

March 5, 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 Minnesota Voting Rights Act (“MNVRA” or HF 3527 and SF 3994)

Dear Members of the Elections Finance and Policy Committee:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to convey our strong support for **HF 3527 / SF 3994**, the Minnesota Voting Rights Act (“MNVRA”).

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.

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,

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

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

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_3bcce20-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

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

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 York⁴³ 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

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

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 voluntary 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

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.

* * *

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 thank you for the opportunity to provide this testimony. 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

Michael Pernick

NAACP Legal Defense and Educational Fund, Inc.

40 Rector Street, 5th Fl.

New York, NY 10006

Adam Lioz

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700 14th Street N.W., Ste. 600

Washington, DC 20005

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.



March 5, 2025

Professional Distinction

Personal Dignity

Patient Advocacy

Chair Freiberg
House Elections Finance and Policy
State Office Building
St Paul, MN 55155

Chair Freiberg and Members of the Committee,

The Minnesota Nurses Association (MNA) is a grassroots union representing more than 22,000 registered nurses in Minnesota, Iowa, North Dakota, and Wisconsin. We are a leader in nursing, labor, health care, and social justice communities and a voice for nurses and patients on issues relating to the professional, economic, and general well-being of nurses and in promoting the health and well-being of the public.

MNA writes in support of HF3527, the Minnesota Voting Rights Act providing critical voting protections to voters of color and other minority groups. We believe an inclusive, functioning, multiracial democracy paves the way for sound healthcare and public health policies and decisions. Black voters and other voters of color across the state and country face voter discrimination, intimidation, and suppression at polling locations, and this severely impacts their ability to fully participate in our democracy.

In Minnesota, significant racial disparities exist in voter registration and turnout: white Minnesotans register and turn out to vote at rates that are 6-16% higher than Asian, Hispanic, and Black Minnesotans. While many factors contribute to likelihood to register or to vote, it is essential that voters are protected from discriminatory voting practices or policies that exacerbate these inequities.

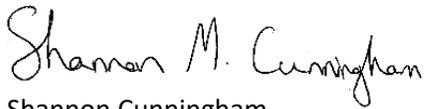
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AFL-CIO

The Minnesota Voting Rights Act would restore and clarify protections against discriminatory voting policies and voter dilution. Protecting the right and freedom to vote should be a top priority for the state, as it is in California, Washington, Oregon, Virginia, and New York. Now is the time for Minnesota to work to remove harmful voting policies and ensure that we continue to be a leader in both democratic and healthcare policies.

MNA strives to uphold and advance excellence, integrity, and autonomy in the practice of nursing – we know that a healthy, inclusive democracy is an integral prerequisite for a healthy society. We strongly support HF3527 and urge members of the House Elections committee to vote in support of this legislation.

A handwritten signature in black ink that reads "Shannon M. Cunningham". The signature is written in a cursive style with a large initial 'S'.

Shannon Cunningham

Director of Governmental and Community Relations

Minnesota Nurses Association

1821 University Ave West, Suite 202
St. Paul, MN 55104

March 4, 2024

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

Hello Chair Freiberg and members of the House Elections Committee,

Asian American Organizing Project (AAOP), connects nonpartisan grassroots organizing efforts within our community and with coalition partners across the Twin Cities, together with community allies, to create a more just and equitable democracy. Our mission at AAOP is to empower young Asian Minnesotans to create systemic change for an equitable, conscious, and just society.

Although Minnesotans are justly proud of our overall “turnout,” Asian voters make up 3.1% of the Minnesota total voting population however we’re only voting at 1.9% meaning that there’s 1.2% of eligible Asian voters that are not voting. Asian voters are disproportionately less likely to register and vote, especially when faced with significant barriers. That is, the legislature did well in 2023 to formalize use of voter information posters and interpreters at the polls, restoring the vote to formerly incarcerated persons, and pre-registering high school students. Those laws need to be buttressed by a law designed to prevent deliberate or inadvertent discriminatory practices and policies. AAOP supports the Minnesota Voting Rights Act, because it explicitly protects our state from discriminating against voters on the basis of race or language minority status, and provides for citizen redress, at a time when some federal election protections seeking to ensure equal access have eroded.

