking to assert voter suppression claims in federal court. *See, e.g., Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2330 (2021).

43 NYVRA, N.Y. Elec. L. § 17-206(b).

44 CTVRA, Conn. Gen. Stat. § 9-368j(a)(2)(A).

45 MNVRA Sec. 5, Subd. 1.

dilution that have long been covered by Section 2 of the federal Voting Rights Act,[46] but adopts a clarified and streamlined legal standard for these claims.[47] The legal standard for the MNVRA's private right of action against vote dilution is based on similar protections against vote dilution that have been adopted in California, Washington, Oregon, Virginia, New York, and Connecticut.[48]

The MNVRA's vote dilution provision will enable voters of color to contest at-large local elections that dilute minority voting strength.[49] It will also provide a framework for contesting district-based elections that configure districts in a manner that denies voters of color an equal opportunity to participate in the political process and elect candidates of choice, for instance, through districting plans that crack communities of color into multiple districts or pack voters of color into just one district.[50]

The MNVRA will make vote dilution litigation more predictable, less time-intensive, and less costly than litigation under the federal VRA. This will benefit both voters who seek to vindicate their rights as well as political subdivisions seeking to comply with the law.

C. Presuit Notice and Safe Harbor for Political Subdivisions

Section 7 of the MNVRA contains important "safe harbor" protections for political subdivisions that wish to voluntarily remedy potential violations without litigation.[51] Prospective MNVRA plaintiffs are required to notify political subdivisions in writing of any alleged violation before they can commence any action in court (subject to a few limited exceptions).[52] Political subdivisions are afforded a "safe harbor" period

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46 *See Thornburg v. Gingles*, 478 U.S. 30 (1986).

47 MNVRA Sec. 5, Subd. 2. Like other state VRAs, the MNVRA's legal standard draws from federal law interpreting Section 2 by permitting claims to be brought primarily on the basis of racially polarized voting, which has been widely acknowledged by federal courts to be the "linchpin" of Section 2. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30 (1986); *Allen v. Milligan*, 599 U.S. 1 (2023). Numerous federal courts have recognized that "[e]vidence of racially polarized voting is the linchpin of a section 2 vote dilution claim." *See Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1238 (C.D. Cal. 2002), *aff'd*, 537 U.S. 1100 (2003); *Harding v. Cnty. of Dallas, Texas*, 336 F. Supp. 3d 677, 690 (N.D. Tex. 2018), *aff'd* 948 F.3d 302 (5th Cir. 2020); *see also McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1043 (5th Cir. 1984) ("racially polarized voting will ordinarily be the keystone of a dilution case"). The MNVRA alternatively allows vote dilution claims to be brought on the basis of the totality of circumstances factors, *see* MNVRA Sec. 6, subd. 1, which are drawn from the Senate Report concerning the 1982 amendments to the federal Voting Rights Act. *Gingles*, 478 U.S. at 43 n.7 ("The 1982 Senate Report is the "authoritative source for legislative intent" in analyzing the amended Section 2"); *accord Milligan*, 599 U.S. at 10, 30 (referencing the Senate Report); *Brnovich v. DNC*, 141 S. Ct. 2321, 2333 (2021) (same).

48 *See, e.g.*, NYVRA, N.Y. Elec. Law § 17-206(2)(b)(i); CTVRA, Conn. Gen. Stat. § 9-368j(b).

49 MNVRA Sec. 5, Subd. 2.

50 *Id.*

51 MNVRA Sec. 7.

52 *Id*.

during which they can adopt a resolution committing to voluntarily remedy the alleged violation.[53]

This provision incentivizes political subdivisions to resolve violations amicably, collaboratively, and outside of court. Similar notification and safe harbor procedures in other state VRAs have proven highly effective at incentivizing voluntarily resolution of potential violations outside of court.[54]

D. Codification of the Democracy Canon

The MNVRA enshrines a "democracy canon" into state law by instructing judges to interpret laws and rules in a pro-voter, pro-democracy way whenever reasonably possible.[55] This ensures that courts will construe election and voting laws—including the MNVRA—in favor of protecting the rights of voters, ensuring voters of color have equitable access to fully participate in the electoral process.

IV. Equitable Voting Rights Protections Have Concrete Benefits

Robust voting rights protections, like those in the federal VRA and state-level voting rights acts, can have powerful effects in making the democratic process fairer, more equal, and more inclusive. These effects include reducing racial turnout disparities,[56] making government more responsive to the needs and legislative priorities of communities of color,[57] and increasing diversity in government office,[58] so that elected representatives more fully reflect the communities they serve.

