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Joint Committees

Administrative, Executive, and
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Children, Youth, and Families

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 342
Voting Rights Act of 2025 – Counties and Municipalities
Before: Education, Energy, and the Environment Committee
February 26, 2025

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

In 1985, then Attorney General Stephen H. Sachs, who just last week departed this life, completed an 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. "Although it found only Somerset with discrimination patterns severe enough to violate the Voting Rights Act, the audit said exclusion of blacks from the electoral process is widespread. Between 1962 and 1982, for example, according to the study, a total of 282 commissioners and county council members were elected in the 11 counties, but only one was black. The counties' voting-age populations are on the average about 21 percent black."¹

At the time, it was reported by the Washington Post that the audit reported that "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."

In 2021 a Baltimore County Redistricting Commission was formed by our County Council and 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, and I lobbied 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 in its map. 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

¹ <https://www.washingtonpost.com/archive/local/1985/07/19/voting-bias-found-in-some-md-counties/58882df1-ecdf-4fc2-919a-37c2505a56be/>

County Council. Ultimately, the federal court issued an injunction overturning Baltimore County's racially discriminatory redistricting map and requiring the County to reconfigure it in compliance with the Voting Rights Act.

In 2022 the Town of Federalsburg, located in Caroline County, 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. However, in June 2023, through charter amendments, legislation and a federal lawsuit, Federalsburg's at-large election system was changed to a two-district system to ensure more representation of Federalsburg's Black residents.² For the first time in its 200-year history, the town, whose population is about 43% Black, elected its first Black leaders.³

In December 2023, several civil rights groups filed suit against Wicomico County for violations of the federal Voting Rights Act challenging the at-large component of the election system for the Wicomico County Council and Board of Education.⁴ Although Wicomico County is comprised of around 30% Black people and 40% non-white people in total, six representatives are white, and only one is black.⁵ It has been alleged that the County employs a partial at-large structure which perpetuates a legacy of discrimination in the County by limiting Black voters' opportunities to one majority-Black district among the seven seats available for Council and Board of Education members.⁶ It is my understanding that this case has recently been settled, in principle, by the parties and simply needs the court's approval.

And today, my County again stands at the precipice of another possible lawsuit stemming from the County Council's creation of a new nine-member council map which was passed in conjunction with legislation to increase the Council's size from seven to nine members. This map was passed without any meaningful public input and prior to a convening of a redistricting commission, which recently has begun to meet.

While the federal Voting Rights Act gives our U.S. 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. In the cases I described, Maryland voters' rights were not championed by the U.S. Attorney General nor our State Attorney General, they were championed by nonprofit organizations. However, it is extremely important that citizens not have to rely on hiring private attorneys to do what can be done by our State's Attorney General.

² In April 2024, a settlement was reached in the lawsuit filed against the town by the Caroline County branch of the NAACP, the Caucus of African American Leaders and Federalsburg residents for \$260,000.

https://www.stardem.com/news/local_news/federalsburg-unveils-sign-to-recognize-historic-2023-election-people-who-made-it-possible/article_f94c1ff4-a6b3-11ef-86f9-4ffdf1f6d9b1.html

³ *Id.*

⁴ Maryland Civil Rights Groups Allege County Violates Voting Rights Laws, Joe Heim, The Washington Post,

<https://www.washingtonpost.com/dc-md-va/2023/12/08/maryland-wicomico-lawsuit-naacp-civil-rights/>

⁵ *Id.*

⁶ https://www.aclu-md.org/sites/default/files/field_documents/wicomico_county_naacp_et_al_v_wicomico_county_et_al_-_complaint.pdf.

As such, SB 342 grants authority to the Maryland Attorney General as well as any other person to enforce sections 4-603 or 8-903 of the Maryland Voting Rights Act of 2025 and allows plaintiffs to seek injunctive relief, damages or other relief if a county or municipality violates the bill.

