



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB1104: Voting Rights Act of 2023 - Counties and Municipalities

Bill Hearing: March 7th, 2023 at 1:00 p.m., Ways and Means Committee

Chairwoman Vanessa E. Atterbeary, Vice Chair Jheanelle K. Wilkins, and members of the Ways and Means Committee,

I am proud to sponsor the Maryland Voting Rights Act (HB1104) and appreciate the opportunity to present testimony in support of this critical legislation today.

This issue is personal for me. My grandmother, Lillian Hill, was forced to pay poll taxes to access the ballot in neighboring Virginia. She taught me that voting is foundational to actively influence the rules and resources that govern our lives and shape the landscape of opportunity—not just for individuals, but for whole communities. For centuries, people who look like my grandmother and me—Black people—were systemically excluded from self-government in Virginia and Maryland. Nothing we do as legislators is more important than reversing the legacy of this exclusion so that all Marylanders can shape the policies and priorities of their government on an equal basis.

The Maryland Voting Rights Act (MDVRA) provides a suite of critical protections to voters of color across the Free State to ensure that all eligible voters—regardless of race, color, or English language ability—can participate in our democracy and have their voices heard. It builds upon the best parts of the landmark federal Voting Rights Act of 1965,¹ as well as state voting rights legislation in neighboring Virginia, New York (enacted just last year) and other places.² When enacted, the MDVRA will set a new standard for protecting voting rights at the state level, immediately making the Free State a national leader in building an equitable, inclusive democracy—just when too many states are moving in the wrong direction.³

^[1] 52 U.S.C. 10301 et seq.

^[2] NYVRA, VVRA

^[3] Voting Laws Roundup: February 2023, BRENNAN CENTER FOR JUSTICE, available at <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023>



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Thankfully, Maryland is not the first state that comes to mind when people think of discriminatory voter suppression, and we have made substantial progress in recent years in making our democracy more accessible.⁴ Yet we need stronger protections for voters of color in our state now. Maryland is now the most diverse state on the East Coast, with deeply rooted Black communities and growing populations of Latino and Asian voters.⁵ We not only have a troubling history of racial discrimination in voting and beyond; we also have policies and practices in place right now that make it difficult or impossible for Black voters and other voters of color to enjoy representation by elected officials who understand their experiences and share their values. Much of this discrimination occurs at the local level and goes unaddressed because we lack the legal tools to efficiently uncover and remedy it.

In my testimony today, I'll discuss Maryland's history of voting discrimination along with current challenges; explain why federal protections are not adequate to protect Black and brown voters in the state; detail the range of tools the MDVRA provides to address our current needs; discuss some further improvements my colleague Senator Sydor and I are proposing to make; and touch on Maryland's opportunity to lead the nation at a critical time for voting rights.

I know this is a long and technical piece of legislation; and I deeply appreciate your patience as we examine it here today. But we can summarize the MDVRA in one sentence: this legislation provides several ways for Maryland officials and voters to ensure that we honor the bedrock principle of one person, one vote, ensuring that every Maryland voter has equal access to the democratic process free from discrimination. Put simply, the MDVRA is an idea whose time is long past due in the Free State.

^[4] Aruna Miller, *Maryland is leading the way in election reform*, The Washington Post, available at <https://www.washingtonpost.com/opinions/2021/05/04/maryland-is-leading-way-election-reform/>

^[5] Marissa J. Lang & Ted Mellnik, *Census data shows Maryland is now the East Coast's most diverse state, while D.C. is whiter*, Washington Post, available at <https://www.washingtonpost.com/dc-md-vi/2021/08/12/dc-virginia-maryland-census-redistricting-2/>; Bennett Leckrone & Danielle E. Gaines, *2020 Census Data: Fewer than Half of Marylanders are White, Baltimore Population Slips, Montgomery Surpasses 1M*, Maryland Matters, available at <https://www.marylandmatters.org/2021/08/12/2020-census-data-fewer-than-half-of-marylanders-are-white-baltimore-population-slips-montgomery-surpasses-1m/>