In order to strengthen and continue to protect our democracy, we need to ensure that all voices are heard and all votes are counted. A MN Voting Rights Act will put in place the necessary protections for free, fair and accessible elections for all people in Minnesota, and especially those faced with hardship of pre-existing barriers.

AAOP strongly supports the Minnesota Voting Rights Act and urges members of the House Elections Committee to vote in favor of this critical legislation.

Sincerely,

Linda Lelis-Her
Executive Director
Asian American Organizing Project



March 5, 2024

Chair Mike Freiberg
3221 Minnesota Senate Bldg
St. Paul, MN 55155

Dear Chair Freiberg and Members of the House Elections Committee:

I am writing on behalf of Ayada Leads to express our enthusiastic support for House File 3527, the Minnesota Voter Rights Act (MNVRA). This legislation plays a crucial role in ensuring equitable access to the electoral process for all Minnesotans, particularly immigrant and refugee communities.

The MNVRA provides voters with the necessary tools to challenge discriminatory voting policies, including insufficient language access at polling places. This is a significant step towards addressing the barriers faced by immigrant and refugee communities, whose native languages may not be English. By allowing voters to challenge inadequate language access through legal avenues, the MNVRA empowers these communities to assert their rights and participate fully in our democracy.

The findings of the 2015 Wilder Research Twin Cities study underscore the importance of initiatives like the MNVRA. Policymakers and advocates must actively work to address the barriers to voting and civic engagement faced by immigrant and refugee communities. Voter outreach efforts should prioritize increasing access to alternate-language voter registration forms and reducing barriers to voting, both of which are addressed by the MNVRA.

House File 3527 aligns closely with the goals and values of Ayada Leads. We believe that every eligible voter should have equal access to the electoral process, regardless of their language background or immigration status. By supporting the MNVRA, we demonstrate our commitment to advancing equity, inclusion, and democratic participation in Minnesota.

We urge you to support House File 3527 and work towards its swift passage. Together, we can ensure that all Minnesotans have the opportunity to exercise their fundamental right to vote and contribute to our vibrant democracy.

Thank you for your attention to this important matter.

Sincerely,

Ayada Leads



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 6, 2024

Letter from Campaign Legal Center in Support of HF 3527

I. INTRODUCTION

Campaign Legal Center (“CLC”) is pleased to submit this letter in support of HF 3527, the Minnesota Voting Rights Act (“HF 3527” or the “MNVRA”).

CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on redistricting and voting rights, CLC seeks to ensure that every United States resident receives fair representation at the federal, state, and local levels. 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.

CLC strongly supports HF 3527 because it will allow communities of color across Minnesota to participate equally in the election of their representatives. The focus of this letter will be to highlight the ways that HF 3527 codifies, clarifies, and simplifies federal law to ensure that Minnesota voters and local governments alike have clear and consistent processes for enforcing voting rights and protecting communities of color.

II. 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 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.¹

But a recent groundless ruling by the federal courts has stripped Minnesotans of the ability to protect their right to vote under the federal VRA. In that case, the 8th Circuit held that voters and organizations can no longer bring lawsuits under the federal VRA, leaving Minnesotans without a means to enforce their equal right to vote and participate in the political process.² 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 simplifies and clarifies 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 HF 3527

A. HF 3527 provides a framework for determining denials of the right to vote that provides clarity to courts and voters alike.

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

¹ Michael J. Pitts, *The Voting Rights Act and the Era of Maintenance*, 59 ALA. L. REV. 903, 920-22 (2008).

