

Maryland Senate
Education, Energy, and Environment Committee
March 14, 2023

Testimony of Election Law Clinic at Harvard Law School in Support of Senate Bill 878

On behalf of the Election Law Clinic at Harvard Law School (“ELC”), we are pleased to offer this testimony in support of Senate Bill 878, the Maryland Voting Rights Act of 2023 (“SB878”). ELC supports SB878 in its entirety; however, we write to specifically elaborate on the benefits of Subtitle 5, which creates the Statewide Election Database and Information Office (“the EDIO”) and a publicly accessible election database (“the Election Database”).

ELC’s mission is to train the next generation of election lawyers through litigation and advocacy that bring novel academic ideas to the practice of election law. ELC aims to build power for voters and recognizes that the struggle for voting rights is a struggle for racial justice. ELC is currently working with coalitions of advocates and organizers to support or amend Voting Rights Acts in multiple states including New Jersey and Connecticut. In December of 2021, ELC and co-counsel Campaign Legal Center represented OneAmerica in an amicus brief defending the constitutionality of the Washington Voting Rights Act and explaining how that act is essential to protecting communities of color.¹ Through these efforts and others, ELC regularly utilizes and analyzes a range of election data. Indeed, ELC recently launched “RPV Near Me”, a microsite offering free access to summary measures of racially polarized voting (“RPV”) for every county in the country.² ELC hopes RPV Near Me will be a resource the election law community and the public can use as they investigate voting patterns, areas of minority underrepresentation, and the types of electoral systems that will bring better local representation to all members of a given jurisdiction. ELC enthusiastically supports SB878 and Subtitle 5, because they will help ensure that Marylanders, and in particular Marylanders of color, can be fully enfranchised at the local government level.

I. SB878 will improve Maryland’s already rich culture of civic participation.

Maryland has a strong culture of civic participation. For example, in the 2020 federal election, Maryland was the eighth highest state for voter turnout (68.7%) and the thirteenth highest state for voter registration rate (73.4%).³ Indeed, in that election “more people voted in Maryland . . . than

¹ See Brief for OneAmerica as Amicus Responding to Intervenor-Defendant’s Motion for Judgment on the Pleadings, *Portugal v. Franklin County*, No. 21-2-50210-11 (Wash. Super. Ct. for Franklin Cnty. Dec. 2, 2021).

² *About RPV Near Me*, RPV NEAR ME, <https://www.rpvnearme.org/about.html>.

³ See Voting and Registration in the Election of November 2020 Table 4a, U.S. CENSUS BUREAU (April 2021), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

ever before.”⁴ And, per The Center for Public Integrity, “Maryland has been among the most aggressive states in the country over the past two years in making access to voting more equitable.”⁵ With SB878, Maryland can build on these successes and ensure Maryland’s election system continues to work for all Marylanders in an equitable fashion.

A strong SB878 would benefit Maryland’s civic participation culture and the state’s local governments. Studies have shown protections like those found in SB878 can reduce disparities in racial turnout,⁶ increase diversity in local elected offices,⁷ and improve local governments’ responsiveness to their constituents.⁸ These improvements will thus make Maryland’s local governments more representative and ensure they work for the people.

The Election Database Subtitle 5 calls for will add to these benefits. Currently, the difficulty of obtaining, comparing and contrasting election data across local jurisdictions impedes the ability of voters, academics, and civil rights organizations to analyze whether and to what extent Marylanders are able to cast a meaningful ballot. The data Subtitle 5 seeks to make accessible is critical to understanding where problems are arising in election policy and how to remedy them, but that data is currently held individually by each locality, posing a significant burden to anyone seeking to conduct such an analysis. A centralized, statewide hub for such election information would help advocates ensure voters can equally access the polls. But, as elaborated on below, it would also enable local governments, boards of elections, civic engagement groups, and active citizens to better perform their roles in Maryland’s democracy.

II. Subtitle 5’s Elections Database benefits local governments, boards of elections, civic engagement groups, and active citizens.

Subtitle 5 offers Maryland an opportunity to bring its elections into the 21st century by providing a central public repository for election and demographic data with the goals of fostering

⁴ *Election Protection Report*, ACLU MD. (March 2021), https://www.aclu-md.org/sites/default/files/field_documents/aclu_of_maryland_election_protection_report_-_examining_the_2020_election.pdf.

⁵ Karen Juanita Carrillo, *Maryland Expands Access to Absentee and Early Voting*, CTR. FOR PUB. INTEGRITY (Oct. 6, 2022), <https://publicintegrity.org/politics/elections/who-counts/maryland-expands-access-to-absentee-and-early-voting/>.

