

Chair Atterbear, Vice Chair Wilkins, and distinguished members of the committee. My name is Ellen Kohl, I am an Assistant Professor of Environmental Studies at St Mary's College of Maryland (SMCM). I have my PhD in human geography with a focus on policies and conduct of local governments outside major urban areas and how structural racism impacts local experiences. My written testimony in favor on House Bill 447 is based on expertise in my field and as a SMCM faculty member, but not as a representative of SMCM.

In her dissent to the ruling on *Shelby v. Holder*, which ruled section 4(b) of the Voting Rights Act of 1965 was unconstitutional, the late Justice Ruth Bader Ginsburg recounted the myriad ways the minority vote has been disenfranchised stating “this Court repeatedly encountered the remarkable ‘variety and persistence’ of laws disenfranchising minority citizens.”¹ These methods included overt legal methods such as all white primaries, poll taxes, literacy tests, restrictive and arbitrary registration practices, and grandfather clauses. These legal actions were often coupled with acts of violence and intimidation intended to deter non-white voters from participating in the democratic process. While these forms of voter disenfranchisement have been ruled unconstitutional and are no longer practices, they have been replaced with second-generation barriers or “Jim Crow 2.0.”² These “indirect structural barriers” include racial gerrymandering, at-large voting, discriminatory annexation, and voter identification laws which particularly target the participation of Black, Indigenous People of Color (BIPOC), poor people, and young voters.³ While contemporary forms of voter disenfranchisement are subtle, “the effect and results are the same, namely a diminishing of the minority community’s ability to fully participate in the electoral process and to elect their preferred candidates.”⁴

At-large voting systems are still widely used in the United States, even though they result in a situation where “the overall majority could control the election of each city council member, effectively eliminating the potency of the minority’s vote.”⁵ There is much debate as to whether at-large voting increases diverse representation of elected officials, primarily because it is contingent on the context within which voting takes place.⁶ There is consensus that a transition from at-large voting does not make elected bodies *less* diverse. While transitioning from at-large voting to district-based voting will not address all forms of voter suppression, it is a step towards ensuring all Maryland counties afford representation to their citizens at the local level. Societies cannot be democratic if they are ruled solely

¹ Ruth Bader Ginsburg, *Shelby County, Alabama v. Holder, et al.* dissent, No. 12-96 (Supreme Court of the United States June 25, 2013), 2 quoting *South Carolina v. Katzenbach*, No. 383 US. 301 (Supreme Court of the United States March 7, 1966).

² Keith G. Bentele and Erin E. O’Brien, “Jim Crow 2.0? Why States Consider and Adopt Restrictive Voter Access Policies,” *Perspectives on Politics* 11, no. 4 (2013): 1088–1116.

³ Brad Epperly et al., “Rule by Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S.,” *Perspectives on Politics* 18, no. 3 (2020): 756–69; Lani Guinier, “The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success,” *Michigan Law Review* 89, no. 5 (1991): 1077–1154; Danielle Lang and J Gerald Hebert, “A Post-Shelby Strategy: Exposing Discriminatory Intent in Voting Rights Litigation,” *The Yale Law Journal Forum* 127 (2018): 779–98.

⁴ “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006” (Committee on the Judiciary: House of Representatives, May 22, 2006) as quoted in Ginsburg, *Shelby County, Alabama v. Holder et al.*, 6.

⁵ Ginsburg, *Shelby County, Alabama v. Holder, et al.*, 5.

⁶ Carolyn Abott and Asya Magazinnik, “At-Large Elections and Minority Representation in Local Government,” *American Journal of Political Science* 64, no. 3 (2020): 717–33; Jessica Trounstein and Melody E. Valdini, “The Context Matters: The Effects of Single-Member versus At-Large Districts on City Council Diversity,” *American Journal of Political Science* 52, no. 3 (2008): 554–69.

by the majority and the voice of the minority is silenced. The “commitment to minority representation can be grounded in pluralism and/or a commitment to racial justice. Failing to focus on minority representation is not a choice in favor of race neutrality, but instead a *de facto* vote against racial justice.”⁷ It is critical to remember, district voting does not prescribe outcomes; instead, it allows communities to self-identify and speak in their own voices. This is fundamentally empowering and democratic.

Contemporary manifestations of voter disenfranchisement are directly tied to Jim Crow laws and racial violence, specifically lynchings.⁸ Understanding this history highlights how even if the current systems of at-large voting are not intentionally discriminatory they perpetuate systems of historical disenfranchisement, and in practice contribute to the silencing of minority populations.