² *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 from 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 and equitable resolution of potential violations and restoring and codifying the robust protections against voter suppression envisioned by the drafters of the federal VRA.

B. HF 3527 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.”³

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 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

³ Section 2 of the Voting Rights Act, U.S. DEPT’ OF JUSTICE, <https://www.justice.gov/crt/section-2-voting-rights-act>.

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 limit plaintiffs to demonstrating 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. HF 3527 avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.

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. HF 3527 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.”⁴ 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.⁵ 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.⁶ 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 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 strongly urge you to enact HF 3527 and protect voting rights in the state of Minnesota. Thank you.

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

⁵ *Id.*

⁶ *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).

Respectfully submitted,

/s/ Lata Nott

Lata Nott, Senior Legal Counsel
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

Chair Freiberg, members, I'm David Fisher. I teach at the University of Minnesota Law School and am a former Minnesota Commissioner and Metropolitan Council member.

I volunteer as Strategic Advisor representing Clean Elections MN, a nonprofit, non-partisan organization working for an inclusive and healthy democracy in Minnesota.

We urge your support for HF3527, the MN Voting Rights Act.

In our system of governance the right to vote is vital. Thomas Jefferson described it as 'the ark of our safety.' It's from the exercise of this right that all other rights flow. As President Biden is fond of saying: "Without it, nothing is possible, but with it, anything is possible."

The Federal Voting Rights Act has been regarded a crown jewel of the civil rights era, to end practices to suppress the vote, specifically on basis of race.

Our Federal courts have weakened this Law, unleashing torrents of state laws to suppress our vote, subvert our elections; diminish our democracy. And our U.S. Congress shows little backbone to do anything about it.

Well, Federal authorities have spoken – let the states do it. Let states be the beacon of democracy, of fair and free voting rights. Let MINNESOTA do it. This is our opportunity. In this Bill, Minnesota stands against vote suppression; against election subversion; and instead FOR democracy!

Clean Elections MN calls on Minnesota to get done what history will judge: Pass the MN Voting Rights Act, to prevent voter suppression assuring, full access to voting and representative democracy.

Particularly important is Section 4 of the Bill:

- 1) protecting the right of natural-born citizens to cast an effective ballot;
- 2) ensuring this right is not impaired;
- 3) ensuring that each lawful vote is counted;
- 4) making this right accessible to all qualified natural-born citizens; and
- 5) ensuring that protected class members have equitable voting access.

Remedying race discrimination is critical, and so too are the guarantees to each of us of the fundamental right and ability to exercise free speech in support of democracy – as Lincoln put it to assure a government “of the people, by the people, for the people,” This is the promise of democracy.

Will you help us fulfill this promise?

Thank you for your work and your commitment to further strengthen our nation. Please support HF3527, the MN Voting Rights Act.



Healthy Democracy Healthy People Minnesota

March 4, 2024

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

Hello Chair Freiberg and members of the House Elections Committee,

Healthy Democracy Healthy People- Minnesota (HDHP-MN) is a nonpartisan coalition of health sector organizations united by our understanding that a healthy inclusive democracy serves as a foundation for the health and wellbeing of our communities. Studies reveal that communities with high voter participation enjoy greater social cohesion and better health.¹ Recent research has also shown a strong relationship between health outcomes and those policies that strengthen and protect democracy, including provisions in the Minnesota Voting Rights Act.^{2,3,&4}

The federal VRA has also been shown to be associated with decreases in Black infant deaths,⁵ which is of particular note here in Minnesota as we continue to see racial disparities in birth outcomes. These findings further illustrate the importance of protecting the right to vote for health and racial equity. For these reasons, *HDHP- MN* is writing in support of the Minnesota Voting Rights Act, HF3527 because it would restore and clarify protections against discrimination for voters of color in Minnesota in the face of a recent federal 8th Circuit Court decision that weakened those protections in our state. Congress passed the federal Voting Rights Act in 1965 (VRA) to prevent state and local governments from passing laws or policies that discriminate against voters on the basis of race or language minority status. The federal VRA undid many Jim Crow-era discriminatory policies and worked to ensure the right and freedom to vote of every citizen by working to eliminate racial discrimination in voting. This bill builds upon the federal Voting Rights Act (VRA), one of the most successful civil rights measures and a landmark legislation protecting and expanding voting rights.

