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ACLU OF RI POSITION: SUPPORT/AMEND

TESTIMONY ON 26-H 8334,
AN ACT RELATING TO ELECTIONS -- RHODE ISLAND VOTING RIGHTS ACT
April 16, 2026

The ACLU of Rhode Island strongly supports this legislation, which would establish a state voting rights act that is largely based on the federal Voting Rights Act of 1965, while also addressing court decisions that have eviscerated the goals of that historic law. Such action at the state level is essential in order to preserve this fundamental right, especially in light of the U.S. Supreme Court's continued actions undermining the federal law's scope. We are therefore very grateful for the interest shown by legislative leadership in addressing this issue.

While every aspect of this bill is important and necessary,[1] we wish to focus on two of particularly critical significance. Like the federal VRA, this bill would establish a private right of action[2] and allow prevailing plaintiffs to recover their attorneys' fees. Both of these provisions are absolutely vital to ensure meaningful implementation and enforcement of this law, just as they have been for over 50 years at the federal level.

The absence of these important enforcement mechanisms would severely undercut the law's utility and its goal of overturning practices that have the effect of diluting or suppressing votes, and the votes of Black and Latino Rhode Islanders in particular. The availability of attorney fee awards has been a key remedy in the federal law for decades. Much of the federal litigation that has been brought under the VRA might never have happened if attorneys had not had the ability to recoup their fees if successful.

It is worth noting that eight states thus far have passed state VRAs. ***Every one of them*** authorizes the award of attorneys' fees to successful plaintiffs, a clear recognition of its crucial role in allowing the law to be enforced. We would be happy to share the citations for those statutes with the committee.

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[1] There are some additional amendments being proposed by the Campaign Legal Center that we are also supporting as essential clarifications and that we urge be included as a Sub A.

[2] Voting rights advocates were particularly alarmed last year when a federal appeals court for the first time held that the federal VRA did not allow private individuals to sue. For the moment, that limitation applies only to the states covered by that appellate court, but the current Supreme Court could very well affirm that interpretation, leaving the VRA virtually unenforceable.

The idea behind this remedy is simple, but powerful. Most people cannot afford to pay an attorney to sue when their civil rights are violated. Most attorneys cannot afford to take cases for free without any prospect of monetary reimbursement for their time and expenses in bringing a suit. Awarding attorneys' fees to **successful** plaintiffs (and only successful plaintiffs) allows individuals to bring these suits, and attorneys to take them on.

The prospect of attorneys' fees awards is particularly crucial in voting cases. These lawsuits are often extremely complex, expensive, and time-consuming. They also frequently require the hiring of expert witnesses, who can easily cost tens of thousands of dollars. We feel confident in saying that no attorney brings a voting rights case with either the goal or expectation of getting rich.

Over the years, like Congress, the General Assembly has also recognized the importance of this specific remedy in vindicating civil rights. The award of attorneys' fees is a key remedy in such important state laws as the Fair Employment Practices Act, the Fair Housing Act, the open meetings and open records laws, the state's wage laws, the Rhode Island Whistleblowers' Protection Act, and many more – laws all designed, like the VRA, to vindicate critical individual **and** public rights.

In short, expecting plaintiffs to pay, or attorneys to expend and forego reimbursement of, tens - and potentially hundreds - of thousands of dollars when they win a case vindicating the rights established by the bill is unrealistic and unfair. As we know committee members can appreciate, it means little to pass a law containing strong voting protections if people will not be able to afford to vindicate their rights in many circumstances.

There is a great fear nationally in the civil rights community that the Supreme Court may reject the long-standing, once unanimous, view that the federal VRA contains a private right of action, allowing individuals to sue for violations of the statute. The state bill's inclusion of a private right of action is thus critical. But it loses most of its force if it does not provide, as the federal law does, for the recovery of attorneys' fees. Instead, it would make the private right of action in the bill a paper tiger and much more of a hollow promise than a truly meaningful remedy.