SB 342 also prohibits Maryland counties⁷ and municipalities⁸ from imposing or applying methods for electing its representatives in a manner that impairs a Protected Class member⁹ from electing a candidate of that member's choice or impairs that Protected Class member's ability to influence the outcome of an election as a result of the dilution or the abridgment of that Protected Class member's voting rights. The legislation provides that intent to discriminate is not required to establish a violation and it provides five probative factors which may be used to establish whether a violation occurred. Those probative factors are noted under sections 8-904(A) and 4-604(A).¹⁰

To prove that a violation of the Maryland Voting Rights Act of 2025, a plaintiff would have to establish (1) a county or municipal election exhibits Polarized Voting¹¹ and (2) the method of the election dilutes or abridges the voting strength of a Protected Class member's ability to influence the outcome of an election.¹²

Finally, under SB 342, when making a determination whether Polarized Voting occurred, the court must consider: (1) the methodologies for estimating group voting behavior, as approved in federal case law, to enforce the federal Voting Rights Act of 1965, (2) elections of the governing body of the county or municipality, (3) ballot question elections, (4) elections where at least one candidate is a member of a protected class, and (5) other electoral choices that affect the right and privileges of the Protected Class member.¹³

For the aforementioned reasons, I am asking the committee to provide a favorable report for SB 342.

⁷ See proposed section 8-904(A).

⁸ See proposed section 4-604(A).

⁹ Under this legislation, "Protected Class" is defined as a "class of voter who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 and related federal case law." See proposed section 8-901(C).

¹⁰ These include (1) a history of discrimination, (2) the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of a method of election, including at large elections, (3) the denial of access to the processes determining which groups of candidates will receive financial or other support in a given election, (4) the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health that hinders the ability to participate effectively in the political process, and (5) the use of overt or subtle racial appeals in political campaigns.

¹¹ See proposed sections 4-601(B) and 8-901(B) which define "Polarized Voting" as "voting in which there is a difference, as defined in federal case law regarding enforcement of the federal Voting Rights Act of 1965, in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of electorate."

¹² See proposed sections 4-603(B) and 8-903(B).

¹³ See proposed sections 4-604(A) and 8-904(A).

Voting Rights Act

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**STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CIVIL RIGHTS DIVISION**

ANTHONY G. BROWN
Attorney General

**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the Senate Education, Energy and the Environment Committee
In Support of Senate Bill 342
February 27, 2025**

In calling for the enactment of the Voting Rights Act, President Lyndon Johnson said “In our system the first and most vital of all our rights is the right to vote. Jefferson described it as ‘the ark of our safety.’ It is from the exercise of this right that all our other rights flow.”¹ However, in recent years, the protections of the Voting Rights Act have been under assault, and the vitality of the law is in question. Senate Bill 342 creates a Maryland analogue to the federal statute to ensure that the rights of all Marylanders to vote are protected regardless of changes to the law at the federal level.

The Voting Rights Act was signature achievement of the Civil Rights Movement. It was designed to remove barriers to voting and open up the franchise to all regardless of race. Yet, disparities in voting based on race persist. Despite the persistent challenges in achieving voting rights for persons of color, the federal Courts continue to narrow the reach and promise of the Voting Rights Act. In *Shelby County v. Holder*, 570 US 529 (2013). The United States Supreme Court struck down the provisions of the law that required states and jurisdictions with a history of voter discrimination to seek preclearance of voting practice changes from the United States Department of Justice. More recently, the Eighth Circuit Court of Appeals found that there was no private enforcement of the Voting Rights Act and that only the DOJ could bring enforcement

¹President Lyndon Johnson’s Speech to Congress on Voting Rights, March 15, 1965, <https://www.archives.gov/legislative/features/voting-rights-1965/johnson.html#:~:text=On%20March%2015%2C%201965%2C%20President,Return%20to%20Voting%20Rights%20Documents>

actions.² And in a 5 to 4 decision, the Supreme Court barely upheld the constitutionality of the Voting Rights Act, a decision that might not stand future challenges.³

Maryland is one of the most diverse states in the nation. Yet, voting rights remain a vital issue. In recent years, there has been litigation to address whether at-large county council districts discriminate against black voters⁴ and discriminatory redistricting.⁵ Nationally, racial disparities in voting are growing and Maryland ranks second in the nation of Black voters who do not vote.⁶ As a result, even in counties with high numbers of voters of color, many have all white county governments.⁷

In enacting a state voting rights act, Maryland would be following the lead of California, Connecticut, Illinois, Minnesota, New York, Oregon, Virginia, and Washington.⁸ A state level remedy will ensure that all Marylanders have access to the franchise and can vote, thus strengthening and ensuring the vitality of our democracy.