As health professionals we are committed champions for the conditions that are vital to advancing health and racial equity. Persistent racial inequities in voter participation in Minnesota make the

¹ Nelson C, Sloan J, & Chandra A. (2019). [Examining Civic Engagement Links to Health](#). RAND Social and Economic Well-Being. (California: RAND Corporation: Santa Monica California).

² Tamara Rushovich, Rachel C. Nethery, Ariel White, and Nancy Krieger, 2024: [1965 US Voting Rights Act Impact on Black and Black Versus White Infant Death Rates in Jim Crow States, 1959–1980 and 2017–2021](#) American Journal of Public Health 114, 300_308, <https://doi.org/10.2105/AJPH.2023.307518>

³ Schraufnagel, S. (2023). Voting Restrictions and Public Health: An Analysis of State Variation 1996–2020. *State and Local Government Review*, 0(0). <https://doi.org/10.1177/0160323X231202421>

⁴ Pabayo R, Liu SY, Grinshteyn E, Cook DM, Muennig P. Barriers to Voting and Access to Health Insurance Among US Adults: A Cross-Sectional Study. *Lancet Reg Health Am*. 2021;2:100026. Published 2021 Jul 30. doi:10.1016/j.lana.2021.100026

⁵ Tamara Rushovich, Rachel C. Nethery, Ariel White, and Nancy Krieger, 2024: [1965 US Voting Rights Act Impact on Black and Black Versus White Infant Death Rates in Jim Crow States, 1959–1980 and 2017–2021](#) American Journal of Public Health 114, 300_308, <https://doi.org/10.2105/AJPH.2023.307518>



Healthy Democracy Healthy People Minnesota

protections of the MNVRA even more urgent. In November 2020, 84 percent of eligible white Minnesotans were registered to vote - compared to 79 percent of Asian voters, 75 percent of Hispanic voters, and 71 percent of Black voters (source: [U.S. Census Bureau](#)). An inclusive representative democracy is a key path towards a healthy thriving state.⁶

HDHP-MN stands firm in our assertion that our health is almost completely connected to our ability to influence the policy decisions that create the conditions necessary for health. For a democracy to be truly inclusive and representative, we must pass legislation that protects the right to vote for all Minnesotans. We strongly support HF3527 and urge members of the House Elections Committee to vote in favor of this critical legislation.

Best,
Jeanne Ayers
Healthy Democracy Healthy People– Minnesota
3030 Shorewood Lane
Roseville, MN 55113

⁶ Blakely TA, Kennedy BP, Kawachi I. Socioeconomic inequality in voting participation and self-rated health. *Am J Public Health*. 2001;91(1):99-104. doi:10.2105/ajph.91.1.99



March 5, 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 HF 3527 to establish a Minnesota Voting Rights Act.

Our associations are not opposed to the creation of a state voting rights act that includes a private right of action that provides state remedies beyond how the federal VRA has been construed by federal courts. We do, however, have concerns and questions about the legal standard this bill creates and the onus it puts on local governments to effectively arbitrate complicated legal questions around the Voting Rights Act. We appreciate the generosity Representative Greenman has provided us in meeting on several occasions to hear our concerns and provide additional details of her goals with this legislation. We hope to continue these meetings and explore opportunities to more clearly delineate shared goals without introducing vague and uncertain terminology into Minnesota statute which will necessitate litigation and ultimately impact election administration efficiencies and local government budgets. For today's meeting, we have broken our questions down into various sections of the bill.

