Vanessa E. Atterbeary, Chair
Jheanelle K. Wilkins, Vice Chair
House Ways and Means Committee
Maryland House
March 25, 2025

Testimony of Campaign Legal Center in Support of Senate Bill 342

I. INTRODUCTION

Campaign Legal Center ("CLC") is pleased to offer this testimony in support of Senate Bill 342, a key piece of the Maryland Voting Rights Act legislative package ("S.B. 342" or the "MDVRA"). CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on redistricting and voting rights, CLC seeks to ensure that every United States resident receives fair representation at the federal, state, and local levels. CLC supported the enactment of state voting rights acts in Washington, Oregon, Virginia, New York, Connecticut, and Minnesota, and brought the first-ever litigation under the Washington Voting Rights Act in Yakima County, Washington.

CLC supports S.B. 342 because it will allow historically disenfranchised communities across Maryland to participate equally in the election of their representatives. CLC's testimony will focus on the various procedural benefits S.B. 342 provide to voters and local governments alike in enforcing voting rights and protecting historically disenfranchised communities.

II. BACKGROUND

States can offer new hope for voters by adopting state voting rights acts that improve upon their federal counterpart, especially by clarifying that government-proposed remedies do not get deference as they might in federal court. By passing S.B. 342, Maryland can reduce the cost of enforcing voting rights and make it possible for historically disenfranchised communities to enforce their rights.

Passage of the MDVRA will mark a new era of voter protections for the people of Maryland by building upon the model of the federal Voting Rights Act ("VRA") of

1965 with several key improvements. CLC's testimony will share highlights of how filing a claim under this state VRA rather than the federal VRA is an improvement, specifically related to vote dilution claims and available remedies.

The federal VRA is one of the most transformative pieces of civil rights legislation ever passed. Section 2 of the federal VRA prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group. The 1982 amendments to Section 2, which allowed litigants to establish a violation of the VRA without first proving discriminatory intent, created a "sea-change in descriptive representation" across the country.[1]

Despite this success, "litigating Section 2 cases [is still] expensive and unpredictable."[2] Plaintiffs must often collect mountains of evidence to support the totality of circumstances inquiry, which means extended discovery periods and long trials. Given the heavy burden of proving a violation of Section 2 of the federal VRA, states serve a vital role in protecting and expanding the right to vote and participate fully in American democracy.

Since the U.S. Supreme Court's 2013 decision in *Shelby County v. Holder*,[3] communities across the country have faced a resurgence of voter suppression tactics. The ruling gutted the preclearance requirement of the federal VRA, enabling states with a history of discrimination to implement restrictive voting laws without federal oversight.[4] As a result, polling place closures, voter roll purges, and new barriers to registration have disproportionately impacted Black, Indigenous, and other historically disenfranchised communities.[5] In *Brnovich v. Democratic National Committee*, the Court further weakened the VRA by making it even harder for voters to challenge discriminatory laws in court.[6] This decision left voters with fewer legal avenues to defend their rights. Meanwhile, Congress has repeatedly failed to restore and strengthen the federal VRA by neglecting to pass the John R. Lewis Voting Rights Advancement Act. These developments have left millions of voters vulnerable to discrimination and suppression. In response to this national landscape, states must step in and ensure their voters have the legal tools necessary to defend their freedom to vote.

As historically disenfranchised communities continue to encounter significant barriers to exercising their rights, more states are stepping up to protect ballot access by passing their own state VRAs. With Congress struggling to enact reforms and

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[1] Michael J. Pitts, *The Voting Rights Act and the Era of Maintenance*, 59 ALA. L. REV. 903, 920–22 (2008).

[2] Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After* Shelby County, 115 COLUM. L. REV. 2143, 2157 (2015).

[3] 570 U.S. 529 (2013).

[4] *Id.*

[5] *See, e.g.*, Jasleen Singh & Sara Carter, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, Brennan Ctr. For Just. (June 23, 2023), https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights.

