



WHITE PAPER: THE CONNECTICUT VOTING RIGHTS ACT

March 25, 2021

The Connecticut General Assembly is currently considering the Connecticut Voting Rights Act (the “CTVRA”).¹ If this critical legislation becomes law, Connecticut will become a national leader in protecting the right to vote for communities of color and other voters.

This White Paper proceeds in three parts. *First*, it explains some of the limitations in certain provisions of the federal Voting Rights Act and the important function that state-level voting rights acts can serve to augment that federal legislation to protect voters of color. *Second*, it explains the longstanding and evolving threats to the franchise that Connecticut’s voters of color continue to confront and challenge. *Third*, it explains the provisions in the Connecticut Voting Rights Act and how it can help protect Connecticut’s voters of color and other voters.

I. Limitations in the Federal Voting Rights Act and Why State Voting Rights Acts Serve an Important Function.

The individual and collective provisions of the federal Voting Rights Act of 1965 (“federal VRA”) has been effective at combatting a wide range of barriers and burdens that have excluded voters of color from the political process.² However, in the decades since its passage, federal courts have eliminated or weakened some of the federal VRA’s protections, making it increasingly burdensome for litigants to vindicate their rights under the law. As a result, despite the importance of the federal VRA, voters of color often still lack an equal opportunity to participate in the political process and elect candidates of their choice.

A. Federal courts have eliminated or weakened some protections in the federal VRA.

The federal VRA protects against voting discrimination on the basis of race, color, and language minority status.³ Federal court decisions have eliminated or weakened

¹ See Connecticut General Assembly, *An Act Concerning a State Voting Rights Act*, S.B. No. 820, <https://bit.ly/2PIFrRR> (the “Connecticut Voting Rights Act” or “CTVRA”).

² Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, BRENNAN CENTER FOR JUSTICE (June 30, 2009), <https://bit.ly/3cjDezF>.

³ 52 U.S.C. § 10101.

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some of the protections provided by the federal VRA, leaving communities of color vulnerable to voting discrimination.

Section 2 offers a private right of action—which means that a person is legally entitled to file a lawsuit—against 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.”⁴ Section 2 applies to (i) voting rules that dilute minority voting strength (“vote dilution” claims) or (ii) voting rules that create barriers to the right to vote for voters of color (“vote denial” claims).⁵

With respect to Section 2 vote dilution claims, in 1986 the Supreme Court adopted an intricate test that requires plaintiffs to satisfy three preconditions and prevail under a complex multi-factor analysis.⁶ With respect to Section 2 vote denial claims, numerous federal courts have entertained such claims regarding a broad range of practices,⁷ and scholars contend that circuit and district courts across the country

⁴ 52 U.S.C. § 10301.

⁵ See LDF, *A Primer on Sections 2 and 3(c) of the Voting Rights Act*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, 1 (2021), <https://bit.ly/39csLUt>.

⁶ *Thornburg v. Gingles*, 478 U.S. 30, 46–51 (1986). To satisfy the *Gingles* preconditions, *first*, a minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district.” *Id.* at 50. *Second*, a minority group must be “politically cohesive.” *Id.* at 51. *Third*, a minority group must demonstrate “that the white majority votes sufficiently as a bloc” to allow it “usually to defeat the minority’s preferred candidate.” *Id.* Once the preconditions are met, Section 2 applies only if, “under the totality of the circumstances,” the challenged law “result[s] in unequal access to the electoral process.” *Id.* at 46.