At-large voting traces its roots to the first US elections in 1788, when states used at-large systems to elect representatives. As a result, significant parts of some states were left without representation.⁹ Congress members became concerned about the implications of at-large representation and in 1842, they passed a law requiring single-member districts. The provision was dropped in 1850 but reinstated in 1862 creating a systems where white male landowners were able to elect representative governments.¹⁰ After the passage of the 15th amendment in 1870, systems of violence, intimidation, and fraud were used to disenfranchise Black voters. In the South, Black voter disenfranchisement was codified into laws through poll taxes, all white primaries, literacy tests, and grandfather clauses.¹¹ These laws worked in tandem with violent intimidation to dilute the Black vote.¹² Voter dilution was not just prevalent in the South, in the North states practiced some of the same tactics, while other states relied on more subtle tactics such as racial gerrymandering and at-large voting. For example, in 1957 in Lowell, Massachusetts, William Geary took out a political advertisement in favor of a proposed at-large voting law declaring “a ‘majority rule’ . . . would limit ‘minority rule’ of ethnic and national groups like the French, Greeks, Irish, Poles, Jews, Syrians, Armenians, and Lithuanians.”¹³

The Voting Rights Act of 1965 ushered in voting reforms, outlawing overt forms of voter disenfranchisement. The end of the Jim Crow era made *de jure* segregation illegal but *de facto* systems of segregation and oppression were maintained.¹⁴ This resulted in a rise of second-generation voter suppression legislation. During this period, at-large voting systems became prevalent as a way to preserve existing power structures. As one law maker indicated “[I]f members were elected at-large, with voters throughout the city casting ballots for all five seats, the white majority could preserve a lily-

⁷ Ruth Greenwood, “Fair Representation in Local Government,” *Indiana Journal of Law and Social Equality* 5, no. 1 (2017): 197–236, 201.

⁸ Epperly et al., “Rule by Violence, Rule by Law.”

⁹ George Pillsbury, “The Bias of At-Large Elections: How It Works,” Nonprofit Vote, August 16, 2017, <https://www.nonprofitvote.org/bias-large-elections-works/>.

¹⁰ Tory Mast, “The History of Single-Member Districts for Congress,” FairVote: Program for Representative Government, accessed February 5, 2021, <http://archive.fairvote.org/?page=526>.

¹¹ Virginia E Hench, “The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters,” *Case Western Reserve Law Review* 48, no. 4 (1998): 727–98.

¹² Epperly et al., “Rule by Violence, Rule by Law.”

¹³ William Geary as quoted in Pillsbury, “The Bias of At-Large Elections.”

¹⁴ Barbara Harris Combs, “Black (and Brown) Bodies Out of Place: Towards a Theoretical Understanding of Systematic Voter Suppression in the United States,” *Critical Sociology* 42, no. 4–5 (2016): 535–49.

white council.”¹⁵ The forces of racism pushed the pendulum of power of at-large voting away from the 1860 Congressional recognition of the need for single member districts toward broad consolidation of power for the majority to exclude minority voices.

Systematic voter suppression has been a tool, historically and contemporarily, for white power structures to push back against Black and Brown populations stepping out of place.¹⁶ These same systems were also used to silence the voices of communities along racial, religious, and immigrant lines. The increase in voter suppression tools since the 2010 election of Barak Obama is evidence of how voter suppression is a “systematic pushback against the advances of minorities amidst a growing discourse of colorblindness.”¹⁷ Regardless of the systems used, what has remained consistent are the long standing and deep-rooted race-based exclusion from voting.¹⁸ Race based exclusions are the longest lasting stain of majoring exclusions of minorities, most broadly defined.

In order for voting to be free and fair, all citizens must have access to “equally effective voting.”¹⁹ After the passage of the 1982 Amendments to section 2 of the Voting Rights Act, which moved only required demonstrating discriminatory impact, not intent, at-large voting systems were challenged as illegal forms of voter suppression.²⁰ After 1982, many jurisdictions began to move from at-large voting systems to prevent lawsuits.²¹ Regardless if the results are discriminatory, at-large voting goes against the spirit of the Voting Rights Act, which is designed to broaden inclusion and strengthen democracy.

To put the impacts of at-large voting in concert with other forms of voter dilution in context, “[m]ore than 1.2 million African Americans in 175 communities across the country [that] have [local] councils that do not descriptively represent them. A council is descriptively representative if its members reflect the demographics of the community they’re supposed to represent.”²² In comparison, 500,000 white people live in areas where their local representation does not match community demographics.²³ This does not account for the number of Latinx, Asian Americans, and Indigenous populations who live in areas where the local representation does not match the demographics of their community.