[6] 594 U.S. 647 (2021).

courts weakening the federal VRA, state-level protections have become essential for addressing discriminatory voting practices and ensuring a more inclusive and accountable democracy. These laws equip voters with tools to challenge unfair election policies while enabling local governments to avoid litigation by proactively addressing potential violations. Even if the federal VRA is restored and strengthened, state VRAs will remain crucial tools for addressing the unique needs of each state.

Momentum for state VRAs is growing. California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), and Minnesota (2024) have already enacted such protections, while states like Colorado, New Jersey, Florida, Michigan, and Arizona are working to follow suit. Maryland should take advantage of this opportunity and join these other states in ensuring all of its citizens have equal access to the democratic process.

S.B. 342 will provide Marylanders with more efficient processes and procedures to enforce their voting rights, saving the state time and money while ensuring equal access to the democratic process.

III. REASONS TO SUPPORT S.B. 342

S.B. 342 will innovate on the federal VRA, as well as other state VRAs, by providing voters with stronger tools to challenge discriminatory policies and streamlining the procedural mechanisms for these kinds of claims. It would create a private cause of action for vote dilution that is a less costly and less burdensome means of enforcing voting rights for historically disenfranchised communities. It would also enable the adoption of tailored remedies that address the specific needs and demographics of each jurisdiction. As discussed below, the following features of S.B. 342 are reasons to support the bill:

- S.B. 342 provides a framework for determining whether vote dilution has occurred that is tailored to the barriers to voting historically disenfranchised communities face at the local level.
- S.B. 342 provides remedies for racial vote dilution that enable historically disenfranchised communities to equally participate in the franchise.

A. S.B. 342 provides a framework for determining vote dilution in a way that is efficient and cost-effective for both voters and jurisdictions.

To bring a vote dilution claim under Section 2 of the federal VRA, a plaintiff must show that: (1) the minority group being discriminated against is sufficiently large and geographically compact to constitute the majority of voters in a single-member district; (2) the minority group is politically cohesive; and (3) there is racially polarized voting such that white bloc voting usually prevents minority voters from

electing their candidates of choice.[7] If these three conditions are met, the court then considers whether, under the totality of the circumstances, the practice or procedure in question has the result of denying a racial or language minority group an equal opportunity to participate in the political process.

S.B. 342 improves on the federal VRA in key respects: it would ensure that integrated as well as segregated communities can influence elections and elect their candidates of choice and set out practical guidelines for courts to properly assess racially polarized voting.

Unlike the federal VRA, S.B. 342 does not require historically disenfranchised communities to be segregated residentially to receive protections under the statute. Like the state VRAs passed in California, Washington, Oregon, Virginia, New York, and Connecticut, S.B. 342 does not demand that the protected class facing discriminatory voting policies prove that it is sufficiently large and geographically compact before being able to proceed with its lawsuit. § 8–904(C). Following the passage of civil rights legislation, residential segregation has decreased in some areas of the United States, yet racially polarized voting and underrepresentation of historically disenfranchised communities persist.[8] Thus, many communities that do not face residential segregation may still lack equal opportunities to elect candidates of choice to their local government. By not requiring minority communities to be segregated to prove minority vote dilution, S.B. 342 takes this reality into account.[9]

Decades of experience litigating cases under Section 2 of the Voting Rights Act have shown that the numerosity and compactness requirements for vote dilution claims are an unnecessary barrier to remedying significant racial discrimination in voting. S.B. 342 will allow violations to be remedied quickly and at much less expense to taxpayers than existing federal law and make it easier for historically disenfranchised communities to vindicate their rights and obtain remedies to resolve racial vote dilution. In previous federal VRA cases in Maryland, voters have had to spend time and money defending against allegations that protected class members were not sufficiently segregated to meet this condition, despite evidence making it clear that voters were denied the equal opportunity to elect their candidate of choice.[10]

The next requirement for a vote dilution claim under the federal VRA is for the plaintiffs to show racially polarized voting. Racially polarized voting ("RPV") means that there is a significant divergence in the electoral choices or candidate preferences

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[7] *Thornburg v. Gingle*s, 478 U.S. 30, 50–51 (1986).

[8] *Why Maryland Needs Its Own Voting Rights Act*, ACLU Maryland (2024), https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga25_english.pdf.