⁷ Practices that have been assessed under the vote denial doctrine include, among other things, voter ID laws, *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc); *N. Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); inequalities in access to voter registration, *League of Women Voters of N.C. v. North Carolina* (“LWV”), 769 F.3d 224 (4th Cir. 2014); *Miss. State Chapter, Operation PUSH, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991); changes to early voting and polling locations, *Allen v. Waller Cty.*, 472 F. Supp. 3d 351 (S.D. Tex. 2020); *Sanchez v. Cegavske*, 214 F. Supp. 3d 961, 973 (D. Nev. 2016); *Spirit Lake Tribe v. Benson Cty.*, No. 2:10-CV-095, 2010 WL 4226614 (D.N.D. Oct. 21, 2010); voter purges, *Toney v. White*, 488 F.2d 310 (5th Cir. 1973); *Allen v. City of Evergreen*, No. 13-0107, 2014 WL 12607819 (S.D. Ala. Jan. 13, 2014); property qualifications, *Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586 (9th Cir. 1997); *Murray v. Kaple*, 66 F. Supp. 2d 745 (D.S.C. 1999); English-literacy requirements, *P.R. Org. for Political Action v. Kusper*, 490 F.2d 575 (7th Cir. 1973); *United States v. Berks Cty.*, 277 F. Supp. 2d 570 (E.D. Pa. 2003); *Hernandez v. Woodard*, 714 F. Supp. 963 (N.D. Ill. 1989); notary requirements, *People First of Ala. v. Merrill*, No. 2:20-cv-00619-AKK, 2020 WL 5814455 (N.D. Ala. Sept. 30, 2020); *Goodloe v. Madison Cty. Bd. of Elect. Comm’rs*, 610 F. Supp. 240 (S.D. Miss. 1985); practices related to election workers, *United States v. Brown*, 561 F.3d 420 (5th Cir. 2009); *Coal. for Educ. in Dist. One v. Bd. of Elections*, 495 F.2d 1090 (2d Cir. 1974); *Harris*

have begun to coalesce on a two-part framework for adjudicating such claims.⁸ However, the Supreme Court is currently considering for the first time the standard for proving denial claims under Section 2.⁹

For nearly 50 years, Section 5 of the federal VRA, the core provision of this legislation, protected millions of voters of color from racial discrimination in voting, by requiring certain states and localities to obtain approval from the federal government *before* implementing a voting change.¹⁰ In *Shelby County, Alabama v. Holder*, the Supreme Court rendered Section 5 inoperable by striking down Section 4(b) of the VRA, which identified the places in our country where Section 5 applied.¹¹ The *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b) (“covered jurisdictions”).¹² In 2021 alone, state lawmakers have carried over, prefiled, or introduced 253 bills with provisions that restrict voting access in 43 states.¹³ The *Shelby County* decision may also have profound

v. Siegelman, 695 F. Supp. 517 (M.D. Ala. 1988); and proof-of-citizenship requirements, *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2010).

⁸ In addition to the complex multi-factor analysis used in vote dilution claims, plaintiffs are generally required to demonstrate (1) the challenged practice “impose[s] a discriminatory burden on members of a protected class, meaning that members of the protected class ‘have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice’”; and (2) “burden ‘must in part be caused by or linked to ‘social and historical conditions’ that have or currently produce discrimination against members of the protected class.” See LDF, *supra* note 5; see also, e.g., Pamela S. Karlan, *Turnout, Tenuousness, and Getting Results in Section 2 Vote Denial Claims*, 77 OHIO ST. L.J. 763 (2016), <https://tinyurl.com/qo72gkf>; Dale E. Ho, *Building an Umbrella in a Rainstorm: The New Vote Denial Litigation Since Shelby County*, Yale L.J. Forum (Feb. 2018), <https://tinyurl.com/vxln2je>; Janai S. Nelson, *The Causal Context of Disparate Vote Denial*, 54 B.C. L. Rev. 579 (2013), available at: <https://tinyurl.com/y35xlcd>.

⁹ See *Brnovich v. Democratic National Committee*, No. 19-1257 (S. Ct. argued Mar. 2, 2021).

¹⁰ 52 U.S.C. § 10304.

¹¹ See *Shelby Cty v. Holder*, 570 U.S. 529, 557 (2013).

¹² See *LDF Testifies Before Congress on Voter Suppression Crisis Post Shelby*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND (June 25, 2019), <https://bit.ly/2NVvkDe>; see also LDF, *supra* note 5.