There is evidence that measures like the MNVRA can have powerful, downstream benefits in economic equality and health. Recent analyses show that incremental improvements in diversity in local representation translate into more

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53 *See* MNVRA Sec. 7. The political subdivision is afforded 60 days to adopt a resolution affirming its intent to enact a remedy. MNVRA Sec. 7, subd. 1. If the political subdivision adopts such a resolution, it is afforded 90 days to enact and implement the remedy. MNVRA Sec. 7, subd. 2.

54 Law. Comm. for C.R. of the S.F. Bay Area, *Voting Rights Barriers & Discrimination In Twenty-First Century California: 2000-2013* 7 (2014), https://www.reimaginerpe.org/files/Voting-Rights-Barriers-In-21st-Century-Cal-Update.pdf.

55 MNVRA Sec. 4. For more information on the Democracy Canon, *see* Rick Hasen, *The Democracy Canon*, 62 Stanford L. Rev. 69 (2009), http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/03/Hasen.pdf.

56 Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California*, MIT Election Lab (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf.

57 Sophie Schllit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 Am. J. of Pol. Sci. 513 (July 2017), https://www.jstor.org/stable/26379507.

58 Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 Urb. Aff. Rev. 731, 757 (2021), https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf; *see* Pei-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 Pol. Sci. & Pol. 489 (July 2007), https://www.jstor.org/stable/20452002; Paru R. Shah, Melissa J. Marschall, & Anirudh V. S. Ruhil, *Are We There Yet? The Voting Rights Act and Black Representation on City Councils, 1981-2006*, 75 J. Pol. 993 (Aug. 20, 2013), https://www.jstor.org/stable/10.1017/s0022381613000972.

equitable educational and policy outcomes.[59] Professor Thomas A. LaVeist of Tulane University, in a landmark study, identified the federal VRA as a causal factor in reducing infant mortality in Black communities where the law's protections had led to fairer representation.[60] For these reasons, the American Medical Association has recognized voting rights as a social determinant of health and declared support for "measures to facilitate safe and equitable access to voting as a harm-reduction strategy to safeguard public health."[61] In short, the MNVRA can have significant, potentially transformative benefits for democracy and society in this state.

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LDF, the nation's oldest and premier civil rights legal organization, is dedicated to the full and equal participation of all people in our democracy, and fully supports the MNVRA. We urge members of the committee to support the inclusion of the MNVRA provisions in the House Elections Policy Bill. If you have any questions, or wish to discuss the Minnesota Voting Rights Act further, please feel free to contact Michael Pernick at (917) 790-3597 or mpernick@naacpldf.org.

Sincerely,

/s/ Michael Pernick
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59 *See*, *e.g.* Vladimir Kogan, Stephane Lavertu, & Zachary Peskowitz, *How Does Minority Political Representation Affect School District Administration and Student Outcomes?*, 65 Am. J. of Pol. Sci. 699 (July 2021), https://www.jstor.org/stable/45415637 (discussing "evidence that increases in minority representation lead to cumulative achievement gains . . . among minority students"); Brett Fischer, *No Spending Without Representation: School Boards and the Racial Gap in Education Finance*, 15 Am. Econ. J: Econ. Pol'y 198 (May 2023), https://www.aeaweb.org/articles?id=10.1257/pol.20200475 (presenting "causal evidence that greater minority representation on school boards translates into greater investment in minority students").

60 Thomas A. LaVeist, *The Political Empowerment and Health Status of African-Americans: Mapping a New Territory*, 97 Am. J. of Socio. 1080 (Jan. 1992), https://www.jstor.org/stable/2781507.

61 Am. Med. Ass'n PolicyFinder, *Support for Safe and Equitable Access to Voting H-440.805* (2022), https://policysearch.ama-assn.org/policyfinder/detail/voting?uri=%2FAMADoc%2FHOD.xml-h-440.805.xml; *see also* Anna K. Hing, *The Right to Vote, The Right to Health: Voter Suppression as a Determinant of Racial Health Disparities*, 12 J. of Health Disparities Rsch. & Prac. 48 (2019), https://digitalscholarship.unlv.edu/jhdrp/vol12/iss6/5.

NAACP Legal Defense and Educational Fund, Inc.