² *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 86 F.4th 1204 2023 (8th Circuit 2023).

³ Scotusblog, Supreme Court upholds Section 2 of the Voting Rights Act, June 8, 2023, [Supreme Court upholds Section 2 of Voting Rights Act - SCOTUSblog](#); *Allen v. Milligan*, 599 US 1 (2023).

⁴ Cases are pending in Wicomico and Caroline counties, <https://www.aclu-md.org/en/cases/wicomico-county-naacp-et-al-v-wicomico-county-et-al>

⁵ <https://www.aclu-md.org/en/cases/baltimore-county-naacp-et-al-v-baltimore-county-et-al>

⁶ Brennan Center for Justice, Growing Disparities in Voter Turnout, 2008-2022, March 2, 2024, <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>

⁷ https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga25_english.pdf

⁸ National Council of State Legislatures, State Voting Rights Acts, November 25, 2025.

<https://www.ncsl.org/elections-and-campaigns/state-voting-rights-acts>

sb 342 Voting Rights Act of 2025 - Counties and Mu

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Position: FAV



THE EPISCOPAL DIOCESE OF MARYLAND

****FAVORABLE****

SUPPORT OF SB 342

Voting Rights Act of 2025 - Counties and Municipalities

TO: Senator Brian J. Feldman, Chair, Senator Cheryl C. Kagan, Vice Chair and the members of the Senate Education, Energy and the Environment Committee

FROM: Rev. Linda K. Boyd, Co-Chair, Maryland Episcopal Public Policy Network, Diocese of Maryland

DATE: February 26, 2025

The Episcopal Diocese of Maryland strongly supports this Bill. As a Church, we advocate for measures that preserve and expand voters' rights. In Resolution 2018-D003, our National Church stated as follows:

Resolved, That this 79th General Convention of The Episcopal Church hereby calls on all states to cease and desist efforts to suppress the voting rights of American Citizens; and be it further

Resolved, That The Episcopal Church calls on governments on all levels to create policies to enhance voter participation by, among other strategies, seeking to implement policies that will increase early voting, extend registration periods, guarantee an adequate number of voting locations, allow absentee balloting without the necessity of having an excuse, and prohibit forms of identification that restrict voter participation; and be it further

Resolved, That in accordance with Executive Council Resolution AN033 adopted October 25, 2017, the 79th General Convention of The Episcopal Church reaffirms that one person one vote means that the votes of all citizens of all races and ethnicities are fairly represented, counted and accounted for; that we oppose any form of partisan gerrymandering which has the same effect of racial gerrymandering; and be it further

Resolved, That the 79th General Convention call upon the National Conference of State Legislators to address gerrymandering as a major focus in developing a fair, not gerrymandered electoral process.

This Bill takes important steps to preserve voting rights in Maryland. Every person deserves an equal opportunity to express themselves via their vote. We must oppose any attempt to exclude someone, especially members of a protected class.

The Diocese of Maryland requests a favorable report.

SB342.pdf

Uploaded by: Lailah Williams

Position: FAV



Position: Favorable
Education, Energy, and the Environment
SB342: Voting Rights Act of 2025 - Counties and Municipalities

To: The Honorable Senator Sydnor

Greetings,

My name is Lailah Williams and I am the Advocacy Intern for Black Girls Vote, a nonpartisan, nonprofit organization committed to engaging, educating, and empowering black women to activate their voice by using their vote. I would like to thank the Education, Energy, and the Environment Committee for the opportunity to share why this issue is important to our organization.

Black Girls Vote has four main pillars: economic development, education, healthcare and of course voting rights. We are committed to democracy and upholding the rights of those in protected classes. It is imperative that we uphold the accessibility of free and fair elections for all those seeking to engage in electing their governing bodies.