¹³ *State Voting Bills Tracker 2021*, BRENNAN CENTER FOR JUSTICE (Feb. 24, 2021) <https://bit.ly/3tK7rOa>.

ramifications for redistricting, because for the first time in five decades of map drawing, people of color in covered jurisdictions will not be protected by Section 5.¹⁴

B. Litigation under Section 2 of the federal VRA is complex, costly, and time intensive.

Following the *Shelby County* decision, communities of color continue to rely upon Section 2—another key provision of the VRA—to ensure that they can participate equally in the political process and elect their preferred candidates. But Section 2 claims continue to impose a heavy burden on plaintiffs, and as a result, some potential Section 2 violations go unnoticed and unaddressed.¹⁵ Courts have recognized that Section 2 litigation is an extremely complex area of law,¹⁶ and there is a dearth of lawyers who have experience litigating Section 2 claims.¹⁷ Section 2 lawsuits are labor intensive and generally require multiple expert witnesses for both plaintiffs and defendants.¹⁸ As a result of these costs, plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 litigations.¹⁹ Individual plaintiffs, even when supported by civil rights organizations, lack the resources and expertise to effectively prosecute Section 2 claims.²⁰ Due to these challenges, some

¹⁴ Michael C. Li, *The Redistricting Landscape 2021–22* at 11 (BRENNAN CENTER FOR JUSTICE, Feb. 11, 2021), <https://bit.ly/2P6bUMf>.

¹⁵ LDF, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation 2* (Feb. 2021) <https://bit.ly/2QCUvvh> (citing Br. of Joaquin Avila, et al. as *Amici Curiae* in Supp. of Resp'ts at 16, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

¹⁶ *Id.* (citing *Johnson v. Hamrick*, 196 F.3d 1216, 1223 (11th Cir. 1999) (“the resolution of a voting dilution claim requires close analysis of unusually complex factual patterns”); *Williams v. Bd. of Comm'rs of McIntosh Cnty.*, 938 F. Supp. 852, 858 (S.D. Ga. 1996); *Project Vote v. Blackwell*, 1:06-CV- 1628, 2009 WL 917737, *10 (N.D. Ohio Mar. 31, 2009) (calling voting rights “an area of law that [is] anything but simple”)).

¹⁷ *Id.* (citing Br. of Joaquin Avila, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)).

¹⁸ *Id.* (citing Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, YAKIMA HERALD (Aug. 10, 2014) <https://bit.ly/3ckou3C>).

¹⁹ LDF, *supra* note 15, at 3 (citing Br. of Joaquin Avila, *Shelby Cnty., Ala. v. Holder*, No. 12-96 (U.S. Feb. 1, 2013)); *see also* *Shelby Cnty.*, 570 U.S. at 572 (Ginsburg, J., concurring) (stating that Section 2 “litigation places a heavy financial burden on minority voters”).

²⁰ *Voting Rights and Election Administration in the Dakotas: Hearing Before the Subcomm. on Elections*, 116th Cong. 64 (2019) (testimony of Jacqueline De León, staff attorney at the Native American Rights Fund) (testifying that Section 2 litigation “is prohibitively expensive for a small organization like NARF to reach every single instance of discrimination that is happening across the country”).

potential Section 2 violations go unnoticed and are never resolved or litigated in court.²¹

Section 2 claims are also expensive for jurisdictions to defend, regularly costing states and localities considerable amounts of taxpayer money. Bridgeport, Connecticut bore this burden in 1994 when Black and Latino residents challenged Bridgeport's redistricting plan under Section 2.²² As part of a settlement agreement, Bridgeport agreed to pay plaintiffs \$175,000 for legal expenses and court costs.²³ More recently, in New York State, East Ramapo Central School District paid its lawyers in excess of \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch, and have been ordered to pay over \$4 million in plaintiffs' attorneys' fees and costs as well.²⁴ States can amass even more exorbitant costs. In *Veasey v. Perry*, which LDF litigated alongside other civil rights groups and the U.S. Department of Justice (DOJ), the district court ordered Texas to pay more than \$6.7 million in the (non-DOJ) plaintiffs' documented costs.²⁵

Litigation under Section 2 also cannot keep up with the urgency of the political process. Because elections are frequent, election-based harms take effect almost immediately after rules are changed. However, on average, Section 2 cases can last two to five years, and unlawful elections often occur before a case is resolved.²⁶ For

²¹ *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hearing Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Testimony of Professor Justin Levitt) (explaining that, without preclearance, it is “difficult to learn about and draw appropriate attention to discriminatory policies, so that the few entities with sufficient resources and expertise know where to litigate in the first place.”).

²² *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, No. CIV. 3:93-1476(PCD), 1993 WL 742750, at *6 (D. Conn. Oct. 27, 1993).

