

# **LDF MDVRA Senate Testimony 3 14 23.pdf**

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***Submitted Electronically***

Brian J. Feldman, Chair  
Cheryl C. Kagan, Vice Chair  
Senate Education, Energy, and the Environment Committee  
2 West  
Miller Senate Office Building  
Annapolis, MD 21401

***RE: Senate Bill 878 –The Maryland Voting Rights Act of 2023 – Favorable***

Dear Chair Feldman and Vice Chair Kagan:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),<sup>1</sup> we appreciate the opportunity to submit written testimony in strong support of SB 878, the Maryland Voting Rights Act of 2023 (MDVRA).<sup>2</sup> The MDVRA builds upon the best parts of the landmark federal Voting Rights Act of 1965<sup>3</sup> and recent efforts by states such as New York and neighboring Virginia to provide much-needed protections against voting discrimination.<sup>4</sup> Through this critical legislation, Maryland would set a new standard for state-level protections for Black voters and other voters of color, and immediately become a national leader in building an inclusive, multiracial democracy.

The MDVRA's voter protections include stronger and more efficient causes of action against vote suppression and vote dilution than currently exist in the federal VRA;<sup>5</sup> an important private right of action against voter intimidation, obstruction, or interference;<sup>6</sup> as well as expanded language access

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<sup>1</sup> Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957.

<sup>2</sup> S.B. 878, 2023 Leg. 445<sup>th</sup> Sess. (Md. 2023), <https://mgaleg.maryland.gov/2023RS/bills/sb/sb0878F.pdf>; cross-filed as H.B.1104, 2023 Leg., 445<sup>th</sup> Sess. (Md. 2023), <https://mgaleg.maryland.gov/2023RS/bills/hb/hb1104F.pdf> (hereinafter MDVRA).

<sup>3</sup> 52 U.S.C. § 10301 et. seq.

<sup>4</sup> A.6678E / S.1046E, 2022 Reg. Sess. (NY 21-22), <https://www.nysenate.gov/legislation/bills/2021/A6678> (hereinafter NYVRA); SB 1395, 2022 Reg. Sess. (VA. 2021). <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1395>

<sup>5</sup> MDVRA § 15.5-201-206.

<sup>6</sup> MDVRA § 15.5-601.

provisions<sup>7</sup> and increased transparency of important election data.<sup>8</sup> LDF strongly supports the entire bill—in fact advancing the MDVRA is a top affirmative voting rights priority for our organization. While we support the full legislation, our testimony submitted today will focus on the legislation’s “preclearance” requirement that certain jurisdictions with a demonstrated history of discrimination secure pre-approval from state officials or a court before changing certain voting polices. Several partners and allies in this effort will submit testimony in support of other key components of the legislation.

For the reasons outlined herein, Maryland should enact the MDVRA. Prior to enactment we also recommend some improvements to better tailor the legislation to Maryland’s particular needs, which we outline below.

### **The Legal Defense Fund’s Long History of Protecting and Advancing Voting Rights**

Founded in 1940 under the leadership of Maryland native Thurgood Marshall, LDF is America’s premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. Justice Marshall—who litigated LDF’s watershed victory in *Brown v. Board of Education*,<sup>9</sup> which set in motion the end of legal apartheid in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*,<sup>10</sup> the 1944 case ending whites-only primary elections, as his most consequential case. He often shared that he held this view because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution.

LDF has prioritized its work protecting the right of Black citizens to vote for more than 80 years—representing Dr. Martin Luther King Jr. and other marchers in Selma, Alabama in 1965, advancing the passage of the Voting Rights Act (VRA) and litigating seminal cases interpreting its scope,<sup>11</sup> and working in communities across the South to strengthen and protect the ability of Black citizens to participate in the political process free from discrimination.

Currently, Black voters face the greatest threat of discrimination and disenfranchisement since the Jim Crow era which the VRA helped bring to a close. In the wake of recent Supreme Court cases

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<sup>7</sup> MDVRA § 15.5-301.

<sup>8</sup> MDVRA § 15.5-505.

<sup>9</sup> 347 U.S. 483 (1954).

<sup>10</sup> 321 U.S. 649 (1944).

<sup>11</sup> LDF is currently lead counsel in a federal VRA case pending before the Supreme Court this term. *Merrill v. Milligan*, 595 U.S. \_\_\_\_ (2022).

that have undercut the federal VRA,<sup>12</sup> as Congress struggles to respond with federal legislation,<sup>13</sup> and as states across the country move to further restrict the franchise,<sup>14</sup> LDF has prioritized working to advance state voting rights acts to meet the urgent need to protect Black voters from discrimination. In 2022, we advocated successfully for the enactment of the John R. Lewis Voting Rights Act of New York (NYVRA).<sup>15</sup> This year we are working with robust coalitions of civil and voting rights advocates to advance similar laws in Maryland, Connecticut and New Jersey.<sup>16</sup> As the most diverse state on the East Coast<sup>17</sup> with historic new Black leadership, a state with a longstanding history of racial discrimination that has made substantial strides in opening its democracy,<sup>18</sup> and as the birthplace of our founder Thurgood Marshall, we are excited to work with the General Assembly to ensure that Maryland can lead the way forward. The Free State can become a national leader by meeting a critical local need.

Even when Congress acts to restore and strengthen the federal VRA and the Supreme Court corrects course to fully value the voting rights of all eligible Americans, state VRAs will remain important tools to protect voters of color from discrimination. States have plenary authority to make rules and standards for state and local elections, and can more finely tailor a suite of protections to specific needs and conditions.

### **Why Preclearance is Important in Maryland**

The importance of the right to vote cannot be overstated. The United States Supreme Court has long described voting as a fundamental right, because it is preservative of all other rights.<sup>19</sup> Voting

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<sup>12</sup> See *Shelby County v. Holder*, 570 U.S. 529 (2013). See *Brnovich v. Democratic National Committee*, 590 U.S. (2021).

<sup>13</sup> Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021).

<sup>14</sup> *Voting Laws Roundup: February 2023*, Brennan Center for Justice (Feb. 22, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>

<sup>15</sup> NYVRA.

<sup>16</sup> Meghan Holden, Chris Ford, Sarai Bejarano, Yanidsi Velez, Rachel Schmidt, Dera Silvestre, and Mannal Haddad, *Civil Rights Organizations and Connecticut Legislators Call for Passage of a State Voting Rights Act*, NAACP Legal Defense Fund, available at <https://www.naacpldf.org/press-release/civil-rights-organizations-and-connecticut-legislators-call-for-passage-of-a-state-voting-rights-act/>; *New Jersey Voting Rights Act*, NJVRANOW, available at <https://njvra.org/>.

<sup>17</sup> Marissa J. Lang and Ted Mellnik, *Census data shows Maryland is now the East Coast's most diverse state, while D.C. is Whiter*, Washington Post, available <https://www.washingtonpost.com/dc-md-va/2021/08/12/dc-virginia-maryland-census-redistricting-2/>

<sup>18</sup> Bennett Leckrone, *Election Reforms Will Make Voting More Accessible In Maryland, Advocates Say*, MARYLAND MATTERS, available at <https://www.marylandmatters.org/2021/06/16/election-reforms-will-make-voting-more-accessible-in-maryland-advocates-say/>

<sup>19</sup> See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

is “the citizen’s link to his laws and government”<sup>20</sup> and “the essence of a democratic society.”<sup>21</sup> If the right to vote is undermined, the Court has cautioned, other rights “are illusory.”<sup>22</sup> Thus, in a democracy, safeguarding the right to vote “is a fundamental matter.”<sup>23</sup>

Preclearance has proven to be a tremendously powerful and effective tool to protect these rights. Such programs require certain jurisdictions with demonstrated histories of discrimination to secure the approval of state officials or a court before implementing changes to voting policies or practices that could harm voters of color.<sup>24</sup> Preclearance programs are based upon the simple premise that when it comes to a matter as fundamental as the right to vote, an ounce of prevention can be worth a pound of cure.

Preclearance was the “heart” of the federal Voting Rights Act of 1965<sup>25</sup> because it prevented voting discrimination *before* it occurred. Challenging voting discrimination can be expensive and time-consuming,<sup>26</sup> and often several elections take place before discriminatory rules are addressed through litigation or policy action.<sup>27</sup> What the Supreme Court observed over fifty years ago remains true today: “Voting suits are unusually onerous to prepare” and “[l]itigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials . . . .”<sup>28</sup> Once an election has taken place under a discriminatory system, it generally cannot be undone; there is no “do over” when a person’s right to vote is denied or abridged in an election. It was for this reason that the drafters of the federal Voting Rights Act devised preclearance as a way to have a second set of eyes

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<sup>20</sup> *Evans v. Cornman*, 398 U.S. 419, 422 (1970).

<sup>21</sup> *Harman v. Forssenius*, 380 U.S. 528, 537 (1965).

<sup>22</sup> *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

<sup>23</sup> *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964).

<sup>24</sup> 52 U.S.C. § 10303; NYVRA § 17-210.

<sup>25</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966).

<sup>26</sup> Leah Aden, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP Legal Defense and Educ. Fund, Inc. (Sep. 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>; Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

<sup>27</sup> In just one example, Plaintiffs successfully challenged Texas’ voter identification law, which an appellate court once considered the most restrictive in the country. During three years of appeals after a federal court held that the law created an unconstitutional burden on the right to vote, Texas voters elected dozens federal, state, and local candidates. *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

<sup>28</sup> *Katzenbach*, 383 U.S. at 314.

on potentially discriminatory voting policies *before* they can go into effect, thus “shift[ing] the advantage of time and inertia from the perpetrators of the evil to its victims.”<sup>29</sup>

Notably, many jurisdictions that were subject to federal preclearance saw the program not as a burden, but rather as a valuable way to garner expert advice on the probable impact of proposed voting changes and minimize the chances of costly litigation down the line.<sup>30</sup>

In 2013, the U.S. Supreme Court struck down the particular criteria for determining which jurisdictions would be covered by the federal preclearance program, not the concept of preclearance itself.<sup>31</sup> One indication of the effectiveness of federal preclearance is that, after the program became inoperative, voters in jurisdictions that were previously required to pre-clear voting changes began to face substantially increased discrimination.<sup>32</sup>

The recent process of redrawing district lines after the 2020 Census demonstrates why bringing the successful preclearance process to Maryland will both prevent future discrimination and also save voters and taxpayers time and money. In several jurisdictions throughout the state, the process caused public concern about the potential discriminatory impact of newly drawn districts, and some places required expensive and time-consuming litigation to address these concerns.<sup>33</sup>

One case in point involves Baltimore County’s districting plan. Despite demographic shifts over the past decade that led to nearly half the County population being people of color, the County Council enacted a districting plan that packed Black voters into a single super-majority district while maintaining significant White majorities in the six remaining districts.<sup>34</sup> The Council acted in the face of sustained advocacy by voting rights groups and clear warnings that the proposed plan would violate federal non-discrimination standards.<sup>35</sup> Local residents and civil rights groups sued under the federal

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<sup>29</sup> *Id.* at 328.

<sup>30</sup> See Brief for the States of New York, California, Mississippi, and North Carolina As Amici Curiae in Support of Respondents, *Shelby County, Ala. v. Holder* (U.S. 2013); Brief for the States of North Carolina, Arizona, California, Louisiana, Mississippi, and New York as Amici Curiae in Support of Eric H. Holder, Jr., et al., *Northwest Austin Municipal Utility District No. 1 v. Holder*, 08-322 at 11 (2009); see also Brief for Amicus Curiae, the City of New York, the Council of the City of New York, Michael R. Bloomberg, in his Capacity as Mayor of the City of New York, and Christine S. Quinn, in her Capacity as the Speaker of the City Council of the City of New York, in Support of Respondents, *Shelby County, Ala. v. Holder*, No. 12-96 (U.S. 2013).

<sup>31</sup> *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013).

<sup>32</sup> Leah Aden, *Democracy Diminished*, LDF’s Thurgood Marshall Institute, available at [https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished\\_-10.06.2021-Final.pdf](https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf).

<sup>33</sup> See testimony by ACLU of Maryland for more detail on the 2020 districting cycle in the state.

<sup>34</sup> *Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562 (D. Md. 2022).

<sup>35</sup> Bennett Leckrone, *In Baltimore County Redistricting Case, Plaintiffs Say New Council Map Doesn’t Comply With Voting Rights Act*, MARYLAND MATTERS, available at <https://www.marylandmatters.org/2022/03/10/in-baltimore-county-redistricting-case-plaintiffs-say-new-council-map-doesnt-comply-with-voting-rights-act/>.

Voting Rights Act and secured a court ruling invalidating the discriminatory plan.<sup>36</sup> This process, however, cost organizations time and effort better spent on affirmative priorities such as expanding voting access; and will almost certainly cost Baltimore County taxpayers at least one million dollars in legal fees.<sup>37</sup>

Given the County's history of discrimination,<sup>38</sup> it would likely qualify as a "covered jurisdiction" under the MDVRA's preclearance program.<sup>39</sup> If the MDVRA had been in place and Baltimore County was deemed covered by the preclearance program, the Attorney General or the Anne Arundel Circuit Court would almost certainly have declined to preclear the proposed districting plan under the MDVRA's standard of review,<sup>40</sup> and the County would have gone back to the drawing board to produce a nondiscriminatory plan--producing fair districts more quickly and saving taxpayer resources.

Similarly, just last month, Black voters and organizations that represent them, such as the NAACP and the Caucus of African American Leaders, were forced to sue the Town of Federalsburg 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.<sup>41</sup> Black residents warned of the discriminatory impact of the current at-large system prior to filing suit.<sup>42</sup> While plaintiffs will likely prevail under the federal Voting Rights Act, there will be substantial cost to both voters and taxpayers to achieve a fair system. Federalsburg may or may not become a "covered jurisdiction" under MDVRA's preclearance program, but it is just one example of a broader problem. At least nine counties in Maryland use full or partial at-large election systems, in addition to municipalities such as Federalsburg.<sup>43</sup>

Establishing a preclearance program for the local redistricting that will occur after the next Census will help avoid such discriminatory actions thus resulting in fairer outcomes and saving

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<sup>36</sup> *Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562 (D. Md. 2022).

<sup>37</sup> Meredith Curtis Goode, "Victory: Federal Judge Orders Baltimore County to Submit Redistricting Plan that Complies with Voting Rights Act," ACLU of Maryland (Feb. 22, 2022), available at <https://www.aclu-md.org/en/press-releases/victory-federal-judge-orders-baltimore-county-submit-redistricting-plan-complies>.

<sup>38</sup> No Black candidate was elected to County office until 2002, and only one Black official has served at any given time since.

<sup>39</sup> MDVRA § 15.5-401(B).

<sup>40</sup> MDVRA § 15.5-404(E).

<sup>41</sup> Ezola Webb & Meredith Curtis Goode, "Black Voters, Advocates Challenge Election System in Eastern Shore Town Shamefully Marking Bicentennial with Continued All-White Government," ACLU of Maryland (Feb. 22, 2023), available at <https://www.aclu-md.org/en/press-releases/black-voters-advocates-challenge-election-system-eastern-shore-town-shamefully>.

