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**Written Testimony Supporting Senate Bill 471, An Act Concerning
Elections and State Voting Rights**

Senator Flexer, Representative Fox, Ranking Members Sampson and Mastrofrancesco, and distinguished members of the Government Administration and Elections Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting written testimony in support of Senate Bill 471, An Act Concerning Elections and State Voting Rights.

Voting is the foundation of democracy, the right through which all our other rights are protected and preserved. For that reason, the ACLU-CT supports extending voting rights to the greatest number of people, with the only permissible restrictions being those essential to making elections secure and fair. Connecticut's history with voting rights is long, checkered, and in many ways shamefully suppressive, but with continued efforts, like those in Senate Bill 471, to extend the franchise and make it as accessible as possible, we can move forward with a strong electorate and truly democratic elections.

Senate Bill 471, also known as the Connecticut Voting Rights Act, covers quite a few substantive policies to make voting easier, more accessible, and fairer. The Connecticut Voting Rights Act is targeted at eliminating persistent structural electoral processes in the state that continue to prevent people of color from voting and that dilute the votes of voters of color. We support the bill overall, and in particular support the provisions specified below:

Voter Discrimination and Causes of Action

For many years, the Voting Rights Act of 1965 existed across 50 states to ensure nationwide access to the ballot was fair and universal. Over the years, though, court decisions chipped away at the Voting Rights Act, reaching the nadir in the notorious *Shelby County v. Holder*¹ decision, which had the effect of removing requirements in the law that certain geographic areas with a history of racist voter suppression submit proposed changes in voting procedure to a federal district court or the U.S. Department of Justice for “preclearance” of those changes.² Since that change, many jurisdictions which had been previously subject to preclearance have contracted voting rights in ways that disproportionately disenfranchise voters of color.³

While the gutting of the Voting Rights Act has precipitated a rollback of voting rights, it would be a mistake to think that the only problem areas for voting rights are places previously subject to preclearance requirements. To the contrary, many states and localities had racist histories of voter suppression that did not meet the specific standards for preclearance. Connecticut, unfortunately, is a state with a long history of racism in its voting laws.

From its early days, Connecticut has been the least expansive for voting rights for Black people of all the New England states, amending the state constitution to explicitly limit the franchise to white people in the 1818 when other neighboring states allowed Black men to vote without significant restriction.⁴ After Connecticut ratified the Fifteenth Amendment, which guaranteed the right to vote to men of all races,⁵ it took a further six years for Connecticut to amend its own state constitution

¹ *Shelby County v. Holder*, 570 U.S. 529 (2013).

² See, e.g., *Shelby County v. Holder*, Brennan Ctr. Just. (Aug. 4, 2018), available at

<https://www.brennancenter.org/our-work/court-cases/shelby-county-v-holder>.

³ Matt DeRienzo, *Analysis: New and Age-old Voter Suppression Tactics at the Heart of the 2020 Power Struggle*, CTR. FOR PUB. INTEGRITY (Oct. 28, 2020), available at

<https://publicintegrity.org/politics/elections/ballotboxbarriers/analysis-voter-suppression-never-went-awaytactics-changed/>.

⁴ Elizabeth Normen, *Our Hard-Won Right to Vote*, CONN. EXPLORED (2016), available at

<https://www.ctexplored.org/our-hard-won-right-to-vote/>.

⁵ Katherine J. Harris, *“No Taxation with Representation”*: *Black Voting in Connecticut*, CONN. EXPLORED (2016), available at <https://www.ctexplored.org/no-taxation-without-representation-voting-petitions-inconnecticut/>.

to remove language restricting voting to white people.⁶ Connecticut was one of only twelve states using a literacy test into the 1950s,⁷ and it was not until a 1970 federal law prohibited literacy tests that the possibility of their use in Connecticut was finally ended.⁸

Some voting laws and practices are still in effect in Connecticut which disproportionately affect voters of color. The state's well-known limitations on alternatives to in-person Election Day voting, for example, may have the effect of disproportionately impacting Black and Latinx voters, who are more likely to face barriers to voting on Election Day.⁹ So do laws which restrict voting for people convicted of felonies and people on parole, due to systemic racism in the criminal legal system.¹⁰ Election management practices, repeated year after year, result in long lines in the urban areas where Connecticut's voters of color are most concentrated.¹¹

Section 2 of this bill would prohibit the enactment or implementation of laws that result in the denial or abridgement of the right to vote for any protected class individuals, that is, members of a race, color, or minority language group. Even further, Section 2 provides members of a protected class as well as the Office of the Secretary of the State on behalf of a protected class to seek enforcement of their voting

⁶ *Connecticut Civil Rights Law Chronology*, CONNECTICUT COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, available at <https://portal.ct.gov/CHRO/Legal/Legal/Connecticut-Civil-Rights-Law-Chronology>.