²³ Edmund Mahoney, *Bridgeport's Redistricting Suit Settled*, HARTFORD COURANT, Mar. 10, 1995, <https://bit.ly/3smiHzM>.

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://bit.ly/39dKvij>; Report and Recommendation, *NAACP, Spring Valley Branch v. East Ramapo Central School Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

²⁵ Order on Motions for Attorney's Fees, *Veasey v. Abbott*, No. 2:13-00193 (S.D. Tex. May 27, 2020); see also Spencer Mestel, *Revealed: US spends millions of taxpayer dollars on ineffective voting restrictions*, THE GUARDIAN, July 22, 2020, <https://bit.ly/3rjJUSz>.

²⁶ *Shelby*, 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.”).

example, voters of color in Bridgeport, Connecticut experienced this firsthand in 1993 when a federal court held that the city’s redistricting plan violated the Voting Rights Act but still permitted the city council elections to proceed under the discriminatory plan that diluted the strength of Black and Latino votes.²⁷ New lawful districts were not drawn until the following year when the city agreed to adopt a map that added three additional districts in which voters of color formed the majority – but council members who were elected under the unlawful and racially discriminatory plan stayed in power for two years before voters had an opportunity to elect candidates under a lawful map.²⁸

C. State voting rights acts provide necessary tools to augment the federal VRA.

Given the limitations and challenges of the federal VRA, several states have taken important steps to fill in the gaps by enacting state-level voting rights acts. The California Voting Rights Act (“CVRA”), adopted in 2001, simplifies the vote dilution causes of action for claims against local governments that use at-large elections by prohibiting any at-large election structure “that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.”²⁹ Unlike the federal VRA, the CVRA does not require plaintiffs to prove that the minority group at issue is sufficiently large and compact to constitute a majority in a potential district.³⁰

In addition to California, the State of Washington enacted its own state-level VRA in 2018, which is modeled on the CVRA.³¹ The following year, the State of Oregon enacted a state-level voting rights act that applies just to school district elections (as

²⁷ *Bridgeport Coal. For Fair Representation v. City of Bridgeport*, No. CIV. 3:93-1476(PCD), 1993 WL 742750, at *6 (D. Conn. Oct. 27, 1993).

²⁸ Mahoney, *supra* note 23.

²⁹ CAL. ELEC. CODE, California Voting Rights Act of 2001, § 14027 (2001).

³⁰ *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986); see also CAL. ELEC. CODE § 14028(c) (2001) (“The fact that members of a protected class are not geographically compact or concentrated may not preclude a finding of racially polarized voting, or a violation of Section 14027.”).

³¹ Wash. Rev. Code Ann. § 29A.92.900 et seq.; see also ACLU Washington Voting Rights FAQ, <https://bit.ly/31ipxun>.

compared to the California and Washington Acts, which apply to all local governments).³²

This year, the Virginia General Assembly passed the Voting Rights Act of Virginia, which is expected to be signed by the governor.³³ The Voting Rights Act of Virginia would enact, among other things: (1) new private rights action against vote denial and vote dilution (applying to both dilutive at-large and district-based elections); (2) broader language assistance requirements than the federal VRA; and (3) pre-litigation mechanisms mandating public input before municipalities can modify election rules, a notice tool lost with the *Shelby County* decision.³⁴

The New York State legislature is currently considering the New York Voting Rights Act, or the John R. Lewis Voting Rights Act Of New York, which would implement a broad set of reforms to protect New York’s voters of color, including, among other things: (1) new private rights of action against voter suppression and vote dilution (including both dilutive at-large and district-based elections); (2) preclearance provisions, under which covered jurisdictions will be required to submit certain election law changes to the New York Attorney General or a court before they can be implemented; (3) broader language assistance requirements than the federal VRA; (4) a statewide database of information on elections to improve transparency and assist election administrators; (5) a canon of judicial construction of election laws in factor of voter enfranchisement; and (6) new private right of action for voter intimidation, deception, and obstruction.³⁵

II. Voters of Color in Connecticut Face Longstanding and Evolving Threats.

Connecticut is no exception to our country’s history of racial discrimination in voting. Indeed, Connecticut has severely restrictive voting laws—which disproportionately affect voters of color—leading the Center for Public Integrity to recently observe that

³² Ore. Rev. Stat. § 255.400 et seq.