For this reason, we urge support for SB342 which would prohibit the imposition or application of a method for electing the governing body of a county or municipality that impairs the ability of members of a protected class to elect candidates of the members' choice. Below you will find more reasons why it is imperative that we support one of our nation's voting rights for all those eligible:

1. In both large and small communities, people who cast their ballots should be able to access polling places that adhere to ADA regulations and solutions for communities that need assistance.¹
2. States and local governments must ensure that their procedures do not interfere with people with disabilities to not have the access to voter registration and physical polling locations.²

Sincerely,

Lailah Williams, Advocacy Intern
Black Girls Vote, Inc.
Email: advocacyintern@blackgirlsvote.com

¹<https://www.ada.gov/resources/protecting-voter-rights/>

²<https://www.ada.gov/resources/protecting-voter-rights/>

SB0342 2:26:2025 Written Testimony.pdf

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Position: FAV

Testimony in support of
SB0342
Voting Rights Act of 2025 -Counties and Municipalities

Favorable Report

To: Chair Senator Brian J. Feldman, Vice Chair Senator Cheryl C. Kagan and all members of the Education, Energy, and the Environment Committee.

From: Lynn Mortoro, resident of Maryland.

Date: February 26, 2025

Chair Senator Feldman, Vice Chair Senator Kagan and members of the Senate Education, Energy, and the Environment Committee.

Thank you for the opportunity to write for this important bill.

I feel that anything we can do to make it safer and easier for citizens to vote should be evaluated and passed into law.

Our ability to vote for our choices could be eroded if not protected.

I request a **Favorable Report** on this Bill

Thank you
Lynn Mortoro

America (Mis)Represented- 2022 Primaries Report (J

Uploaded by: Nina Taylor

Position: FAV



THE CENTER FOR
Election Science

AMERICA (MIS)REPRESENTED:

How Vote Splitting Distorts the Electoral Process

2022 PRIMARIES REPORT

RESEARCH TEAM:

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FOR RELEASE: July 2024

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The Center for Election Science (CES) is grateful for the contributions of Aden Beyene, Gaurvi Singhvi, and Judy Nguyen Liu, without which this research would not be possible.

ABOUT THIS REPORT

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EXECUTIVE SUMMARY

The America (Mis)Represented: 2022 Election Report examines how vote splitting distorts the electoral process in the United States, specifically focusing on the 2022 election cycle.

Vote Splitting in Elections:

- Vote splitting occurs in plurality voting systems when votes are divided among multiple candidates, often resulting in a winner who does not receive a majority of the vote.
- This phenomenon is prevalent across various levels of government, leading to non-majority winners who may not best represent their constituencies.

Main Findings from the 2022 Election Cycle:

- Approximately 11.9% of the 5,662 national primary elections (state legislative, statewide office, and congressional races) involved vote splitting.
- Vote splitting affected elections in both Democratic, Republican, and swing states, with New Hampshire, Arizona, Nebraska, California, and Nevada showing significant instances.
- Notable cases include J.D. Vance in Ohio and Andrea Salinas in Oregon winning with less than 50% of the vote in their primaries.

Voter Sentiment:

- There is a growing dissatisfaction with the electoral process, with a notable decline in the public's satisfaction with democracy from 41% in 2021 to 31% by early 2024.
- Many voters feel that elected officials do not truly represent their preferences, leading to a decline in trust and increased perception of indifference from politicians.
- Over 70% of voters in Michigan and Maryland agree that there should be a better way to vote for elected officials.

Statistical Analysis:

- We employ logistic regression models to analyze the probability of vote splitting occurring based on factors such as election competitiveness and the presence of incumbents.
- Open seat elections are approximately 7.8 times more likely to experience vote splitting.
- Competitive district elections are approximately 8.9 times more likely to experience vote splitting.

Recommendations for Reform:

- Implementing alternative methods such as approval voting, would allow voters to select all candidates they approve of, as a way to mitigate vote splitting and ensure more representative electoral outcomes.