⁷ Steve Thornton, *Literacy Tests and the Right to Vote*, CONN. HISTORY, available at <https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/>.

⁸ *Id.*

⁹ For common barriers to voting and reasons why voters do not vote, see, e.g., Amelia Thomson-DeVeaux, Jasmine Mithani & Laura Bronner, *Why Many Americans Don't Vote*, FIVETHIRTYEIGHT, (Oct. 26, 2020), available at <https://projects.fivethirtyeight.com/non-voters-poll-2020-election/>; *11 Barriers to Voting*, CARNEGIE CORP. N.Y. (Nov. 1, 2019), available at <https://www.carnegie.org/topics/topicarticles/voting-rights/11-barriers-voting/>. See also Vann R. Newkirk II, *Voter Suppression is Warping Democracy*, ATLANTIC (July 17, 2018), available at <https://www.theatlantic.com/politics/archive/2018/07/pollprri-voter-suppression/565355/>.

¹⁰ Karina Schroeder, *How Systemic Racism Keeps Millions of Black People from Voting*, VERA INST. JUST., (Feb. 16, 2018), available at <https://www.vera.org/blog/how-systemic-racism-keeps-millions-of-blackpeople-from-voting>.

¹¹ Matt DeRienzo, *In Connecticut, Voters Face Some of the Biggest Obstacles Outside the South*, CTR. PUB. INTEGRITY (Oct. 7, 2020), available at <https://publicintegrity.org/politics/elections/us-polling-places/connecticutvoters-face-some-of-the-biggest-obstacles-outside-the-south/>; see also Jack Kramer, *In Connecticut, Long Lines and Problems at a Hartford Polling Place*, CT NEWS JUNKIE (Nov. 8, 2016), available at https://ctnewsjunkie.com/2016/11/08/smooth_start_to_voting_in_tumultuous_year/.

rights. Section 2 also provides opportunities for public hearings and input on proposed remedies before they are put in place, as well as requiring outreach to the public, specifically in language minority communities, to ensure that proposed solutions to voting rights violations actually address community needs.

Section 5 of Senate Bill 471 provides additional necessary oversight that mirrors the preclearance process of Section 5 of the federal VRA. Under Senate Bill 471, a covered jurisdiction requiring preclearance would include (1) municipalities that have been subject to enforcement of the federal VRA, state or federal civil rights laws, or the Fourteenth and Fifteenth Amendment of the U.S. Constitution within the past twenty-five years; (2) municipalities that fail to comply with the data requirements of Section 3 within the past five years; (3) municipalities with high felony and misdemeanor arrest rates within the past ten years; (4) municipalities with a particular ratio of protected class voters. In the past, Section 5 of the federal VRA has been particularly effective in stopping discriminatory voting changes before they go into effect. Voter discrimination and poor access to the polls does not exist solely in the south. Discrimination at the polls on the basis of race, color, or language minority groups is pervasive throughout the country.¹² The ACLU-CT supports measures that increase accountability and safeguards for modifying or enacting laws dealing with voting rights. We particularly applaud Senate Bill 471 in going further than the federal VRA by considering the impact of high rates of mass incarceration in the electorate when determining whether a municipality requires preclearance.

Discouraging Voter Intimidation

The ACLU-CT believes in ensuring that every eligible voter can exercise their right to vote without barriers or intimidation. The risk for racist voter intimidation in Connecticut is real. From its early days, Connecticut has been the least expansive for voting rights for Black people of all the New England states, limiting Black people's

¹² *ACLU's 2021 Report: The Case for Restoring and Updating the Voting Rights Act*, ACLU (2021), available at <https://www.aclu.org/report/aclus-2021-report-case-restoring-and-updating-voting-rights-act>.

franchise in the 1800s when other states allowed Black men to vote without significant restriction.¹³ Voter intimidation began as soon as Connecticut ratified the Fifteenth Amendment, which guaranteed the right to vote to men of all races.¹⁴ Connecticut was one of only twelve states using a literacy test into the 1950s.¹⁵ Even today, voter suppression is overwhelmingly directed at Black voters and other voters of color¹⁶ by people who want to limit the political power of people of color. Throughout this country's history, voter intimidation led not only to disenfranchisement of Black people and other people of color, but often cost them their lives.¹⁷ The ACLU-CT applauds this Committee for taking a step through Senate Bill 471 to ensure that we do not repeat our harmful past.