Concerns about unfamiliar/new definitions:

We are concerned about putting local governments in a position to interpret definitions that require significant contextualization from case law to effectively understand and potentially limiting a court's ability to make determinations based on decades of case law. Some of the definitions we continue to have questions about include:

- “Disparity” on lines 3.22-3.23: we remain uncertain of how the terms “variance”, “validated methodologies”, and “statistical significance” would be applied in the context of this definition and what entity determines what constitutes as “validated methodologies” and “statistical significance.”
- “Politically cohesive” and “Polarized voting” on lines 4.19-4.20 and 4.24-2.26, respectively: If these terms remain in this legislation, it would be helpful to understand how the court/expert witnesses have interpreted these at a national level and what methodologies have been used, particularly as it relates to nonpartisan local elections. It is not clear how political cohesiveness or polarized voting under these definitions could be determined without party affiliation. If partisanship is not used in making determinations under these definitions, we would also ask for more clarity on what elements would be used in weighing how these terms apply to such cases.

Violations are based on outcomes rather than action:

Both voter suppression and voter dilution seem to establish a violation based on an outcome, not a specific action (or inaction) committed by a local unit of government. This is a type of violation structure that local government administrators are not experienced with and could cause significant confusion if they have to respond to accusations of violating this chapter instead of a court.

Section 5, subd. 1 states: “a political subdivision... must not adopt or enforce any law, ordinance, rule, standard practice, procedure... or take any other action or fail to take action that results in, is likely to result in, or is intended to result in...”

- We continue to have questions and concerns around how this language may impact a local government’s ability to implement voting laws dictated by the state legislature in the event that they create potential violations under this chapter. Cities and counties have very minimal discretion in elections administration.
- The language “take any other action or fail to take action that results in, is likely to result in, or intended to result in” on lines 5.26 and 5.27 seems to create implicit obligations outside of state elections law that local governments must adhere to, without telling them what those obligations are.

Factors for Determining Violation:

This section is prescribing what is to be counted as a factor indicating a violation of the voting rights act, and what should not be considered a factor. This seems to limit the courts’ ability to interpret the significant volume of case law on these legal issues.

- Factor (5) includes the “use of overt or subtle racial appeals in political campaigns” as a potential factor. Could this be used as a factor in a case against a local government who has no affiliation or connection with an individual political candidate?
- Factor (11) would include “responsiveness by local officials to the particularized needs of protected class members or a community of protected class members.” We continue to have questions about how broadly this could be interpreted.

Subd. 5 dictates which factors must be excluded in these cases. This seems to restrict a court’s ability to evaluate the myriad of circumstances that could impact how elections are administered. We continue to have questions on what evidence a local government could reasonably use as a means of defense based on this section.

Presuit Notice:

We appreciate Rep. Greenman’s efforts to try to create a process to settle legitimate voting rights infringements outside a costly and time exhaustive judicial process. That said, we have concerns that the currently framed presuit process in HF 3527 creates financial burdens to local governments for agreeing to respond and act on alleged violations. In addition, questions remain about how much authority cities and counties will have to address alleged violations without judicial or legislative action.

To begin, the presuit 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 a pre-legal 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, but that could set precedent for the voting rights act without ever having been litigated. Moreover, this process does not separate allegations of state policy infractions rather than local election administrator actions.

It is important to note local governments have very little discretion as it relates to voting administration. The Legislature creates election policy that local election administrators administer. If this presuit notice section remains, local governments would want a separation from liability or defense of accusations that are simply based on disagreeable election policy and not on objective actions carried out by local election administrators adhering to state policies.