³³ Ben Paviour, *Virginia Is Poised To Approve Its Own Voting Rights Act*, NPR, Feb. 26, 2021, <https://n.pr/39dqw3i>.

³⁴ Virginia House Bill 1890 (2021 Session), <https://bit.ly/39dpyEt>.

³⁵ See *John R Lewis Voting Rights Act of New York*, Senate Bill S1046 (2021-2022 Legislative Session), <https://bit.ly/3cck3Ws>.

“in Connecticut, voters face some of the biggest obstacles outside of the south.”³⁶ The CTVRA will help confront these barriers to and burdens on effective political participation.

A. Connecticut’s voters of color have endured a long history of voter suppression.

The systematic suppression of voters of color was not confined to the Jim Crow South. Prior to the passage of the 15th Amendment to the U.S. Constitution, the people of Connecticut twice voted down proposed amendments to the state constitution to strike the word “white” from qualifications of electors.³⁷ Moreover, Connecticut was the first state in the country to enact a literacy test as a requirement for voting, and was one only twelve states in which literacy tests were still in use in the 1950s.³⁸ While nominally applying to everyone, literacy tests are widely regarded as racist barriers to voting, and Connecticut election officials administered them disproportionately against Black voters.³⁹

B. Connecticut’s restrictive election rules continue to suppress minority turnout today.

Connecticut has some of the most restrictive voting laws in the country in at least three ways. *First*, the Connecticut Constitution prohibits early voting,⁴⁰ which makes

³⁶ Matt DeRienzo, *In Connecticut, Voters Face Some of the Biggest Obstacles Outside the South*, CENTER FOR PUBLIC INTEGRITY, Oct. 7, 2020, <https://bit.ly/3faZWvs>.

³⁷ Rebecca Furer, *Who Gets to Vote? History of Voting Rights in Connecticut and the United States*, CONNECTICUT HUMANITIES, <https://bit.ly/31fuBQ7>.

³⁸ Steve Thornton, *Literacy Tests and the Right to Vote*, CONNECTICUT HUMANITIES, Nov. 2, 2020, <https://bit.ly/39ibrxE>.

³⁹ *See id.*

⁴⁰ CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, *HISTORY AND CONSTITUTIONALITY OF EARLY VOTING IN CONNECTICUT*, 2004-R-0906 (Dec. 3, 2004), <https://bit.ly/2QEnIG9>.

Connecticut one of only a few states in the country that still bar early voting.⁴¹ These restrictions disproportionately harm voters of color.⁴²

Second, the Connecticut Constitution imposes rigid limits on absentee voting by prohibiting no-excuse absentee voting or the counting of ballots that arrive after Election Day.⁴³ Although Connecticut passed special legislation that allowed every eligible voter to vote absentee in the November 2020 election, this change was temporary and stemmed from special concerns over the coronavirus pandemic.⁴⁴ Advocates have been working for decades to amend the Connecticut Constitution to expand the state's early and absentee voting limitations, but these efforts have been unsuccessful thus far and Connecticut still maintains its restrictive absentee voting policies.⁴⁵

Third, Connecticut suffers from a lack of uniformity in election administration, which often results in practices that further suppresses minority participation.⁴⁶ For example, this year, the town of Vernon initially refused delivery of its ballot drop box,⁴⁷ and another town placed its drop box indoors, contrary to coronavirus safety guidelines.⁴⁸ Inconsistent election practices in the 2016 and 2018 elections resulted

⁴¹ *Preparing Your State for an Election Under Pandemic Conditions*, BRENNAN CENTER FOR JUSTICE (Feb. 1, 2021), <https://bit.ly/2NOhZML>.

⁴² Studies show that Black voters are more likely to vote early than non-Black voters. Sarah Smith, *Which Voters Show Up When States Allow Early Voting?*, PROPUBLICA, Sept. 22, 2016, <https://bit.ly/3vWR6rf>.

⁴³ CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, *supra* note 40.

⁴⁴ *Faye v. Merrill*, No. SC20477 (Conn. S. Ct.) (determining that the coronavirus pandemic constituted a permissible “excuse” under the Connecticut constitution). In 2020, the ACLU challenged the state's absentee voting rules for the November elections under the Equal Protection Clause and federal Voting Rights Act. Complaint, *Connecticut State Conference of NAACP Branches v. Merrill*, Docket No. 3:20-00909-JBA (D. Conn. Jul 02, 2020).