Voting Discrimination in Maryland: Past & Present



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Our state has had a troubling history of racial suppression, including with respect to the right to vote. Lynchings have been documented in 18 of our 24 counties.⁶ A recent study has found a small, but consistent correlation between past lynchings and lower voter registration amongst Black people, indicating this sort of racial animus continues to have a profound effect on our democracy today.⁷ In 1994, a federal court detailed Maryland's sordid history of voting discrimination, noting that dual registration systems were one of many ways that Maryland hampered Black voter turnout.⁸ Black citizens, historically excluded from political participation and unfamiliar with registration procedures, were frequently turned away at polls for only being registered for one type of election. According to a 1985 report by Attorney General Stephen Sachs, the dual registration requirement may have resulted in the dilution of Black voting strength.⁹ Further, the court acknowledged that Black electoral participation in Maryland had been limited by legislation that impaired Black Marylander's right to register to vote, the 1904 "Poe amendment" that further disenfranchised Black voters, and all-white, volunteer fire departments on the Eastern Shore that functioned as an unofficial slating organization for white candidates.¹⁰

Across the nation, we have witnessed the rights of voters become threatened by harassment at polling centers and widespread misinformation about election fraud. Maryland is no exception. In 2020, there were concerns over voter intimidation at in-person polling places in Montgomery County.¹¹ The Maryland Attorney General, Brian Frosh, had to issue a warning that voter harassment is prohibited and would not be tolerated in our state.¹² In 2021, a man in Frederick, Maryland was charged with voter

^[6] Jonathan M. Pitts, *Maryland conference on lynchings finds links to voter suppression, social inequality*, Baltimore Sun, available at <https://www.baltimoresun.com/maryland/bs-md-maryland-lynching-conference-20201019-wqdo2w6xorc3vm73jzmtguisda-story.html>.

^[7] Jhacova Williams, *Historical Lynchings and the Contemporary Voting Behavior of Blacks*, AMERICAN ECONOMIC ASSOCIATION, available at <https://www.aeaweb.org/articles?id=10.1257/app.20190549&from=f>

^[8] *Marylanders for Fair Representation v. Schaefer*, 849 F.Supp. 1022, 1061 (D.MD, January 14, 1994).

^[9] Office of the Attorney General, At-Large Election of [County Commissioners, at 29, 110–11 \(1985\)](#)

^[10] *Id.*

^[11] Bennett Leckrone, *Montgomery Election Officials Plan Patrols to Prevent, Stop Voter Intimidation*, Maryland Matters, available at <https://www.marylandmatters.org/2020/10/01/montgomery-election-officials-plan-patrols-to-prevent-stop-voter-intimidation/>.

^[12] *Id.*

intimidation and sentenced to two years in the Division of Corrections for mailing letters threatening violence to neighbors who displayed lawn signs in support of Joe Biden and Kamala Harris.¹³ As recently



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as November 2022, gubernatorial candidate Dan Cox encouraged volunteers to “monitor” election drop boxes, suggesting that they are used for nefarious purposes.¹⁴ A top aide to Michael Peroutka, candidate for state Attorney General, also encouraged supporters to create long lines at polling places on election night.¹⁵

Undoubtedly, voter intimidation and other discriminatory practices have continued to disadvantage Maryland’s voters of color. One of the clearest examples of this is felony disenfranchisement, a practice with racist roots that has resulted in a total of 2.2 million Black citizens being denied their right to vote.¹⁶ In fact, Black Americans of voting age are more than four times as likely to lose their voting rights than the rest of the adult population.¹⁷ In 2007, Maryland passed legislation that ended our state’s policy of lifetime disenfranchisement for people convicted of felonies, restoring the right to vote to upwards of 50,000 people.¹⁸ This law was not without limits, however, as it required citizens to complete all aspects of their sentence before restoration of their voting rights.

In 2016, with the enactment of SB 340/HB 980, Maryland ensured that moving forward, citizens regained their voting rights immediately upon release from detention.¹⁹ But those who remain incarcerated for a felony are not allowed to vote while serving out their sentences, which severely weakens the political will of Black Marylanders. Despite accounting for only 30% of Maryland’s total population, nearly 70% of those who have been in prison are Black.²⁰ And the impact of felony

^[13] WDMV, *Frederick man charged with voter intimidation*, available at <https://www.localdvm.com/news/maryland/frederick-man-charged-for-voter-intimidation/>.