<sup>42</sup> *Id.*

<sup>43</sup> Maryland House Bill 655, [https://mgaleg.maryland.gov/2021RS/fnotes/bil\\_0005/hb0655.pdf](https://mgaleg.maryland.gov/2021RS/fnotes/bil_0005/hb0655.pdf).

taxpayer money. But the benefits of preclearance go well beyond redistricting. For example, a shortage of election judges and voting machines has led to long lines at the polls, particularly in Black and brown communities.<sup>44</sup> Under preclearance certain jurisdictions would need to submit their proposed allocation of polling locations across communities for review to ensure that resource allocation decisions do not leave Black or Latino neighborhoods with longer lines on Election Day.<sup>45</sup>

While preclearance would impose a small compliance requirement on covered localities, it would ultimately save many of those jurisdictions significant time and money by identifying discriminatory policies *before* they are enacted, thereby avoiding subsequent litigation. Moreover, it would serve as a powerful prophylactic to prevent voting discrimination and promote fairness and equal access to the fundamental right to vote for Maryland citizens.

### **How the MDVRA's Preclearance Program Works**

The MDVRA's preclearance program is modeled after the program enacted by New York State in 2022,<sup>46</sup> which was in turn based upon the successful federal program.<sup>47</sup> The program requires a limited set of jurisdictions with a demonstrated history of discrimination to secure pre-approval from the Attorney General or a court before making changes to an enumerated set of voting practices. To ensure that covered jurisdictions may move forward with nondiscriminatory changes in a timely manner, a jurisdiction may seek preclearance either through a streamlined administrative process with defined timelines run by the Attorney General<sup>48</sup> or by the Circuit Court for Anne Arundel County.<sup>49</sup>

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<sup>44</sup> Scott Dance & Cassidy Jensen, *As Maryland voters cast in-person ballots Tuesday, election judge shortages punctuate an unusual primary election season*, Baltimore Sun, available at <https://www.baltimoresun.com/politics/bs-md-pol-election-day-updates-20220719-sh6cvarkofgvzmmx4vdzug2yca-story.html>; Hannah Klain, Kevin Morris, Rebecca Ayala, and Max Feldman, BRENNAN CENTER, *Waiting to Vote*, available at [https://www.brennancenter.org/our-work/research-reports/waiting-vote#footnoteref6\\_etr2asr](https://www.brennancenter.org/our-work/research-reports/waiting-vote#footnoteref6_etr2asr); Barry Simms, *Some counties reducing numbers of polling places due to election judge shortage*, WBALTV11, available at <https://www.wbaltv.com/article/maryland-election-judge-shortage-counties-reduce-number-of-polling-places/33457657#> (reporting the reduction in polling sites in certain counties due to election judge shortages); Ovetta Wiggins, Rebecca Tan, Rachel Chason, and Erin Cox, *Citing a history of voter suppression, Black Marylanders turn out to vote in person*, The Washington Post, available at [https://www.washingtonpost.com/local/md-politics/maryland-early-voting-prince-georges-trust/2020/10/25/847c5afc-1537-11eb-ad6f-36c93e6c94fb\\_story.html](https://www.washingtonpost.com/local/md-politics/maryland-early-voting-prince-georges-trust/2020/10/25/847c5afc-1537-11eb-ad6f-36c93e6c94fb_story.html) (discussing the long lines Black voters had to wait in when voting in the 2020 election); Rachel Baye, *Maryland lawmakers say local election officials violated state law by opening fewer polling places*, WYPR, available at <https://www.wypr.org/wypr-news/2022-09-30/maryland-lawmakers-say-local-election-officials-violated-state-law-by-opening-fewer-polling-places> (discussing the consolidation of polling places for the 2022 election, resulting in declines of as much as 45% of a county's voting locations); *Election Data Overview*, Ways and Means Committee Briefing, available at <https://s3.documentcloud.org/documents/23115106/election-data-overview-9-29-22.pdf> (showing the comparative difference in the amount of polling places per county in 2018 versus in 2022).

<sup>45</sup> MDVRA § 15.5-401(C)(6).

<sup>46</sup> NYVRA § 17-210.

<sup>47</sup> 52 U.S.C. § 10303.

<sup>48</sup> MDVRA § 15.5-404.

<sup>49</sup> MDVRA § 15.5-406.



A covered jurisdiction may appeal the denial of preclearance by the Attorney General<sup>50</sup> or the Circuit Court.<sup>51</sup>

### Covered Jurisdictions

To determine which jurisdictions are subject to the preclearance requirement, the MDVRA constructs a coverage framework consisting of four district criteria, or “prongs.” Each prong provides a different way to assess the jurisdiction’s history of discrimination in a manner that courts have found relevant to the accessibility of the political process. Critically, each prong is time-bound, only encompassing jurisdictions that meet its criteria within a certain number of years. This ensures that the coverage framework is responsive to current conditions. It also means that jurisdictions that come under preclearance are not covered in perpetuity; but rather can roll out of coverage after a sustained period of nondiscriminatory voting administration.

The following criteria qualify a county, municipality, or school board as a covered jurisdiction:

*Any local government with at least one voting rights violation in the past 25 years.*<sup>52</sup> Past voting discrimination is perhaps the clearest sign that a jurisdiction may engage in future voting discrimination. The federal Voting Rights Act’s preclearance coverage was based upon whether certain jurisdictions had discriminatory practices in place when the law was passed.<sup>53</sup> The leading legislation in Congress to restore federal preclearance determines geographic-based preclearance coverage based largely upon voting rights violations within the past 25 years, similar to this prong of the MDVRA’s coverage.<sup>54</sup> The 25-year rolling look-back window provides a long enough period to establish patterns<sup>55</sup> while also ensuring that coverage is based upon present conditions rather than the more distant past.<sup>56</sup>

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<sup>50</sup> MDVRA § 15.5-404(G).

<sup>51</sup> MDVRA § 15.5-406(I).

<sup>52</sup> MDVRA § 15.5-401(B)(1)(I) (“Covered jurisdiction means any local government: that, within the immediately preceding 25 years has become subject to a court order or government enforcement action based on a finding of a violation of this title, the federal Voting Rights Act, the 15th Amendment to the U.S. Constitution, or a voting-related violation of the 14th Amendment to the U.S. Constitution.”).

<sup>53</sup> 52 U.S.C. § 10303.

<sup>54</sup> H.R.4, 117<sup>th</sup> Cong. (2021).

<sup>55</sup> Voting discrimination, for example, is often concentrated during redistricting, which occurs once-per-decade after each decennial census, and a 25-year look-back allows consideration of two redistricting cycles—including the post-redistricting litigation that may span several years before a court adjudication that a redistricting plan illegally discriminated against voters of color.

<sup>56</sup> Although states have more leeway to pass voting protections than does Congress (which must act pursuant to the Elections Clause or specific authority to enforce the U.S. Constitution), it is notable that this 25-year rolling look-back period is consistent with the period of time the U.S. Supreme Court has considered voting and other civil rights violations to be relevant for informing current conditions. In the 1999 case *Lopez v. Monterey County*, the Court upheld

*Any local government with at least three race-based civil rights violations in the past 25 years.*<sup>57</sup> Congress and the courts have long recognized that underlying social conditions resulting from past and ongoing discrimination often interact with particular voting rules to cause or exacerbate voting disparities.<sup>58</sup> For example, courts have long considered “the effects of discrimination in such areas as education, employment, and health” to be relevant to analyzing potential voting rights violations,” because such conditions can “hinder [a minority group’s] ability to participate effectively in the political process.”<sup>59</sup> The MDVRA relies upon the same body of law and social science research and evidence or findings in constructing its preclearance program. Jurisdictions that have engaged in discrimination in these and other areas of civil rights are more likely to engage in voting discrimination, and discrimination in these areas can make voting more difficult or impossible.

*Any local government with a significant number of citizens of voting age population of any protected class where the arrest rate of that protected class is significantly higher than that of the population as a whole.*<sup>60</sup> Getting arrested is the first step in engagement with the criminal legal system, which can have both immediate and long-term effects on an individual’s and a community’s engagement in the political process. Most directly, Maryland does not permit those convicted of felonies to vote while incarcerated.<sup>61</sup> In addition, studies have shown that voter turnout is lower in neighborhoods with high incarceration rates, even among residents with no criminal convictions themselves.<sup>62</sup> Congress and the Supreme Court have required lower courts to consider in evaluating

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the constitutionality of Section 5 at that time, and rejected a challenge brought by a jurisdiction that was covered based on conditions in the jurisdiction in 1968. 525 U.S. 266, 282-285 (1999). *Lopez* thereby recognizes that evidence of voting discrimination from 30 years ago may justify preclearance, and that Congress, in 1982, acted properly in subjecting jurisdictions to preclearance for 25 additional years based on evidence of voting discrimination from 1968. Similarly, in *Tennessee v. Lane*, the Court upheld Title II of the Americans with Disabilities Act (“ADA”) as applied to court access by looking to evidence of discrimination dating back to 1972—32 years before the Court’s decision in *Lane*, and 18 years before Congress enacted the ADA in 1990. *Tennessee v. Lane*, 541 U.S. 509, 525 & nn. 12, 14 (2004).

<sup>57</sup> MDVRA § 15.5-401(B)(1)(II) (“Covered jurisdiction means any local government: that, within the immediately preceding 25 years has become subject to at least three court orders or government enforcement actions based on a finding of a violation of a federal or state civil rights law or the 14th Amendment to the U.S. Constitution concerning discrimination against members of a protected class.”).

<sup>58</sup> *See, e.g., Gingles*, 478 U.S. at 44-47.

<sup>59</sup> *Id.* at 36-47 (quoting S. Rep. No. 97-417, at 28-29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206-207).

<sup>60</sup> MDVRA § 15.5-401(B)(1)(III) (“Covered jurisdiction means any local government: where the combined misdemeanor and felony arrest rate of members of any protected class consisting of at least 10,000 citizens of voting age or whose members comprise at least 10% of the citizen voting age population of the local government, exceeds the proportion that the protected class constitutes of the citizen voting age population of the local government as a whole by at least 20% at any point within the immediately preceding 10 years.”).

<sup>61</sup> Julie Zauzmer Weil and Ovetta Wiggins, *D.C. and Maryland have new policies allowing prisoners to vote. Making it happen is hard*, The Washington Post, available at <https://www.washingtonpost.com/dc-md-va/2020/09/28/dc-maryland-prisoners-voting/>.

<sup>62</sup> Traci Burch, *Major Empirical Research Effort Finds Incarceration Suppresses Overall Voter Turnout*, AMERICAN BAR FOUNDATION, available at <https://www.americanbarfoundation.org/news/467>.

claims of racial discrimination in voting brought under Section 2 of the Voting Rights Act of 1965, “the extent to which minorities in the state or political subdivision bear the effects of discrimination in education, employment, and health, which hinder their ability to participate effectively in the political process.”<sup>63</sup> As part of this analysis, courts have considered whether and to what extent there are “disparities . . . in the numbers of law enforcement stops, arrests, fines, and fees.”<sup>64</sup>

*Any local government with a significant number of citizens of voting age population of any protected class where there is significant residential segregation.*<sup>65</sup> As noted above, Congress and the courts have recognized that underlying social conditions resulting from past and ongoing discrimination often interact with particular voting rules to cause or exacerbate voting disparities. Courts have considered the degree to which neighborhoods are racially segregated as a relevant factor when considering whether voters of color are being unfairly marginalized in the political process due to the lingering effects of discrimination.<sup>66</sup> Voters of color are more likely to face discriminatory voting outcomes in places where they are already facing discrimination in housing, and residential segregation can make voting more difficult directly by affecting the accessibility of polling locations, for example.

These four coverage prongs are modeled after the recently enacted New York Voting Rights Act.<sup>67</sup> Taken as a whole, they serve to identify jurisdictions where recent discrimination substantially increases the risk of current or future voting discrimination. Through further research and consultation with local experts, LDF is recommending some changes and additions to these coverage prongs that will help further tailor the MDVRA’s preclearance framework to Maryland’s unique circumstances and needs. These recommendations are detailed in the section below.

### Covered Voting Policies and Practices

A key difference between the MDVRA and the federal preclearance program is that rather than require covered jurisdictions to preclear any change to voting policy or practices,<sup>68</sup> the MDVRA

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<sup>63</sup> See S. Rep. No. 97-417, at 28-29 (Senate Judiciary Committee report on 1982 Amendments to Section 2 of the Voting Rights Act, 52 U.S.C. § 10301); see also *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).

<sup>64</sup> See, e.g., *Missouri State Conf. of the Nat’l Ass’n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1071 (E.D. Mo. 2016), *aff’d*, 894 F.3d 924 (8th Cir. 2018).

<sup>65</sup> MDVRA § 15.5-401(B)(1)(IV) (“Covered jurisdiction means any local government: where, based on data made available by the U.S. Bureau of the Census, the dissimilarity index of any protected class that consists of at least 25,000 citizens of voting age for the local government or whose members comprise at least 10% of the voting age population of the local government, has been in excess of 50 with respect to the race, color, or language minority group that comprises a majority within the local government at any point during the immediately preceding 10 years.”).

<sup>66</sup> See, e.g., *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1087 (E.D. Va. 2021); *N.A.A.C.P. Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 408 (S.D.N.Y. 2020), *aff’d* 984 F.3d 213 (2d Cir. 2021); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606 (N.D. Ohio 2008).

<sup>67</sup> NYVRA § 17-210.

<sup>68</sup> 52 U.S.C. § 10303.

enumerates a specific set of “covered policies” and practices that experience shows have the potential to be deployed in a discriminatory fashion.<sup>69</sup> These covered policies include changes to forms of government, election methods, district lines, polling locations, and language or disability assistance.<sup>70</sup> The aim is to protect voters against discriminatory changes while making compliance as efficient as possible both for covered jurisdictions and the preclearance administrator.

### Standard of Review for Preclearance Decisions

The MDVRA differs from federal preclearance and the New York model in that it provides for a standard of preclearance review that is more protective of voters. Under the federal preclearance program, a voting change would be precleared as long as the change would not diminish the voting power of a protected class, a standard that came to be known as anti-retrogression.<sup>71</sup> This standard is the result of statutory interpretation by the Supreme Court, not the explicit intent of the drafters of the VRA.<sup>72</sup> The MDVRA includes this standard because it is clear and relatively easy to administer: do not make voters of color worse off.<sup>73</sup>

Anti-retrogression, however, is not sufficient to address discrimination in certain circumstances—such as when a local population has already been suffering from discrimination for years (so a change might not be a step backwards, but maintains a discriminatory regime), or when fairness requires voters of color be given additional opportunities to elect candidates of choice (such as when population shifts should require an additional majority-Black district). For this reason, the MDVRA also prohibits the preclearance of any enumerated policy that “is more likely than not to violate a provision” of the MDVRA as a whole.<sup>74</sup>

### **Recommendations for Improving the MDVRA’s Preclearance Framework**

Based upon LDF’s extensive experience with preclearance at the federal level, our work to help design the preclearance provision of the recently-enacted John R. Lewis Voting Rights Act of New York,<sup>75</sup> our work with legislators in Connecticut and other states to help craft programs that meet

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<sup>69</sup> MDVRA § 15.5-401(C).

<sup>70</sup> Id.

<sup>71</sup> *Beer v. United States*, 425 U.S. 130 (1976).

<sup>72</sup> Id.

<sup>73</sup> MDVRA 15.5-404(E); 15.5-406(G).

<sup>74</sup> Id.

<sup>75</sup> NYVRA § 17-210.

local needs,<sup>76</sup> and our consultations with local experts on Maryland voting patterns and discrimination, we recommend some targeted improvements to the current MDVRA framework. These improvements are intended to help meet Maryland's specific needs by either adjusting existing coverage prongs or by adding new ones.