- Studies show that approval voting produces more representative results by reflecting wider voter support and reducing strategic voting.
- Using a CA senate survey, we show that the results of the Senate primary race in 2024 would have resulted in Katie Porter finishing in second place instead of Garvey, suggesting a more representative election.

Conclusion:

The report highlights the significant impact of vote splitting on the electoral process and the subsequent representation of voters. It calls for urgent reform to address these issues and enhance the legitimacy of election outcomes, advocating for alternative voting methods like approval voting to ensure fairer and more democratic elections.

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INTRODUCTION

RECENT ELECTION CYCLES have further exposed the shortcomings of our electoral system, prompting urgent and important discussions about the representativeness of the candidates elected to office and the fairness of our voting processes. For instance, in 2022, Republican candidate J.D. Vance ran in the anticipated Ohio open seat Senate primary, securing a victory with only 32.2% of the vote and subsequently winning the general election. Similarly, Democratic candidate Andrea Salinas competed in Oregon’s newly created sixth congressional district for the 2022 U.S. House primary, triumphing over eight other candidates with only 36.8% of the vote, and later winning the general election. These were not isolated instances where this outcome occurred in the 2022 election cycle. **Three out of every ten** congressional primary races in 2022 resulted in a candidate winning without receiving a majority vote, with at least one advancing to later win the general election.



In the 2022 elections, 3 out of 10 Congressional primary races had winners without a majority vote, and 1 in 3 of these winners went on to win the general election.

Data source: The Vote Split Elections Project (2022).

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Amidst this backdrop, the integrity of the electoral process faces increased scrutiny, with growing concerns about its effectiveness and legitimacy. American voters continue to experience a decline in satisfaction with the functioning of the country’s democracy. In 2021, satisfaction levels were reported at 41%, dropping by 10 percentage points to 31% by the start of 2024.¹ Elections, by nature, serve a foundational role in democracy. They are a mechanism for constituents to express their preferences and ensure that their voices are reflected in the final outcomes. This process is fundamental for holding

¹ E.g. [1] Gallup. 2024. "Mood Remains Glum as Few Are Satisfied with State of the Nation." July 11, 2024.; [2] Gallup. 2023. "Record Low in U.S. Are Satisfied with How Democracy Is Working." June 22, 2023; [3] Pew Research Center. 2024. "Satisfaction with Democracy Has Declined in Recent Years in High-Income Nations." June 18, 2024.

representatives and elected officials accountable. Fair and regularly held elections are essential to maintaining a representative democracy, where officials are answerable to the electorate.

However, the growing dissatisfaction with democracy in the country indicates a rising concern that electoral results no longer reflect the true will of the people, thereby undermining the principle of representativeness. This issue is evident in the fact that elected officials may not always have the broadest support from their constituencies. A truly representative electoral result should elect the candidate with the widest support across the constituency. Unfortunately, this ideal is frequently unmet, leading to a disconnect between elected officials and the populace.

In many ways, our current electoral system is the root cause of this wave of concern. Plurality systems, where voters must choose only one candidate, can limit their ability to express true preferences, leading to winners who may not best represent their constituencies. Recent studies have extensively covered the growing dissatisfaction and mistrust among Americans in the electoral process and democracy broadly.² Trends of decreasing voter engagement and a feeling of inefficacy in the power of their vote forebode an eroding democracy, where the interests of a powerful few are represented above those of the people.