^[14] *Concerns grow that voter intimidation could disrupt midterm elections*, MARYLAND MATTERS, available at <https://www.marylandmatters.org/2022/11/03/concerns-grow-that-voter-intimidation-could-disrupt-midterm-elections/>

^[15] *Top Peroutka aide encouraged supporters to form long lines late on election day*, MARYLAND MATTERS, available at <https://www.marylandmatters.org/2022/10/31/top-peroutka-aide-encouraged-supporters-to-form-long-lines-late-on-election-day/>

^[16] Jeffery Robinson, *The Racist Roots of Denying Incarcerated People Their Right to Vote*, ACLU, available at <https://www.aclu.org/news/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote>

^[17] *Id.*

^[18] Andrew Green, *Felons gain right to vote*, Baltimore Sun, available at <https://www.baltimoresun.com/news/bs-xpm-2007-04-25-0704250234-story.html>

^[19] *Voting Rights Restoration Efforts in Maryland*, BRENNAN CENTER FOR JUSTICE, available at <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-maryland>

^[20] 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, <https://www.washingtonpost.com/dc-md-va/2020/09/28/dc-maryland-prisoners-voting/>

disenfranchisement is felt not only by those who are incarcerated, but their communities as well. With the highest incarceration rate for Black Americans in the nation, Maryland can, and must, do better.



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The use of at-large elections has also denied voters of color the opportunity to elect candidates of their choice. Consider the Town of Federalsburg, where despite Black residents making up half the Town's population, no Black candidate in history has ever been elected to the Town Council.²¹ Circumstances such as this demonstrate how easily minority voting power can be diluted under an at-large election system.²² In Maryland, nine counties still use complete or partial at-large systems with the potential to discriminate.²³

States like California have taken steps to prohibit the use of at-large methods of election where they can impair the ability of a protected class to elect candidates of its choice.²⁴ Following the switch from at-large to district-based elections, research has shown that California experienced a significant boost in the election of candidates of color.²⁵ Similarly, in Washington, the state enacted its own Voting Rights Act in 2018 that also protected voters against the dilutive effects of at-large elections.²⁶

^[21] Hannah Combs, *HOLD FOR COMPLETE STORY-Caroline County NAACP, Caucus of African American Leaders, ACLU seek reforms to town of Federalsburg's municipal electoral system*, MyEasternShoreMD, available at https://www.myeasternshorem.com/stardem/news/local_news/hold-for-complete-story---caroline-county-naacp-caucus-of-african-american-leaders-aclu/article_2d437799-bd64-55a7-a013-291c9457d38b.html

^[22] LDF, *At-Large Voting: Frequently Asked Questions*, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, available at https://ippsr.msu.edu/sites/default/files/LLP/Presentations/At_large_voting_faq.pdf.

^[23] Maryland House Bill 655, https://mgaleg.maryland.gov/2021RS/fnotes/bil_0005/hb0655.pdf.

^[24] CAL. ELEC. CODE, California Voting Rights Act of 2001, § 14025 et. seq. (2002). Although called the CVRA of 2001, the legislation was actually enacted into law in 2002. Federal courts in California recently rejected challenges to the constitutionality of the CVRA. *See Higginson v. Becerra*, 363 F. 3d 1118 (S.D. Cal. 2019), *aff'd*, No. 19-55275, 2019 WL 6525204 (9th Cir. Dec. 4, 2019).

^[25] Loren Collingwood and Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, Urban Affairs Review, available at https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf.

^[26] Wash. Rev. Code Ann. § 29A.92.900 et seq.; *see also* ACLU Washington Voting Rights FAQ, <https://bit.ly/3l1pxun>.

Federal Protections are Insufficient for Maryland Voters of Color



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The Voting Rights Act of 1965, a landmark civil rights law, is responsible for much of the progress we have been able to achieve on voting rights over the past six decades. In addition to prohibiting literacy tests, grandfather clauses, and “good character tests,” the federal Voting Rights Act (“federal VRA”) contained a strong set of affirmative protections against discrimination.²⁷ These include claims against vote denial or dilution (Section 2); language access guarantees (Section 203); preclearance of voting changes for jurisdictions with a history of discrimination (Section 5); and a prohibition on voter intimidation.