### Combine the Legal Violation Coverage Prongs

The MDVRA has separate coverage prongs for voting violations and other race-based civil rights violations. LDF recommends combining these into a single prong which is simpler and allows racial discrimination in areas beyond voting to play a strong role in the preclearance framework. This is the approach taken by Connecticut in its state voting rights act.<sup>77</sup> It will be especially helpful in Maryland where lack of prior preclearance coverage or widespread Section 203 language access coverage means that voting discrimination was less likely to be successfully remedied through federal Voting Rights Act lawsuits or administrative action in the past.

### Amend the Criminal Legal System Prong to Add Traffic Stops

As noted above, courts have found disparities in arrest rates and traffic stops are both indicators of discrimination in a particular jurisdiction.<sup>78</sup> Since Maryland collects and makes publicly available traffic stop data by race,<sup>79</sup> this is a helpful metric to add to the criminal legal system prong of the preclearance coverage framework.

### Add Coverage Prongs Based Upon Voter Participation Disparities

LDF recommends adding two coverage prongs that would include in the preclearance program jurisdictions where there is a substantial disparity (at least 10%) in either voter registration or voter turnout rates between members of a protected class and the jurisdiction as a whole.

Disparities in participation as measured by voter registration and voter turnout are direct evidence of unequal access to the ballot.<sup>80</sup> For this reason, registration and turnout disparities in a

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<sup>76</sup> SB471, 2022 General Assembly, 2022 Reg. Sess., (CT. 2022). <https://www.cga.ct.gov/2022/fc/pdf/2022SB-00471-R000454-FC.pdf>.

<sup>77</sup> Id. § 5(c)(1).

<sup>78</sup> See, e.g., *Missouri State Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1071 (E.D. Mo. 2016), *aff'd*, 894 F.3d 924 (8th Cir. 2018).

<sup>79</sup> *Race-Based Traffic Stop Data Dashboard*, Governor's Office of Crime Prevention, Youth, and Victim Services, available at <http://goccp.maryland.gov/data-dashboards/traffic-stop-data-dashboard/>.

<sup>80</sup> Studies have shown that eligible citizens of color often face more substantial burdens or barriers to exercising their fundamental right to vote. *The Impact of Voter Suppression on Communities of Color*, BRENNAN CENTER FOR JUSTICE, available at <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>.

particular jurisdiction were specifically cited in the federal Voting Rights Act as factors for consideration during federal preclearance determinations.<sup>81</sup>

Unfortunately substantial, greater-than-average voter registration and turnout disparities persist in Maryland, and the overall diversity of the state means that a significant number of Black and brown potential voters are sidelined each election. In April 2022, the nonpartisan Voter Participation Center conducted a nationwide analysis to identify the most severe participation disparities across race, gender, and age. The Center found a 33.3% disparity between White turnout and participation by voters of color in the state in the 2020 election, which put Maryland in the top third of the country.<sup>82</sup> In addition, the share of the citizen population registered to vote was nearly 10% lower than overall share of citizen population for people of color in Maryland.<sup>83</sup> The Center placed Maryland in its top quintile with respect to the need to reduce registration disparities between citizen populations by race.<sup>84</sup>

### Add Coverage Prong Based Upon Failure to Submit Required Changes

We recommend adding an additional prong that would retain preclearance coverage for any covered jurisdiction that fails to submit required voting changes to either the Attorney General or a court. This prong would not add to the number of jurisdictions covered under the program, but would rather extend the time period that already-covered jurisdictions would be within the program if they do not follow the rules; therefore it provides a strong incentive for covered jurisdictions to comply.

### Align Population Thresholds and Disparities Across Coverage Prongs

To provide consistency, better tailor to Maryland's particular needs, and better ensure that the coverage framework is neither overinclusive nor underinclusive, LDF recommends aligning the minimum protected class population thresholds and the minimum disparity metrics across the relevant coverage prongs (dissimilarity index, criminal legal system disparities, and voter participation disparities).

In consultation with local experts, we recommend that only jurisdictions with at least six-thousand (6,000) members of any particular protected class, or for which a protected class makes up at least fifteen percent (15%) of its population be eligible to be subject to the preclearance

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<sup>81</sup> 52 U.S.C. § 10303 (a)(2).

<sup>82</sup> Voter Participation Center, *Demographic and Turnout Trends from Voter File/Census Estimates (April 2022)*, available at [https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7\\_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=799968722](https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=799968722).

<sup>83</sup> Id., available at [https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7\\_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=1187652746](https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=1187652746).

<sup>84</sup> Id., available at [https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7\\_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=1792381242](https://docs.google.com/spreadsheets/d/1Lldx15dtruOmvT7_fZsZSR35ci67hKreJ-jdp7BYRIY/edit#gid=1792381242).

requirement.<sup>85</sup> Further, we suggest that jurisdictions where protected class members suffer from disparities of ten percent (10%) or greater with respect to the relevant metric (arrest rates, traffic stops, voter participation) qualify for preclearance coverage (assuming they meet the population thresholds).

### **Other Recommended Changes to MDVRA**

After reviewing the legislative text, LDF has suggested other targeted changes to MDVRA's sponsors. These are largely technical changes to better implement the intent of the legislation. We are happy to answer questions about any of them if / when they are presented to this Committee.

### **Conclusion**

This Committee hearing takes place soon after the 58<sup>th</sup> anniversary of the Bloody Sunday Selma-to-Montgomery march that led directly to the passage of the federal VRA. Maryland now has an opportunity to carry forward that legacy by enacting its own VRA. We urge this Committee to seize this opportunity by moving the MDVRA forward to the Senate floor; and we stand ready to work with you to protect Black voters, and other voters of color, in the Free State.

Please feel free to contact Adam Lioz at (917) 494-2617 or [alioz@naacpldf.org](mailto:alioz@naacpldf.org) with any questions or to discuss the MDVRA in more detail.

Sincerely,

*/s/ Adam Lioz*

Adam Lioz, Senior Policy Counsel  
Jared Evans, Senior Policy Counsel  
Lisa Cylar Barrett, Director of Policy  
NAACP Legal Defense & Educational Fund, Inc.  
700 14th Street N.W., Ste. 600  
Washington, DC 20005

### **NAACP Legal Defense and Educational Fund, Inc. ("LDF")**

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People ("NAACP") since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

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<sup>85</sup> This does not mean that all such jurisdictions would be covered. They would still need to meet the primary metric of discrimination. It just means that no jurisdictions that do not meet this threshold requirement would be covered.

**WDC 2023 Testimony SB878 FINAL.pdf**

Uploaded by: Beth Tomasello

Position: FAV





MONTGOMERY COUNTY, MARYLAND  
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

[www.womensdemocraticclub.org](http://www.womensdemocraticclub.org)

**SB0878-Voting Rights Act of 2023-Counties and Municipalities  
Education, Energy and the Environment Committee –March 15, 2023  
SUPPORT**

Thank you for this opportunity to submit written testimony concerning an important priority of the Montgomery County Women's Democratic Club (WDC) for the 2023 legislative session. WDC is one of the largest and most active Democratic clubs in our state, with hundreds of dues-paying members, including many elected officials.

WDC has formed an *ad hoc* committee, Advancing Democracy in Maryland, (ADM) to advocate for a menu of legislation that empowers voters, creates equality of voice and representation, and ensures the greater responsiveness of government institutions. WDC is proud to join Common Cause Maryland, ACLU Maryland, Legal Defense Fund, and the Campaign Legal Center in advocating for passage of SB0878. Modeled after the John R. Lewis Voting Rights Act of New York, the Maryland Voting Rights Act (MDVRA) will protect voters of color and Maryland's democracy, enshrining strong voter protections in Maryland law— even as the federal Voting Rights Act of 1965 may be further eroded by the U.S. Supreme Court.

According to ACLU Maryland, discriminatory structures and voting rights abuses persist among hundreds of local government entities in the Free State. Key provisions of the MDVRA that provide legal remedies for preventing discrimination and enhancing voter participation include:

- Launching a pre-clearance program that puts the burden on local governments with records of discrimination to prove that certain voting changes—such as redistricting— won't harm voters of color before they can go into effect.
- Creating strong protections against voter intimidation, deception, or obstruction
- Expanding language assistance for voters with limited English proficiency
- Enforcing prohibitions against vote denial and dilution
- Establishing a statewide public database to serve as a central repository for election and demographic data, fostering transparency and evidence-based practice in election administration.

As stated by the advocacy group sponsors, "A Maryland Voting Rights Act will provide a means of ensuring that all voters are able to cast a meaningful ballot, but it will especially help to accelerate the participation of voters of color who have historically been denied an equal opportunity to participate in the political process.

**We ask for your support for SB0878 and strongly urge a favorable Committee report.**

Diana E. Conway  
President  
WDC

Lynn Olson  
Advancing Democracy  
in MD Committee

# **Voting Rights Act 2023.pdf**

Uploaded by: Bonnie Weissberg

Position: FAV

Dear Senate Rules Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of **District 41. I am testifying in support of the Voting Rights Act of 2023, SB878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB878**. I am attaching an ACLU fact sheet about SB878.

Thank you for your time, service, and consideration.

Sincerely,  
Bonnie Weissberg  
1704 Mt. Washington Ct., #H  
Baltimore, MD 21209  
Showing Up for Racial Justice Baltimore

# Maryland Needs Its Own Voting Rights Act

**ACLU**  
Maryland

**CLC**  
ADVANCING  
DEMOCRACY  
THROUGH LAW

**Common  
Cause**  
Maryland  
Holding Power Accountable

**LDF** Legal  
Defense  
Fund

**BILLS SB 878 & HB 1104**

## BACKGROUND

Maryland has a progressive reputation nationally, yet many of our counties and municipalities have a troubling history when it comes to race and the right to vote.

Maryland's history of discrimination includes English literacy tests, property ownership requirements and entitlements linked to voting, as well as laws that carry forward discrimination in the criminal legal system into our democracy, some of which are still in force today. Some local jurisdictions still use at-large elections which can empower a white majority to capture most or all seats, even where there is a substantial population of Black, Indigenous, and other Voters of Color.

Following the 2020 U.S. Census and redistricting in 2021, several counties faced litigation over unfair gerrymandering – such as in Baltimore County, where a federal court struck down the redistricting plan as racially discriminatory.

## WHAT'S THE PROBLEM?

Unfortunately, many voting rights abuses and discriminatory structures persist among Maryland's hundreds of local government entities simply because the legal tools and resources to investigate and prosecute them have been unavailable or too costly. This is happening in part because judicial decisions over the last 30 years – most notably by

an increasingly conservative Supreme Court – have chipped away at protections under the federal Voting Rights Act. One Supreme Court decision struck down the preclearance protections that required states and local governments around the country with a history of discrimination to obtain advanced approval before changing their election rules, while another made it harder for Voters of Color to protect against vote suppression. And this year the Voting Rights Act is once again before the Supreme Court.

## WHAT'S THE SOLUTION?

Maryland can enact its own fully effective Voting Rights Act (MDVRA), building on models enacted recently in New York, Virginia, and other states. A MDVRA will protect Voters of Color in the Free State regardless of what direction the Supreme Court pushes federal law.

## WHAT WOULD A MARYLAND VOTING RIGHTS ACT INCLUDE?

- 1. Preclearance** – The MDVRA would bring the framework of the most effective civil rights law in American history to Maryland. In passing the federal Voting Rights Act, Congress recognized that case-by-case litigation alone was inadequate – too slow and too costly – to eradicate discrimination

**ACLU** Maryland

3600 Clipper Mill Rd., Suite 350  
Baltimore, MD 21211

410.889.8555  
aclu-md.org

and to prevent its resurgence. Thus, instead of voters having to prove that new election laws and practices are discriminatory, jurisdictions with a history of voter discrimination would need to have election changes – such as redistricting – secure “preclearance” from the Maryland Attorney General or a court to show the new systems will not disadvantage minority voters.

**2. Prohibition Against Vote Denial and Dilution** – The MDVRA provides a framework to ferret out vote dilution and barriers that deny voting opportunities in a way that is efficient and cost-effective for both voters and local governments within the state, through enforcement either by the State Attorney General or private plaintiffs.

**3. Language Access** – The MDVRA would require local governments to ensure that non-English speakers are not left behind in the voting process. This section requires that in a locality with a population of two percent or more falling into a language minority, the local government or board of elections provides voting materials in that additional language. No voter should be discouraged from voting because the voting materials were not provided in a language they can understand.

**4. Stopping Voter Intimidation** – This section provides Marylanders with a civil cause of action against voter intimidation, deception, or obstruction that is more important than ever today, given recent efforts to stoke fear, spread disinformation, and obstruct access to ballot box in naturalized citizen communities and Communities of Color.

**5. Statewide Database** – The MDVRA offers Maryland an opportunity to bring its elections into the 21<sup>st</sup> Century by providing a central public repository for election and demographic data with the goal of fostering evidence-based practices in election administration and unprecedented transparency.

**6. Making Private Enforcement Feasible** – The MDVRA would ensure that there are adequate incentives for voters, advocacy organizations, and public-minded attorneys to protect voting rights by making available fees for attorneys and litigation costs when plaintiffs prevail.

Through a state Voting Rights Act, Maryland can continue its march toward becoming a nationwide leader in promoting equal access to political participation. Maryland can build on the comprehensive framework of the federal VRA and state VRAs already adopted in New York, California, Oregon, Washington, and Virginia. This will enable our state to confront evolving barriers to effective participation, and to root out longstanding discriminatory practices more effectively.

A state VRA will offer affirmative steps to make our democracy more inclusive and robust by creating a fulsome and transparent basis for data-driven evaluation of our election practices.

**A Maryland Voting Rights Act will provide a means of ensuring that all voters are able to cast a meaningful ballot, but it will especially help to accelerate the participation of voters of color who have been historically denied an equal opportunity to participate in the political process.**

[aclu-md.org/mdga23](http://aclu-md.org/mdga23)

# **Testimony for MDVRA.pdf**

Uploaded by: Carl Snowden

Position: FAV

Good afternoon Chair, Vice Chair and Distinguished members of the Committee. My name is Carl Snowden and I am the Convenor of the Caucus of African American Leaders. I have worked on voting rights, as well as other civil rights issues, in this State for over 50 years. I am here to lend my voice in support of the Maryland Voting Rights Act, SB878. This bill would institute vital legal protections for our system of voting as well as individual voters. Maryland has come a long way in ensuring the right to vote among all of its citizens; but where issues persist, there must be remedies. Maryland's communities need SB878 to ensure that all of the progress we've made, progress that I have physically seen in my lifetime, does not regress.

The Voting Rights Act of 1965 is the most effective civil rights law in American history. Due to challenges at the federal level, its effectiveness has become vulnerable. This is happening in part because judicial decisions over the last 30 years – most notably by an increasingly conservative Supreme Court – have chipped away at protections under the federal Voting Rights Act. The Shelby decision struck down the preclearance protections that required states and local governments around the country with a history of discrimination to obtain advanced approval before changing their election rules, while another made it harder for Voters of Color to protect against vote suppression. And this year the Voting Rights Act is once again before the Supreme Court.

In order to secure the voting rights of Marylanders and ensure that no citizen experiences voting rights abuses without the appropriate resources available to remedy them, Maryland needs to pass a state Voting Rights Act. Maryland has long been a state touted for its progressive reputation, yet voting rights issues still persist in parts of this state. There are jurisdictions with ever-growing minority populations that have only had all white governments for their existence, instances of voter intimidation, as well as language barriers in certain communities that can make accessing the ballot more cumbersome for minority communities.