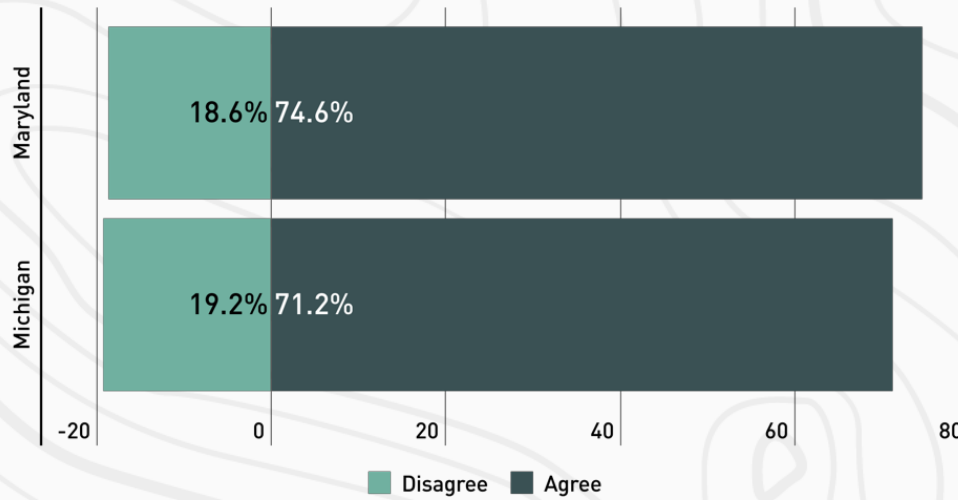
Studies conducted by The Center for Election Science (CES) in collaboration with SurveyUSA, involving voters in Michigan and Maryland, underscore this issue, with an overwhelming majority of respondents believing that American voters deserve a better way to elect their representatives.³ As illustrated in **Figure 1**, a significant portion of voters in both states share this sentiment. Specifically, 74.6% of Maryland voters and 71.2% of Michigan voters agree that the current electoral system needs improvement, with only 18.6% and 19.2%, respectively, disagreeing.

These findings, gathered from registered voters between March and April 2024, reflect a strong and consistent desire for electoral reform among the electorate in these states. The alignment in voter attitudes across Maryland and Michigan suggests a growing momentum for reformative actions at both state and federal levels.

² E.g [1] American Bar Association. 2024. "Increasing Trust in Our Elections." May 06, 2024.; [2] Axelrod, Tal. "Americans' Faith in Election Integrity Drops: POLL." *ABC News*, January 3, 2022.; [3] Yankelovich Center for Social Science Research. "After the 2022 Midterms: Do Americans Trust Elections?" University of California, San Diego, 2023.

³ The Maryland voter study was conducted from March 13, 2024, to March 17, 2024, and included 1,764 adults from the state of Maryland. The pool of adult survey respondents was weighted to US Census American Community Survey targets for gender, age, race, education, and home ownership. The full report and statement of methodology is publicly accessible [online here](#). The Michigan voter study was conducted from April 24, 2024, to April 29, 2024, and included 1,900 adults from the state of Michigan. The pool of adult survey respondents was weighted to US Census American Community Survey targets for gender, age, race, education, and home ownership. The full report and statement of methodology is publicly accessible [online here](#).

Figure 1. Voter Sentiment in Maryland and Michigan Towards the Electoral Process in the U.S.



Percent of Americans from Maryland and Michigan who say they agree or disagree that voters deserve a better way to elect their representatives

Note: The Maryland and Michigan voter attitudes and behavior studies were conducted with SurveyUSA in Maryland and Michigan from 03/13/24 to 03/17/24 and 04/24/24 – 04/29/24, respectively, amongst registered voters in each respective state. Null responses were excluded from the plot for clarity.

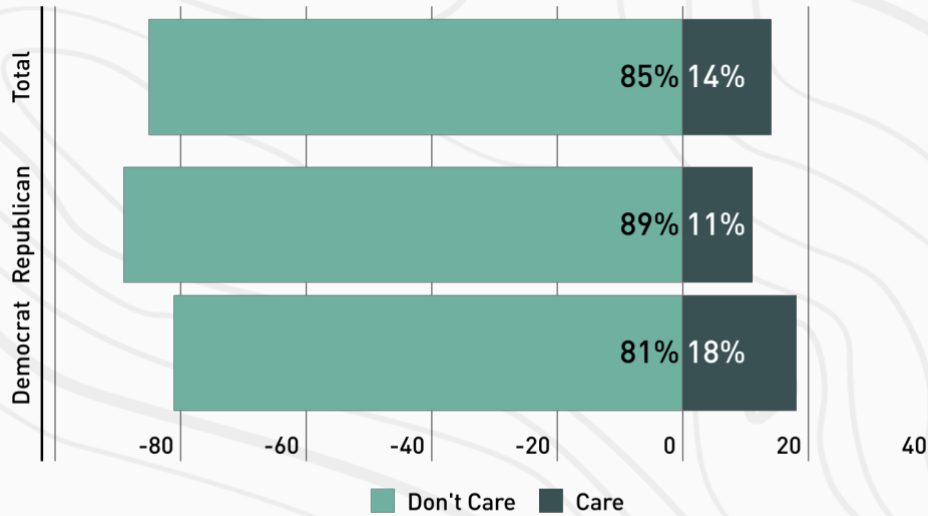
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Not only are voters becoming more dissatisfied with the current voting system, but they also feel increasingly disregarded by those elected to office. The perceived indifference from politicians towards constituents has risen since the 2000s, with 85% of Americans feeling that politicians do not care about them or what they think in 2023—a sentiment shared by both Democrats and Republicans.⁴

