



Testimony for the House Ways and Means Committee

HB800 Voting Rights Act of 2024 – Counties and Municipalities February 20th, 2024

FAVORABLE

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The ACLU of Maryland urges a favorable report on HB800, a historic bill that seeks to establish strong voting protections for Marylanders across the state. Importantly, HB800 would establish a civil cause of action for Marylanders to bring suit when faced with barriers to casting a ballot, an unfortunate necessity, even in a progressive state like Maryland.

As it currently stands, Section 2 of the federal Voting Rights Act of 1965 creates a civil cause of action to challenge voting rights violations committed by state and local jurisdictions. In Maryland, the ACLU of Maryland has brought three recent Section 2 lawsuits: (1) A challenge in 2021 to Baltimore County's unlawful re-districting scheme that packed a supermajority of Black voters into a single district among seven districts, diluting the Black vote when a second Black opportunity district could be created; (2) A challenge against Federalsburg, a municipality in Caroline County, for diluting the Black and BIPOC vote by maintaining a staggered-term, at-large election system that sustained an all-white government throughout the Town's 200 year history; and (3) a challenge against Wicomico County and its School Board for diluting the voting strength of Black voters through use of a hybrid at-large, district plan that limits Black residents to a single realistic election opportunity, when a second opportunity district could be created.

Last year, the U.S. Supreme Court heard cases that could have undermined Section 2 of the Voting Rights Act, leaving voters with no legal recourse to challenge voting rights violations in court, like was done with Baltimore County, Federalsburg, and Wicomico County.¹ Luckily, Section 2 remains an available mechanism to challenge unlawful voting systems, but having come so close to losing this critical piece of the federal Voting Rights Act leaves Maryland voters vulnerable to future rollbacks of their rights.

Furthermore, the federal VRA – as limited by decades of federal court cutbacks – cannot address the full range of voting rights issues across Maryland that have

¹ <https://www.aclu.org/cases/thomas-v-merrill-and-milligan-v-merrill>;
<https://www.npr.org/2023/02/26/1157248572/supreme-court-voting-rights-act-private-right-of-action-arkansas>.

prevented BIPOC voters from securing equal voting rights. To preserve democracy and ensure true equality for all, **Maryland must enact its own Voting Rights Act and be a leader in protecting citizens' right to vote.**

Recent ACLU of Maryland Voting Cases

Baltimore County NAACP et. al. v. Baltimore County

In Baltimore County, Black voters filed a federal Voting Rights Act lawsuit challenging the racially discriminatory redistricting plan that the County adopted in December 2021. Despite months of public outcry and warnings about the illegality of its proposed redistricting plan, the County enacted a plan that packed a supermajority of Black voters into a single district, diluting their vote, when a second majority-Black district could have been created among the seven Council districts. The federal judge hearing the case found that the County's plan was racially discriminatory and diluted the Black vote, thus requiring that the plan be redone. Ultimately, the County re-drew their plan in a way that allowed them to continue maintaining a single majority-Black district, without drawing a district map that allowed election of a second Black Council member. The Baltimore County NAACP case exemplifies the necessity of preclearance in Maryland: Had the County been subject to preclearance, more than a million dollars in litigation costs could have been avoided, and an equitable redistricting plan could have been created.

Caroline County NAACP et. al. v. Town of Federalsburg

Beginning in August 2022, residents of the Town of Federalsburg, the Caroline County Branch of the NAACP, the Caucus of African American Leaders, and the ACLU of Maryland called upon Town officials to collaborate in changing the racially discriminatory at-large, staggered term election system that has diluted the Black vote such that no Black person, or any person of color, won election to municipal government in the Town's 200-year history. Such uninterrupted racial exclusion from public office is especially shocking, given that the 2020 Census shows the Town is now majority BIPOC, at 53%, and 47% Black.

After spending months fruitlessly trying to persuade Town officials to reform Federalsburg's election system, on February 22, 2023, Federalsburg residents, Caroline County NAACP, and Caucus of African American Leaders filed suit to take back their right to vote. Notwithstanding this filing, the Town continued to push back against equal voting rights for Federalsburg's Black voters. As a result, on May 9, 2023 the federal district court ordered the Town to produce a plan that would comply with the Voting Rights Act, whereby the Black community could finally have a fair opportunity to elect two out of the four Town Council members in the Town's 2023 elections. On September 26, 2023, Black candidates Brandy James and Darlene Hammond were elected to serve as Town Council members representing the Black community of Federalsburg, finally ending the centuries long legacy of disenfranchisement for the Black community.