A Maryland Voting Rights Act would institute preclearance by the Attorney General in covered jurisdictions for election changes such as redistricting, prohibit vote denial and dilution, provide voting materials for non-English speaking communities, provide a civil cause of action for Marylanders to combat voter intimidation, establish a state-wide database of election and demographic data, and ensure that efforts to challenge voting rights violations are feasible by making attorneys fees and costs recoverable by prevailing plaintiffs. The aim of this bill is not to cast Maryland as a state with rampant voting rights abuses, but rather to provide our citizens adequate legal resources to combat violations and abuses wherever, if ever, they may exist. Maryland has always been a leader on securing the rights of its citizens; let us continue to lead here and secure the voting rights of every community across the state. Maryland needs a Voting Rights Act because every single Maryland voter matters.

**Sydnor\_SB 878 Testimony Fav -EEE.pdf**

Uploaded by: Charles E. Sydnor III

Position: FAV



CHARLES E. SYDNOR III, ESQ.  
*Legislative District 44*  
Baltimore County



James Senate Office Building  
11 Bladen Street, Room 216  
Annapolis, Maryland 21401  
410-841-3612 · 301-858-3612  
800-492-7122 Ext. 3612  
Charles.Sydnor@senate.state.md.us

Judicial Proceedings Committee

Executive Nominations Committee

*Joint Committees*

Administrative, Executive, and  
Legislative Review

Children, Youth, and Families

*Senate Chair*  
Legislative Ethics

*Chair*

Baltimore County Senate Delegation

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony Regarding SB 878**  
**Election Law – Voting Rights Act of 2023 – Counties and Municipalities**  
**Before the Education, Energy, and Environment Committee**  
**On March 15, 2023**

Good afternoon Chair Feldman, members of the Education, Energy, and Environment Committee,

In 1985, then Attorney General Stephen H. Sachs completed a 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.<sup>1</sup> The audit showed that in a 20-year span, from 1962 to 1982, in a total of 282 commissioners and county council members that were elected in the 11 counties, only one was black. The counties’ voting-age populations were on average about 21 percent Black. At the time, it was reported by the Washington Post that the audit showed “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.’”<sup>2</sup>

Unfortunately, these situations are not a thing of the past. Within the past few years, it has been reported that Montgomery County’s White Oak residents repeatedly asked election officials for an early voting center in the majority-minority neighborhood and Delegate Brian Crosby charged that the lack of a second early voting center in his county amounted to “voter suppression”.<sup>3</sup>

Last year, during the redistricting process, a Baltimore County Redistricting Commission 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

<sup>1</sup> Paul Valentine. [Voting Bias Found in Some Md. Counties](#). Washington Post. July 19, 1985.

<sup>2</sup> Id.

<sup>3</sup> <https://www.marylandmatters.org/2019/10/08/state-board-will-consider-additional-early-voting-site-in-montgomery-but-not-baltimore/>

and I tried to persuade 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. 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 in December 2021.

Our case was argued before United States District Judge Lydia Kay Griggsby who then issued an injunction overturning Baltimore County's racially discriminatory redistricting plan, and that required the County to reconfigure its election system in compliance with the Voting Rights Act. The County Council ultimately adopted a plan, accepted by the District Court which led to a Baltimore County Council with no women and one non-white member.

And just last month, the Town of Federalsburg 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.<sup>4</sup>

The federal Voting Rights Act gives our US 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. Senate Bill 878 will offer the most comprehensive state law protections for the right to vote in the United States. Specifically, it will provide a framework to address barriers that deny voting opportunities in the political process in a way that is efficient and cost-effective for both voters and local governments in the State.

Senate Bill 878 consists of eight subtitles. **Subtitle 1** provides definitions and some general overarching provisions of the bill. **Subtitle 2** establishes certain legal protections for protected class members from local governments outlawing tactics that harm protected classes. **Subtitle 3** requires local governments with a population of two percent or four thousand or more who comprise a language minority to provide voting materials in that additional language. **Subtitle 4** provides for a preclearance program which is based upon a New York statute which ensures that certain "covered jurisdictions submits any proposals to our Attorney General or the Courts prior to enactment so they do not run afoul of the law. **Subtitle 5** establishes a Statewide Election Database and Information Office to be a central public repository for election and demographic data. The stated purpose would be to evaluate whether our elections are administered in accordance with this law; that we are using best practices and investigating potential infringement of the right to vote. **Subtitle 6** provides Marylanders with a civil cause of action against voter intimidation, deception, or obstruction. **Subtitle 7** provides for procedures regarding how actions and investigations will occur. Finally, **Subtitle 8** notes how costs and fees will be addressed if litigation does occur.

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<sup>4</sup> <https://www.aclu-md.org/en/press-releases/black-voters-advocateschallenge-election-system-eastern-shore-town-shamefully>

The people of Maryland deserve more than what the diminished Voting Rights Act of 1965 affords them. We deserve protection, equality and control of our elections and to uplift those who have felt impeded in casting a vote. I ask that you give SB 878 a favorable report.

**FTP-MD\_SB878test\_031523.pdf**

Uploaded by: Charlie Cooper

Position: FAV



Get Money Out – Maryland

Baltimore County Progressive Democrats Club

Baltimore Nonviolence Center

Be the Change Bmore

Caucus of African American Leaders of Anne Arundel

Chesapeake Climate Action Network

Common Cause Maryland

Don't Shop on Tuesdays

Do the Most Good

Indivisible Central Maryland

Indivisible Howard County

Indivisible Montgomery

Indivisible Worcester

J Walkers Action Group

League of Women Voters of Baltimore City

Maryland Peace Action

Maryland Poor People's Campaign

Maryland United for Peace and Justice

Matthew Henson Community Development Center

National Association of Social Workers - Maryland

Our Revolution Maryland

Progressive Maryland

Randallstown Branch NAACP

Represent Maryland

St. Ignatius Justice & Peace Committee

Southwest Baltimore County Democratic Club

WISE –Women Indivisible Strong Effective

**March 15, 2023**

## **Support SB 878 – Voting Rights Act of 2023 – Counties and Municipalities**

**Charlie Cooper, Convener**

For the People – Maryland is a coalition of state nonprofit advocacy and community organizations that stands for political equality, equal access to the ballot for voters and candidates and fair districts regardless of race, ethnicity, or party affiliation, and reducing the corrupting influence of concentrated wealth in our political system. Every citizen should have equal access to the ballot as a voter or as a candidate.

SB 878 seeks to protect equal access to the ballot – the most fundamental principle upon which our Coalition, State, and nation are based. We support the thesis of the bill that classes of voters need to be protected because history provides undeniably clear evidence of past discrimination against certain communities that traditionally have faced obstacles to voting, running for office, and electing candidates of their choice.

Here are reasons we endorse SB 878:

- Its statistical approach to elections for local offices would counter possible attempts by local governments to disempower protected classes of voters. The Court should consider factors such as participation in voting and access to campaign-finance, as well as evidence of discrimination in housing, transportation, education, employment, and the criminal justice system as important determinants of communities that need to be protected.
- It provides a useful compendium of possible remedies for the Court and Civil Rights Division to employ.

- Mechanisms to allow communities to resolve complaints directly with local governments would save time and money, instead of filing for relief with the Court or the Civil Rights Division.
- Since communities seeking redress are very likely to be financially disadvantaged, the bill wisely allows for organizations representing those communities to receive compensation for expenses. Similarly, communities that comprise a substantial number of non-English-speaking members will be able to conduct business with local governments in their preferred language.
- The pre-clearance mechanism in the bill has been shown to work to alleviate severe discrimination against a protected class in voting.
- Creating an Election Database and Information Office would be a positive step toward objective evaluation of local government actions regarding voting rights and political equity.

SB 878 is landmark legislation that provides a toolkit of proactive provisions to ensure that voting rights and political equality are protected throughout the State of Maryland. We strongly urge a favorable report.

# **SB0878 Voting Rights Act 2023.docx.pdf**

Uploaded by: Christina Nemphos

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of District 40 and live in the Medfield neighborhood of Baltimore. **I am testifying in support of the Voting Rights Act of 2023, SB 0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. **For these reasons, we need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.**

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,  
Christina Nemphos  
1301 W 42nd St., Baltimore, Md 21211  
Showing Up for Racial Justice Baltimore



# **Dana's Testomony SB 878 -2.pdf**

Uploaded by: Dana Vickers Shelley

Position: FAV

Good afternoon Chair and Members of the Committee.

My name is Dana Vickers Shelley, and I am Executive Director of the ACLU of Maryland. But I speak today in my personal capacity as a Black Baltimore County resident and voter supporting the Maryland Voting Rights Act. Strong voting rights enforcement is needed now more than ever, given the perilous moment our democracy faces today.

I have heard it asked why Maryland, a progressive state, needs its own voting rights act. Black and BIPOC residents of Baltimore County like me have no difficulty explaining why. Baltimore County is one of many places in our state with a record of locking Black and Brown people out of representative government – a problem that continues today.

Consider this: BIPOC residents now make up 47 percent of Baltimore County's population, an increase from 25 percent in 2000 and 35 percent in 2010. But despite this growth, in 2022 the County enacted a racially gerrymandered redistricting plan that heavily packed Black voters into a single County Council district to maintain significant white majorities in six of the seven Council districts.

The County did this despite enormous public outcry and repeated warnings that its gerrymandered plan violated the federal Voting Rights Act. This led Black voters and advocates, myself among them, to file a federal lawsuit challenging the redistricting plan as racially discriminatory; the judge concluded the County's plan was indeed discriminatory and required the County to reconfigure the plan to make it more fair. Still, the County resisted, doing the bare minimum to expand opportunities for Black voters; As a result, Black County voters still are not fairly represented – with only one Black Council member among the seven.

One of the things a Maryland VRA would do is alleviate the need for costly and time-consuming federal litigation, through resources offered by our state Attorney General through a new "preclearance" process. Through this process, major changes like redistricting in covered jurisdictions would be submitted to the Attorney General for review before they take effect. Had that process been in place last year, the AG would have flagged the legal problem with the County plan before it took effect – saving everyone both the emotional stress of litigation, and hundreds of thousands of taxpayer dollars in legal fees.

Baltimore County is not the only jurisdiction in Maryland that falls short in providing equal voting opportunities for Black and Brown residents. A Maryland Voting Rights Act can bring us closer to changing that, and will help our state become the national model of democracy we all long for it to be.

For these reasons, I urge a favorable report on SB 878.



# **SB0878 Voting Rights Act 2023.pdf**

Uploaded by: Daryl Yoder

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of District 44A. **I am testifying in support of the Voting Rights Act of 2023, SB 0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,  
Daryl Yoder  
309 Glenmore Ave.  
Catonsville, MD 21228  
Showing Up for Racial Justice Baltimore

# **Testimony for SB 878, Deb Otis, FairVote.pdf**

Uploaded by: Deb Otis

Position: FAV

Testimony from:  
Deb Otis

**In SUPPORT of SB 878**

March 14, 2023

Maryland Senate Committee on Education, Energy, and the Environment

Dear Committee Members,

I am writing to express FairVote Action's support for SB 878, the Maryland Voting Rights Act ("MDVRA").

FairVote Action is a national nonpartisan organization based in Silver Spring that educates and advocates for electoral system reforms that improve our elections. We are seen as a leading national resource on ranked choice voting (RCV). I serve as Director of Research and Policy.

This landmark legislation would address discrimination against voters of color in Maryland and immediately position Maryland as a national leader on protecting the right to vote. Despite Maryland's progressive reputation, many discriminatory barriers to equal participation still exist in the state for voters of color and voters whose first language is not English, particularly at the local level.

In addition, some local jurisdictions<sup>1</sup> still use at-large winner-take-all elections, which can empower a white majority to capture most or all seats, even where there is a substantial population of Black, Indigenous, and other voters of color. We believe that strong democracy is reflective democracy – that government should reflect the demographics of the electorate.

One of the reasons we support SB 878 is that it includes a provision to use proportional ranked choice voting (RCV) as an option to remedy violations of the voting rights protections affirmed in this Act. Proportional RCV is the gold standard for how to conduct legislative elections in the United States. It ensures both majority rule and fair representation, while giving voters more choices and a more empowering way to vote.

Proportional RCV advances descriptive representation and strengthens voting rights by preserving and enhancing the power of communities of color to elect candidates of their choice. It can be used in at-large elections, meaning one city-wide election can elect multiple representatives, or it can be used in multi-member districts, meaning each district in a city or in the state elects multiple representatives. In both cases, every community niche – be it racial, ethnic, religious, partisan, or bound together by some other characteristic that makes voters like-minded – has the power to elect a number of representatives proportional to the size of that community within the electorate as a whole. Proportional RCV is an ideal remedy

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<sup>1</sup> Some examples of municipalities that still have at-large election systems include Federalsburg in Caroline County, Aberdeen in Harford County, and La Plata in Charles County.

to state VRA violations because it protects minority communities that are too small or too diffuse to elect their preferred candidate in a single-winner district.

Proportional RCV has been used as a VRA remedy in other states in response to vote dilution lawsuits.<sup>2</sup> In addition, implementing ranked choice voting is a smooth and efficient process for remedying voting rights violations – far easier than the often long and expensive process of drawing or redrawing contentious maps of single-seat voting districts.<sup>3</sup>

Data from past RCV elections documents that voters understand RCV and find it easy to use. They like it, and they want to continue to use it after their first experience with it.

Ranked choice voting is in use in over 60 jurisdictions across the country, in which implementation and tabulation are smooth and efficient, with election results returned the same night or next day.

We commend the bill sponsors for including proportional RCV as a component of this bill and urge the committee to recommend passage.

FairVote Action is available to answer any other questions from the committee or provide additional data. FairVote Action can also advise the legislature as it deems fit and be a resource for RCV implementation. You can reach me at dotis@fairvotearction.org and my FairVote Action colleagues at info@fairvotearction.org.

Thank you for the opportunity to testify.

Sincerely,

Deb Otis  
Director of Research and Policy  
FairVote Action

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<sup>2</sup> See “[Case Study: Eastpointe, Michigan](https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#case-study-eastpointe-michigan)” (https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#case-study-eastpointe-michigan) and “[State Voting Rights Acts](https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#state-voting-rights-acts)” (https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#state-voting-rights-acts)

<sup>3</sup> See “[Single-winner district shortcomings](https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#singlewinner-district-shortcomingsnbsp)” (https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#singlewinner-district-shortcomingsnbsp)



# **SB0878 - Voting Rights Act 2023.pdf**

Uploaded by: Erica Palmisano

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of 12A. **I am testifying in support of the Voting Rights Act of 2023, SB 0878.**



Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,

**Erica Palmisano**

5580 Vantage Point Rd, Apt 5, Columbia, MD  
Showing Up for Racial Justice Baltimore

# **SB 878 MDVRA Testimony R.pdf**

Uploaded by: Gregory Brown

Position: FAV



## Testimony for the Education, Energy, and the Environment Committee

### SB 878 Voting Rights Act of 2023 – Counties and Municipalities

March 15<sup>th</sup>, 2023

GREGORY BROWN  
PUBLIC POLICY  
COUNSEL

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND  
  
3600 CLIPPER MILL  
ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

[WWW.ACLU-MD.ORG](http://WWW.ACLU-MD.ORG)

OFFICERS AND  
DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS  
SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

### FAVORABLE

The ACLU of Maryland urges a favorable report on SB 878, a historic bill that seeks to establish strong voting protections for Marylanders across the state. SB 878 would establish preclearance procedures for jurisdictions with a history of race discrimination, provide language assistance materials to communities that meet the threshold, prohibit vote denial and dilution, and prohibit voting intimidation, obstruction, and deception by providing a civil cause of action for Marylanders to bring suit when faced with these impediments to casting a ballot.