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voting discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People ("NAACP") since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

Rep. Mike Freiberg, Chair
Rep. Emma Greenman, Vice Chair
Elections Finance and Policy Committee
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

March 19, 2024

Chair Freiberg and Members of the House Elections Finance and Policy Committee:

Campaign Legal Center ("CLC")[1] writes to thank you for including the important provisions of the Minnesota Voting Rights Act, HF 3527 (the "MNVRA") in the House Elections Omnibus DE Amendment.

CLC strongly supports the MNVRA because it will allow communities of color across Minnesota to participate equally in the election of their representatives. This letter highlights the ways that the MNVRA codifies, clarifies, and improves upon federal law to ensure that Minnesota voters and local governments alike have clear and consistent processes for protecting voting rights.

I. BACKGROUND

The federal Voting Rights Act of 1965 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

[1] CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through our 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 supported the enactment of state voting rights acts in Washington, Oregon, Virginia, New York and Connecticut, and brought the first-ever litigation under the Washington Voting Rights Act in Yakima County, Washington.

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.[2]

But a recent groundless ruling by the federal courts has removed an avenue for Minnesotans to protect their right to vote under the federal VRA. In that case, the 8th Circuit held the federal VRA lacks a private right of action, making it more difficult for Minnesotans to enforce their equal right to vote and participate in the political process.[3] This is only the latest in a long line of judicial decisions over the last 30 years that have chipped away at the protections under the federal VRA.

Passing the MNVRA will ensure that Minnesota voters *always* have a private right of action to challenge barriers to effective participation in their communities, regardless of what federal courts do to further weaken federal protections. The MNVRA also clarifies and improves upon federal law to provide a clear framework to identify and fix vote dilution and barriers to voting access in a way that is collaborative, efficient, and cost-effective for both voters and local governments.

III. REASONS TO SUPPORT THE MNVRA

A. <u>The MNVRA provides a framework for determining denials of the right to vote that provides clarity to courts and voters alike.</u>

The MNVRA codifies the right of voters to challenge laws and practices that deny or impair a protected class's access to the ballot, based on the private right of action against vote denial that is available under Section 2 of the federal VRA. 52 U.S.C. § 10301(a). Like the federal VRA, the MNVRA's language is sufficiently broad to cover any conduct related to voting that could result in racial discrimination. *Id.* And like the federal VRA, MNVRA claims can be brought against policies that are intentionally discriminatory *or* that have discriminatory effects. 52 U.S.C. § 10301(b).

However, the federal VRA does not set forward a clear legal standard for deciding vote denial claims, and the Supreme Court has never provided one. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2325 (2021) ("[T]he

[2] Michael J. Pitts, The Voting Rights Act and the Era of Maintenance, 59 ALA. L. REV. 903, 920-22 (2008).
[3] *Ark. State Conference NAACP v. Ark. Bd. of Apportionment*, No. 22-1395 (8th Cir. Nov. 20, 2023).

Court declines in these cases to announce a test to govern all VRA § 2 challenges to rules that specify the time, place, or manner for casting ballots."). The Supreme Court instead announced a flawed set of "guideposts" to help inform decisions. *Id.* These guideposts are not dispositive, make it harder to challenge voter suppression, and distract from the core question of whether the challenged act or practice has a discriminatory effect on voters of color. As a result, lower courts do not have a unified legal standard for evaluating these claims.

The MNVRA therefore distills the current ambiguous body of federal law by providing a simple and predictable standard for determining when a local government's practice has denied or impaired a community of color's access to the ballot. Under the MNVRA, a violation is established by showing either that the practice results in a disparity in the ability of voters of color to participate in the electoral process, or that, under the totality of circumstances, the practice results in an impairment of the ability of voters of color to participate in the franchise. The elements in this legal standard are informed by federal case law. For example, the racial disparity standard in Subd. 1(1) is drawn from principles acknowledged by the Supreme Court. *See Brnovich*, 141 S. Ct. at 2325 ("The size of any disparities in a rule's impact on members of different racial or ethnic groups is an important factor to consider."). And the totality-of-circumstances standard is similarly drawn from federal law. *Id.* at 2341 (Section 2 "commands consideration of 'the totality of circumstances' that have a bearing on whether a State makes voting 'equally open' to all and gives everyone an equal 'opportunity' to vote.") (quoting 52 U.S.C. § 10301(b)).