Lastly, current language that would automatically mandate local governments pay for legal costs associated with a successful mediation of a complaint during the presuit notice process seems to discourage local governments from pursuing this route. A jurisdiction may also not want to engage in these presuit notices if they could cause risks in future litigation, potentially disincentivizing the easy remedy that this bill seeks to find. It should be noted that any remedy implemented at the presuit notice process does not mean a violation of the voting rights act has occurred. At this point in the process, the alleged violation has not been tested by a court against any legal standards, except for the interpretation of a local government administrator, so while small remedies may still be actionable (like hiring more staff to a given elections precinct), large remedies such as redistricting or switching governance systems from an at-large to a ward based council system would likely seem too significant for a local government to take action on solely by a presuit notice and without significant engagement with residents or potentially a directive from a court.

To reiterate, our associations are not opposed to a private right of action under the Voting Rights Act. However, we continue to have concerns around the expansion of the Federal Voting Rights Act under this legislation, prescriptiveness in how the law should be interpreted by courts, and would request further amendments to the presuit notice process to address concerns shared above.

We greatly appreciate Representative Greenman's willingness to meet with local governments to answer questions and discuss our numerous concerns and hope to continue those discussions as the bill advances.

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 4, 2024

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

Dear Chair Freiberg and House Elections Committee Members,

Jewish Community Action (JCA) is the Jewish voice in Minnesota's movement for economic, racial, and social justice. We organize in solidarity with marginalized communities in Minnesota through state and local coalitions, interfaith initiatives, and local neighborhood groups. This work is done in commitment to a shared future, where all voices are heard and respected equally. We believe that our democracy functions at its best when it is expanded to include a diverse set of opinions.

JCA writes in support of HF3527, the Minnesota Voting Rights Act. This bill adds Minnesota to a growing list of states acting to protect the right and freedom to vote for all citizens, especially those facing discriminatory policies and unfair barriers to voting. In 1965, the U.S. Congress passed the Federal Voting Rights Act, a landmark legislation prohibiting racial discrimination in voting. Since then, several court decisions have weakened these protective laws, most notably a ruling by the federal Eighth Circuit Court of Appeals in November 2023 removing the right of voters and their organizations to sue under Section 2 of the federal VRA. This court has jurisdiction over Minnesota, among other states, making the ruling directly and negatively impactful on our voters across the state.

HF3527 safeguards our democracy from barriers such as unfairly drawn districts weakening the Black and Brown vote, insufficient language access for immigrant voters with a native language other than English, and voter intimidation throughout polling locations. The bill addresses vote denial and dilution and allows private citizens and civil rights groups to sue against discriminatory voting policies. By strengthening the freedom to vote, we allow more people to share their ideas for improving their lives and the lives of their loved ones.

At Jewish Community Action, we endeavor to create an inclusive, equitable, multi-racial democracy. The Minnesota Voting Rights Act is an important tool that can get us one step closer by ensuring that all voters, especially Black voters and voters of color, can fully and fairly participate in our elections.

We call upon members of the House Elections Committee to pass this critical legislation.

Beth Gendler
Executive Director, Jewish Community Action



March 4, 2024

To: Chair Mike Freiberg
Cc: House Elections Committee Members
Re: HF3527 Minnesota Voting Rights Act

Hello Chair Freiberg and members of the House Elections Committee,

Minnesota Voice is a member-based coalition of 40+ grassroots organizations working to increase civic engagement and voter participation among Black, Native, Latinx, Asian, and Immigrant voters across the state. We coordinate Minnesota's largest nonpartisan voter registration and turnout programs, train new organizers of color every election, and support more than 20 organizations with data, technology, and programmatic support.

MN Voice writes in support of the Minnesota Voting Rights Act, HF3527. This bill builds upon the federal Voting Rights Act (VRA) of 1965, one of the most successful civil rights measures in history, undoing Jim Crow-era discriminatory policies and ensuring the right and freedom to vote of every citizen. Since then, several restrictive voting laws and court decisions weakening the VRA have been passed. The U.S. Court of Appeals for the Eighth Circuit ruled that private citizens can no longer bring lawsuits against discriminatory voting policies under section two of the VRA. This alarming decision is binding in Minnesota and several neighboring states.

