



Testimony for the Senate Education, Energy, and Environment Committee

SB 878 Voting Rights Act of 2023 – Counties and Municipalities

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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.¹ 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.

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

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.