The MNVRA also simplifies federal law by barring the consideration of certain "guideposts" that have added unneeded complexity to vote denial claims. For example, the MNVRA excludes consideration of the so-called "pedigree" of a challenged practice. In *Brnovich*, the Supreme Court held that the fact that a practice was widely used in 1982 (when Section 2 of the federal VRA was amended) should weigh against plaintiffs. However, the fact that a particular practice may have been prevalent has no relevance to the harm it causes to voters of color. The MNVRA's language barring consideration of this and other such "guideposts" is critical to ensuring predictable, equitable resolution of potential violations and to restoring and codifying the robust protections against voter suppression envisioned by the drafters of the federal VRA.

B. The MNVRA provides a framework for determining vote dilution that clarifies and simplifies federal law.

Like the federal VRA, the MNVRA prohibits discriminatory maps or methods of election that result in vote dilution, including dilutive at-large elections or dilutive districting plans. *See* 52 U.S.C. § 10301. The MNVRA's guarantee that protected class voters are afforded an "opportunity . . . to participate in the political process and elect representatives of their choice" codifies similar language in the federal VRA. *See* 52 U.S.C. § 10301(b).

Federal courts impose a complex and burdensome test on vote dilution claims. 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) the minority group is politically cohesive; 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). The second and third of these preconditions are together said to require a showing of racially polarized voting. If all three of these preconditions 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]

The MNVRA, like every other state VRA, clarifies and simplifies this complex test to make it more administrable, predictable and less costly. The MNVRA requires plaintiffs to establish two elements: a "harm" element (meaning that plaintiffs must demonstrate that they do not have equal opportunity or ability to elect candidates of their choice) and a "benchmark" against which to measure the harm (meaning that plaintiffs must identify a reasonable alternative to the existing system that can serve as the benchmark undiluted voting practice).

The "harm" element can be proven in either of two ways. First, plaintiffs can prove that there exists racially polarized voting that results in an impairment in the ability of protected class voters to elect candidates of choice, a showing required under the federal VRA. Racially polarized voting (RPV) means that there is a significant divergence in the electoral choices or candidate preferences of protected class voters, as compared to other voters. Measuring RPV often depends on statistical analysis of election return data, which is

[4] Section 2 of the Voting Rights Act, U.S. DEP'T OF JUSTICE, https://www.justice.gov/crt/section-2-voting-rights-act.

sometimes unavailable, especially in smaller jurisdictions and in places with long histories of vote dilution and disenfranchisement where candidates preferred by minority voters simply stop running for office. Thus, the effect of vote dilution itself means that minority communities will often be hard pressed to find "proof" that RPV exists in actual election results. This is why it is critical that the MNVRA has two paths to prove the "harm" element. Plaintiffs can alternatively prove that, under the totality of circumstances, the equal opportunity or ability to elect candidates of their choice is denied or impaired.

The "benchmark" element can be satisfied if the plaintiff can identify a remedy that would mitigate the identified harm. For example, if a lawsuit challenges an at-large election that denies voters of color any representation, this element can be satisfied if there is a potential district-based map that would provide protected-class voters with a district in which they can elect candidates of choice. If a lawsuit challenges a districting plan that, for instance, packs voters of color into only one district in which they can elect candidates of choice, this element can be satisfied if an alternate plan is drawn in which voters of color have two districts in which they elect candidates of choice.

The idea of a benchmark requirement comes from federal law, but federal courts have set a high bar for vote-dilution claims. *See Thornburg v. Gingles*, 478 U.S. 30 (1986); *Holder v. Hall*, 512 U.S. 874 (1994). However, the MNVRA provides for a more flexible benchmarking requirement. In particular, the MNVRA does not require plaintiffs to demonstrate an illustrative districting plan with a "geographically compact," *i.e.*, segregated, majority in a single-member district. *See Bartlett v. Strickland*, 556 U.S. 1 (2009). Instead, plaintiffs need only show that there is a new method of election or change to the existing method of election that would mitigate the impairment. This makes it possible for communities of color that are *not* residentially segregated but still experiencing vote dilution to enforce their rights.

C. <u>The MNVRA avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.</u>

Under the MNVRA, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 60 days before bringing a lawsuit. During that time, both parties must collaborate in good faith to find a solution to the alleged problem. If the jurisdiction adopts a resolution identifying a remedy, it gains a safe harbor from litigation for an additional 90 days. The MNVRA recognizes that many jurisdictions will seek to enfranchise communities of color by

remedying potential violations. Such notice and safe-harbor provisions will enable them to do so without the costs and delay of lengthy litigation.

The MNVRA also provides for limited cost reimbursement for pre-suit notices, in recognition of the fact that notice letters often require community members to hire 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 voting rights acts in California, Oregon, and New York.