Voter intimidation has been a historic tool to effectively bar Black communities from participating at the polls. From the Reconstruction Era to the Civil Rights movement, voter intimidation took the form of overtly racist incidents of violence such as lynchings, police beatings, and harassment from white mobs, but even today, the need to protect all voters from any form of voter intimidation sadly remains.

It is important to mark on this day, a week after the 58<sup>th</sup> Anniversary of Bloody Sunday, the amount of intimidation, violence, and hatred the advocates who came before us faced in order to secure the right to vote. Bloody Sunday put racist voter intimidation on display for the world to see, making clear the need for protections against these abuses. The actions of that day ultimately resulted in the passage of the most transformative civil rights law in our nation's history, the Voting Rights Act of 1965. Maryland now has the chance to take the framework of that iconic law and implement protections and legal remedies that would secure the right to be free from fear and intimidation while voting. SB 878 does just that by allowing Marylanders to legally challenge those seeking to intimidate, obstruct, or deceive others trying to access the ballot. In addition to providing a civil cause of action against those who would use threats of violence or otherwise intimidating behavior, SB 878 also prohibits the use of deceptive devices or

communications used to interfere with one’s right to vote. Protecting Marylanders from bad actors who seek to unduly influence our elections via deception and misinformation is critical to guaranteeing free and fair elections in our state.

### **The need for voter intimidation protections in Maryland**

Although some may argue that Maryland does not experience instances of voter intimidation, obstruction, or deception, the need for protections and legal remedies remains due to the fact that there are indeed forms of voter intimidation that go unchecked in the state. Recent incidents include the following: In La Plata, Maryland, a man was reported to the Attorney General’s office for “trying to intimidate people to vote for Trump.”<sup>1</sup> In Montgomery County, flyers used to intimidate minority communities, warning non-U.S. citizens of the legal penalties of voting in a U.S. election, were posted at a high school.<sup>2</sup> In Cecil County, a man was addressed a letter that referenced the Proud Boys and contained the hashtag “#moregunsthanu” despite reporting there was no political signage in his yard.<sup>3</sup> These forms of voter intimidation, obstruction, and deception are real and likely happen more often than are reported.

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND



Images taken by ACLU of Maryland investigator following complaints of voter intimidation outside of Edgewood Elementary School in Harford County during the 2022 November elections.

<sup>1</sup> <https://apnews.com/article/election-2020-technology-elections-maryland-email-b8f5045edd5c37b47e172011f6bb4263>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The need for legal protections becomes even greater when it is candidates and their operatives engaging in intimidation and obstruction. A week before Maryland's 2022 midterm elections, a gubernatorial nominee put out a call for volunteers to "monitor" drop boxes.<sup>4</sup> While the "monitoring" of drop boxes or polling stations themselves cannot inherently be categorized as intimidation, the history of these monitoring operations reveals the true intent of these endeavors. In 1981 the Republican National Committee (RNC) sent a "ballot security task force" into predominately Black and Latino neighborhoods where they posted "warning" signs and "monitored" polls wearing armbands and armed with guns.<sup>5</sup> The resulting lawsuit found the RNC in violation of the law for intimidating voters, despite the task force committing no physical violence.<sup>6</sup> Targeted "monitoring" operations, such as the one a recent gubernatorial candidate called for, have the sole goal of intimidation and obstruction, just as these kinds of operations had in 1981.

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 SB 878.

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<sup>4</sup> <https://www.marylandmatters.org/2022/11/03/concerns-grow-that-voter-intimidation-could-disrupt-midterm-elections/>

<sup>5</sup> <https://www.retroreport.org/video/poll-watchers-and-the-long-history-of-voter-intimidation/>

<sup>6</sup> *Id.*

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FOUNDATION OF  
MARYLAND



**2023-03-15 SB 878 (OAG Support).pdf**

Uploaded by: Hannibal Kemerer

Position: FAV

**ANTHONY G. BROWN**  
*Attorney General*



**CANDACE McLAREN LANHAM**  
*Chief of Staff*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO.  
(410) 576-6584

March 15, 2023

**TO:** The Honorable Brian Feldman  
Chair, Education, Energy, and the Environment Committee

**FROM:** Hannibal G. Williams II Kemerer  
Chief Counsel, Legislative Affairs, Office of the Attorney General

**RE:** SB878 – Voting Rights Act of 2023 – Counties and Municipalities  
**(Support)**

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The Voting Rights Act of 1965<sup>1</sup> is, by many accounts, the most effective civil rights law in American history. Due to challenges at the federal level, its effectiveness has become vulnerable. In order to secure the voting rights of Marylanders and ensure that no citizen experiences voting rights abuses without the appropriate resources available to remedy them, Maryland needs to pass a state Voting Rights Act. The Office of Attorney General supports Senate Bill 878, Senator Charles E. Sydnor's Voting Rights Act of 2023 – Counties and Municipalities, as appropriate legislation meeting the demand.

Senate Bill 878 would: (1) institute preclearance by the Attorney General in covered jurisdictions for election changes such as redistricting, (2) prohibit vote denial and dilution, (3) provide voting materials for non-English speaking communities, (4) provide a civil cause of action for Marylanders to combat voter intimidation, (5) establish a state-wide database of election and demographic data, and (6) ensure that efforts to challenge voting rights violations are feasible by making attorneys' fees and costs recoverable by prevailing plaintiffs.

The aim of this bill is not to cast Maryland as a state with rampant voting rights abuses, but rather to provide our citizens with adequate legal resources to combat violations and abuses wherever, if ever, they may exist.

We urge a favorable report on SB 878.

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<sup>1</sup> 52 U.S.C. § 10101, et seq.

# **MDVRA partner support letter.pdf**

Uploaded by: Joanne Antoine

Position: FAV



The Honorable Wes Moore  
Governor of Maryland  
100 State Circle  
Annapolis, MD 21401

The Honorable Bill Ferguson  
President Pro Tempore, Maryland Senate  
State House H-107  
100 State Circle  
Annapolis, MD 21401

The Honorable Adrienne A. Jones  
Speaker, Maryland House of Representatives  
State House H-101  
100 State Circle  
Annapolis, MD 21401

**RE: SUPPORT FOR THE MARYLAND VOTING RIGHTS ACT**

Dear Governor Moore, Senate President Ferguson, and Speaker Jones:

We write to express our strong support for the Maryland Voting Rights Act (“MDVRA”). This landmark legislation would address discrimination against voters of color in Maryland and immediately position the Free State as a national leader on protecting the right to vote. For these reasons, the MDVRA is a top priority for the undersigned civil and voting rights organizations.

As we approach the tenth anniversary of the Supreme Court’s disastrous *Shelby County* decision that undercut the federal Voting Rights Act,<sup>1</sup> many states are moving backwards on ensuring free,

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<sup>1</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

fair, and nondiscriminatory elections.<sup>2</sup> Following the historic election of Maryland's first Black governor and attorney general, we need our leaders to stand up for equal, inclusive democracy.

Despite Maryland's progressive reputation, many discriminatory barriers to equal participation still exist in the state for voters of color and voters whose first language is not English, particularly at the local level. Maryland's history of discrimination includes English literacy tests, property ownership requirements and entitlements linked to voting, as well as laws that carry forward discrimination in the criminal legal system into our democracy, some of which are still in force today. In addition, some local jurisdictions<sup>3</sup> still use at-large elections which can empower a white majority to capture most or all seats, even where there is a substantial population of Black, Indigenous, and other voters of color.

The MDVRA will set a new standard for protecting the right to vote by:

- Providing new legal tools to fight discriminatory voting rules and election systems in court.
- Launching a “preclearance” program that requires places with records of discrimination to prove that proposed voting changes will not harm voters of color before they can go into effect.
- Expanding language assistance for voters with limited English proficiency.
- Creating strong protections against voter intimidation, deception, or obstruction.
- Establishing a central hub for election data and demographic information that will empower officials and community members to ensure accessible elections.

The MDVRA builds upon successful laws already passed in California, Washington, Oregon, Virginia, and New York—which enacted the [John R. Lewis Voting Rights Act of New York](#) in 2022. Similar bills are also under consideration in Connecticut and New Jersey this session. The MDVRA will carry forward this momentum and become one of the most comprehensive state-level voting rights acts in the country.

Now is Maryland's time to lead. We encourage you to prioritize, pass, and fully fund the MDVRA this legislative session, and we stand ready to work with you to secure this victory for all Maryland voters.

Sincerely,

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<sup>2</sup> Brennan Center for Justice, [Voting Laws Roundup: February 2023](#) (February 22, 2023).

<sup>3</sup> Some examples of municipalities that still have at-large election systems include Federalsburg in Caroline County, Aberdeen in Harford County, and La Plata in Charles County.

ACLU of Maryland  
Common Cause Maryland  
NAACP Legal Defense Fund  
Campaign Legal Center  
NAACP Maryland State Conference  
Movement Advancement Project  
Maryland League of Conservation Voters  
Maryland Votes for Animals, Inc.  
FairVote Action  
National Council of Jewish Women,  
Maryland Action Team  
Caucus of African-American Leaders  
The Arc Maryland  
Public Justice Center  
No Boundaries Coalition  
Advance Maryland  
Mothers On The Move  
Lower Shore Progressive Caucus  
Declaration for American Democracy  
Coalition  
Indivisible Central Maryland  
AAAsk, LLC  
Definitive Mechanical  
Community Development Network of  
Maryland

AFT-Maryland  
Indivisible Howard County  
Public Citizen  
Maryland Center on Economic Policy  
DemCast USA  
Fair Elections Center  
Human Rights Campaign  
Hip Hop Caucus  
LatinoJustice PRLDEF  
Asian and Pacific Islander American Vote  
(APIAVote)  
Demos  
Allen AME Church  
DoTheMostGood  
Center for Popular Democracy  
Cedar Lane Environmental Justice Ministry  
Council on American-Islamic Relations  
Stand Up America  
The Talking Drum Incorporated  
Secure Elections Network  
Franciscan Action Network  
STAR Scholars  
The Baltimore City Civilian Review Board  
End Citizens United/Let America Vote  
Showing Up for Racial Justice Annapolis  
and Anne Arundel County  
Quaker Voice of Maryland  
PETA  
Indivisible Howard Count

**SB0878\_JohnFord\_favorable.pdf**

Uploaded by: John Ford

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

I am a resident of **D46** and plan to be a voter in this state for the rest of my foreseeable life. **I am testifying in support of the Voting Rights Act of 2023, SB 0878.**

Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,  
**John Ford**  
**3301 Fleet St**  
**Baltimore, MD 21224**



# **MDVRA Senate testimony.pdf**

Uploaded by: Lata Nott

Position: FAV



Brian J. Feldman, Chair  
Cheryl C. Kagan, Vice Chair  
Senate Education, Energy, and the Environment Committee  
Maryland Senate  
March 15, 2023

## **Testimony of Campaign Legal Center in Support of Senate Bill 0878**

### **I. INTRODUCTION**

Campaign Legal Center (“CLC”), is pleased to offer this testimony in support of House Bill 1104, the Maryland Voting Rights Act (“SB 878” 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, and New York, and brought the first-ever litigation under the Washington Voting Rights Act in Yakima County, Washington.

CLC strongly supports SB 878 because it will allow communities of color across Maryland to participate equally in the election of their representatives. The focus of CLC’s testimony will be to highlight the various procedural benefits that Subtitle 2 of SB 878 will provide to voters and local governments alike in enforcing voting rights and protecting communities of color.

### **II. BACKGROUND**

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

court. Importantly, they can also empower state courts to apply a wider range of locally tailored remedies that better serve communities of color.

Passage of the MDVRA will mark a new era of voter protections for the people of Maryland, 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 voting rights act rather than the federal VRA is an improvement, such as with 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.<sup>1</sup>

Despite this success, “litigating Section 2 cases [is still] expensive and unpredictable.”<sup>2</sup> 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 rights to vote and participate fully in American democracy. Maryland should take advantage of this opportunity and join several other states—California, Washington, Oregon, Virginia, and most recently, New York—in ensuring all of its citizens have equal access to the democratic process.

The MDVRA will apply more efficient processes and procedures to enforcing the voting rights of traditionally disenfranchised communities, saving Maryland time and money when going through voting rights litigation. Subtitle 2 of the MDVRA makes it less costly for minority voters and their jurisdictions to collaboratively develop a remedy before resorting to expensive litigation.

### **III. REASONS TO SUPPORT SB 878**

The MDVRA will innovate on the federal VRA, as well as other state VRAs, by streamlining the procedural mechanisms by which voters may state a claim of vote dilution. The private right of action for voting discrimination under Subtitle 2 of the MDVRA is a less costly and less burdensome means of

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<sup>1</sup> Michael J. Pitts, *The Voting Rights Act and the Era of Maintenance*, 59 ALA. L. REV. 903, 920-22 (2008).

<sup>2</sup> Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the VRA After Shelby County*, 115 COLUMBIA L. REV. 2143, 2157 (2015).

enforcing voting rights for communities of color and encourages negotiation between voters and elected governments. As discussed below, the following features of the MDVRA are reasons to support the bill:

- The MDRVA’s presuit notice provisions allow jurisdictions to proactively remedy potential violations.
- The MDVRA provides express statutory guidance to ensure courts interpret voting-related conflicts in favor of the right to vote.
- The MDVRA provides a framework for determining whether vote dilution or vote denials have occurred that is tailored to the barriers to voting communities of color face at the local level.
- The MDVRA prioritizes remedies for voting discrimination that enable communities of color to equally participate in the franchise.

**A. SB 878 avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.**

As set forth in § 15.5-205(B) of the MDVRA, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 50 days before bringing a lawsuit. During that time or before receiving any notice, the jurisdiction may remedy a potential violation on its own initiative and gain safe harbor from litigation for at least 90 days. § 15.5-205(B)(3). The MDVRA recognizes that many jurisdictions will seek to enfranchise communities of color by remedying potential violations. Such notice and safe-harbor provisions will enable them to do so without the costs and delay of lengthy litigation.

The MDVRA also provides for limited cost reimbursement for pre-suit notices, in recognition of the fact that notice letters often require community members to hire experts to perform statistical analysis, and to ensure that such expenses do not prevent people from enforcing their civil rights. § 15.5-206(A). Similar provisions are already part of voting rights acts in California, Oregon, and New York. There is a cap of \$50,000 on compensation for these costs to ensure that communities of color have the resources they need to enforce their rights while also protecting local governments from exorbitant fee requests. § 15.5-206(A)(4)(I)(2).

In contrast, no such presuit provisions exists in Section 2 of the federal VRA. As a result, voters often spend time and money well in excess of \$50,000 to investigate potential violations of the federal VRA, the cost of which is later borne by the taxpayer. Indeed, in Maryland, advocates have noted the lack of incentive for counties to negotiate to resolve problems of voting discrimination, stating that the resultant cost of a federal VRA lawsuit is “[a] payment that

could have been avoided if [the Maryland county] had been willing to negotiate, rather than litigate.”<sup>3</sup>

**B. SB 878 will provide guidance to Maryland State judges as they interpret laws, policies, procedures, or practices that govern or affect voting.**

The MDVRA specifies that judges should resolve ambiguities in Maryland state and local election laws in favor of protecting the right to vote. § 15.5-102(B). This is essentially a codification of the existing protections of the Maryland Constitution and Declaration of Rights, which recognize that vigorous political participation is the foundation of our democracy and that the right to vote is preservative of all other rights.

Article I, § 1 of the Maryland Constitution states that “[e]very citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote . . . .” Article 7 of the state Declaration of Rights expands on this promise and states “[t]hat the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.”

