

February 26, 2025

Submitted Electronically

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

***RE: Senate Bill 342 – Voting Rights Act of 2025 – Counties and
Municipalities – Favorable with Amendments***

Chair Feldman and Vice Chair Kagan:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we appreciate the opportunity to submit written testimony in strong support of S.B. 342, Voting Rights Act of 2025 – Counties and Municipalities, as improved by anticipated sponsor’s amendments.² S.B. 342 provides key protections against election systems that drown out or weaken voters’ voices based on their race.³ Its enactment would build Maryland’s status as a national leader in protecting the right to vote, just as we are facing increasing threats at the federal level.

S.B. 342, as amended, is a key part of the Maryland Voting Rights Act (“MDVRA”) legislative package.⁴ The MDVRA builds upon the best parts of the landmark federal Voting Rights Act of 1965⁵ and recent efforts by states such as New York, Connecticut, Minnesota, and neighboring Virginia to

¹ 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.

² S.B. 342, 2025 Leg., 447th Sess. (Md. 2025), <https://mgaleg.maryland.gov/2025RS/bills/sb/sb0342f.pdf>.

³ *Id.*

⁴ In the 2025 legislative session, the MDVRA legislative package includes S.B. 342, H.B. 1043, H.B. 1044, H.B. 983, and S.B. 685.

⁵ 52 U.S.C. §§ 10301–10314.

provide much-needed protections against voting discrimination.⁶ Through this critical legislative package, Maryland would help set the 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.

Advancing the MDVRA is a top affirmative voting rights priority for our organization, and Maryland voters agree. Eight-in-ten Maryland voters support passing a MDVRA (81%) and would like their state legislators to prioritize enacting such legislation (80%).⁷

I. 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 fulfils the promise of equality for all Americans.

LDF has prioritized its work protecting the right of Black communities 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), litigating seminal cases interpreting the federal VRA’s scope,⁸ and working in communities across the South to strengthen and protect the ability of Black voters to participate in the political process free from discrimination.

In the wake of recent Supreme Court cases that have undercut the federal VRA,⁹ as Congress struggles to respond with federal legislation,¹⁰ and as states across the country move to further restrict the franchise,¹¹ LDF has prioritized working to advance state voting rights acts to meet the urgent need to protect Black voters from discrimination. LDF worked with partners to successfully advocate for the enactment of the John R. Lewis Voting Rights Act

⁶ A.6678E / S.1046E, 2022 Reg. Sess. (N.Y. 2022), <https://www.nysenate.gov/legislation/bills/2021/A6678> (hereinafter “NYVRA”); S.B. 1395, 2022 Reg. Sess. (Va. 2021), <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1395>; H.B. 6941, 2023 Reg. Sess. (Conn. 2023), <https://www.cga.ct.gov/2023/ACT/PA/PDF/2023PA-00204-R00HB-06941-PA.PDF> (hereinafter “CTVRA”); Minn. Stat. §§ 200.50–200.59 (hereinafter “MNVRA”).

⁷ Mem. from LDF & Impact Rsch. to Interested Parties (Jan. 30, 2025), <https://www.naacpldf.org/wp-content/uploads/IMPACT-LDF-MDVRA-Key-Findings.pdf>.

⁸ *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

⁹ See, e.g., *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647 (2021).

¹⁰ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021).

¹¹ *Voting Laws Roundup: September 2024*, Brennan Ctr. for Just., N.Y.U. L. (Sept. 26, 2024), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-september-2024>.

of New York (the New York Voting Rights Act or “NYVRA”) in 2022, the John R. Lewis Voting Rights Act of Connecticut (the Connecticut Voting Rights Act or “CTVRA”) in 2023, and the Minnesota Voting Rights Act (“MNVRA”) in 2024.¹² This year we are working with robust coalitions of civil and voting rights advocates seeking to advance similar laws here in Maryland, as well as in New Jersey.

As a vibrantly diverse state¹³ with historic Black leadership, as a state with a longstanding history of racial discrimination that has made substantial strides in opening its democracy,¹⁴ 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.

II. Racial Discrimination in Voting in Maryland

Maryland has made substantial progress in making voting more equitable and accessible, yet substantial racial disparities persist in both voter participation and local representation.