D. The MNVRA ensures that courts will select the remedy best suited to mitigate a violation.

In keeping with the broad discretion that federal and state courts have to craft appropriate remedies, the MNVRA requires courts to consider remedies that have been used in similar factual situations in federal courts or in other state courts.

But the MNVRA does depart from the practice of federal courts in one important respect: the law specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. This directly responds to an egregious practice among federal courts of granting government defendants the "first opportunity to suggest a legally acceptable remedial plan."[5] This often leads to jurisdictions choosing a remedy that only minimally addresses a discriminatory voting practice, precluding consideration of remedies that would fully enfranchise those who won the case. For example, in *Cane v. Worcester County*, the Fourth Circuit applying the federal VRA explained that the governmental body has the first chance at developing a remedy and that it is only when the governmental body fails to respond or has "a legally unacceptable remedy" that the district court can step in.[6] In *Baltimore County Branch of the NAACP v. Baltimore County*, the district court likewise accepted the defendant county's proposed map, despite plaintiffs' objections and presentation of an alternative map.[7] This is antithetical to the concept of remedying racial discrimination; courts should not defer to the preferences of a governmental body that has been found to violate anti-discrimination laws in fashioning a remedy for that body's own discriminatory conduct. The MNVRA avoids this problem by allowing the court to consider remedies offered by *any* party to a lawsuit and decide which one is best suited

[5] *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994)
[6] *Id.*
[7] *Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., Minnesota*, No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).

to help the impacted community, instead of giving deference to the remedy proposed by the government body that violated that community's rights.

IV. CONCLUSION

We thank Representative Greenman for her authorship and leadership on the MNVRA. And we urge members of the committee to support this omnibus legislation and the voting rights provisions therein. Thank you.

Respectfully submitted,

/s/ Aseem Mulji

Aseem Mulji, Legal Counsel
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

March 19, 2024

Dear Chair Freiberg and Members of the Elections Policy and Finance Committee,

We are writing on behalf of the League of Minnesota Cities, Association of Minnesota Counties, and Minnesota Association of County Officers to provide comments on the provisions contained in H4772-DE3 to establish a Minnesota Voting Rights Act.

Though we appreciate some of the provisions in this proposal that have been amended in previous hearings and the significant amount of time that Representative Greenman has provided local governments to discuss this proposal, we still continue have concerns over this section as drafted. Our associations recognize the long history of the Federal Voting Rights Act's acknowledgement of a private right of action—an important protection for voters that has significant precedent across the country. In light of the 8th Circuit's decision removing this important protection, we are not opposed to the creation of a state voting rights act that includes a private right of action independent of how the federal VRA has been construed by federal courts.

We do, however, have concerns and questions about the new legal standard this bill creates and the onus it puts on local governments to effectively arbitrate complicated legal questions around the Voting Rights Act. If a Minnesota Voting Rights Act is to be established, our associations believe the suggested changes identified below would find a middle ground between federal law and the new proposed legal standards that would likely result in more violations being found under this chapter.

Deviations from Federal Voting Rights Act need more clarity.
In discussions with stakeholders and presentations in other committees, it is clear that this bill is not simply codifying federal voting rights laws but creating a new legal standard for which voting rights claims are to be measured against. We request the following changes to find a middle-ground between federal law and this new proposal:

- The definition of "disparity" (Sec. 4, Subd. 2) is a result of interpreting case law under the Federal Voting Rights Act. If this definition is to remain in the bill, we request that the terms "variance," "validated methodologies," and "statistical significance" be more clearly defined in relation to the applicable case laws.
- We understand that the Federal Voting Rights Act has never had a specific definition as it relates to voter suppression and that the proposed definition in this bill (Sec. 6, Subd. 1) is a creation out of selected case law, though we also understand that case law on this matter has been inconsistent and that this definition is comparable to some, but contrary to other, legal precedent. Currently drafted language would provide that a case could be found by the existence of a disparity in voter participation, access, or the opportunity to participate in the political process for a protected class OR, based on the totality of the circumstances, a denial or impairment of the opportunity for members of a protected class to vote or participate in the political process. We understand that a definition that would require both of these conditions, not just one, is more consistent with Federal case law and would not justify a remedy from a disparate outcome alone and would request this change.
- The legal standard required for indicating a case of vote dilution (Sec. 6, Subd. 2b) is a significant deviation from federal law. Under federal law, three preconditions AND a totality of circumstances is

required to demonstrate vote dilution. Under MNVRA, a plaintiff would need to demonstrate the existence of polarized voting OR that the equal opportunity for a protected class to nominate or elect candidates is impaired based on the totality of circumstances, and a plaintiff-identified remedy to the We recognize that this new standard may result in more successful claims as the conditions needed to establish a case would likely be more easily met than requirements in current federal law.