The MDVRA’s instruction to courts to construe laws in favor of the right to vote is in line with the spirit of the Maryland Constitution and Declaration of Rights. This clarification provides a default pro-voter rule for judges interpreting laws, policies, procedures, or practices that govern or affect voting, which will reduce litigation costs by avoiding unnecessary arguments over statutory interpretation. Similar provisions are in the New York Voting Rights Act and in Voting Rights Acts recently proposed in Connecticut and New Jersey.

**C. SB 878 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

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<sup>3</sup> Deja Parker, *Town of Federalsburg sued for voting discrimination, 30 days to respond*, WMDT (Feb. 24, 2023), <https://www.wmdt.com/2023/02/town-of-federalsburg-sued-for-voting-discrimination-30-days-to-respond/>.

voters in a single-member district; (2) there is racially polarized voting; and (3) white bloc voting usually prevents minority voters from electing their candidates of choice. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). 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.”

The MDVRA improves on the federal VRA in several ways: it ensures that integrated as well as segregated communities of color are able to influence elections and elect their candidates of choice; it provides plaintiffs an alternative to proving racially polarized voting; it sets out practical guidelines for courts to properly assess racially polarized voting; and it clarifies that coalitions made up of two or more protected classes to bring vote dilution claims.

Unlike the federal VRA, the MDVRA does not require communities of color to be segregated residentially to receive protections under the statute. Like the voting rights acts passed in California, Washington, Oregon, Virginia, and New York, the MDVRA does not demand that the minority group being discriminated against prove that it is “sufficiently large and geographically compact” before being able to proceed with its lawsuit. § 15.5-202(C)(2)(IV). 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 communities of color persist. Thus, many communities of color 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, the MDVRA takes this reality into account.<sup>4</sup>

Decades of experience litigating cases under Section 2 of the Voting Rights Act have shown that that the numerosity and compactness requirements for vote dilution claims are an unnecessary barrier to remedying significant racial discrimination in voting. The MDVRA will allow violations to be remedied quickly and at much less expense to taxpayers than existing federal law and make it easier for communities of color 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 voters of color were not sufficiently segregated to meet this

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<sup>4</sup> Like VRAs in other states, the MDVRA does allow courts to consider whether a community is sufficiently numerous and geographically segregated in determining a remedy to a vote dilution violation. *See* § 15.5-202(C)(2)(IV).

condition, despite evidence making it clear that voters were denied the equal opportunity to elect their candidate of choice.<sup>5</sup>

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 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 “proof” that RPV exists in actual election results.

This is why it is critical that the MDVRA has two paths to prove a vote dilution case, not just a one-size-fits-all approach. The first path allows affected voters to prove vote dilution by showing that a jurisdiction maintains a dilutive at-large or other system of election and RPV is present. §§ 15.5-202(B)(1)(I), (2)(I). The MDVRA also sets out reliable and objective standards for courts to apply in their assessment of RPV. § 15.5-202(C).

But where election results used to assess RPV are unavailable, the MDVRA also allows affected voters to show that they are nevertheless denied equal opportunity to participate in the political process under the totality of the circumstances. §§ 15.5-202(B)(1)(II), (2)(II). This path allows plaintiffs to introduce expert and fact evidence under a range 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 United States 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.<sup>6</sup>

Finally, the MDVRA allows two or more protected classes of voters within an election district to bring a coalition claim, so long as they can establish that they are politically cohesive. § 15.5-204(A)(2). Coalition claims reflect the MDVRA’s spirit and intent to protect all communities of color from discriminatory voting rules and election systems, whether they impact one or more than one racial or ethnic group. If two or more communities vote in a bloc together, organize to elect candidates together, and tend to suffer from vote

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<sup>5</sup> See *Baltimore Cnty. Branch of Nat'l Ass'n for the Advancement of Colored People v. Baltimore Cnty., 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.”).

<sup>6</sup> See, e.g., *Gingles v. Thornburg*, 478 U.S. 30, 47 (1986)

dilution together, they should be able to work together to prove it and combat it.

**D. SB 878 provides a framework for determining denials of the right to vote that provides clarity to courts and voters alike.**

The MDVRA provides a stronger standard for proving that a challenged practice denies or impairs a protected class's access to the ballot. Under the federal VRA, voters may challenge practices which "result in a denial or abridgement" of the right to vote because of race or color. 52. U.S.C. 10301. The Supreme Court, however, greatly limited the kinds of claims that voters could make in *Brnovich v. DNC*, 141 S.Ct. 2321 (2021). Specifically, the Supreme Court set forth additional "guideposts" for proving vote denials that will make Section 2 claims even more costly and time consuming to litigate. Furthermore, the lack of clarity provided in *Brnovich* leaves federal courts in the lurch about the appropriate way to interpret vote denial claims under Section 2.

The MDVRA fills in that gap by prohibiting a local government from enacting any voting practice which will "deny" or "impair" the right to vote of communities of color. § 15.5-201(A). A violation is established by showing *either* that that the practice results in a disparity in the ability of voters of color to participate in the electoral process, *or* that, under the totality of circumstances, the practice results in an impairment of the ability of voters of color to participate in the franchise. § 15.5-201(B). Under the federal law, on the other hand, voters have to show (among other things) both a statistical disparity and an impairment under the totality of the circumstances. This innovation of the MDVRA will allow voters of color to show that voting discrimination has occurred without having to jump over unnecessary burdens of proof. Furthermore, because the standard is more explicit under the MDVRA, state courts will have proper guidance about how to determine whether a violation has occurred.

**E. SB 878 expands the remedies that communities of color can seek to ensure their electoral enfranchisement.**

Under the MDVRA, if a violation of Subtitle 2 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government and prioritize the full and equitable participation access of voters. The court may only take such action if the remedy will not impair the ability of the protected class of voters to participate in the political process. This part of the bill recognizes that vote denial and vote dilution tactics take many different forms and are not solely limited to traditional methods of voter discrimination. Examples of such remedies from the language of §§ 15.5-204(B)(1)(I) - (XII) of the MDVRA include replacing a discriminatory at-large



system with a district-based or alternative method of election; new or revised redistricting plans; adjusting the timing of elections to avoid known dips in turnout; and adding voting hours, days, or polling locations.

The MDVRA also specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 15.5-204(B)(3). This directly responds to an egregious flaw in the federal law, where Section 2 has been interpreted by the federal courts to grant government defendants the “first opportunity to suggest a legally acceptable remedial plan.”<sup>7</sup> 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 step in.<sup>8</sup> 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.<sup>9</sup> 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. The MDVRA 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 SB 878 and strengthen voting rights in the state of Maryland. SB 878 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. Thank you.

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<sup>7</sup> *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994)

<sup>8</sup> *Id.*

<sup>9</sup> *Baltimore Cnty. Branch of Nat’l Ass’n for the Advancement of Colored People v. Baltimore Cnty., Maryland*, No. 21-CV-03232-LKG, 2022 WL 888419, at \*1 (D. Md. Mar. 25, 2022).

Respectfully submitted,

/s/ Lata Nott

Lata Nott, Senior Legal Counsel  
Aseem Mulji, Legal Counsel  
Valencia Richardson, Legal Counsel  
Campaign Legal Center  
1101 14th St. NW, Suite 400  
Washington, DC 20005

# **SB0878 Voting Rights Act 2023.docx.pdf**

Uploaded by: Lindsay Keipper

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of District 46, and **I am testifying in support of the Voting Rights Act of 2023, SB0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB0878.**

Thank you for your time, service, and consideration.

Sincerely,

**Lindsay Keipper**

**2425 Fleet St.**

Showing Up for Racial Justice Baltimore

**SB0878\_QVM\_Testimony\_SUPPORT.docx.pdf**

Uploaded by: Molly Finch

Position: FAV



March 12, 2023

Dear Chairman Senator Feldman, Vice Chairman Senator Kagan, and Members of the Committee,

**Quaker Voice of Maryland is submitting this testimony in FAVOR of SB0878 – *Voting Rights Act of 2023 - Counties and Municipalities.***

We have identified this bill as one of our priorities for the 2023 general assembly because Quakers across Maryland have shared their concern about voting access and protection. One of the testimonies of Quakerism is equality and we see the Maryland Voting Rights Act as striving to support equality in participation to the state political process.

This is because the “Maryland Voting Rights Act will provide a means of ensuring that all voters are able to cast a meaningful ballot, but it will especially help to accelerate the participation of voters of color who have been historically denied an equal opportunity to participate in the political process” (ACLU Fact Sheet, link provided below). Some highlights of this bill for us include:

- Creating strong protections against voter intimidation, deception, or obstruction.
- Launching a “preclearance” program that requires places with records of discrimination to prove that proposed voting changes will not harm voters of color before they can go into effect.
- Providing new legal tools to fight discriminatory voting rules and election systems in court.

In addition to submitting hearing testimony in support of this bill we have signed on to a letter being organized by Common Cause Maryland and have joined over 20 organizations to urge SUPPORT for this bill.

To learn more about the issue and how passing this legislation will lead to positive change for Marylanders who have historically been denied an equal opportunity to participate in the political process I recommend you read the American Civil Liberties Union (ACLU-MD) bill fact sheet:

[https://www.aclu-md.org/sites/default/files/votingrights\\_onepager\\_mdga23.pdf](https://www.aclu-md.org/sites/default/files/votingrights_onepager_mdga23.pdf)

We encourage a FAVORABLE report for this essential legislation.

Sincerely,

Molly Finch

*Working Group Member, on behalf of Quaker Voice of Maryland*

*Personal email: mgsfinch@gmail.com*

*Organization email: quakervoicemd@gmail.com*

# **SB 878 - Voting Rights Act of 2023 - Counties and**

Uploaded by: Morgan Drayton

Position: FAV

**March 15, 2023**

**Testimony on SB 878**  
**Voting Rights Act of 2023 – Counties and Municipalities**  
**Ways and Means**

**Position:** Favorable

Common Cause Maryland is in enthusiastic support of SB 878, a landmark piece of legislation that builds on successful Voting Rights Act models enacted recently in Virginia, New York, California, and other states. The bill takes the necessary steps to protect the voting rights of all Marylanders at the state level – but especially Voters of Color who have historically been denied the equal opportunity to participate in the democratic process – regardless of what direction the Supreme Court takes federal law.

Despite our nationally progressive reputation, many of Maryland’s counties and cities have a troubling history when it comes to race and voting: English literacy tests, property ownership requirements, grandfather clauses, and entitlements linked to voting are just a few examples of the legal discrimination faced by Voters of Color attempting to exercise their right to vote. Despite the strides towards equality that society has made since the Civil Rights movement, the spirit of many of these discriminatory practices has been carried forward to the present day: for example, some jurisdictions still use at-large elections which can empower a white majority to capture most or all seats, even when there is a substantial population of Black, Indigenous, and other Voters of Color.

The Maryland Voting Rights Act (MDVRA) proposal includes a requirement for local voting changes to receive preapproval, taking from core provisions of the federal Voting Rights Act that was struck down by the Supreme Court ten years ago. As we move forward it’s important to note that Maryland was not among the states, mostly in the South, that were covered under federal preclearance provisions – making it even more necessary that these reforms be passed at the state level. The MDVRA will be a boon for the electoral participation of all historically excluded groups, and increased language access requirements are just one of the ways this legislation seeks to advance that mission.

[Studies indicate](#) that translated materials and other forms of language assistance make it easier for populations that don’t speak English well to participate in the democratic process.<sup>1</sup> In any election, voters make decisions about whether or not to cast a ballot – [with only 27.4% voter turnout](#) in the 2022 Maryland gubernatorial election, many choose not to. Access to translated ballots can help ensure that this decision stays with the voter, rather than a systemic barrier that makes the choice for them.<sup>2</sup>



SB 878 will ensure that non-English speakers are not left out of the voting process by requiring localities with a language minority population of two percent of citizens of voting age citizens to provide voting materials in that additional language. This will ensure that more voters are accurately informed, resulting in greater participation and an overall healthier democracy. It is our strong belief that no voter should ever be discouraged from voting because the materials were not provided in a language they can understand.

The Maryland Voting Rights Act will ensure that all voters are able to cast a ballot and participate freely in our elections if they so choose. SB 878 will make Maryland a national leader on protecting the right to vote, carrying forward momentum from across the nation to become one of the most comprehensive enacted state-level voting rights acts in the country.

For these reasons, we strongly urge a favorable report from the committee.

# **SB 878 MDVRA Testimony.pdf**

Uploaded by: Nick Steiner

Position: FAV



## Testimony for the Senate Education, Energy, and Environment Committee

### SB 878 Voting Rights Act of 2023 – Counties and Municipalities

March 15th, 2023

GREGORY BROWN  
PUBLIC POLICY  
COUNSEL

#### FAVORABLE

AMERICAN CIVIL  
LIBERTIES UNION  
OF MARYLAND  
  
3600 CLIPPER MILL  
ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND  
DIRECTORS  
HOMAYRA ZIAD  
PRESIDENT

DANA VICKERS  
SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

The ACLU of Maryland urges a favorable report on SB878, a historic bill that seeks to establish strong voting protections for Marylanders across the state. Importantly, SB878 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 two recent Section 2 lawsuits: (1) A challenge in 2021 to Baltimore County's unlawful re-districting scheme that packs a supermajority of Black voters into a single district of six districts, diluting the Black vote when a second district could be created, and (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 has sustained an all-white government for its 200 year history.

However, it is particularly concerning that cases seeking to undermine the civil cause of action under Section 2 of the Voting Rights Act are being filed and reaching appellate level federal courts, including the U.S. Supreme Court.<sup>1</sup> To say that the federal Voting Rights Act of 1965 and the nation's right to cast a meaningful vote is under threat severely understates the potential fallout of harmful decisions in these cases, and requires States seeking to protect democracy to become voting rights leaders by enacting their own Voting Rights Act.

**Maryland must be one such leader.**

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<sup>1</sup> <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>.

### ***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. The County 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 found that the County's plan was racially discriminatory and diluted the black vote, and that the plan had to be redone. Ultimately, the County re-drew their plan in a way that allowed them to continue maintaining a single district of Black voters, without drawing a district map that would have allowed a second Black-represented district to be created. 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***

Since 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 have been seeking to change the at-large staggered term election system that has diluted the Black vote such that no Black person, or any person of color, has been elected to municipal government in the Town's 200-year history. In the 2020 Census, the Town is now majority BIPOC, at 53%, and 47% Black.

After months of negotiations and one-sided dealings, the Town engaged in a reform process that maintained their white-dominant election structure, until finally Federalsburg residents, Caroline County NAACP, and Caucus of African American Leaders filed suit on February 22, 2023.

### **Municipal Reform**

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 violation has occurred that can be challenged in federal court. If the Maryland VRA is passed, significant resources can be saved, while still reforming systems of disenfranchisement that still exist across the state. Among Maryland's numerous municipalities, at-large election systems, like in Federalsburg, keep all or nearly all-white governments in place. A Maryland VRA could help change that in numerous municipalities, including:

**La Plata, Charles County**

**Denton, Caroline County**

**Elkton, Cecil County**

**Aberdeen, Harford County**

**Havre de Grace, Harford County**

**Leonardtown, St. Mary's County**  
**Delmar, Wicomico County**  
**Fruitland, Wicomico County**

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 SB878.