In spite of its name, the Free State has a troubling legacy of racial terror linked to voter suppression. Lynchings have been documented in 18 of the state’s 24 counties.¹⁵ As the Vice Chair of the Maryland Lynching Truth and Reconciliation Commission noted prior to the 2020 election, “[t]he legacy of lynching is directly connected to voter suppression and attempts to stoke fear in the hearts of Black and brown [people] and allies of every color . . . ”¹⁶ Three decades ago, a federal court detailed Maryland’s history of voting discrimination in a ruling striking down a state legislative redistricting plan as racially discriminatory, noting that this history is marked by a 1904 provision to disenfranchise Black voters, “all-white, but state-funded, volunteer fire departments on the Eastern Shore [that] functioned as a kind of unofficial slating organization for white candidates” through the mid-1980s,

¹² NYVRA, N.Y. Elec. L. §§ 17-200–222; CTVRA, Conn. Gen. Stat. §§ 9-368i–q; MNVRA, Minn. Stat. §§ 200.50–200.59.

¹³ Marissa J. Lang & Ted Mellnik, *Census Data Shows Maryland Is Now the East Coast’s Most Diverse State, While D.C. Is Whiter*, Wash. Post (Aug. 12, 2021), <https://www.washingtonpost.com/dc-md-va/2021/08/12/dc-virginia-maryland-census-redistricting-2/>.

¹⁴ Bennett Leckrone, *Election Reforms Will Make Voting More Accessible in Maryland, Advocates Say*, Md. Matters (June 16, 2021), <https://www.marylandmatters.org/2021/06/16/election-reforms-will-make-voting-more-accessible-in-maryland-advocates-say/>.

¹⁵ Jonathan M. Pitts, *Maryland Conference on Lynchings Finds Links to Voter Suppression, Social Inequality*, Balt. Sun (Oct. 19, 2020), <https://www.baltimoresun.com/maryland/bs-md-maryland-lynching-conference-20201019-wqdo2w6xorc3vm73jzmtguisda-story.html>.

¹⁶ *Id.*

and a dual registration system that kept many Black voters from the polls until 1988.¹⁷

Unfortunately, voting discrimination is not just a relic of the past—it persists today. According to the U.S. Census Bureau, Maryland has seen substantial racial disparities in racial turnout in recent elections. For example, for the 2022 elections, turnout for white Marylanders was almost ten points higher than for Black residents, and 20 points higher than for Latine voters.¹⁸ Recent research from the Brennan Center for Justice shows that Maryland ranked second in the nation in 2022 for the number of Black voters who did not vote but would have if turnout rates were equal between Black and white Marylanders.¹⁹ In other words, due to Maryland’s significant Black population, its racial turnout disparities are warping its electorate to sharply reduce Black political power.

In addition to disparities in *participation*, voters of color in Maryland experience significant disparities in *local representation*. The ACLU of Maryland found that, as of 2024, more than half of Maryland municipalities have substantial populations of people of color, and nearly a quarter those municipalities have all white governments.²⁰ The ACLU also found that one-third of the counties with substantial populations of people of color lack any elected officials of color.²¹

Although such descriptive underrepresentation itself is not necessarily unlawful (the relevant metric is the ability of voters of color to elect candidates of choice, regardless of such candidates’ race), substantial racial disparities in political participation coupled with signs of systemic underrepresentation are concerning red flags of racial discrimination in voting, and are often associated with racially discriminatory barriers to the franchise, such as insufficient polling places in communities of color that suppress turnout among voters of color, or district maps that crack or pack voters of color to dilute their voting strength.

Moreover, the prevalence of at-large election structures throughout Maryland—a form of election which, when combined with racially polarized

¹⁷ *Marylanders for Fair Representation v. Schaefer*, 849 F.Supp. 1022, 1061 (D.Md, Jan. 14, 1994).

¹⁸ Press Release, U.S. Census Bureau, Voting and Registration in the Election of November 2022 tbl. 4b (Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2022 [<1.0 MB]) (Apr. 2023), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html>.

¹⁹ Kevin Morris & Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008–2022*, Brennan Ctr. for Just., N.Y.U. L. (Mar. 2, 2024), <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>.

²⁰ ACLU Md., *Why Maryland Needs Its Own Voting Rights Act*, https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga25_english.pdf (last visited Feb.21, 2025).

²¹ *Id.*

voting or other relevant factors, can “operate to minimize or cancel out the voting strength of racial minorities in the voting population”—raises questions about potential vote dilution that may be going unchallenged at present.²² The ACLU of Maryland found that, as of 2024, the majority (63%) of municipalities with substantial populations of people of color use fully at-large election systems, and nearly three-quarters (73%) use some form of at-large voting.²³ To be clear, at-large elections are not discriminatory in all cases; but under certain circumstances can operate to dilute, or drown out, certain voters’ voices based on race.