- The bill establishes that "evidence concerning the causes of, or the reasons for, the occurrence of polarized voting is not relevant to the determination of whether polarized voting occurs" (Sec. 6, Subd. 2f). We understand that this is a new parameter in response to these arguments being used in previous case law.
- Two new factors for determining violations under this act are established by this bill (Sec. 7, Subd. 1). Factor (3) related to the rate at which members of a protected class vote and factor (4) related to the extent in which members of a protected class contribute to political campaigns are new factors that are not currently contained in the list of "Senate Factors" utilized in federal cases and would request that they not be included in the MNVRA.
- Sec. 7, Subd. 5 establishes factors that must be excluded from consideration in cases under this bill. It is important to note that this is a direct deviation from federal law, as the factors to be excluded in this bill are the factors specifically named as "guideposts" by SCOTUS to be used in FVRA cases. If this section were to remain, we would request a close examination of these factors and potential eliminations of factors (1) and (4).

We believe that all of these changes should be evaluated closely to understand how prior case law either supports or conflicts with the new proposed standards, and how those deviations would impact future cases brought under this law. We believe that any new standards should be clearly defined as they relate to how they would impact local governments in potential cases under this law.

Clarity for the new presuit notice process is needed.
We appreciate this bill's efforts to try to create a process to settle legitimate voting rights claims outside a costly and time exhaustive judicial process. That said, we have concerns that the currently framed presuit notice process Section 8 creates financial burdens and legal liability for local governments that attempt to respond to claims before a legal finding of a violation. In addition, questions remain about how much authority cities and counties will have to address alleged violations without judicial or legislative action.

The presuit notice process contained in this bill would require all private right of action claims for violating the voting rights act start with local governments. This is an extrajudicial process in which local governments would be required to attempt to provide an appropriate remedy for claims with no impartial third party or legal test of the validity of the claim, which could set precedent for the voting rights act without ever having been litigated. Moreover, this process does not distinguish between claims arising from state law or policies versus local election administrator actions. If this process is to remain in this legislation, we request the following changes be made to clarify the role of local governments and mitigate the risk of future litigation:

- We request that Sec. 6, Subd. 1 clarify that claims related to a political subdivision under this section must be limited to elections ordinances and policies in which the political subdivision has discretion over the application of, and not election administration laws that are governed by state or federal law. Local governments must follow state elections law and have very little discretion regarding voting administration.
- We request the following changes to presuit notice required in Section 8:
    - Removing the 90-day timeline for implementing a remedy, as an implementation timeline should be agreed upon in the remedy. Some remedies, such as redistricting or establishing wards, may take longer than 90 days to complete. This should be clarified so that local

governments have time to work in good faith before triggering legal action. We also request that the provision allowing statutory cities to establish wards (Sec. 49) also allows a city to adopt a ward-based council system by a ballot question put to voters.

- Clarifying that the enactment and implementation of a remedy under this section by a political subdivision is not an admission of a violation under this chapter.
- Establishing that a remedy imposed under this section by a political subdivision shall not be considered legal precedent in other cases brought forward under this chapter.
- Establishing that claims made in the presuit notice process that are resolved by a mutual agreement between parties are considered settled as it relates to potential future litigation.
- Clarifying approval of a remedy under this section by the Office of the Secretary of State or a court is not an indication that a violation under this chapter has occurred.

We oppose any requirement for a political subdivision to pay costs associated with the presuit notice process. As it is aimed at being a non-legal process, fees should not be imposed on a political subdivision working in good faith to remedy the complaint, which at this point in the process has not been tested for legal validity. Local governments are limited in their uses of public taxpayer funds and may be unable to pay for costs directly to residents or organizations without a clear legal directive from court. Not only is it unclear how "reasonable" costs would be determined without a third party, costs imposed at this point in the process would disincentivize the good faith process this section attempts to create. For this process to be a viable option for local governments, costs cannot be required and the above changes regarding the presuit notice must be included.

We appreciate Representative Greenman's ongoing commitment to discussing this proposal with local governments and hope to continue working together to address the concerns raised above.