[9] Like VRAs in other states, S.B. 324 would allow courts to consider whether a community is sufficiently numerous and geographically segregated in determining a remedy to a vote dilution violation. § 8–904(C).

[10] *See Baltimore County Branch of the NAACP v. Baltimore County, Maryland,* No. 21-CV-03232-LKG, 2022 WL 657562, at *7 (D. Md. Feb. 22, 2022), modified, No. 21-CV-03232-LKG, 2022 WL 888419 (D. Md. Mar. 25, 2022) (plaintiffs defending against allegations that they could not meet the requirements for vote dilution because the maps they proposed were "irregular.").

of protected class voters, as compared to other voters. Measuring RPV often depends on election return data, which is sometimes unavailable, especially in smaller jurisdictions and in places with long histories of vote dilution and disenfranchisement where candidates preferred by minority voters simply stop running for office. Thus, the effect of vote dilution itself means that minority communities will often be hard-pressed to find quantitative proof that RPV exists in actual election results.

In contrast, S.B. 342 takes a more flexible approach to assessing vote dilution violations. Affected voters must first prove vote dilution by showing that a jurisdiction maintains a dilutive at-large or other system of election and RPV is present. § 8–903(B)(1). S.B. 342 also sets out reliable and objective standards for courts to apply in their assessment of RPV. § 8–904.

But S.B. 342 also allows affected voters to show that they are denied equal opportunity to participate in the political process based on relevant qualitative circumstances, including the history of discrimination against the protected class and the extent to which the protected class members face barriers, disparities, and hostility in the political process. § 8–905. This provision allows plaintiffs to introduce expert and fact evidence under a streamlined set of relevant factors identified by the Supreme Court, Congress, and other courts to demonstrate that the challenged map or method of election, in the words of the U.S. Supreme Court, "interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [protected class voters] and white voters to elect their preferred representatives" or influence the outcome of elections.[11]

B. S.B. 342 expands the remedies that historically disenfranchised communities can seek to ensure their electoral enfranchisement.

If a violation of S.B. 342 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government. § 8–906(B). This part of the bill recognizes that dilution tactics take many different forms and are not solely limited to traditional methods of voter discrimination.

S.B. 342 also specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 8–906(C)(2). This directly responds to an egregious flaw in federal law, where Section 2 has been interpreted by federal courts to grant government defendants the "first opportunity to suggest a [legally acceptable] remedial plan."[12] This often leads to jurisdictions choosing a remedy that only minimally addresses a discriminatory voting practice rather than fully enfranchising those who won the case. For example, in *Cane v. Worcester County*, the Fourth Circuit, applying the federal VRA, explained that the governmental body has the first chance at developing a remedy and that it is only when the governmental body fails to respond or has "a legally unacceptable remedy" that the district court can

[11] *See, e.g.*, *Gingles*, 478 U.S. at 47.
[12] *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994).

step in.[13] In *Baltimore County Branch of the NAACP v. Baltimore County*, the district court likewise accepted the defendant county's proposed map, despite plaintiffs' objections and presentation of an alternative map.[14] This is antithetical to the concept of remedying racial discrimination; courts should not defer to the preferences of a governmental body that has been found to violate anti-discrimination laws in fashioning a remedy for that body's own discriminatory conduct. S.B. 342 avoids this problem by allowing the court to consider remedies offered by *any* party to a lawsuit, and prioritizing remedies that will not impair the ability of protected class voters to participate in the political process.

This bill also promotes settlement through this specification that courts must weigh all proposed remedies equally and decide which one is best suited to help the impacted community, instead of giving deference to the remedy proposed by the government body that violated that community's rights.

IV. CONCLUSION

We strongly urge you to enact S.B. 342 and strengthen voting rights for all Marylanders. S.B. 342 signifies a pivotal inflection point for the state of Maryland to lead in protecting voting rights, offering a more efficient and lower-cost layer of oversight for communities.

Respectfully submitted,
/s/ Marisa Wright
Marisa Wright, Legal Fellow
Lata Nott, Director, Voting Rights Policy
Aseem Mulji, Senior Legal Counsel
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

[13] *Id*.

[14] No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).