⁶ See generally, Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California* (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf (analyzing the effects the California VRA on turnout); see also Elizabeth U. Cascio & Ebonya Washington, *Valuing the Vote: The Redistribution of Voting Rights and State Funds Following the Voting Rights Act of 1965*, 129 Q. J. ECON. 379, 423 (2014) (analyzing the impact of the federal VRA).

⁷ See Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 URB. AFFS. REV. 731, 757 (2021); Paru R. Shah et al., *Are We There Yet? The Voting Rights Act and Black Representation on City Councils*, 75 J. OF POL. 993, 1006 (2013); Pie-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 POL. SCI. & POL. 489, 492 (2007).

⁸ See Sophie Schuit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 AM. J. OF POL. SCI. 413, 524 (2017).

evidence-based practices in election administration and unprecedented transparency. This database will include five kinds of election and demographic data: (1) census-based, precinct-level population estimates by race, color, and language minority; (2) precinct level state and local election results; (3) geocoded voter history files and registration lists; (4) shapefile local election districting plans and precinct boundaries; and (5) geocoded polling place and ballot drop box locations for local elections.⁹ This data will benefit: (1) local governments and boards of election crafting election administration policy; (2) civic engagement organizations creating nonpartisan voter education programs; and (3) local governments, boards of election, and engaged citizens collaborating on redistricting plans.

- a. Subtitle 5 equips local governments and boards of elections with the tools to enact evidence-based, best-in-class election administration policy.

The EDIO and Election Database will enable the development and sharing of best practice election administration policy across Maryland’s local governments and boards of elections. Precinct level population estimates by race, precinct level election results, location-based voter history files, and location based polling place and ballot drop box data are critical inputs to understanding how well election administration policy is serving a community. Presently, local governments and boards of elections have access to this data for their own jurisdiction, but cannot as easily access other jurisdictions’ data. If one county is deciding how many ballot drop boxes it needs to effectively service a particular precinct, it would benefit them to be able to evaluate how successful other counties have been in determining the number and location of ballot drop boxes for a particular population area. The Election Database allows them to do just that by providing easy access to this kind of data statewide. And, the county can seek technical assistance from the EDIO should it need it.¹⁰

- b. Subtitle 5 empowers civic engagement organizations in their efforts to mobilize and educate voters.

Civic engagement organizations seeking to turnout voters will also benefit from the Election Database. Organizations that create voter guides rely on shapefiles of districting plans and precinct boundaries as well as on location-based polling place and drop box data to create nonpartisan voter education programs.¹¹ Shapefiles allow these organizations to match voters with the contests that will appear on their ballot.¹² Currently, these groups must request this data in a piecemeal fashion

⁹ HB1104 (M.D. 2023–2024) (creating M.D. ELEC. LAW § 15.5–505); SB0878 (M.D. 2023–2024) (same).

¹⁰ See HB1104 (M.D. 2023–2024) (creating M.D. ELEC. LAW §§ 15.5–503, 15.5–508) (instructing the EDIO to “implement best practices in election administration” and “provide nonpartisan technical assistance” to local governments seeking to use the database); SB0878 (M.D. 2023–2024) (same).

¹¹ See, e.g., *Testimony to the New York State Senate Standing Committee on Elections*, THE LEAGUE OF WOMEN VOTERS OF N.Y. STATE, 2 (Mar. 3, 2020), <https://www.lwvnyonline.org/advocacy/vote/2020/march/LWVNY-NYVRA-Testimony-for-Senate-Elections-Hearing-2020.pdf>.

¹² See *id.*

from each local government or board of elections. But, any struggles they encounter in retrieving these files can inhibit them from operating their programs to their full potential.¹³ By making this kind of data easily accessible for the entire state, Subtitle 5 will ensure civic engagement groups can fulfill their missions of providing nonpartisan election information to voters.

c. Subtitle 5 facilitates equitable and accessible redistricting processes.

The election database will additionally facilitate collaboration between local governments, boards of elections, and active citizens on redistricting efforts. Redistricting processes rely, in part, on census-based population estimates broken down by race, election results by precinct, and historical shapefiles that show previous districting plans. While the public has the opportunity to provide input on redistricting efforts, without easy access to this kind of data their ability to provide *meaningful* input is inhibited. Subtitle 5 and the EDIO can help Maryland mimic efforts states like California have undertaken to make it easier for citizens to engage with redistricting. California hosts a publicly accessible redistricting database that, among other things, provides Californians “three free-to-use tools” they can use to “draw [their] California” and thereby share their input with the relevant redistricting authorities.¹⁴ Providing citizens and local governments with statewide population and districting plan data will help make local redistricting processes more accessible and ultimately, equitable.