# **SB0878 Voting Rights Act 2023.pdf**

Uploaded by: Rebecca Shillenn

Position: FAV

Dear **Members of the Education, Energy, and the Environment Committee,**

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of **District 45. I am testifying in support of the Voting Rights Act of 2023, SB 0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,

**Rebecca Shillenn**

**5401 Elsrode Avenue Baltimore MD 21214**

Showing Up for Racial Justice Baltimore

# **Eckel SURJ FAV SB0878 Voting Rights Act 2023.pdf**

Uploaded by: Rianna Eckel

Position: FAV



Dear **Members of the Education, Energy, and the Environment Committee,**

My name is Rianna Eckel, I live in the 43<sup>rd</sup> District, and I am submitting this testimony as a member of Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. **I am testifying in support of the Voting Rights Act of 2023, SB 0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

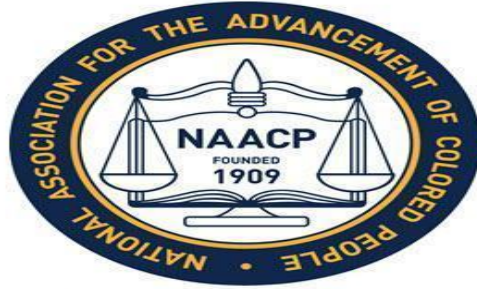
Thank you for your time, service, and consideration.

Sincerely,  
Rianna Eckel  
2300 Hunter St, Baltimore, 21218  
Showing Up for Racial Justice Baltimore

**SB0878.pdf**

Uploaded by: Ryan Coleman

Position: FAV



## **Randallstown**

**P.O. Box 731 Randallstown, MD 21133**

March 14, 2023

Education, Energy, and the Environment Committee  
2 West  
Miller Senate Office Building  
Annapolis, Maryland 21401

**RE: SUPPORT SB 0878 Voting Rights Act of 2023-Counties and Municipalities**

Dear Chair Feldman, VC Kagan and Committee Members:

The Randallstown NAACP is based in Baltimore County with a membership of 500 individuals throughout the region. May it be known the mission of the Randallstown NAACP is to secure equal rights in order to eliminate race-based discrimination and ensure the health and wellbeing of all persons in Baltimore County and the State of Maryland.

The plight of African American political representation in American politics has been very turbulent. Immediately following the Civil War, there was a substantial increase in the number of African Americans elected. However, their tenure would be short-lived. Once African Americans took their places in the legislative chambers, many southern whites responded with violence, intimidation tactics, and the creation of racial gerrymanders to dilute minority-voting strength. The passage of the Voting Rights Act of 1965 and its subsequent amendments called for the creation of minority majority districts that allowed African Americans to elect the candidate of their choice. This allowed African Americans to elect a number of blacks to serve in political offices.

One of the signature achievements of the civil rights movement was to provide African Americans with an opportunity to exercise their constitutional right to vote. This allowed them to enjoy full inclusion in American society by electing representatives who could make much needed changes to public policies and resources that would alleviate racial inequality.

In Baltimore County the African American population is 35% and should equate to two council members. The fourth district has over 72% African Americans in the district. This fully illustrates the concept of packing which is illegal. Packing is the term used when minority voters are compressed into a small number of districts when they could effectively control more. This is the case in Baltimore County. No African American has won elected office in a white majority district in Baltimore County. We could move precincts 02-028 and 02-009 to the second councilmanic district to create a second African American district of 53%. We could make a third district with African Americans having a dominant percentage in the first councilmanic district; by adding Precinct 02-031, 02-001, 02-002, and 02-003 which would restore Woodlawn. The fourth councilmanic district would be the third minority majority district with over 60% African Americans.

However, the Baltimore County Council did not hear our warnings. The US District Court threw out the council's first map. The new map still didn't give us the desired result of equal representation. In fact the current county council has less diversity than the previous- 6 white men and 1 African American for a county that has 54% residents of color.

This bill would give regular citizens and communities another tool to ensure equal representation. **The Randallstown Branch of the NAACP urges a favorable report from the committee on SB 0878.**

Best,

Ryan Coleman  
Randallstown NAACP, President

# **SB0878 Voting Rights Act 2023\_FAV.pdf**

Uploaded by: Sarah Johnson

Position: FAV

Dear Members of the Education, Energy, and the Environment Committee,

This testimony is being submitted by Showing Up for Racial Justice Baltimore, a group of individuals working to move white folks as part of a multi-racial movement for equity and racial justice in Baltimore City, Baltimore County, and Howard County. We are also working in collaboration with the Campaign for Justice, Safety and Jobs, and ACLU of Maryland. I am a resident of District 41 in Baltimore City. **I am testifying in support of the Voting Rights Act of 2023, SB0878.**



Yes, Maryland has made progress in recent years to improve voting rights access. Yet Maryland has a history of discrimination against Black and Brown voters. As recently as 2021, the ACLU and Baltimore County NAACP brought suit to challenge Voting Rights Act violations in proposed redistricting plans. Furthermore, the Supreme Court has recently weakened enforcement of the national Voting Rights Act. We need a Maryland-specific Voting Rights Act to improve protections for historically marginalized voters and to act as safeguard against weakened national enforcement.

This proposed bill would establish requirements for local governments when they plan redistricting or change election methods. It would also establish a statewide database of demographic and election information; this database would promote transparency and evidence-based practices. Furthermore, it would require pre-clearance from the Maryland Attorney General's office to confirm or deny local government remedies addressing past violations.

A few other states, like New York and Virginia, have enacted their own state Voting Rights Acts. In passing a Maryland version, our state would be joining good company. Maryland voters deserve the strongest possible protection of their voting rights.

It is for these reasons that I am encouraging you to vote **in support of the Voting Rights Act of 2023, SB 0878.**

Thank you for your time, service, and consideration.

Sincerely,  
Sarah Johnson  
1 Merryman Court  
Baltimore, MD 21210  
Showing Up for Racial Justice Baltimore

**2023.03.15\_ELC MD VRA Senate Statewide Database Te**

Uploaded by: Theresa Lee

Position: FAV

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.<sup>1</sup> 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.<sup>2</sup> 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%).<sup>3</sup> Indeed, in that election “more people voted in Maryland . . . than

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<sup>1</sup> 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).

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

<sup>3</sup> 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.”<sup>4</sup> 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.”<sup>5</sup> 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,<sup>6</sup> increase diversity in local elected offices,<sup>7</sup> and improve local governments’ responsiveness to their constituents.<sup>8</sup> 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 21<sup>st</sup> century by providing a central public repository for election and demographic data with the goals of fostering

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<sup>4</sup> *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](https://www.aclu-md.org/sites/default/files/field_documents/aclu_of_maryland_election_protection_report_-_examining_the_2020_election.pdf).

<sup>5</sup> 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/>.

<sup>6</sup> 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](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).

<sup>7</sup> 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).

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

- 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.<sup>11</sup> Shapefiles allow these organizations to match voters with the contests that will appear on their ballot.<sup>12</sup> Currently, these groups must request this data in a piecemeal fashion

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

<sup>10</sup> 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).

<sup>11</sup> 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>.

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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,<sup>15</sup> 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.

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<sup>13</sup> See, e.g., *id.*

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

<sup>15</sup> 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,<sup>16</sup> hiring the number of staffers the State Board of Elections deems sufficient to perform the EDIO's duties,<sup>17</sup> 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.<sup>18</sup> 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,<sup>19</sup> 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.<sup>20</sup> 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.

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<sup>16</sup> 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.”).

<sup>17</sup> See *id.*

<sup>18</sup> 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>.

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

<sup>20</sup> 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

**BaltimoreCounty\_FWA\_SB0878.pdf**

Uploaded by: Joshua Greenberg

Position: FWA



JOHN A. OLSZEWSKI, JR.  
*County Executive*

JENNIFER AIOSA  
*Director of Government Affairs*

AMANDA KONTZ CARR  
*Legislative Officer*

JOSHUA M. GREENBERG  
*Associate Director of Government Affairs*

**BILL NO.:**            **SB 878**

**TITLE:**                Voting Rights Act of 2023 - Counties and Municipalities

**SPONSOR:**           Senator Sydnor

**COMMITTEE:**        Education, Energy, and the Environment

**POSITION:**         **SUPPORT WITH AMENDMENTS**

**DATE:**                March 15, 2023

Baltimore County **SUPPORTS WITH AMENDMENTS** Senate Bill 878 – Voting Rights Act of 2023 - Counties and Municipalities. This legislation would enhance current protections for the right of every citizen of the State of Maryland to vote.

Voting is a sacred act of civic duty and a right that each and every citizen of this Country must be afforded. Unfortunately, as protections at the federal level have consistently come under threat, it is up to states and local governments to ensure all citizens continue to enjoy their constitutional rights. Baltimore County applauds the State for ensuring the proper protections for voters are in place, however, it cannot bear the fiscal burden of this legislation alone, and feels the bill would be made stronger if amended to include assistance from the State.

Costs associated with reimbursements to a complaining party, attorney and expert witness fees, and providing language assistance for voters could impose substantial costs on local governments who already devote numerous resources to the election process every two years. The County agrees that language accessibility and legal remedy to enforce voting rights are critical components to ensuring a fair election process, but asks that the State partner with its local jurisdictions to make sure these protections do not carry onerous fiscal consequences.

Accordingly, Baltimore County requests a **FAVORABLE WITH AMENDMENTS** report on SB 878. For more information, please contact Jenn Aiosa, Director of Government Affairs at [jaiosa@baltimorecountymd.gov](mailto:jaiosa@baltimorecountymd.gov).

**DRM SB 878 FAV.pdf**

Uploaded by: Samuela Ansah

Position: FWA





Empowerment. Integration. Equality.

1500 Union Ave., Suite 2000, Baltimore, MD 21211

Phone: 410-727-6352 | Fax: 410-727-6389

[www.DisabilityRightsMD.org](http://www.DisabilityRightsMD.org)

## EDUCATION, ENERGY & ENVIRONMENT COMMITTEE

March 10, 2023

### SB 878 – Voting Rights Act of 2023 - Counties and Municipalities

#### Position: SUPPORT

Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the Protection & Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. Our mission is to advance the civil rights of persons with disabilities. We work to ensure that people with disabilities can fully participate in civic life, including the electoral process.

At a time when voting rights are constantly being challenged, SB 878 will enshrine voting rights protections in the Maryland State Constitution<sup>1</sup>. In addition to protecting against racial gerrymandering and providing civil cause of action, The Maryland Voting Rights Act (MDVRA) will require local governments to ensure non-English speakers have voting materials in the minority language of a locality and creates a statewide database with demographic data to foster evidence-based practices in election administration which includes data on voters with disabilities.

The Voting Rights Act of 1965 (VRA) put an end to the racist practices that effectively denied African-Americans the right to vote through poll taxes, literacy tests and intimidation. The federal Voting Rights Act of 1965 protected against racial gerrymandering that diluted the power of African American voters. The Act required certain states to receive pre-clearance from the United States Department of Justice for redistricting and other voting legislation. However, in 2013, the Supreme Court ruled that this required pre-clearance under Section 5 was unconstitutional. Since then, we've seen tactics and measures that threaten the voting rights of African-Americans, voters with disabilities<sup>2</sup>, and other disenfranchised groups.

Although Maryland was not subject to the 'pre-clearance' requirements, the Voting Rights Act Section 5 coverage served as a prophylactic against state and local efforts to minimize the voting rights of people of color. This summer, the Supreme Court will again decide the extent of protections under the Voting Rights Act in regards to redistricting. SB 878 will enshrine protections currently guaranteed under the federal Voting Rights Act into the State constitution, regardless of how the Supreme Court may rule. Implementing voting rights into our State constitution will protect and guarantee equal voting rights for all Marylanders.

We are particularly supportive of the provisions that will expand language access to the ballot for minority languages. This will affirmatively ensure access to the ballot, improving our

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<sup>1</sup> [Voting Rights Act faces further dismantling at Supreme Court : NPR](#)

<sup>2</sup> [Legislation - HB0035 \(maryland.gov\)](#); [Legislation - HB0022 \(maryland.gov\)](#); [Legislation - HB0926 \(maryland.gov\)](#); [Legislation - HB1216 \(maryland.gov\)](#); [Legislation - HB1092 \(maryland.gov\)](#); [Legislation - HB0616 \(maryland.gov\)](#)



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1500 Union Ave., Suite 2000, Baltimore, MD 21211

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democracy. The Maryland Voting Rights Act will also create an election hub for demographic data with the goal of fostering evidence-based practices in election data. For example, this data will help inform the location of drop boxes according ensure equal access for protected classes. We respectfully recommend the language of the demographic data include demographic data for voters with disabilities, to improve accessibility measures the State Board of Elections may adopt in the future. Including voters with disabilities to the demographic data hub is vital to ensure election administration provides equal access to voters with disabilities. Additionally, there is a huge lack of data for voters with disabilities, making it difficult to evaluate how election administration impacts voters with disabilities. Including voters with disabilities in demographic data gives Maryland the opportunity to provide better accessibility and equal access to the ballot using evidence-based practices.

Voting rights are fundamental to a working, equitable and transparent democracy. Maryland has the opportunity to join New York and Virginia in affirmatively protecting voting rights by passing SB 878, the Maryland Voting Rights Act. The provisions in the bill make this a forward thinking piece of legislation, particularly its provisions to expand language access to the ballot and creating a data hub for demographics. We respectfully request disabilities be included in the language of demographic data to ensure all disenfranchised voters are represented. For those reasons and with that amendment, we request a favorable report on SB 878. For any questions, please contact Samuela Ansah at [SamuelaA@DisabilityRightsMD.Org](mailto:SamuelaA@DisabilityRightsMD.Org) or 443-692-2512.

**SB 878 - UNF - MML.pdf**

Uploaded by: Angelica Bailey Thupari

Position: UNF



## Maryland Municipal League

*The Association of Maryland's Cities and Towns*

# TESTIMONY

March 15, 2022

**Committee:** Senate Education, Energy, and the Environment

**Bill:** SB 878 - Voting Rights Act of 2023 - Counties and Municipalities

**Position:** Oppose

**Reason for Position:**

The Maryland Municipal League opposes Senate Bill 878, which establishes many new requirements for voting qualifications which are both unduly burdensome and redundant.

The State has largely authorized municipal governments to operate their elections in a manner that allows for changes to be made to fit the wants and needs of each individual community. As a result, municipalities have different eligibility requirements, election dates, and processes. Establishing the new requirements proposed in this bill would be financially and logistically challenging, especially to smaller towns, with little value added; the federal Voting Rights Act already ensures that residents cannot be excluded from voting based on race.

Our towns and cities already work hard to make sure all residents can vote safely and effectively, at great cost to their own budgets. For these reasons the League respectfully requests that this committee provide SB 878 with an unfavorable report.

**FOR MORE INFORMATION CONTACT:**

Theresa Kuhns  
Angelica Bailey Thupari, Esq.  
Bill Jorch  
Justin Fiore

Chief Executive Officer  
Director of Advocacy & Public Affairs  
Director of Public Policy  
Manager of Government Relations

1212 West Street, Annapolis, Maryland 21401

410-268-5514 | 800-492-7121 | FAX: 410-268-7004 | [www.mdmunicipal.org](http://www.mdmunicipal.org)

**230314-SB878-election-protected-class.pdf**

Uploaded by: Christine Hunt

Position: UNF

Christine Hunt and Jay Crouthers  
1014 Dockser Drive  
Crownsville, MD 21032

March 14, 2023

Maryland General Assembly  
Members of the Education, Energy and the Environment Committee  
Annapolis, MD

RE: SB 878-Voting Rights Act of 2023 – Counties and Municipalities

Dear Senators,

We oppose SB 878 and respectfully request that you vote against it.

As a member of the MFRW (Maryland Federation of Republican Women) I agree with all of the points in opposition of SB 878 as cited below; particularly to paragraph 3 relating to “special preference to ‘protected class’”. We agree that all voters should be treated equally, and is that not already defined in a law somewhere?