Wicomico County NAACP et. al. v. Wicomico County et. al.

On December 7, 2023, the Wicomico County NAACP, the Caucus of African American Leaders, the Watchmen with One Voice Ministerial Alliance, and individual voters in Wicomico County filed suit against Wicomico County and the Wicomico County Board of Education, for diluting Black voting strength by maintaining an election system that uses an at-large feature to limit Black voters to representation in a single district among seven Council seats, when a second Black opportunity district could be created. This case is currently pending, but reform may nevertheless be possible.

If we still have a federal VRA, why does Maryland need its own?

Bringing complex Section 2 lawsuits requires enormous resources, specialized legal expertise, and the hiring of expert demographers and political scientists, even to determine whether a voting rights challenge in federal court is possible. If the Maryland VRA is passed, significant resources can be saved – both for residents and the government – while still reforming systems of disenfranchisement that still exist too widely across the state. These include:

- 54% of all the municipalities in Maryland have at least a 20% BIPOC population, but 23% of them have *all-white* governments.
- There are 18 municipalities with BIPOC populations over 80%, and in 7 of them, BIPOC representation make up less than half the municipal government. For example, in Landover Hills, the BIPOC population is 90% but only two representatives out of six are not white.
- 63% of all the municipalities in Maryland have at-large election systems, requiring only a bare majority to win all of the seats to the municipal government, the reason why Federalsburg was able to shut out the Black community for 200 years.²

In **Harford County**, the county council is all white, despite having a 28% BIPOC population. A federal VRA challenge is extremely difficult because the BIPOC population is not compact enough to create a majority BIPOC district, which is a necessary component of proof under the federal VRA, as limited by the Supreme Court. However, **under the MDVRA, Harford could reform its election system** under a different voting structure to offer BIPOC residents fair representation.

Maryland has a historic opportunity to secure voting rights for all and ensure every Marylander has legal recourse in the face of deception, obstruction, or intimidation when accessing the ballot.

For these reasons, we urge a favorable report on HB800.

² See Appendix 1.

Appendix 1

Why Maryland Needs Its Own *Voting Rights Act*

AMERICAN CIVIL
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MARYLAND

WHY MARYLAND NEEDS ITS OWN *Voting Rights Act*

The right to vote is a fundamental part of our democracy. Everyone's vote must count equally. But in many Maryland counties, cities, and towns, the local election systems in place dilute votes of Black, Indigenous, and People of Color (BIPOC). The *Maryland Voting Rights Act* (MDVRA) would give counties, cities, and towns the opportunity to make their elections fairer, and give BIPOC voters an equal vote. In 2024, it is high time that we pass the *Maryland Voting Rights Act*.

BIPOC PEOPLE ARE UNDERREPRESENTED IN COUNTY GOVERNMENTS

- 75% of Maryland counties have substantial BIPOC populations.*
- 1/3 of those Maryland counties with substantial BIPOC populations have all-white governments.

Even counties that have some BIPOC representation, vote dilution is still present, and BIPOC people are underrepresented:

- **Baltimore County:** Ordered by a federal judge to re-draw its district lines; but the Federal VRA has allowed the county to implement a plan that continues to dilute the vote, where there remains only a single Black opportunity district. The last Council election resulted in 6 out of 7 seats being occupied by white representatives. (See *Baltimore County Branch of NAACP v. Baltimore County*, No. 21-CV-03232-LKG, 2022 WL 657562, [D. Md. Feb. 22, 2022].)
- **Wicomico County:** Mixed at-large and district system, where the white population holds 60% of the population, and control 6 out of 7 seats on the council. If the County were to re-district, as they must, a second Black opportunity district could be created, and create 2 out of 7 BIPOC opportunity districts. (See *Wicomico County Branch of NAACP v. Wicomico County*, No. 23-CV-03325-MJM [D. Md. Dec. 7, 2023].)