Section 2 of the federal VRA provides for Attorney General enforcement and a nationwide private right of action against all existing forms of racial discrimination in voting. But claims under Section 2 are costly and time consuming to pursue. These claims require that plaintiffs and defendants make use of expert witnesses, meaning plaintiffs and their lawyers risk significant expenditures, even when backed by civil rights organizations.²⁸ Further, Section 2 claims are costly for the government to defend, resulting in the usage of considerable amounts of taxpayer funds. And considering Section 2 cases last two to five years on average, the fundamental rights of voters are under continued attack even during the course of litigation.²⁹

Section 203 requires states and political subdivisions to provide language assistance for voters with limited English proficiency.³⁰ However, here in Maryland, this only covers one jurisdiction—Montgomery County.³¹

^[27] *Black Americans and the Vote*, NATIONAL ARCHIVES, available at <https://www.archives.gov/research/african-americans/vote>

^[28] See *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation as of September 2021*, NAACP Legal Defense and Educational Fund, available at <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-9.19.21-Final.pdf>.

^[29] *Shelby*, 570 U.S. at 572 (Ginsburg, J., concurring) (“An illegal scheme might be in place for several election cycles before a Section 2 plaintiff can gather sufficient evidence to challenge it.”).

^[30] 52 U.S.C. § 10503.

^[31] <https://www.justice.gov/crt/page/file/1460416/download>

Section 5 of the federal VRA protected communities of color from racial discrimination in voting by requiring that certain states and localities with a history of discrimination obtain approval from the federal government before implementing any voting changes.³² But in its 2013 *Shelby County v. Holder*



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ruling, the Supreme Court struck down Section 4(b) of the federal VRA which determined which jurisdictions would fall under the “preclearance” requirement.³³ Even before the Supreme Court gutted Section 5, it did not apply to Maryland,³⁴ and so voters of color here did not benefit from its protection.

Section 11(b) offers protection to all voters against intimidation, but there are no damages available for plaintiffs and they often face difficulties getting an injunction in federal court.

The MDVRA Gives Voters of Color the Tools We Need

The Maryland Voting Rights Act will provide strong protections for the franchise by building on the model of the newly-enacted New York Voting Rights Act and the demonstrated record of success in California, Oregon, Virginia, and Washington, as well as the historic successes of the federal Voting Rights Act. MDVRA will offer the most comprehensive state law protections for the right to vote in the United States. Specifically, the MDVRA will provide the following protections for voters of color:

Vote Denial & Dilution: The MDVRA provides a framework to address barriers that deny voting opportunities and prevent the equal opportunity to participate in the political process in a way that is efficient and cost-effective for both voters and local governments in the state.

Preclearance: The MDVRA would bring the framework of the most effective civil rights tool in American history to Maryland. Instead of voters having to prove that new election laws and practices are discriminatory, states with a history of voter discrimination would need to have election changes secure “preclearance” from the Attorney General or a court to show that the new practice will not disadvantage minority voters.

Language Access: The MDVRA would require 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.

^[31] <https://www.justice.gov/crt/page/file/1460416/download>

^[32] <https://www.aclu.org/news/voting-rights/supreme-court-put-dagger-heart-voting-rights-act>

^[33] See *Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013).

^[34] <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>

Voter Intimidation: The MDVRA provides Maryland with a civil cause of action against voter intimidation, deception, or obstruction that is more important than ever today, given recent efforts to stoke

STEPHANIE SMITH
Legislative District 45
Baltimore City

HOUSE PARLIAMENTARIAN

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The Maryland House of Delegates
6 Bladen Street, Room 314
Annapolis, Maryland 21401
410-841-3486 · 301-858-3486
800-492-7122 Ext. 3486
Stephanie.Smith@house.state.md.us

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fear, spread disinformation, and obstruct access to the ballot box in naturalized citizen communities and communities of color.

Statewide Database: The MDVRA provides a central public repository for election and demographic data with the goal of fostering evidence-based practices in election administration and unprecedented transparency.

Additionally, in consultation with national and Maryland-based voting rights experts, my colleague Senator Sydnor and I are proposing to make some targeted changes to the bill to better fit Maryland's needs.