In Minnesota, significant racial inequities exist in both voter registration and voter turnout figures, emphasizing the need and urgency of the protections of the MNVRA. In November 2020, white Minnesotans were registered to vote at a rate 5% higher than Asian voters, 9% higher than Hispanic voters, and 13% higher than Black voters (source: [U.S. Census Bureau](#)). Looking at voter turnout, white Minnesotans turned out to vote at a rate 13-16% higher than Black, Asian, and Hispanic voters.

Our voters, especially our Black, Brown, and Immigrant voters, are at risk of losing critical protections against racial discrimination in voting. This discrimination comes in many forms, including lack of sufficient language access for non-native speaking voters, voter intimidation, and voter suppression. The Minnesota Voting Rights Act would restore and strengthen protections against these exclusionary policies.

Minnesota Voice and its partners prioritize investing in BIPOC community civic engagement and addressing the disparities we have seen within our voting communities. HF3527 both aligns with and advances these priorities, and we urge members of the House Elections Committee to vote in favor of this bill.



March 5, 2024

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

Hello Chair Freiberg and members of the House Elections Committee,

MNIPL, works through faith organizations to improve our individual and coordinated stewardship of our comprehensive environment through practical, legislative and cultural means, uplifting the voices of those in our environmentally vulnerable communities within green zones and tribal territories. In 2023 laws were pushed which formalized the use of voter information posters and interpreters at the polls, restoring the vote to formerly incarcerated persons, and pre-registering high school students. We need to ensure an additional nuanced law is implemented to protect voters from discriminatory practices and policies. MNIPL supports the Minnesota Voting Rights Act, HF3527 because it explicitly protects our state from discriminating against voters on the basis of race or language minority status, and provides for citizen redress.

At MNIPL we work to create solidarity via a celebration of the differences in our material circumstances and backgrounds under the umbrella of a commitment to improving our community out of a responsibility that underlies and is universal. A healthy democracy is like a healthy ecosystem and requires diversity and participation to flourish- improving access and awareness is a great step towards a healthier democratic system.

MNIPL strongly supports HF3527 and urges members of the House Elections Committee to vote in favor of this critical legislation.

Sincerely,
Joshua Lewis Environmental Movement Organizer
MNIPL 4707 E Lake st. Minneapolis, MN 55406
330-217-6717
March 5, 2024



March 4, 2024

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

Hello Chair Freiberg and members of the House Elections Committee,

MUUSJA, the Minnesota Unitarian Universalist Social Justice Alliance, connects the nonpartisan faith-based social and environmental action teams of 25 Unitarian Universalist congregations across Minnesota, together with community allies, to create a more just and loving world. As one part of this work, we join with other nonpartisan faith-based and community groups to encourage civic participation and an accessible, equitable electoral process. We honor and promote voting as the way we all choose people who will decide how to pay for and share whatever we all need to thrive, such as clean air and water, schools and hospitals, roads and bridges, and so forth.

Although Minnesotans are justly proud of our overall “turnout,” Black and Hispanic voters are disproportionately less likely to register and vote. That is The legislature did well in 2023 to formalize use of voter information posters and interpreters at the polls, restoring the vote to formerly incarcerated persons, and pre-registering high school students. Those laws need to be buttressed by a law designed to prevent deliberate or inadvertent discriminatory practices and policies. MUUSJA supports the Minnesota Voting Rights Act, HF3527 because it explicitly protects our state from discriminating against voters on the basis of race or language minority status, and provides for citizen redress, at a time when some federal election protections seeking to ensure equal access have eroded.

Essential principles of our faith include “justice, equity and compassion in human relations,” and “the use of the democratic process within our congregations and in society at large.” Our goal of beloved community depends upon each eligible citizen having equal, unobstructed access to be counted as a voter.

MUUSJA strongly supports HF3527 and urges members of the House Elections Committee to vote in favor of this critical legislation.