The bottom line is that in Maryland communities across the state, there is a high risk that Black voters and other voters of color have not been able to elect candidates of their choice to local government.

III. Limitations of the Federal Voting Rights Act

Although the individual and collective provisions of the federal VRA have been effective at combatting a wide range of barriers and burdens,²⁴ federal courts have weakened some of the federal VRA’s protections in recent years, making it increasingly complex and burdensome for litigants to vindicate their rights under the law. As a result, despite the federal VRA’s importance, voters of color often face significant barriers to participate in the political process and elect candidates of their choice.

Maryland voters, supported by organizations such as the ACLU of Maryland, have used the federal VRA to achieve important voting rights victories in recent years.²⁵ Yet, existing federal law does not fully address the need for voting rights protections in Maryland and other states. For nearly 50 years, Section 5 of the federal VRA, the heart of the legislation, protected millions of voters of color from racial discrimination in voting by requiring certain political subdivisions to obtain approval from the federal government *before* implementing a voting change.²⁶ However, in *Shelby County, Alabama*

²² *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (internal quotations and brackets omitted).

²³ ACLU Md., *supra* note 20, at 2.

²⁴ Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Ctr. for Just., N.Y.U. L. (June 30, 2009), <https://www.brennancenter.org/our-work/analysis-opinion/voting-rights-act-legacy-15th-amendment>.

²⁵ Settlement Order, *Caroline Cnty. NAACP v. Federalsburg*, No. 1:23-CV-00484, ECF No. 56; *Baltimore County NAACP et al v. Baltimore County et al*, ACLU Md. (Aug. 20, 2024), <https://www.aclu-md.org/en/cases/baltimore-county-naacp-et-al-v-baltimore-county-et-al>; Press Release, ACLU Md., VICTORY: Federal Judge Orders Baltimore County to Submit Redistricting Plan that Complies with Voting Rights Act (Feb. 22, 2022), <https://www.aclu-md.org/en/press-releases/victory-federal-judge-orders-baltimore-county-submit-redistricting-plan-complies>; Press Release, ACLU Md., Landmark Settlement, with Sweeping Array of Restorative Measures, Unveiled in Historic Federalsburg Voting Rights Case (Apr. 3, 2024) <https://www.aclu-md.org/en/press-releases/landmark-settlement-sweeping-array-restorative-measures-unveiled-historic>.

²⁶ *See* 52 U.S.C. § 10304.

v. Holder, the United States Supreme Court rendered Section 5’s “preclearance” process inoperable by striking down Section 4(b) of the federal VRA, which identified the places where Section 5 applied.²⁷

Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b).²⁸ This onslaught accelerated after the 2020 election, which saw historic levels of participation by voters of color (albeit with persistent racial turnout gaps).²⁹ Following that election, in 2021, state lawmakers introduced more than 440 bills with provisions that restrict voting access in 49 states, and 34 such laws were enacted.³⁰ This wave of harmful legislation shows no signs of abating: In 2024, states enacted more restrictive voting laws than in any year in the past decade except for 2021.³¹

Section 2 of the federal VRA offers a private right of action to challenge any voting practice or procedure that “results in a denial or abridg[]ment of the right of any citizen of the United States to vote on account of race.”³² But Section 2 litigation imposes a high bar for plaintiffs. Such cases are expensive and can take years to reach resolution.³³ Section 2 lawsuits generally require multiple expert witnesses for both plaintiffs and defendants.³⁴ Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.³⁵ Individual plaintiffs, even when supported by civil rights organizations or private lawyers, often lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.³⁶ Moreover, even when

²⁷ See *Shelby Cnty.*, 570 U.S. at 557.

²⁸ See Legal Def. Fund, *Democracy Defended* (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf; see also Legal Def. Fund, *A Primer on Sections 2 and 3(c) of the Voting Rights Act 1* (Jan. 5, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Sections-2-and-3c-VRA-primer-1.5.21.pdf>.

²⁹ Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, Brennan Ctr. for Just., N.Y.U. L. (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

³⁰ *Voting Laws Roundup: December 2021*, Brennan Ctr. for Just., N.Y.U. L. (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

³¹ *Voting Laws Roundup: 2024 in Review*, Brennan Ctr. for Just., N.Y.U. L. (Jan. 15, 2025), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2024-review>.

