

**Testimony of
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On Behalf of the New York Civil Liberties Union**

**Before the New York State Senate Elections Committee
March 3, 2020**

Thank you, Chair Myrie, and members of the State Senate Elections Committee, for the opportunity to testify today regarding the New York Voting Rights Act (“NYVRA”). My name is Michael Pernick. I am a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison LLP in New York. I am appearing today on behalf of the New York Civil Liberties Union.

My legal practice includes representing parties in voting rights and election law cases, including under the federal Voting Rights Act, in New York State and across the country. I am a co-author of the Modern Election Law treatise, serve as a senior fellow on the Millennial Policy Initiative Commission on Democracy and Voting Rights, and serve as a member of the Nassau County Board of Ethics.

My testimony will focus on the voter suppression and vote dilution rights of action established in Section 17-206 of the NYVRA, and in particular how those rights of action will operate in practice for litigants.

The voter suppression right of action (Section 17-206(1)) addresses voting practices by political subdivisions that deny or abridge the right of racial or ethnic minority groups to vote. For example, this provision could be used to prevent a county Board of Elections from placing poll sites in white communities while failing to place poll sites in communities of color. Or, it could be used to prevent a county Board of Elections from engaging in purges of the voter rolls in a manner that disproportionately affects voters of color.

The vote dilution right of action (Section 17-206(2)) addresses methods of election that dilute the votes of racial or ethnic minority groups. For example, this provision could be used to challenge a municipal legislative map that cracks a large minority community into four different districts, preventing the minority community from electing a candidate of their choice. Or, it could be used to challenge an at-large election structure in a municipality containing a significant minority community that has gone unrepresented because it is consistently outvoted by the white majority.

Although claims like these can be brought under Section 2 of the federal Voting Rights Act, such litigation is extremely burdensome for all parties. The federal Voting Rights Act requires plaintiffs to satisfy a complex patchwork of elements, which frequently require parties to retain large teams of specialized lawyers, as well as expensive expert witnesses. The complexity of the federal cases interpreting Section 2 of the federal Voting Rights Act makes it extremely difficult—and costly—for parties to litigate these claims.

Nevertheless, many municipalities across New York State have been sued under Section 2 of the federal Voting Rights Act, including counties such as Albany, Suffolk, Niagara, and Orange;

towns such as Babylon, Islip, and Hempstead; cities such as Niagara Falls, Buffalo, and New Rochelle; villages such as Port Chester; and school districts such as Mount Vernon and East Ramapo. These cases often involved years of litigation and cost taxpayers millions of dollars in legal fees. For example, the vote dilution case that resulted in the Town of Hempstead transitioning from at-large to district-based elections took over 12 years to resolve. And, in a vote dilution case currently pending against a school district in Rockland County, the school board predicted that it would spend approximately \$6 million of taxpayer money to defend the lawsuit.

The NYVRA fixes these problems. It sets forth clear and predictable legal standards for the voter suppression and vote dilution rights of action. It eliminates the unnecessary burdens imposed by federal law and creates safeguards against arguments designed to introduce unnecessary complexities into these cases. As a result, the NYVRA would make it easier to address violations and dramatically reduce the cost and burden of litigating these cases.

The NYVRA also includes a Notice and Safe Harbor provision (Section 17-206(6)), which creates a new mechanism for parties to resolve voter suppression and vote dilution claims without the need for litigation. This provision requires any potential plaintiff to send a letter to a municipality before litigation can be initiated, giving the municipality fifty days to take preliminary steps towards resolving a potential violation, with the possibility of additional extensions if the municipality is actively working towards a resolution. This provision will prevent unnecessary litigation and it will save taxpayer dollars.

This provision resolves a recurring challenge to voting rights cases brought in New York. In many other states, municipalities sued under the federal Voting Rights Act often have home rule authority to resolve potential violations with a simple vote of the municipality's governing body, thus avoiding litigation. That is frequently not the case in New York. For example, Section 85 of the Town Law would prevent a town sued over its at-large election structure from resolving the potential violation by converting to district-based elections. Similar restrictions exist both in state law and municipal charters across the state, frequently making it impossible for municipalities to resolve potential violations on their own.

As a result, when municipalities in New York are sued under the federal Voting Rights Act, they are put between a rock and a hard place. On the one hand, they can contest the claim – but this costs taxpayers millions of dollars, and, if they lose, they are also liable for plaintiffs' legal fees. On the other hand, they can concede that their election structure violates the Voting Rights Act and ask a federal court to enact a remedy, but they could face collateral consequences for doing so, and would still be liable for plaintiffs' legal fees.

The Notice and Safe Harbor provision of the NYVRA solves these issues. The provision grants municipalities flexibility to make changes to their election structure when necessary to fix a violation of the NYVRA. This provision creates an efficient mechanism to resolve potential voting rights violations quickly and without going to court, and will save taxpayers millions of dollars in unnecessary litigation costs.

Thank you again for the opportunity to testify today. I am happy to answer any of your questions.