⁴⁵ DeRienzo, *supra* note 36.

⁴⁶ Connecticut does not have county or regional governments, so its 169 towns and cities administer elections independent of one another. This system can result in irregularities. See DeRienzo, *supra* note 36.

⁴⁷ Anthony Branciforte, *Local Officials Refuse to Use Merrill's Absentee Ballot Box*, JOURNAL INQUIRER, July 22, 2020, <https://bit.ly/3tV69Qw>.

⁴⁸ DeRienzo, *supra* note 36.

in long lines in the state's largest communities of color, causing voters to go home without casting their ballots.⁴⁹

C. Connecticut's towns and cities are susceptible to racial vote dilution.

Connecticut has been home to the investigation and successful prosecution of racial vote dilution. In 1994, Black and Latino voters in Bridgeport brought Section 2 vote dilution claims against the city council's district map.⁵⁰ A federal court held that the ability of minority voters in Bridgeport to elect their chosen representatives was inferior to that of white voters, leading to a settlement agreement in which Bridgeport agreed to redraw its council districts to ensure that the city's Black and Latino voters would have an opportunity to elect candidates of their choice.⁵¹

Moreover, Connecticut may be home to numerous municipalities that impose at-large election structures or district maps that dilute the strength of voters of color, but—for the reasons explained above—these problematic structures or maps would only be addressed after a state VRA is enacted that provides voters of color with necessary tools to investigate and litigate these potential violations.

The lack of representation of minority officials in the Connecticut General Assembly further raises red flags of voting discrimination against Connecticut's communities of color. The Connecticut State Senate consists of 6% Latino and 9% Black members, which substantially lags Connecticut's population, which is 17% Latino and 12% Black.⁵² The National Conference of State Legislatures found that the percentage of non-Hispanic white lawmakers *increased* from 74% to 84% from 2015 to 2020, yet only 66% of Connecticut's population is non-Hispanic white.⁵³ This data reveals a concerning underrepresentation of communities of color.

⁴⁹ DeRienzo, *supra* note 36.

⁵⁰ *Bridgeport Coal.*, No. CIV. 3:93-1476(PCD), 1993 WL 742750, at *1–2.

⁵¹ Mahoney, *supra* note 23.

⁵² Valerie Horsley & Nija Phelps, *Shattering the Remaining Glass Ceilings in Connecticut*, CT MIRROR, Nov. 17, 2020, <https://bit.ly/3vWhKk3>.

⁵³ *State Legislator Demographics*, National Conference of State Legislators (Dec. 1, 2020), <https://bit.ly/31fyDIn>; see also Kristina Vakhman, *Bridgeport's Redistricting Suit Settled*, HARTFORD COURANT, Oct. 16, 2020, <https://bit.ly/3smrCRN> (providing data as-of 2019).

D. Many of Connecticut’s language minority voters lack sufficient assistance.

Connecticut currently has a significant Latino population and the highest concentration of Puerto Rican people of any state.⁵⁴ However, under the language assistance provisions in the federal Voting Rights Act, only ten Connecticut municipalities are currently required to provide language assistance to voters.⁵⁵ These thresholds have created obstacles for some of Connecticut’s language minority voters. For instance, Danbury does not currently provide language assistance, even though 30% of people in Danbury are Latino, and Danbury officials have faced allegations of voter suppression against language minority voters.⁵⁶

E. Connecticut voters are exposed to intimidation.

Recent years have witnessed a re-emergence of voter intimidation across the country, and Connecticut is no exception. In October 2020, Secretary of State Denise Merrill, Attorney General William Tong, and the Chief State’s Attorney Richard J. Colangelo, Jr. issued a memo, in response to events in Connecticut and nationally, warning local election officials to be vigilant against voter intimidation.⁵⁷ Moreover, in 2019, it was widely reported that voters in Bridgeport were pressured into voting for a particular candidate, prompting an investigation from the State Elections Enforcement Commission.⁵⁸ Although voter intimidation is a crime in Connecticut, state law does

⁵⁴ Michael Lee-Murphy, *Puerto Rico and Connecticut: Linked by Struggle*, CONNECTICUT MAGAZINE, Dec. 4, 2017, <https://bit.ly/2PLSqDg>.