Best regards,
Karen Wills, Ph.D., L.P., Democracy Strategist
MUUSJA, 900 Mount Curve Ave, Minneapolis, MN, 55403



March 5, 2024

Chair Mike Freiberg
3221 Minnesota Senate Bldg
St. Paul, MN 55155

Dear Chair Freiberg and Members of the House Elections 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 express our strong support for the Minnesota Voting Rights Act ("MNVRA"/HF 3527). This legislation would restore and clarify protections against discrimination for voters of color in Minnesota in the face of a recent court decision that weakened those protections in our state.

Congress passed the federal Voting Rights Act in 1965 to prevent state and local governments from passing laws or policies that discriminate against voters on the basis of race or language minority status. Section two of the Voting Rights Act allows private citizens to sue in court to challenge discriminatory voting plans or policies. Unfortunately, a series of court decisions has weakened the federal Voting Rights Act in recent decades. In the most recent of those damaging court decisions, the federal Eighth Circuit Court of Appeals - whose jurisdiction includes Minnesota and several neighboring states - ruled in November 2023 that voters and organizations that represent them can no longer sue under Section 2 of the federal VRA.

The MN Voting Rights Act would restore and clarify protections against discrimination for voters of color and those whose first language is not English. The MNVRA would restore the ability of private citizens or civil rights groups to challenge discriminatory voting policies or practices in court, the essential protection that was lost in the recent circuit court decision. The bill also protects against "vote dilution" (when jurisdictions use at-large elections or draw district boundaries in a way that "dilutes" the collective voice of voters of color, preventing them from having an equal opportunity to elect the candidates of their choice). The bill requires good-faith negotiations to give local jurisdictions the opportunity to fix voting discrimination efficiently. And, it instructs state judges to interpret election laws in a pro-voter way whenever reasonably possible.

Persistent racial inequities in voting in Minnesota make the protections of the MNVRA even more urgent. In November 2020, 84 percent of eligible white Minnesotans were registered to vote - compared to 79 percent of Asian voters, 75 percent of Hispanic voters, and 71 percent of Black voters (source: [U.S. Census Bureau](#)). The racial disparities in who turns out to vote are even greater. Seventy-nine percent of eligible white voters turned out to vote in November 2020, compared to 66 percent of Black voters, 64 percent of Asian voters, and 63 percent of Hispanic voters. While many factors contribute to likelihood to register or to vote, it is essential that voters are protected from discriminatory voting practices or policies that exacerbate these inequities.

Minnesota lawmakers took major strides to protect and expand the right to vote in the 2023 session. The MNVRA is an opportunity to build on our state's democracy leadership and to stand firmly against voting discrimination. California, Washington, Oregon, Virginia, and New York, and Connecticut have all passed their own state voting rights acts. It is time for Minnesota - in the wake of the recent circuit court decision - to protect voters of color in our state and to provide all the necessary tools to tackle our state's persistent racial inequities in voting.

We urge your support for the MN Voting Rights Act (HF 3527).

Thank you for your consideration.

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

100% Campaign

Asian American Organizing Project

African Career Education and Resources

AFL-CIO

AFSCME Council 5

Ayada Leads

Barbershop and Black Congregation Cooperative

CAIR Minnesota

Jewish Community Action

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

Clean Elections Minnesota

Clean Water Action

COPAL

ERA Minnesota

Fer y Justicia

Fair Vote

Grassroots in Action

Healthy Democracy Healthy People

Indivisible

Inquilinxs Unidxs por Justicia

Inter Faculty Organization

Interfaith Power and Light

ISAI AH

Minnesota Voice

Minnesota Move to Amend State Network

Muslim Coalition

Native American Community Development Institute

New Justice Project

Planned Parenthood

Pro-Choice MN

SEIU

TakeAction Minnesota

Ujamaa Place

Unidos

We Win Institute

OutFront Minnesota