³² 52 U.S.C. § 10301(a).

³³ *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hr’g Before the Subcomm. on the Const. 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).

³⁴ Legal Def. Fund, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation* at 2 (Feb. 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>; see also, e.g., Mike Faulk, *Big Costs, Heavy Hitters in ACLU Suit Against Yakima*, Yakima Herald (Aug. 10, 2014), https://www.yakimaherald.com/special_projects/aclu/big-costs-heavy-hitters-in-aclu-suit-against-yakima/article_3cbcce20-ee9d-11e4-bfba-f3e05bd949ca.html.

³⁵ ACLU Md., *supra* note 20, at 2.

³⁶ *Voting Rights and Election Administration in the Dakotas: Hr’g Before the Subcomm. on Elections*, 116th Cong. 64 (2019).

voters ultimately prevail in the lawsuits, several unfair elections may be held while the litigation is pending, subjecting voters to irreparable harm.³⁷ Due to these challenges, some potential Section 2 violations are never identified, addressed, or litigated in court.³⁸

Section 2 claims are also expensive for jurisdictions to defend, regularly costing political subdivisions considerable amounts of taxpayer money. For example, the East Ramapo Central School District in New York State paid its lawyers more than \$7 million for unsuccessfully defending a Section 2 lawsuit brought by the local NAACP branch—and, after the NAACP branch prevailed, was ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs as well.³⁹ In *Veasey v. Abbott*, the federal lawsuit in which LDF challenged the State of Texas’s Voter ID law with other civil rights groups and the U.S. Department of Justice (DOJ), the district court and the Fifth Circuit Court of Appeals required Texas to pay more than \$6.7 million toward the non-DOJ plaintiffs’ documented litigation costs.⁴⁰ Recent voting rights litigation in Baltimore County has left taxpayers on the hook for more than \$800,000 to pay County lawyers seeking to defend its unlawful district map, in addition to attorneys fees they will owe Black voters who succeeded in establishing a violation of the VRA.⁴¹

Above and beyond its complexity and cost, litigation under Section 2 of the federal VRA simply cannot keep up with the urgency of the political process. Because elections occur frequently, discriminatory electoral maps or practices can harm voters almost immediately after rules are changed. However, on average, Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved.⁴²

³⁷ *Shelby Cnty.*, 570 U.S. at 572 (Ginsburg, J., dissenting) (“An illegal scheme might be in place for several election cycles before a [Section] 2 plaintiff can gather sufficient evidence to challenge it.”).

³⁸ *Congressional Authority to Protect Voting Rights After Shelby County v. Holder: Hr’g Before the Subcomm. on the Const., C.R. & C.L. of the H. Comm. on Judiciary*, 116th Cong. 14 (Sept. 24, 2019) (Written Test. of Professor Justin Levitt).

³⁹ Jennifer Korn, *ERCSD Threatens to Fire Teachers if Legal Fees Not Cut to \$1: NAACP Leaders Respond*, Rockland Cnty. Times (Jan. 21, 2020), <https://www.rocklandtimes.com/2021/01/21/ercsd-threatens-to-fire-teachers-if-legal-fees-not-cut-to-1-naacp-leaders-respond/>; Report and Recommendation, *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, No. 7:17-08943-CS-JCM (S.D.N.Y. Dec. 29, 2020).

⁴⁰ See Mike Scarcella, *5th Circuit Upholds \$6.7 mln in Fees for Plaintiffs in Voting Rights Case*, Reuters (Sept. 4, 2021), <https://reut.rs/3tN14L7>.

⁴¹ *Balt. Cnty. Branch of the NAACP v. Balt. Cnty.*, No. 21-cv-3232-LKG, ECF No. 105-4 (D. Md. Feb. 5, 2024) (attaching Defendants’ counsel’s invoices for the duration of litigation to Plaintiffs’ fee petition).

⁴² *Shelby Cnty.*, 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.”).

IV. S.B. 342 Protects Maryland Voters Against Discriminatory Racial Vote Dilution

S.B. 342 directly addresses the challenge of underrepresentation of Black voters and other voters of color through elected leadership in local government by building upon the protections against racial vote dilution contained in the federal VRA. The sponsor’s amendments provide more guidance to courts to ensure that any resulting state-court litigation is more streamlined and cost-effective than federal cases—for both voters and local jurisdictions.