MARYLAND NEEDS A VOTING RIGHTS ACT BECAUSE:

1. BIPOC voters are underrepresented in their local governments.
2. Solving this problem through lawsuits is expensive, slow, and inefficient.
3. The federal Voting Rights Act of 1965 (VRA) cannot comprehensively fix vote dilution like the MDVRA can.

BILLS: SB 660 / HB 800

aclu-md.org/mdga24



THE POWER OF FIXING ELECTION SYSTEMS TO MAKE THEM MORE FAIR: A MUNICIPAL EXAMPLE

The town of Federalsburg faced an all-white government for 200 years.

That finally changed in 2023 when 7 Black women from Federalsburg sued the town for diluting their right to vote through the town's at-large system.

The federal lawsuit involved extensive and expensive expert analysis and testimony and a year's worth of advocacy until the court ordered a new election plan be produced. That plan changed the at-large system into a district system.

The people of Federalsburg were finally able to elect two Black women to the Council.

"I've been here all my life, 68 years. I haven't seen no African American on the board. But we're not going back. We're going forward. It's time for a change getting young African Americans on that board."

– **Roberta Butler**

A Black woman, voter, and lifelong resident of Federalsburg

BIPOC PEOPLE ARE UNDERREPRESENTED IN MUNICIPAL GOVERNMENTS

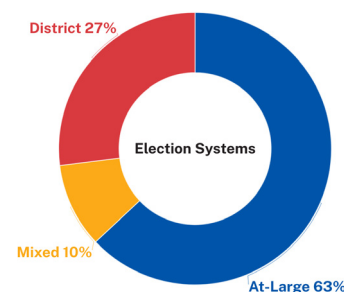
- 54% of the municipalities in Maryland have substantial BIPOC populations.*
- Of the municipalities with substantial BIPOC populations, 23% have all-white governments

Some municipalities are particularly egregious:

- There are 18 municipalities with over 80% BIPOC populations (less than 20% white).
- In 7 of them, BIPOC representatives hold less than half of the seats in their municipal governments.

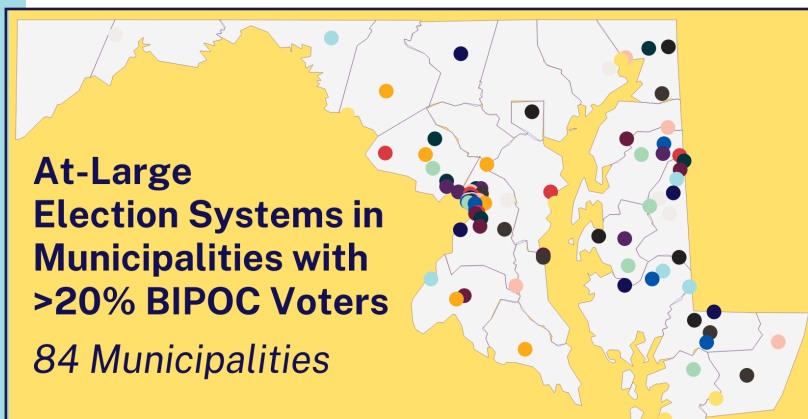
AT-LARGE ELECTION SYSTEMS ARE COMMON ACROSS MARYLAND

- In municipalities with a substantial BIPOC population,* 73% of them have a mixed at-large and district-based election system, and 63% have an at-large system only.



At-Large Election Systems in Municipalities with >20% BIPOC Voters

84 Municipalities



GLOSSARY

- **County:** A county is a political or administrative subdivision of a state. In Maryland, we have 24 counties. They all have county-level governments
- **Municipality:** A municipality is a town or city that has its own local government, usually created by a town or city charter, which is like a local constitution.
- **District-Based Election System:** In a district-based election system, a county, city, or town is divided into separate districts, where voters who live in that district can only vote for a candidate to represent them from that geographic subdivision. Districts are the most common legal remedy that courts use to fix at-large election systems. However, districts can still dilute votes if drawn unfairly.
- **At-Large Election System:** In at-large elections, the entire electorate of a town, city, or county votes for the elected official. At-large systems have been used to dilute BIPOC votes because you only need a bare majority to win the seat. Therefore, a 50% white population could elect all of the seats to the local government, shutting out the possibility of a BIPOC candidate from winning.