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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 342
Voting Rights Act of 2025 – Counties and Municipalities
Before the: Ways and Means Committee
March 25, 2025

Good afternoon Chair Atterbeary, members of the Ways and Means Committee,

In 1985, then Attorney General Stephen H. Sachs, who just last week departed this life, completed an 111-page audit of 11 heavily black counties which found Racial discrimination and polarization in a number of Maryland's southern and Eastern Shore counties. "Although it found only Somerset with discrimination patterns severe enough to violate the Voting Rights Act, the audit said exclusion of blacks from the electoral process is widespread. Between 1962 and 1982, for example, according to the study, a total of 282 commissioners and county council members were elected in the 11 counties, but only one was black. The counties' voting-age populations are on the average about 21 percent black."¹

At the time, it was reported by the Washington Post that the audit reported that "There is a "special sense of isolation among members of the black community... a sense that they are governed, but do not participate in governing, and that important public issues are decided for them, not by them."

In 2021 a Baltimore County Redistricting Commission was formed by our County Council and proposed a redistricting plan that would maintain a white majority in six of seven Council districts by "packing" a supermajority of Black voters (70 plus percent) into its single majority Black district, a tactic the U.S. Supreme Court has counseled against. Advocacy organizations, my colleagues, and I lobbied the County Council to amend the map to better reflect the demographics of the county. Instead of doing that, the Council amended the map creating an even more precarious council districts in its map. The Council's response led me and a few other Baltimore County citizens to join the ACLU, League of Women Voters of Baltimore County, the Baltimore County Branch of the NAACP, and Common Cause - Maryland in filing a federal lawsuit challenging the racially discriminatory and unlawful redistricting plan approved by the Baltimore County Council. Ultimately, the federal court issued an injunction overturning Baltimore

¹ <https://www.washingtonpost.com/archive/local/1985/07/19/voting-bias-found-in-some-md-counties/58882df1-ecd4-4fc2-919a-37c2505a56be/>

County's racially discriminatory redistricting map and requiring the County to reconfigure it in compliance with the Voting Rights Act.

In 2022 the Town of Federalsburg, located in Caroline County, was sued to end a discriminatory at-large election system that has kept governance exclusively white for two centuries in a community that is now nearly half Black. However, in June 2023, through charter amendments, legislation and a federal lawsuit, Federalsburg's at-large election system was changed to a two-district system to ensure more representation of Federalsburg's Black residents.² For the first time in its 200-year history, the town, whose population is about 43% Black, elected its first Black leaders.³

In December 2023, several civil rights groups filed suit against Wicomico County for violations of the federal Voting Rights Act challenging the at-large component of the election system for the Wicomico County Council and Board of Education.⁴ Although Wicomico County is comprised of around 30% Black people and 40% non-white people in total, six representatives are white, and only one is black.⁵ It has been alleged that the County employs a partial at-large structure which perpetuates a legacy of discrimination in the County by limiting Black voters' opportunities to one majority-Black district among the seven seats available for Council and Board of Education members.⁶ It is my understanding that this case has recently been settled, in principle, by the parties and simply needs the court's approval.

And today, my County again stands at the precipice of another possible lawsuit stemming from the County Council's creation of a new nine-member council map which was passed in conjunction with legislation to increase the Council's size from seven to nine members. This map was passed without any meaningful public input and prior to a convening of a redistricting commission, which recently has begun to meet.

While the federal Voting Rights Act gives our U.S. Attorney General the ability to sue any government which violates the federal Voting Rights Act, but the reality is, that office does not have the capacity to get involved in every violation that occurs. In the cases I described, Maryland voters' rights were not championed by the U.S. Attorney General nor our State Attorney General, they were championed by nonprofit organizations. However, it is extremely important that citizens not have to rely on hiring private attorneys to do what can be done by our State's Attorney General.

² In April 2024, a settlement was reached in the lawsuit filed against the town by the Caroline County branch of the NAACP, the Caucus of African American Leaders and Federalsburg residents for \$260,000.

https://www.stardem.com/news/local_news/federalsburg-unveils-sign-to-recognize-historic-2023-election-people-who-made-it-possible/article_f94c1ff4-a6b3-11ef-86f9-4ffdf1f6d9b1.html

³ *Id.*

⁴ Maryland Civil Rights Groups Allege County Violates Voting Rights Laws, Joe Heim, The Washington Post, <https://www.washingtonpost.com/dc-md-vi/2023/12/08/maryland-wicomico-lawsuit-naacp-civil-rights/>

⁵ *Id.*

⁶ https://www.aclu-md.org/sites/default/files/field_documents/wicomico_county_naacp_et_al_v_wicomico_county_et_al_-_complaint.pdf.

As such, SB 342 grants authority to the Maryland Attorney General as well as any other person to enforce sections 4-603 or 8-903 of the Maryland Voting Rights Act of 2025 and allows plaintiffs to seek injunctive relief, damages or other relief if a county or municipality violates the bill.

SB 342 also prohibits Maryland counties⁷ and municipalities⁸ from imposing or applying methods for electing its representatives in a manner that impairs a Protected Class member⁹ from electing a candidate of that member's choice or impairs that Protected Class member's ability to influence the outcome of an election as a result of the dilution or the abridgment of that Protected Class member's voting rights. The legislation provides that intent to discriminate is not required to establish a violation and it provides five probative factors which may be used to establish whether a violation occurred. Those probative factors are noted under sections 8-904(A) and 4-604(A).¹⁰

To prove that a violation of the Maryland Voting Rights Act of 2025, a plaintiff would have to establish (1) a county or municipal election exhibits Polarized Voting¹¹ and (2) the method of the election dilutes or abridges the voting strength of a Protected Class member's ability to influence the outcome of an election.¹²

Finally, under SB 342, when making a determination whether Polarized Voting occurred, the court must consider: (1) the methodologies for estimating group voting behavior, as approved in federal case law, to enforce the federal Voting Rights Act of 1965, (2) elections of the governing body of the county or municipality, (3) ballot question elections, (4) elections where at least one candidate is a member of a protected class, and (5) other electoral choices that affect the right and privileges of the Protected Class member.¹³

For the aforementioned reasons, I am asking the committee to provide a favorable report for SB 342.

⁷ See proposed section 8-904(A).

⁸ See proposed section 4-604(A).

⁹ Under this legislation, "Protected Class" is defined as a "class of voter who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 and related federal case law." See proposed section 8-901(C).

¹⁰ These include (1) a history of discrimination, (2) the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of a method of election, including at large elections, (3) the denial of access to the processes determining which groups of candidates will receive financial or other support in a given election, (4) the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health that hinders the ability to participate effectively in the political process, and (5) the use of overt or subtle racial appeals in political campaigns.

¹¹ See proposed sections 4-601(B) and 8-901(B) which define "Polarized Voting" as "voting in which there is a difference, as defined in federal case law regarding enforcement of the federal Voting Rights Act of 1965, in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of electorate."

¹² See proposed sections 4-603(B) and 8-903(B).

¹³ See proposed sections 4-604(A) and 8-904(A).