A. Cause of Action Against Racial Vote Dilution

S.B. 342 provides voters with a private right of action to challenge dilutive election structures or district maps, which weaken or drown out voters’ voices based on race.⁴³ The legislation codifies into Maryland law the same types of protections against racial vote dilution that have long been covered by Section 2 of the federal Voting Rights Act,⁴⁴ but, as amended, adopts a clarified and streamlined legal standard for these claims.⁴⁵ The legal standard for S.B. 342’s private right of action against vote dilution is based on similar protections against vote dilution that have been adopted in California, Washington, Oregon, Virginia, New York, Connecticut, and Minnesota.⁴⁶

S.B. 342’s vote dilution provision will enable voters to contest at-large local elections in the specific circumstance that this election system dilutes minority voting strength in a particular community.⁴⁷ It will also provide a framework for contesting district-based elections that configure districts in a manner that denies voters an equal opportunity to participate in the political

⁴³ S.B. 342 §§ 8-905, 4-605

⁴⁴ See *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁴⁵ S.B. 342 § 8–903(A). Like other state VRAs, the MDVRA’s legal standard draws from federal law interpreting Section 2 by permitting claims to be brought primarily on the basis of racially polarized voting, which has been widely acknowledged by federal courts to be the “linchpin” of Section 2. See, e.g., *Gingles*, 478 U.S. 30; *Allen v. Milligan*, 599 U.S. 1 (2023). Numerous federal courts have recognized that “[e]vidence of racially polarized voting is the linchpin of a section 2 vote dilution claim.” See *Westwego Citizens for Better Gov’t v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989); *Cano v. Davis*, 211 F. Supp. 2d 1208, 1238 (C.D. Cal. 2002), *aff’d*, 537 U.S. 1100 (2003); *Harding v. Cnty. of Dallas*, 336 F. Supp. 3d 677, 690 (N.D. Tex. 2018), *aff’d* 948 F.3d 302 (5th Cir. 2020); see also *McMillan v. Escambia Cnty.*, 748 F.2d 1037, 1043 (5th Cir. 1984) (“racially polarized voting will ordinarily be the keystone of a dilution case”). The MDVRA alternatively allows vote dilution claims to be brought on the basis of the totality of circumstances factors, *cf.* S.B. 342 §§ 8–903(B)—8–904, which are drawn from the Senate Report concerning the 1982 amendments to the federal Voting Rights Act. *Gingles*, 478 U.S. at 43 n.7 (“The 1982 Senate Report is the “authoritative source for legislative intent” in analyzing the amended Section 2”); *accord Milligan*, 599 U.S. at 10, 30 (referencing the Senate Report); *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. at 659–60 (same).

⁴⁶ See, e.g., NYVRA, N.Y. Elec. Law § 17-206(2)(b)(i); CTVRA, Conn. Gen. Stat. § 9-368j(b); MNVRA, Minn. Stat. §§ 200.50–200.59.

⁴⁷ S.B. 342 § 8–905. Minority is used here as consistent with judicial opinions.

process and elect candidates of choice based on race, for instance, through districting plans that crack communities of color into multiple districts or pack voters of color into just one district.⁴⁸

The legislation, as amended, will make vote dilution litigation more predictable, less time-intensive, and less costly than litigation under the federal VRA. This will benefit both voters who seek to vindicate their rights as well as political subdivisions seeking to comply with the law.

More than three-quarters (77%) of Maryland voters support “[s]topping racial vote dilution - when politicians manipulate voting districts to weaken or drown out the voices of Black and Brown voters.”⁴⁹

B. The Sponsor’s Amendments Strengthen H.B. 342 in Critical Ways

Anticipated sponsor’s amendments to H.B. 342 will make its protections both more flexible and clearer, ensuring that any ensuing litigation will be more likely to lead to equitable outcomes that resolve discrimination and also be more cost effective for all parties. The anticipated amendment text is based on language featured in the most recently adopted State VRA, the 2024 Minnesota Voting Rights Act, which in turn builds upon years of experience developing State VRAs and enforcing the federal VRA and State VRAs.⁵⁰

The amendments accomplish the flexibility and clarity goals referenced above in the following ways:

Providing a clear, flexible benchmark for measuring vote dilution. To establish a violation, the amended language requires plaintiffs to show that there is a plausible alternative district map or election system that would allow protected class members to elect candidates of choice in a more equitable manner.⁵¹ The original bill says that a violation is established if “the method of election dilutes or abridges the voting strength of members of a protected class to elect a candidate of the members’ choice or the members’ ability to influence the outcome of an election” but does not provide courts with clear guidance on how to evaluate if unlawful dilution is present.⁵² This language also mitigates the risk that state courts may impose their own benchmarks, which could lead to inconsistent outcomes or import harmful federal case law into state law.