Language Minority Group Assistance

While English language requirements are no longer explicitly in law, voting rights groups report that often local jurisdictions do not translate their materials or offer the language assistance that is required by law.¹⁸ Over 25.2 million American residents have limited English proficiency, and this includes both immigrants and indigenous people.¹⁹ Ballots are already often confusing and complex even for proficient English speakers, and those in language groups face distinct hardships in deciphering the ballot and voting.²⁰

¹³ Elizabeth Normen, *Our Hard-Won Right to Vote*, CONN. EXPLORED (2016), available at <https://www.ctexplored.org/our-hard-won-right-to-vote/>.

¹⁴ Katherine J. Harris, "No Taxation with Representation": *Black Voting in Connecticut*, CONN. EXPLORED (2016), available at <https://www.ctexplored.org/no-taxation-without-representation-voting-petitions-inconnecticut/>.

¹⁵ Steve Thornton, *Literacy Tests and the Right to Vote*, CONN. HIST. (Nov. 2, 2020), available at <https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/>.

¹⁶ Vann R. Newkirk II, *Voter Suppression Is Warping Democracy*, ATLANTIC (July 17, 2018), available at <https://www.theatlantic.com/politics/archive/2018/07/poll-prri-voter-suppression/565355/>.

¹⁷ Peniel E. Joseph, *In 2020, Voting Rights Are on the Ballot*, WASH. POST (Sept. 10, 2020), available at <https://www.washingtonpost.com/outlook/2020/09/10/2020-voting-rights-are-ballot/>.

¹⁸ *11 Barriers to Voting*, CARNEGIE CORP. (Nov. 1, 2019), available at <https://www.carnegie.org/topics/topic-articles/voting-rights/11-barriers-voting/>.

¹⁹ For example, a study of Arizona's Navajo voting-age citizens in Apache, Coconino, and Navajo countries found that one third of people have limited English proficiency. *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, 17 (Jan. 2014), available at <http://www.supportthevoter.gov/>.

²⁰ Liz Kennedy, *Millions to the Polls: Language & Disability Access*, DEMOS (Feb. 18, 2014), available at <https://www.demos.org/policy-briefs/millions-polls-language-disability-access#fn3>.

The federal Voting Rights Act (VRA) addresses some aspects of language access to voting, but not all difficulties.²¹ The federal VRA is merely a floor for language access, and some states have already expanded their statutes to have lower population requirements to trigger language translation.²²

Section 4 of this bill reduces the thresholds for when municipalities must provide language support to communities with limited English access. Language access is essential to ensure that all eligible Connecticut voters can participate fully and equally in the democratic process, and we support this change. If Senate Bill 471 is passed, Connecticut would join the states that have even further expanded access to the ballot box for those who are a member of a minority language group. This is a measure that the ACLU-CT absolutely supports.

Conclusion

There will doubtless be those who say that these provisions are not necessary in Connecticut. There will be others who will compare Connecticut's current voting scheme to efforts underway right now to significantly restrict voting rights in other parts of the country. Connecticut's history as the most regressive voting rights state in New England demonstrates the need for continued skepticism of any belief that voting rights are uniquely strong in this state. More even than our history, though, Connecticut's voting present shows that we are not, in fact, exceptional. To the contrary, Connecticut is ranked in the bottom of all states, sometimes as low as the fourth-worst, for voting options.²³ Black voters, and other protected class voters, in worst, for voting options. Connecticut have been denied equal electoral participation for well over two hundred years. The Connecticut Voting Rights Act has the potential to bring these failings to an end, forever.

²¹ Tova A. Wang et al., *Voting in 2010: Ten Swing States*, DEMOS (Aug. 2010), available at <http://www.demos.org/publication/voting-2010-ten-swing-states>.

²² Liz Kennedy, *Millions to the Polls: Language & Disability Access*, DEMOS (Feb. 18, 2014), available at <https://www.demos.org/policy-briefs/millions-polls-language-disability-access#fn3>.

²³ See Bill Theobald, *The 6 Toughest States for Voting During the Pandemic*, FULCRUM (Apr. 29, 2020), available at <https://thefulcrum.us/voting/votingduringcoronavirus>.

The provisions in Senate Bill 471 will make voting fairer and more accessible to everyone in Connecticut. The price of inaction to protect the voting rights of Connecticut residents is high, and history offers myriad examples demonstrating its cost to the nation. Historical and current evidence shows that the right to vote remains in threat for many. Connecticut must be a leader in eradicating discrimination at the ballot box, and Senate Bill 471 would be a major step in that effort. The ACLU-CT strongly supports Senate Bill 471, and urges this Committee to do the same.