The stacked bar plot shown in Figure 2 illustrates the percentage of American voters who believe elected officials care (green) or do not care (gray) about their opinions, based on a recent survey. The data shows that 85% of respondents in the first category, 89% in the second, and 81% in the third feel that officials care about their views. Conversely, 14%, 11%, and 18% respectively believe officials do not care about their opinions.

⁴ Pew Research Center. 2024. "More Than 80% of Americans Believe Elected Officials Don't Care What People Like Them Think." April 30, 2024.

Figure 2. U.S. Public Perception of Elected Officials Indifference Towards What They Think.

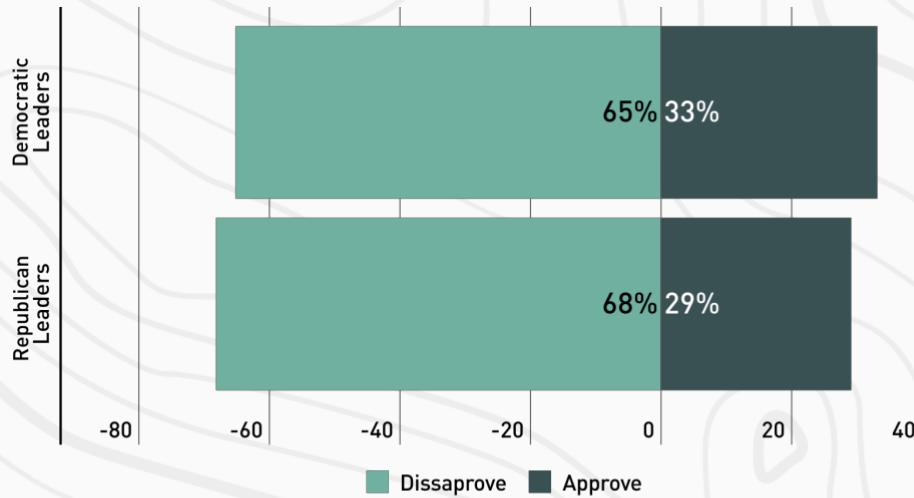


Percent of Americans who say elected officials care or don't care what they think

Data source: Pew Research Center (2023). Null responses excluded from plot.

Finally, this sense of being unrepresented by elected officials is reflected in how voters view the performance of political leaders in office. Americans have expressed highly negative views regarding congressional leadership's performance. As illustrated in **Figure 3**, survey data from 2023 shows that 65% of Americans disapprove of the job Democratic leaders are doing, with only 33% expressing approval. Similarly, 68% of respondents disapprove of Republican leaders' performance, with just 29% showing approval—suggesting that public trust in elected government and the electoral process is on the decline.

Figure 3. U.S. Public Approval/Disapproval of Congressional Leaders.



Percent of Americans who say they approve or disapprove of the job congressional leaders are doing

Data source: Pew Research Center (2023). Null responses excluded from plot.

Overall, the various issues of voter dissatisfaction, perceived indifference from elected officials, and declining trust in the electoral process center around the phenomenon where multiple candidates in a race with similar platforms or backgrounds draw votes from the same base—resulting in a non-consensus candidate winning with only a fraction of the total support.