⁴⁸ *Id.*

⁴⁹ LDF & Impact Rsch., *supra* note 7, at 2.

⁵⁰ MNVRA, Minn. Stat. §§ 200.50–200.59.

⁵¹ S.B. 342 §§8–903 to 8–904(A), 4–604. Since the amendment language is not yet available, citations here and below are to the section of the underlying legislation that will be amended.

⁵² *See id.* §§ 8–903(B)(2), 4–603(B)(2).

Providing a flexible path to establishing a violation that accounts for differing local circumstances. The amended language allows voters to establish a violation either through proving the existence of “racially polarized voting” (“RPV”) or via a more holistic review known as a “totality of circumstances” analysis,⁵³ whereas the original bill would require establishing RPV in all cases.⁵⁴ This flexibility tracks vote dilution provisions in recent state VRAs, including legislation that has been adopted in New York, Connecticut, and Minnesota, as well as similar bills that are pending in over a half dozen other state legislatures. This is a critical policy choice, because statistical RPV analyses often require complex and costly expert studies that may not be possible in small jurisdictions and are not necessary in all cases, especially where dilution is obvious based on the totality of circumstances inquiry.

Providing courts with clear guidance regarding remedies. One challenge with federal litigation is that courts have tended to defer to a defendant jurisdiction to propose a remedy, given the same jurisdiction that just violated the law priority and preference in the remedial process.⁵⁵ This was the case in recent litigation over Baltimore County’s districts, which resulted in a new district map that did not enable Black voters to elect an additional candidate of their choice.⁵⁶ Amended language makes clear that courts should consider all proposed remedies on equal footing and not give preference to those proposed by defendant jurisdictions. This would likely have led to a more equitable outcome in the Baltimore County litigation.

Ensuring Marylanders are not forced to vote under discriminatory election systems just because an election is coming up and may be several months away. At the federal level, the Supreme Court and lower courts have allowed jurisdictions to maintain discriminatory district maps for an upcoming election even when voters moved quickly to challenge these maps and there is ample time to implement a fairer system.⁵⁷ The sponsor’s amendment will make clear that Maryland courts need not follow this troubling federal precedent, and instead can remedy a discriminatory map as long as it is possible to do so before an upcoming election.⁵⁸

⁵³ *Id.* § 8–903(B)(1)–(2), 4–603(B)(1).

⁵⁴ *See id.* §§ 8–903(B), 4–603(B).

⁵⁵ *See McGhee v. Granville Cnty.*, 860 F.2d 110, 115 (4th Cir. 1988) (giving the legislative body the first opportunity to devise an acceptable remedial plan to which the district court must give great deference).

⁵⁶ *Balt. Cnty. Branch of the NAACP v. Balti. Cnty.*, No. 21-CV-03232-LKG, 2022 WL 657562, 2 (D. Md. Feb. 22, 2022). The Plaintiffs’ expert demographer was able to craft a district map that created two districts where the Black community held 53 percent of the population. Instead, the County’s plan, accepted by the Court, packed the Black community into a single district comprising 61 percent of the population, maintaining white voting age majorities in every other district.

⁵⁷ *Purcell v. Gonzalez*, 549 U.S. 1 (2006) ; *Allen v. Milligan*, 599 U.S. 1 (2023)

⁵⁸ S.B. 342 §§ 8–905, 4–605.

Clarifying that the presence of racially polarized voting is an empirical inquiry, not a question of motive. The concept of racially polarized voting means that electoral preferences tend to break down along racial lines. Its presence creates an important risk of vote dilution because it means that in certain election systems members of a racial minority may not be able to effectuate their preferences, which are different than the majority's preferences. The reasons preferences may differ among racial groups are not relevant to the inquiry. The sponsor's amendment provides courts with clear guidance on this point to avoid costly and unnecessary distraction during litigation.