⁵⁵ Section 203 of the Voting Rights Act, UNITED STATES DEPT. OF JUSTICE, <https://bit.ly/3fguQmf>.

⁵⁶ Census Quick Facts, Danbury City, Connecticut, UNITED STATES CENSUS BUREAU, <https://bit.ly/3vWA0tE>; Ingrid Alvarez-DiMarzo, *Testimony Before the Nat. Commission on Voting Rights*, (April 2014) <https://bit.ly/39dQK5J>.

⁵⁷ See Press Release, Secretary of the State Merrill, Attorney General Tong, Chief State’s Attorney Colangelo Outline Protections Against Voter Intimidation, Reaffirm Commitment to Ensuring Every Connecticut Voter is Able to Safely and Conveniently Cast Their Ballot (Oct. 15, 2020), <https://bit.ly/3f9Awyj>.

⁵⁸ See Bill Cummings & Ken Dixon, *Bridgeport Absentee Voting Rife With Irregularities, Hearst CT Probe Reveals*, CT INSIDER, Sep. 19, 2020; <https://bit.ly/39cCp9S>; *6 Things to Know About Hearst CT’s Absentee Ballot Probe*, CT POST, Sep. 21, 2019, <https://bit.ly/3sxfmyh>; Ignacio Laguarda & Ken Dixon, *Elections Commission to Probe Bridgeport Absentee Ballot Fraud*, CT INSIDER, Sep. 20, 2019, <https://bit.ly/39aP6BO>.

not currently afford victims of voter intimidation a private right of action to enable them to vindicate their rights, unlike the federal VRA.

III. A Connecticut Voting Rights Act Will Provide Tools to Efficiently Root Out Racial Discrimination in Voting.

Connecticut has an opportunity to safeguard the franchise and protect its voters of color, and all voters, by enacting the CTVRA.⁵⁹ The CTVRA presents an important opportunity for Connecticut to build on the success of state VRAs in California, Washington, and Oregon, and emulate current efforts in New York and Virginia, by establishing comprehensive state-level protections against racial discrimination in voting.

The current draft of the bill includes five main provisions: 1) new private right of action against voter suppression and vote dilution (including both at-large and district-based elections); (2) preclearance provisions, under which covered jurisdictions will be required to submit certain election law changes to the Connecticut Attorney General or a court before they can be implemented; (3) broader language assistance requirements than the federal VRA; (4) a statewide database of information on elections to improve transparency and assist election administrators; and (5) a new private right of action for voter intimidation, deception, and obstruction.⁶⁰

A. Private rights of action against voter suppression and vote dilution.

The CTVRA provides voters of color, as well as private organizations that represent or serve voters of color, with a private right of action against municipalities that adopt policies or practices that suppress minority votes or dilute minority voting strength.

Voter suppression. The CTVRA provides an efficient and predictable framework for prosecuting voter suppression claims. The CTVRA allows voters of color to address practices that suppress minority turnout, including, among other things, inconvenient or insufficient polling locations; wrongful voter purges; lack of

⁵⁹ The Connecticut Voting Rights Act, or S.B. 820, is currently pending before the Joint Committee on Government Administration and Elections in the Connecticut General Assembly.

⁶⁰ See Connecticut General Assembly, *An Act Concerning a State Voting Rights Act*, S.B. No. 820, <https://bit.ly/2PIFrRR> (the “Connecticut Voting Rights Act” or “CTVRA”).

availability of drop boxes; or improper election administration decisions that lead to longer lines.⁶¹ These provisions are especially important in Connecticut, where voters of color have routinely been affected by long lines at polling places.⁶²

Vote dilution. The CTVRA provides an effective means of prosecuting racial vote dilution claims. Modeled off the success of the California Voting Rights Act, the CTVRA will create a clear and straightforward framework for contesting at-large municipal elections that dilute minority voting strength.⁶³ The CTVRA also provides a clear framework for contesting district-based and alternative methods of election that dilute minority voting strength.⁶⁴ The CTVRA will make this type of litigation less time-intensive and less costly for all parties as compared to the federal VRA.

