March 24, 2024

Dear Chair Latz and Members of the Senate Judiciary and Public Safety Committee,

We are writing on behalf of the League of Minnesota Cities, Association of Minnesota Counties, and Minnesota Association of County Officers to provide comments on the provisions contained in SF 3994, a bill to establish a Minnesota Voting Rights Act.

Our associations recognize the long history of the Federal Voting Rights Act's acknowledgement of a private right of action—an important protection for voters that has significant precedent across the country. In light of the 8th Circuit's decision removing this important protection, we are not opposed to the creation of a state voting rights act that includes a private right of action independent of how the federal VRA has been construed by federal courts.

We do, however, have concerns and questions about the new legal standard SF 3994 creates and the onus it puts on local governments to effectively arbitrate complicated legal questions around an expanded version of the federal Voting Rights Act.

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

- The definition of "disparity" (Sec. 2, Subd. 2) is a result of interpreting case law under the Federal Voting Rights Act. If this definition is to remain in the bill, we request that the terms "variance," "validated methodologies," and "statistical significance" be more clearly defined in relation to the applicable case laws.
- The legal standard required for indicating a case of vote dilution (Sec. 4, Subd. 2b) is a significant deviation from federal law. Under federal law, three preconditions AND a totality of circumstances is required to demonstrate vote dilution. Under SF 3994, a plaintiff would need to demonstrate the existence of polarized voting OR that the equal opportunity for a protected class to nominate or elect candidates is impaired based on the totality of circumstances. We recognize that this new standard may result in more successful claims as the conditions needed to establish a case would likely be more easily met than requirements in current federal law.
- The bill establishes that "evidence concerning the causes of, or the reasons for, the occurrence of polarized voting is not relevant to the determination of whether polarized voting occurs" (Sec. 4, Subd. 2f). We understand that this is a new parameter in response to these arguments being used in previous case law.
- Two new factors for determining violations under this act are established by this bill (Sec. 5, Subd. 1). Factor (3) related to the rate at which members of a protected class vote and factor (4) related to the extent in which members of a protected class contribute to political campaigns are new factors that are not currently contained in the list of "Senate Factors" utilized in federal cases and would request that they not be included in the Minnesota Voting Rights Act (MNRVA).
- Sec. 5, Subd. 5 establishes factors that must be excluded from consideration in cases under this bill. It is important to note that this is a direct deviation from federal law, as the factors to be excluded in

this bill are the factors specifically named as "guideposts" by SCOTUS to be used in FVRA cases. If this section were to remain, we would request a close examination of these factors and potential eliminations of factors (1) and (4).

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

Clarity for the new presuit notice process is needed.
We appreciate this bill's efforts to try to create a process to settle legitimate voting rights claims outside a costly and time exhaustive judicial process. That said, we have significant concerns that the currently framed presuit notice process Section 6 creates financial burdens and legal liability for local governments that attempt to respond to claims before a legal finding of a violation. In addition, questions remain about how much authority cities and counties will have to address alleged violations without judicial or legislative action.

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

- We request that Sec. 4, Subd. 1 clarify that claims related to a political subdivision under this section must be limited to elections ordinances and policies in which the political subdivision has discretion over the application of, and not election administration laws that are governed by state or federal law. Local governments must follow state elections law and have very little discretion regarding voting administration. Put simply, cities and counties do not believe we have the requisite authority to abstain from carrying out state election policy.
- We request the following changes to presuit notice required in Section 6:
    - Removing the 90-day timeline for implementing a remedy, as an implementation timeline should be agreed upon in the remedy. Some remedies, such as redistricting, establishing wards, or switching to Ranked Choice Voting may take longer than 90 days to complete. This should be clarified so that local governments have time to work in good faith before triggering legal action. We also request that the provision allowing statutory cities to establish wards (Sec. 11) also allows a city to adopt a ward-based council system by a ballot question put to voters.
    - Clarifying that the enactment and implementation of a remedy under this section by a political subdivision is not an admission of a violation under this chapter. Any efforts made by cities and counties to engage in good faith with a party to understand and potentially offer a remedy should not be construed as an acknowledgement that a Voting Rights Act violation occurred.
    - Establishing that a remedy imposed under this section by a political subdivision shall not be considered legal precedent in other cases brought forward under this chapter.
    - Establishing that claims made in the presuit notice process that are resolved by a mutual agreement between parties are considered settled as it relates to potential future litigation.

- Clarifying approval of a remedy under this section by the Office of the Secretary of State or a court is not an indication that a violation under this chapter has occurred.

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

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

Sincerely,

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