III. Subtitle 5 relieves local governments and boards of elections of an information production burden they currently bear.

The EDIO and Election Database will save local jurisdictions time and manpower they currently expend responding to PIA requests for election data. As discussed, voting rights advocates, civic engagement organizations, and active citizens need this kind of data to effectively perform their roles in Maryland’s democracy. Today, getting that data can often entail requesting it from local governments and boards of elections through mechanisms like Maryland’s Public Information Act (PIA). While Maryland government agencies are normally expected to comply with PIA requests in 30 days,¹⁵ that is still up to a month’s worth of time and energy per request that could be saved by the presence of a publicly accessible statewide election database. Under Subtitle 5, local election administrators will only need to provide the EDIO data at least once a year and after each local election. Subtitle 5 will thus standardize Maryland election administrators’ information production duties and relieve them of some burdensome PIA requests.

¹³ See, e.g., *id.*

¹⁴ See *The Redistricting Database for the State of California*, STATEWIDE DATABASE: THE REDISTRICTING DATABASE FOR THE STATE OF CAL., <https://statewidedatabase.org/>.

¹⁵ See OFF. OF ATT’Y GEN. BRIAN E. FROSH, MARYLAND PUBLIC INFORMATION ACT MANUAL 4-3 (July 2022).

IV. Operating and maintaining the Election Database via the EDIO will not be difficult for Maryland.

Maryland can easily operate and maintain the Election Database and the EDIO, in part because it can seek to leverage the personnel and expertise of universities to ensure the EDIO's success. At a minimum, operating and maintaining the database and the EDIO requires appointing an EDIO Director,¹⁶ hiring the number of staffers the State Board of Elections deems sufficient to perform the EDIO's duties,¹⁷ and acquiring software licenses to support the database. Importantly, Maryland likely already has agreements with relevant software companies to support similar databases; for example, the Help America Vote Act already requires Maryland to maintain a statewide voter registration database.¹⁸ Other states operating or contemplating establishing similar election databases have additionally leaned on their state university systems for support. For example, California's Redistricting Database is housed at the University of California Berkley Law School,¹⁹ and pending legislation in New York proposes creating a "New York State Voting and Elections Database and Institute" jointly hosted by the State University of New York and the City University of New York.²⁰ Establishing a partnership between a university in Maryland and the EDIO would allow the EDIO to benefit from the data expertise of Maryland's academics and would provide unique opportunities to students to learn about the mechanics of elections via supporting the database.

¹⁶ See HB1104 (M.D. 2023–2024) (creating M.D. ELEC. LAW § 15.5–504); SB0878 (M.D. 2023–2024) (same) (requiring the Governor to appoint a Director of the EDIO who, at a minimum, holds an advanced degree and “has expertise in demography, statistical analysis, and electoral systems.”).

¹⁷ See *id.*

¹⁸ See 52 U.S.C. § 21083; see also *State Wide Voter Registration Systems*, U.S. ELECTIONS. ASSISTANCE COMM'N (Aug. 31, 2017) <https://www.eac.gov/statewide-voter-registration-systems>.

¹⁹ See *About the Statewide Database*, STATEWIDE DATABASE: THE REDISTRICTING DATABASE FOR THE STATE OF CAL., <https://statewidedatabase.org/about.html>.

²⁰ See *Senate Bill S657*, THE N.Y. SENATE, <https://www.nysenate.gov/legislation/bills/2023/s657>.

V. Conclusion

SB878 represents an opportunity for Maryland to join California, Oregon, Washington, Virginia, and New York as a national leader in protecting voting rights. And Subtitle 5 represents an opportunity to provide Marylanders unprecedented accessibility to critical election data for the benefit of voting rights activists, local governments and boards of elections, civic engagement organizations, and engaged citizens alike. Everyone has a role to play in Maryland's vibrant democracy, and Subtitle 5 ensures everyone has the tools they need to effectively play their role.

ELC strongly supports SB878 and urges you to enact it.

* * *

Respectfully submitted,

Theresa J. Lee, Litigation Director
Election Law Clinic
Harvard Law School
6 Everett Street, Suite 4105
Cambridge, MA 02138
Tel: (617) 496-0370
thlee@law.harvard.edu