Sincerely,

Alex Hassel
Intergovernmental Relations Representative
League of Minnesota Cities

Matt Hilgart
Government Relations Manager
Association of Minnesota Counties

Troy Olson
Government Relations Consultant, Ewald Consulting
Minnesota Association of County Officers

March 19, 2024

RE: H4772DE3 – Elections Policy Bill

Dear Chair Freiberg and members of the House Elections Finance and Policy Committee:

On behalf of the Minnesota Association of County Officers (MACO) and the League of Minnesota Cities (LMC), we are writing to you to provide feedback on section 9, page 21.17 – 22.2 of the DE3 amendment to HF4772 (Freiberg).

Though county and city election administrators support convenient poll locations, we have concerns regarding the prescriptive language in the DE3 amendment mandating counties and cities to establish a polling place rather than current permissive language passed by the legislature in 2023 authorizing counties and cities to designate absentee and early voting polling places prior to election day. Cities and counties spend considerable time planning how to efficiently designate and budget polling places to meet voting needs in their communities.

Significant planning and resources are required to establish a temporary polling location with dozens of logistical details to be considered and mitigated to establish a safe, secure, functioning location. We are concerned that the timeline established in the DE3 amendment will not be enough time for elections budgets to be adjusted and proper planning to take place to accommodate such new polling places.

When determining if, where, or when a temporary polling location will be established, election administrators must determine how to best utilize limited resources such as election judges, equipment, supplies, etc. in the most efficient way possible to meet the needs of the entirety of their jurisdiction. By allowing a non-governmental entity to determine city and county election administration requirements and spending, local elections administrators could potentially be forced to divert resources and staff from other elections administrative duties to comply with the request from a college, university, or student organization.

A historic number of changes affecting the administration of Minnesota's elections were approved by the legislature in 2023 including the authority for a city or county to establish temporary polling places. We are appreciative of the legislature granting this authority; however, we would request maintaining this as an option rather than changing it into a mandate before any statewide general election has been held since the authority was granted.

We feel that allowing election administrators the existing discretion and flexibility will allow them to make the best decisions regarding temporary polling places as they relate to their jurisdiction's voting needs. A temporary polling place on a postsecondary institution's campus may be part of the plan for an efficient and effective election, however it is already authorized under current law and should not become mandated if requested by the institution.

Sincerely,

Alex Hassel
Intergovernmental Relations Representative
League of Minnesota Cities

Troy Olsen
Government Relations Consultant, Ewald Consulting
Minnesota Association of County Officers

Chair Mike Freiberg
381 State Office Building
St. Paul, MN 55115

March 19, 2024

RE: HF 4772 Omnibus Elections Policy Bill

Dear Chair Freiberg,

On behalf of the Minnesota School Boards Association (MSBA), it is my pleasure to offer our support of HF 4772, the Omnibus Elections Policy Bill.

Section 42, Lines 33.6-33.22
Thank you for the modification to statue that allows Minnesota school boards to pass a combined polling place resolution only when a change is made. This modification will benefit all 331 Minnesota public school districts that are required by current statute to pass the same consolidated polling place resolution every year, even when no changes have been made.

This revision will create a common standard and bring all polling place regulations into the same configuration. We appreciate your work to support our school boards in efficient and effective school district governance.

Section 1, Lines 1.5-2.13
MSBA supports the changes that modify the requirements of a school board when filling a vacancy. The modifications to statute will help public school districts by preventing costly and labor-intensive special elections from being held in off years after a board member resigns. Because they are outside of general election years, school districts are required to run these elections themselves. School districts do not have any dedicated funding to run elections so they must be paid for with the general fund, taking money out of the classroom.

According to data collected by MSBA, the average cost to a school district for an off year special election is approximately $10,000 per election. Across the state in 2023, that's well over $300,000 lost to pay for special elections which often have very low voter turnout.

MSBA also supports this bill's change in requirements when a school board member resigns less that 90 days prior to the end of the term. This revision states that the board may, but is not required to, fill the vacancy by board appointment. Given the 30-day waiting period that is

required after the resolution to appoint is approved, a board may do all the work of appointing to have a newly appointed board member serve at only one meeting before the end of a term. We value this local control and flexibility.

In closing, MSBA fully supports HF 4772. We thank the Senate Elections Committee for your ongoing commitment to improving school board elections.