V. Equitable Voting Rights Protections Have Concrete Benefits

Robust voting rights protections, like those in the federal VRA and state-level voting rights acts, can have powerful effects in making the democratic process fairer, more equal, and more inclusive. These effects include reducing racial turnout disparities,⁵⁹ making government more responsive to the needs and legislative priorities of communities of color,⁶⁰ and increasing diversity in government office,⁶¹ so that elected representatives more fully reflect the communities they serve.

There is evidence that measures like the MDVRA can have powerful, downstream benefits in health and economic equality as well. Professor Thomas A. LaVeist of Tulane University, in a landmark study, identified the federal VRA as a causal factor in reducing infant mortality in Black communities where the law's protections had led to fairer representation.⁶² Recent analyses show that incremental improvements in diversity in local representation translate into more equitable educational and policy

⁵⁹ Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California*, MIT Election Lab (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf.

⁶⁰ Sophie Schllit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 *Am. J. Pol. Sci.* 513 (July 2017), <https://www.jstor.org/stable/26379507>.

⁶¹ Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 *Urb. Aff. Rev.* 731, 757 (2021), https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf; see Pei-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 *Pol. Sci. & Pol.* 489 (July 2007), <https://www.jstor.org/stable/20452002>; Paru R. Shah et al., *Are We There Yet? The Voting Rights Act and Black Representation on City Councils, 1981-2006*, 75 *J. Pol.* 993 (Aug. 20, 2013), <https://www.jstor.org/stable/10.1017/s0022381613000972>.

⁶² Thomas A. LaVeist, *The Political Empowerment and Health Status of African-Americans: Mapping a New Territory*, 97 *Am. J. Socio.* 1080 (1992), <https://www.jstor.org/stable/2781507>.

outcomes.⁶³ For these reasons, the American Medical Association has recognized voting rights as a social determinant of health and declared support for “measures to facilitate safe and equitable access to voting as a harm-reduction strategy to safeguard public health.”⁶⁴ In short, the MDVRA can have significant, potentially transformative benefits for democracy and society in this state.

VI. Conclusion

This Committee hearing takes place just prior to the 60th 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 are experiencing attacks, not progress, on voting rights at the national level. Project 2025, an agenda the Trump Administration has embraced, includes plans to undermine enforcement of protections against voting discrimination.⁶⁵ In fact, the administration has already done so by changing the Justice Department’s position in voting cases to threaten fair participation by people of color. This includes a reversal in a critical case on fair districts the Supreme Court is considering this year.⁶⁶

We urge this Committee to seize this opportunity by moving S.B. 342 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 with any questions or to discuss S.B. 342 in more detail.

⁶³ See, e.g., Vladimir Kogan et al., *How Does Minority Political Representation Affect School District Administration and Student Outcomes?*, 65 Am. J. Pol. Sci. 699 (July 2021), <https://www.jstor.org/stable/45415637> (discussing “evidence that increases in minority representation lead to cumulative achievement gains . . . among minority students”); Brett Fischer, *No Spending Without Representation: School Boards and the Racial Gap in Education Finance*, 15 Am. Econ. J: Econ. Pol’y 198 (2023), <https://www.aeaweb.org/articles?id=10.1257/pol.20200475> (presenting “causal evidence that greater minority representation on school boards translates into greater investment in minority students”).

⁶⁴ *Support for Safe and Equitable Access to Voting H-440.805*, [J]AMA|PolicyFinder (2022), <https://policysearch.ama-assn.org/policyfinder/detail/voting?uri=%2FAMADoc%2FHOD.xml-h-440.805.xml>; see also Anna K. Hing, *The Right to Vote, The Right to Health: Voter Suppression as a Determinant of Racial Health Disparities*, 12 J. Health Disparities Rsch. & Prac. 48 (2019), <https://digitalscholarship.unlv.edu/jhdrp/vol12/iss6/5>.

⁶⁵ *What Project 2025 Means for Black Communities: Voting Rights and Black Political Power*, Thurgood Marshall Inst., Legal Def. Fund (Oct. 3, 2024), <https://tminstituteldf.org/threats-to-voting-rights-project-2025/>.

⁶⁶ Letter of the Acting Solic. Gen. on Behalf of the U.S., *Louisiana v. Callais*, No. 24-109 (U.S. Jan. 24, 2025) (the solicitor general notifies the Supreme Court that its previous amicus brief filed on December 23, 2024, does not reflect the current administration’s position and that it wishes to withdraw its motion for leave to participate in oral argument).

Sincerely,

/s/ Adam Lioz

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NAACP Legal Defense and Educational Fund, Inc.

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 voting 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.