The 1426 members of the Maryland Federation of Republican Women strongly OPPOSE HB 1104 – Voting Rights Act of 2023 – Counties and Municipalities. This proposed legislation is very likely to cause chaos in the elections of many counties and municipalities. It will override county charters enacted by ALL of the voters of those jurisdictions and have the Anne Arundel Circuit Court decide instead.

HB 1104 provides for jurisdictions to abandon their legally chosen methods of electing their county or municipal officials by districts or at-large or a combination of district and at-large representation and replacing them with ranked-choice voting, cumulative voting and limited voting without defining them. Ranked-choice voting is confusing to voters, takes longer to make 3 or more choices for each office without knowing who the top candidates will be in each round of voting. This can lead to drop off in voting in down-ballot races such as Board of Education. It also prolongs the counting and certification of elections and can lead to reduced voter confidence in election outcomes.

HB 1104 gives special preference to “protected class” defined as “a class of citizens who are members of a race, color, or language minority group”. All voters should be treated equally and all voters, regardless of color, race or language preference, should have equal voice in all elections.

P. 6 -7 provides for 2 or more protected classes that are politically cohesive within the election district of the local government may bring a combined claim of discrimination without requiring evidence that each protected class is separately polarized from other voters and does not require evidence that the local government discriminated against the protected class voters or any other evidence of discrimination.

Page 10 – (15.5-204 (A) (1)) provides for organizations whose mission would be frustrated by a violation or who would expend resources in order to fulfill its mission under this subtitle could bring an action to overturn election methods duly enacted by voters. An organization, including an organization formed outside of Maryland, would have more rights than citizens of Maryland.

HB 1104 will allow the Court to “reasonably increase the size of the legislative body” and order special elections or change the election process. These are decisions that should be made by the state or county legislative body not the court. HB 1104 will hurt not help voter participation in elections.

Sincerely,

Christine Hunt and Jay Crouthers

# **SB 878-2023 Voting Rights Act - final.pdf**

Uploaded by: Ella Ennis

Position: UNF





Ella Ennis, Legislative Chairman  
Maryland Federation of Republican Women  
PO Box 6040, Annapolis MD 21401  
Email: eee437@comcast.net

The Honorable Brian Feldman, Chairman  
And Members of the Committee on Education, Energy and Environment  
Senate of Maryland, Annapolis, Maryland

RE: **SB 0878** – Voting Rights Act of 2023 – Counties and Municipalities - **UNFAVORABLE**

Dear Chairman Feldman and Committee Members,

The 1,426 members of the Maryland Federation of Republican Women strongly OPPOSE SB 0878 – Voting Rights Act of 2023 – Counties and Municipalities. This proposed legislation is very likely to cause chaos in the elections of many counties and municipalities. It will override county charters enacted by ALL the voters of those jurisdictions and have the Anne Arundel Circuit Court decide instead.

SB 0878 provides for jurisdictions to abandon their legally chosen methods of electing their county or municipal officials by districts or at-large or a combination of district and at-large representation and replace them with proportional ranked-choice voting, cumulative voting, and limited voting without defining those voting methods. Ranked-choice voting is confusing to voters, and it takes much longer to make 3 or more choices for each office. This cannot be an informed decision without knowing who the remaining candidates will be in each round of voting. This could lead to drop off in voting in down-ballot races such as Board of Education. It also prolongs the counting and certification of elections and can lead to reduced voter confidence in election outcomes.

SB 0878 gives special preference to “protected class”, defined as “a class of citizens who are members of a race, color, or language minority group”. All voters must be treated equally and all voters, regardless of color, race, or language preference, must have an equal voice in all elections.

Pages 6 -7 provide for 2 or more protected classes that are politically cohesive within the election district of the local government to be able to bring a combined claim of discrimination without requiring evidence that each protected class is separately polarized from other voters and does not require evidence that the local government discriminated against the protected class voters or any other evidence of discrimination.

Page 10 – 15.5-204 (A) (1) will allow an organization whose mission would be frustrated by a violation or who would expend resources in order to fulfill its mission under this subtitle to bring an action to overturn election methods duly enacted by voters. An organization, including an organization formed outside of Maryland, would have more rights than Maryland citizens.



Ella Ennis, Legislative Chairman  
Maryland Federation of Republican Women  
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SB 0878 will allow the Court to “reasonably increase the size of the legislative body” and order special elections or change the election process. These are decisions that should be made by the state or county legislative body, not the court. SB 0878 will hurt, not help, voter participation in elections.

Please give an **UNFAVORABLE** Report to **SB 0878**.

Sincerely,  
Ella Ennis  
Legislative Chairman

**sb878.pdf**

Uploaded by: Matthew Pipkin

Position: UNF

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Education, Energy, and the Environment Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 878  
Voting Rights Act of 2023 – Counties and Municipalities  
**DATE:** March 1, 2023  
(3/15)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 878. This bill proposes to add an entire section to the Election Law Article titled the Voting Rights Act – Counties and Municipalities.

The bill further authorizes the Anne Arundel Circuit Court to “preclear”, meaning submitting in writing, any proposed enactment or implementation of any new or modified local government qualification for the admission of a voter, prerequisite to voting, or ordinances, regulations, standards, practices, procedures, or policies touching on the changes described in the noted subsection. The bill would also allow certain persons to file an action in Anne Arundel Circuit Court to enjoin the enactment or implementation proposed by local government and allow sanctions if local government moved forward without obtaining preclearance. This bill is problematic, as courts are prohibited from rendering “advisory opinions.” To have the Circuit Court for Anne Arundel County “review and grant preclearance to certain policies” certainly seems like such.

Although well meaning, this bill would also create a constant morass of litigation. The standards being sought are so broad and so numerous, that a court could spend weeks or months trying to resolve a case. These bills also impose “weight” of the evidence standards which are outside legislative purview.

Finally, it is unclear why this burden is being placed on one circuit court, rather than to apply normal jurisdictional requirements, which seems unwise. Current law provides Anne Arundel County circuit court with jurisdiction over statewide election cases but this bill applies to county and municipal elections. It is unclear why a challenge to an Allegany local election would need to be filed in the Circuit Court for Anne Arundel County.

cc. Hon. Charles Sydnor  
Judicial Council  
Legislative Committee  
Kelley O'Connor

# **Witness Signup Comments SB0878.pdf**

Uploaded by: Michael Fletcher

Position: UNF

Chairman Feldman, and  
Members of the Senate Education, Energy, and the Environment Committee

RE: SB0878 Voting Rights Act of 2023 - Counties and Municipalities [UNFAVORABLE]

This emergency bill, SB0878, and its companion, cross-filed bill HB1104, establish various State law provisions relating to voting rights, including provisions (1) establishing a Protected Class of voters; (2) protecting the voting rights and abilities of protected class members in local government elections; (3) prohibiting voter intimidation, deception, or obstruction; (4) requiring language-related assistance in local government elections under specified circumstances; (5) establishing a Statewide Election Database and Information Office; and (6) requiring the Civil Rights Division of the Office of the Attorney General to approve or deny proposed local government remedies to address certain violations.

SB0878/HB1104 set up a convoluted system of legal remedies to fix a problem that does not exist. Also, the bills promote changes in voting methods that would diminish local control of elections and changes that have nothing to do with voting rights. In addition, these bills would likely have the effect of promoting racial balkanization of the electorate by groups and organizations set up to profit from societal strife.

SB0878/HB1104 establish a Statewide Election Database and Information Office to perform duties in support of these bills; however, the expenses required to establish this Office are unnecessary because these bills are unnecessary. Current Maryland law already provides the protections and remedies for voting rights violations that these bills purport to address. Another unnecessary, expensive bureaucracy is not needed.

The bills mandate that the Attorney General's Civil Rights Division or the Anne Arundel Circuit Court identify and adjudicate "Racially Polarized Voting" and assure the voting rights of a "Protected Class" of voter. A major problem with these bills is that, in order to identify Racially Polarized Voting as defined in the bills, someone must be able to read the minds of the Protected Class voters to ascertain if an election resulted in a divergence between the preferences of that class and the actual outcome of the election. This is impossible. These bills are replete with "requirements" and infractions that are both subject to interpretation and unnecessary. For example, the bills state that racially polarized voting occurs under certain circumstances "based on the totality of the circumstances." These circumstances are undefined; the bills should at least define them. By relying on imprecise terms and subjective criteria, the bills would invite lawsuits brought by any group or outside organization, even those organizations outside of Maryland, that would want to profit from promoting divisions based on "race, color or language". These bills will result in countless hours of wasted time and wasted revenue because the protections of Protected Class Members provided in these bills are redundant to the protections afforded by current Maryland law.

The bills promote alternate methods of voting (ranked choice, cumulative, or limited). Ranked choice voting (RCV) is the subject of another proposed bill; however, this

method of voting should not be adopted because it disenfranchises voters, it uses algorithms to determine election outcomes, and it makes post-election audits impossible. Studies have shown that RCV results in lower voter turnout and undermines the principle of "one person, one vote." The bills do not define cumulative or limited voting; nevertheless, the only fair method of voting is the traditional, "at-large" method that maintains one person, one vote.

These bills would result in a shift of power over elections from counties and municipalities to the State. This is not the normal method of governance in the USA where local governments better serve local constituents. In the absence of some problem, this shift in power is unwarranted; and there is no such problem. Current civil rights and election laws in Maryland provide ample protection for the voting rights of its citizens.

By defining groups of citizens based on race, color or language, and setting up a prosecutorial system to adjudicate perceived infractions based on nebulous terms, these bills will likely promote divisions in the electorate based on race, color or language. Again, current law adequately addresses voting rights, and these bills are a solution to a non-problem.

For the above reasons, these bills should be reported as unfavorable.

Thank you,

Michael Fletcher  
Derwood, MD



# **SB 878 Testimony - Gaithersburg.pdf**

Uploaded by: Ty Hardaway

Position: UNF



Good Afternoon Chair, Vice-Chair, and Members of the Committee:

My name is Ty Hardaway. I am Vice Chair of the Board of Supervisors of Elections for the City of Gaithersburg, and I am here in opposition to SB 878.

I joined my city's Board of Supervisors almost a decade ago because I have long believed in accessible, fair, and open elections. I feel it is my responsibility as a citizen to protect the sanctity of elections. Gaithersburg's Board of Supervisors of Elections has a long history of operating fair and open elections and has voluntarily implemented procedures through the years, such as mail-in voting and providing all election materials in English and Spanish, to ensure all of our residents have the information and access to enable them to participate in municipal elections. We are strong advocates for voting rights, but this bill would impose unnecessary oversight and increased costs for municipal elections.

This bill would give the Circuit Court for Anne Arundel County, instead of local County Courts, the authority to determine whether protected class voting by race occurs, and significantly limits information the Court may consider in making this determination. Under the Bill's criteria, a finding of racially polarized voting could be made solely on the extent to which protected class voters have been elected to office.

The Bill grants the Court significant authority to alter elections, and even the structure of government, including the imposition of district-based elections, rank choice voting, elimination of staggered elections, and the increase in the size of the legislative body.

Additionally, under the pre-clearance provisions, local boards of elections would need approval even for minor changes to polling places and drop box locations. For every election, Gaithersburg's Board of Supervisors of Elections has always evaluated our polling places and drop box locations to optimize accessibility for all of our residents. A Court in Annapolis does not have the knowledge or history of our neighborhoods, voting trends, or demographics the way our local Board does.

Although Gaithersburg's election ordinances also contain a robust complaint procedure and resolution process, the City has never received a complaint alleging denial of voting rights. When our local residents suggest changes to improve the election process, the Board listens and works to better our system in an inclusive and transparent manner.

We oppose SB 878. But we believe that a viable Voting Rights Bill could be developed with further study. The Gaithersburg Board of Supervisors of Elections would eagerly participate in shaping a future Bill.

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2038  
301-258-6300 • FAX 301-948-6149 • [cityhall@gaitthersburgmd.gov](mailto:cityhall@gaitthersburgmd.gov) • [gaitthersburgmd.gov](http://gaitthersburgmd.gov)

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MAYOR  
Jud Ashman

COUNCIL MEMBERS  
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Lisa Henderson  
Jim McNulty  
Ryan Spiegel  
Robert T. Wu

CITY MANAGER  
Tanisha R. Briley

# **SB 878 Voting Rights Act Informational Only.pdf**

Uploaded by: Nancy Soreng

Position: INFO



**TESTIMONY THE SENATE EDUCATION, ENERGY AND ENVIRONMENT  
COMMITTEE**

**SB 878 Voting Rights Act of 2023 – Counties and Municipalities**

**POSITION: Information Only**

**By: Nancy Soreng, President**

**Date: March 15, 2023**

The League of Women Voters was founded on the concept that voter participation is the essential element of a successful democracy. LWVMD has worked for over 100 years to ensure the right to vote for every citizen. While we respect the intention of the national organizations who have drafted this law and the bill's sponsors – which was to overcome the devastating impacts to voting rights caused by the removal of the Preclearance provision from the 1965 Voting Rights Act – we don't believe that SB 878 is right for Maryland.

There are several provisions in this bill that we could support. Those include:

- Addressing local redistricting practices that dilute minority voting power.
- Expanding requirements for providing voting materials in languages beyond what is currently required by federal law.
- Collecting and analyzing data to better understand voter registration and election participation rates in relation to demographic census data in order to identify areas for improvement in election administration.
- Considering the use of alternate ballot casting and tabulation systems such as Ranked Choice Voting.

However, as much as we support these concepts, the recommendations in the bill need to be explored further, evaluated, and refined to be workable.

**Some of the provisions that give us great pause are:**

- The presumption that counties can enact laws that limit voting access. This bill ignores that Maryland Counties and Baltimore City must follow the voting requirements set in law by the General Assembly and administered by the State Board of Elections. This makes the preclearance provision for counties irrelevant. In addition, the Maryland General Assembly has been a national leader in passing laws considered the gold standard in best practices in facilitating election administration.



- While municipalities may enact their own voting laws, methods, and procedures, no attempt was made to document whether current municipal voting systems have been discriminatory. This is why we support the data collection piece of the bill before offering such a significant remedy as initiating pre-clearance programs for municipalities.
- Much of the section on Prohibition Against Voter Intimidation, Deception, or Obstruction has already been incorporated into Maryland Law. The Voters' Rights Protection Act of 2015 (House Bill 73, signed by Governor Hogan) gives the Attorney General (or the State Prosecutor if the Attorney General is a candidate in an election where illegal acts take place) the authority to seek injunctive relief to prohibit persons from committing election violations that willfully and knowingly influence or attempt to influence a voter's voting decision or decision whether to go to the polls to vote.
- The definition of a protected class in the 1965 Voting Rights Act is extremely limited. If Maryland is looking to update its voting rights laws, we need to go beyond protecting only citizens who are members of a race, color, or language minority group. We know it is paramount to include protections for marginalized groups such as the disabled, gender non-conforming people, and women.
- The factors used to identify discrimination in the bill don't account for emerging populations making some rural areas of Maryland more diverse than historical data would show.
- SB 878 is long, complex, and has many disparate elements. It was introduced so late it had to go to the Rules Committee. There has not been adequate time to evaluate its content or the impacts of its proposals.

The League of Women Voters of Maryland recognizes that barriers to voting do exist, especially for those who are systematically denied adequate housing, health care, education, and opportunity. But those barriers are caused by more than just election laws and must be treated holistically, so we have supported many pieces of social and economic justice legislation this session.

We are interested in working with legislators and Maryland advocacy groups during the interim to draft voting rights bills tailored to Maryland. We will advance voting access for Marylanders for whom the current system isn't working as well as it should.