In St. Mary’s County, according to the 2010 census 74% of the population is white, 14% is Black/African American, 5% is Hispanic/Latinx, 3% is Asian and 3% identify as multi-racial, and 50% is female. Yet, the current County Commissioners are all white and all men. St. Mary’s County has only had one Black Commissioner, John Lancaster, who served as County Commissioner from 1986 - 1994.

¹⁵ Donald G. Nieman, *Promises to Keep: African Americans and the Constitutional Order, 1776 to the Present, Promises to Keep* (Oxford University Press), 213 as quoted in Hench “The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters,” 745.

¹⁶ Combs, “Black (and Brown) Bodies Out of Place.”

¹⁷ Combs, 735.

¹⁸ Combs; Epperly et al., “Rule by Violence, Rule by Law”; Hench, “The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters”; Samuel Issacharoff, “Voting Rights at 50,” *Alabama Law Review* 67, no. 2 (2016): 387–414.

¹⁹ *Reynolds v. Sims*, No. 377 U.S. 533 (United States Supreme Court June 15, 1964) as quoted in Issacharoff, “Voting Rights at 50.”

²⁰ Issacharoff, “Voting Rights at 50.”

²¹ Michael J. Pitts, “The Voting Rights Act and the Era of Maintenance” 59, no. 4 (2008): 903–85.

²² Karen Shanton, “The Problem of African American Underrepresentation in City Councils,” *Demos*, 2014, 1.

²³ Shanton.

A similar pattern exists in Calvert County, where 78% of the population is white, 13.3% are Black/African American; 4% are Hispanic/Latinx, 2% are Asian and 4% identify as multi-racial and 50% is female, but just as in St. Mary's County, all the current County Commissioners are all white men. They have had two Black Commissioners, Jesse Reid Sr, who was appointed to fulfill a term in 1981 and Michael Moore, elected in 1990 for one term. From a descriptive representative perspective, it would be expected to have a higher portion of Black commissioners. Queen Anne's County is 87% white, 7% Black, 1% Asian, 4% Latinx, and 2% multi-racial and 50% female. Garrett County has less racial diversity with 96% of the population identifying as white and 1% identifying as Black, Latinx, and Multiracial, with 50% of the population identifying as female. As in St. Mary's and Calvert Counties, the commissioners in Queen Anne's and Garrett County are all white men. Charles County, whose Black population is 48.6% of the population has three Black Commissioners, two of whom are women. Even though Charles County proves to be an exception, transitions to district voting does not lead to *less* diverse representation at the local level but there is a correlation between at-large representation and Black under-representation.²⁴ Furthermore, African Americans men and white women are most likely to benefit from the transition from at-large to district voting.²⁵ This is increased in districts where minority populations make up a large share of the voting block and live in residentially segregated districts. In the counties in question, Black and Latinx populations are concentrated geographically, which could lead to increased representation in a district based electoral system.

The importance of diverse representation at the local level cannot be underestimated. Canon contends there is “very little support” for the claim that “whites are just as able to represent black interests as blacks.”²⁶ This can be seen in the type of legislation proposed, how money and infrastructure projects are developed, and the relationship between communities, policy makers, and law enforcement.²⁷ This is not only reflected in the policies passed, but also in the relationship communities have with governing and legal bodies. Greenwood finds that “Descriptive representation for people of color at the local level has the potential to significantly improve the lives of communities of color.”²⁸

Legal scholar and constitutional lawyer Samuel Issacharoff (2016, 388) contends that “the eligibility to cast a ballot free of legal shenanigans is more seriously under challenge than at any time since the civil rights revolution.”²⁹ It is therefore necessary for legislatures to take steps to counter the subtle second-generation forms of voter disenfranchisement. The elimination of at-large voting in Maryland for county commissioner elections will move towards allowing the voices of BIPOC communities to be heard, especially in non-urban and non-suburban spaces, through representation at the local level. That step toward a more perfect union is why I am asking for a favorable report on HB 447.

Thank you.

²⁴ Abott and Magazinnik, “At-Large Elections and Minority Representation in Local Government.”

²⁵ Trounstine and Valdini, “The Context Matters.”

²⁶ David Canon, *Race, Redistricting, and Representation: The Unintended Consequences of Black Majority Districts* (Chicago: The University of Chicago Press, 1999), 12.

²⁷ Greenwood, “Fair Representation in Local Government”; Kerry L. Haynie, *African American Legislators in the American States* (New York: Columbia University Press, 2001).

²⁸ Greenwood, “Fair Representation in Local Government,” 213.

²⁹ Issacharoff, “Voting Rights at 50.”