First, we plan to combine the first two prongs of the preclearance coverage formula, to simplify these prongs and ensure that race-based civil rights violations play a strong role in determining preclearance coverage. Second, we plan to add additional criteria regarding racial disparities in traffic stop rates, voter registration, and voter turnout, and to adjust the population thresholds and disparity metrics in the existing criteria. With these changes we believe we can tailor the coverage framework to better capture the local jurisdictions which suffer from the disparities specific to our state that prevent voters of color in Maryland from participating in the franchise. As a leading national expert on preclearance, the NAACP Legal Defense Fund (LDF) will explain the value of these changes and the value of preclearance generally in more detail in its testimony.

Maryland's Opportunity to Lead

Passing the MDVRA is more important now than ever, and an opportunity for Maryland to both address discrimination at home and step into a leadership role nationally.

On the national level, voting rights protections have been under attack for years. Ten years ago, the Supreme Court decided *Shelby County v. Holder*, the 2013 Supreme Court case which gutted Section 4 of the federal Voting Rights Act. Then, in 2021, the Supreme Court decided *Brnovich v. Democratic National Committee*, undermining the strength of Section 2 of the federal VRA.³⁵ Before the Supreme Court this term are two cases relevant to voting rights. *Merrill v. Milligan* – a case challenging Alabama's post-2020 redistricting map which allegedly minimizes the voices of Black voters and violates Section 2 of the federal Voting Rights Act through its racially discriminatory effect.³⁶ And *Moore v. Harper*, a



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challenge to North Carolina’s post-2022 redistricting map which allegedly violates the “free elections clause.”³⁷

In light of detrimental action from the Supreme Court, Congress has been unable to make meaningful steps in protecting voting rights. Left in the 117th Congress were the John R. Lewis Voting Rights Advancement Act of 2021³⁸ and the Freedom to Vote Act³⁹ – two bills which were intended to increase voting rights protections on the federal level. While these bills had the support of the majority and promised to make needed changes to the civil rights landscape, challenges with the filibuster prevented their enactment.

Unfortunately, too many states are moving in the wrong direction. In 2022 alone, 8 states enacted new restrictive voting laws and 7 states enacted 12 election interference laws.⁴⁰ These laws are representative of the over 500 restrictive and election interference bills that were introduced and considered across the country.⁴¹ As of January 25, 2023, state lawmakers in at least 32 states pre-filed or introduced 150 restrictive voting bills.⁴²

However, some states have been moving aggressively to protect voters of color – fighting back against the national tide of suppressing and restricting voting rights. California was the first to act in 2002. Since then Oregon, Washington, Virginia and New York have passed state level voting rights acts. The John R. Lewis Voting Rights Act of New York, enacted just last year, is the most comprehensive voting rights statute on the state level.⁴³

^[36] Brief for Milligan Appellees at 19-24, *Merrill v. Milligan*, No. 21-1086 (Feb. 7, 2022).

^[37] *Moore v. Harper*, No. 21-1271 (argued Dec. 7, 2022).

^[38] John R. Lewis Voting Rights Advancement Act of 2021, H.R. 4, 117th Cong. (2021).

^[39] Freedom to Vote Act, S. 2747, 117th Cong. (2021).

^[40] *Voting Laws Roundup: December 2022*, Brennan Center for Justice, available at <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022>

^[41] *Id.*

^[42] *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>

^[43] S.B. S1046E, 2021-2022 Legislative Session (N.Y. 2022).

This wave is continuing with New Jersey and Connecticut considering comprehensive reforms to ensure that all voters have equal and equitable access to the ballot box. Maryland has the potential to join

STEPHANIE SMITH
Legislative District 45
Baltimore City

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The Maryland House of Delegates
6 Bladen Street, Room 314
Annapolis, Maryland 21401
410-841-3486 • 301-858-3486
800-492-7122 Ext. 3486
Stephanie.Smith@house.state.md.us

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and lead this growing force to push back against repressive legislation and precedent and become a civil rights leader.

Before us is the opportunity to guarantee that all voters in Maryland will have their constitutional rights protected and their voices heard – today, tomorrow, and every time their ballots are cast in the future. For these reasons, I urge the committee to give a favorable report on House Bill 1104.

Sincerely,

A handwritten signature in black ink that reads "Stephanie M. Smith". The signature is written in a cursive style with a large, stylized "S" and "M".

Delegate Stephanie M. Smith