Some public bodies may express fiscal concerns about the potential cost to the state or municipalities if they lose a voting rights case under this law and have to pay attorneys' fees. But they only have to pay if they lose – that is, if a court has found they violated the rights of voters. Frankly, that is how it should and must be. Otherwise, it means that the person whose rights were violated and vindicated (or their attorney) must pay for the "privilege" of winning that right. In any event, as noted above, this remedy is contained in many other state laws as well as being available in federal litigation over constitutional rights and other civil rights statutes.

Finally, we understand that there has been objection in some quarters to the language in the bill providing that a prevailing plaintiff "*is* entitled" to recover their fees rather than "*may* be entitled." However, this language makes perfect sense since the phrase is taken

directly from the state's most analogous civil rights law, the Rhode Island Civil Rights Act of 1990.[3]

It is also critical to understand that the key federal civil rights law that provides for attorneys' fees to successful plaintiffs in constitutional challenges, 42 U.S.C. §1988, while using the term "may," has been interpreted for decades by the U.S. Supreme Court as essentially meaning "shall" – unless, in the Court's words, "special circumstances would render such an award unjust."[4]

This standard was first articulated by the U.S. Supreme Court in a case involving Title II of the Civil Rights Act of 1964, which bars racial and other forms of discrimination in public accommodations, and which gave courts discretion to award attorneys' fees. As the Court in that case noted:

> If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts. Congress therefore enacted the provision for counsel fees -- not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals injured by racial discrimination to seek judicial relief under Title II. It follows that one who succeeds in obtaining an injunction under that Title should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 403 (1968).

Fittingly, six years later, the R.I. Supreme Court approvingly cited that language in a voting rights case in which it held that the successful plaintiff was entitled to an award of attorneys' fees:

> The discretion of a court to deny attorney's fees to a prevailing party is limited. A prevailing plaintiff "Should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." (quoting *Newman*) *O'Connors v. Helfgott*, 481 A.2d 388 (R.I. 1984).[5]

Two years after that, when Congress passed the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. §1888, Senate and House reports approved that interpretation, which the federal courts have affirmed and routinely used since then.

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[3] "An aggrieved person who prevails in an action authorized by this section, in addition to other damages, is entitled to an award of the costs of the litigation and reasonable attorney's fees in an amount to be fixed by the court." R.I.G.L. §42-112-2. Other, but not all, state laws protecting civil rights use similar entitlement language. *See*, e.g., R.I.G.L. §28-6-20(b)("Wage Discrimination Based on Sex"); R.I.G.L. §28-14-9.2(a)("Payment of Wages"); R.I.G.L. §38-2-9(d) ("Access to Public Records).

[4] *See*, e.g., *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

[5] In fact, one Rhode Island public interest statute, the Open Meetings Act, explicitly uses this language: "The court shall award reasonable attorney fees and costs to a prevailing plaintiff, other than the attorney general, except where special circumstances would render such an award unjust." R.I.G.L. §42-46-8(d).

Because there is no Rhode Island caselaw interpreting state civil rights laws that use discretionary attorneys' fee award language like that contained in the federal Civil Rights Act or §1888, and since the Rhode Island General Assembly does not issue reports like Congress that assist with interpreting legislative intent, revising the language in this bill to make fee awards purely discretionary could easily lead to a judicial interpretation that the legislature did *not* intend to routinely allow for awards of attorneys' fees in these cases.[6]

As a result, any attempt to water down the attorneys' fees language in this way would, we submit, undermine the whole point of including a private right of action.

For the reasons expressed above and the reasons expressed by many other supporters in their testimony, we therefore strongly urge passage of this legislation as drafted **and** with the additional important revisions recommended by the Campaign Legal Center. With its passage, Rhode Island can continue to be a leader in promoting this truly fundamental right.

Thank you for considering our views.

[6] The CLC's proposed amendments include the reinstatement of a sentence that was in the original draft of this bill but excluded in the introduced version. The inclusion of that sentence – "Costs and fees include, but are not limited to, attorneys fees, expert witness fees, and all other litigation or pre-litigation fees and costs." – is necessary to make clear what the "fees" that are recoverable under the law refer to.