Notification and safe harbor. The CTVRA contains important safe harbor provisions that provide protection for municipalities seeking to resolve potential violations. Prospective plaintiffs are required to notify municipalities in writing of any alleged violation *before* commencing any action in court. Municipalities are then afforded a “safe harbor” period during which it may take steps to cure the alleged violation without exposure to litigation. These provisions incentivize municipalities to resolve CTVRA violations outside of court.⁶⁵ Indeed, in California, the notification and safe harbor procedure has proven highly successful at accomplishing precisely this goal – one study identified 140 California jurisdictions that voluntarily resolved potential voting rights violations after the California Voting Rights Act was enacted.⁶⁶

B. Preclearance.

The CTVRA establishes a preclearance program that requires certain municipalities with a history of civil rights abuses or other indicators of historical racial discrimination to obtain approval from the Attorney General or a state court before

⁶¹ *Id.* at § 2(a).

⁶² DeRienzo, *supra* note 36.

⁶³ *Id.* at § 2(b).

⁶⁴ *Id.*

⁶⁵ *Id.* at § 2(g).

⁶⁶ Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, VOTING RIGHTS BARRIERS & DISCRIMINATION IN TWENTY-FIRST CENTURY CALIFORNIA: 2000- 2013, 7 (2014), <https://bit.ly/3chJRlO>.

making changes to its election rules or practices. The CTVRA requires these municipalities to demonstrate that changes will not diminish the ability of minority groups to participate in the political process before they can be implemented.⁶⁷ Unlike the federal VRA, which required covered jurisdictions to obtain preclearance for *all* voting-related changes, the CTVRA only requires preclearance for an enumerated set of changes.⁶⁸ While preclearance would impose a small compliance requirement on covered municipalities, it would save covered municipalities significant time and money by identifying discriminatory policies before they are enacted, thereby avoiding subsequent litigation.

C. Language assistance requirements.

The CTVRA enhances the provision of language assistance to better enfranchise language-minority voters. Currently only ten municipalities in Connecticut meet the criteria for language assistance under the federal VRA.⁶⁹ The CTVRA lowers the statutory threshold to cover a broader set of municipalities.⁷⁰

D. Statewide database of election data.

The CTVRA establishes a statewide database containing election and demographic information to be available for election administration and voting rights enforcement.⁷¹ This central repository of election data will encourage the state and municipalities to enact evidence-backed policies and will assist election officials in evaluating the extent to which current practices favor expansive access to the franchise.⁷² The database should be publicly available to improve transparency and allow voters to detect inequitable policies and racial discrimination.

⁶⁷ CTVRA § 5.

⁶⁸ CTVRA § 6.

⁶⁹ 52 U.S.C. § 10301. A political subdivision is covered if more than 10,000 or more than 5% of its total voting age citizens are members of a single language minority group and have limited English proficiency. *See also* Alvarez-DiMarzo, *supra* note 56.

⁷⁰ CTVRA § 4. A Connecticut municipality is covered if more than 4,000 or more than 2% of its total voting age citizens are members of a single language minority group and have limited English proficiency.

⁷¹ CTVRA § 3.

⁷² *Id.*

E. Private rights of action against voter intimidation, deception, or obstruction.

The CTVRA provides Connecticut voters with a private right of action against voter intimidation, deception, or obstruction. Voter intimidation is re-emerging across the country and in Connecticut.⁷³ Black voters and other voters of color are particularly vulnerable and bore the brunt of voter intimidation in the 2020 election cycle.⁷⁴ The CTVRA will provide voters with tools to protect themselves against these critical and growing threats.

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If you have questions or need further information, please contact LDF Redistricting Counsel, Michael Pernick, at mpernick@naacpldf.org.

Since its founding in 1940, NAACP Legal Defense and Educational Fund, Inc. (“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 voter 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.

⁷³ Briana Stewart, *How to Spot Voter Intimidation and What to Do*, ABC NEWS, Oct. 27, 2020, <https://abcn.ws/3vWoC0P>.

⁷⁴ Press Statement, NAACP Legal Defense Fund, *LDF Releases Preview of Democracy Defended Report Detailing Voter Suppression and Intimidation in 2020 General Election* (March 6, 2021), <https://bit.ly/3cfRwkK>.