Sincerely,
Andrea Cuene
MSBA Government Relations
acuene@mnmsba.org
763-458-1252

MINNESOTA COUNCIL ON FOUNDATIONS

a community of grantmakers

March 19, 2024

Re: Census enumerator access and incarcerated persons in district plans

Dear Elections Finance and Policy Committee,

The Minnesota Council on Foundations is a statewide association of grantmakers focused on ensuring Minnesota has a strong charitable sector and an inclusive democracy where everyone can be seen, counted, and heard. We are committed to strengthening democratic systems and civic participation. As part of this, we support state decisions and investments that will prepare Minnesota for a full 2030 census count and redistricting processes that put people first through fair representation.

The Minnesota Council on Foundations is excited to see the following priorities included in the HF4772 omnibus bill:

1. **Census enumerator access:** Removing date restrictions for enumerator access has many benefits. First, this allows for operational adjustments deemed necessary by the Census Bureau, such as the adjusted timelines for census collection during the COVID-19 pandemic. Secondly, allowing for broader enumerator access related to decennial census activities ensures that the Census Bureau can thoroughly prepare for and evaluate Census enumeration efforts. Removing the time constraints from enumerator access promotes a fuller and more inclusive count of Minnesotans into the future.
2. **Counting incarcerated persons in home districts:** Counting incarcerated persons at their last known address in the census allows for more accurate representation in legislative districting. Counting incarcerated individuals at their home addresses helps empower their home communities and ensures the needs and interests of these communities can effectively be represented. We emphasize the critical need to make all efforts to allow for incarcerated folks to be able to self-report their last residential addresses so that they may be accurately represented in their home district. These efforts promote a more inclusive democracy by ensuring that all residents, including those who are incarcerated, have a voice in shaping the policies and laws that affect their lives.

Thank you to the committee for your leadership in issues of democracy and fair representation and for the opportunity to submit testimony. I am happy to answer any questions or provide further information.

Sincerely,
May Yang
Senior Policy and Partnerships Manager
Minnesota Council on Foundations
myang@mcf.org

March 18, 2024

Chair Mike Freiberg
381 State Office Building
St. Paul, MN 55155

Dear Chair Freiberg and members of the House Elections Finance and Policy Committee,

We Choose Us (WCU) is a coalition of over 40 grassroots organizations, unions and advocacy groups committed to building multiracial democracy in Minnesota. We write to share our support for the HF4772 DE, the House Elections Policy Omnibus Bill, which includes many key provisions that will protect, strengthen, and expand our state's democracy.

Thank you, Chair Freiberg, for your inclusion of the following critical provisions in the House Elections omnibus bill:

- **on-campus polling locations at post-secondary institutions** (HF3447 Pursell), a proposal providing greater ability for college students to vote, reducing key voting barriers many youth face, and ensuring that young Minnesotan voices are heard in our elections;

- the **Minnesota Voting Rights Act** (HF3527 Greenman), landmark legislation that would restore and clarify protections against discrimination for voters of color in Minnesota. The MNVRA is a prime opportunity to build on our state's democracy leadership and stand firmly in support of the right to vote;

- and the **elimination of prison gerrymandering** in our state (HF4043 Agbaje), which counts incarcerated individuals at their place of legal residency rather than their prison location for redistricting purposes. This would ensure fair and accurate representation for all communities, and would especially work against the dilution of political power in communities of color.

We thank Chair Freiberg for his leadership of HF4772 and ask for House Elections Finance and Policy committee members' support and consideration of aforementioned additions into the bill.

Sincerely,

Lilly Sasse, We Choose Us Campaign Director
and We Choose Us Coalition Partners:

100% Campaign	ISAIAH
Asian American Organizing Project	Jewish Community Action

African Career Education and Resources

AFL-CIO

AFSCME Council 5

Ayada Leads

Barbershop and Black Congregation Cooperative

CAIR Minnesota

Citizens United

Clean Elections Minnesota

Clean Water Action

Conservation Minnesota

COPAL

ERA Minnesota

Fe y Justicia

Fair Vote

Grassroots in Action

Healthy Democracy Healthy People

Indivisible

Inquilinxs Unidxs por Justicia

Inter Faculty Organization

Interfaith Power and Light

Land Stewardship Project

League of Women Voters

Main Street Alliance

Minnesota Association of Professional Employees

Minnesota Association of Peacemakers

Minnesota Nurses Association

Minnesota Unitarian Universalist Social Justice Alliance

Minnesota Voice

Minnesota Move to Amend State Network

Muslim Coalition

Native American Community Development Institute

New Justice Project

OutFront Minnesota

Planned Parenthood

Pro-Choice MN

SEIU

TakeAction Minnesota

Ujamaa Place

Unidos

We Win Institute