This issue was visibly present with Senator Vance’s (R-OH) and Congresswoman Salinas’ (D-OR) outcomes in the 2022 elections and is becoming evident with the most recent primary elections, such as Congressman Schiff (D-CA) in California’s 2024 Senate primary race. These instances reiterate the importance of understanding this phenomenon to address the democratic challenges in our system. Consequently, this report aims to shed light on the understudied yet impactful phenomenon of what we define as **vote splitting**, and its role in distorting electoral outcomes.

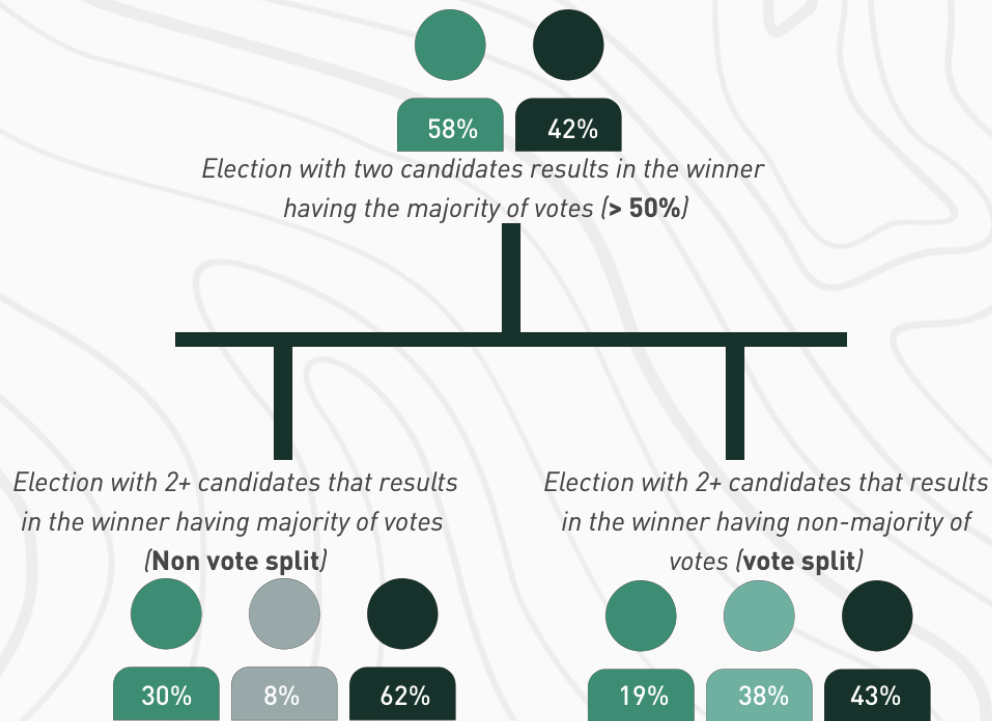
WHAT IS VOTE SPLITTING?

VOTE SPLITTING describes an electoral phenomenon found in plurality voting systems, often triggered by races with more than two candidates. It occurs when votes are divided among multiple candidates, preventing any one candidate from receiving a majority vote they might have garnered in a less crowded election. Given the United States’ plurality electoral process, or otherwise known as first-past-the-post (FPTP) system, the outcome of a **vote split election** is when the winning candidate receives less than half (i.e. less than 50 percent) of all votes casted. While the presence of additional candidates in a race can

lead to a spoiler effect, vote splitting is distinct in that it specifically refers to the division of votes between several candidates that if combined, the votes would represent a majority. Put simply, vote splitting may be considered the mechanism that leads to the spoiler effect.

As depicted in the flowchart from **Figure 4**, the presence of many candidates in an election may not always result in a vote split outcome, but it significantly increases the likelihood of votes being divided among candidates who share similar characteristics, whether ideological, demographic, or otherwise. In the example from the flowchart, the candidates that received 19% and 38% of the vote respectively share similar characteristics, which caused a vote split to occur between the two of them. This division implies that a candidate who differs more from the rest can likely win the election. Overall, vote split elections can be found at all levels of government.

Figure 4. Flowchart of How Vote Splitting Impacts Electoral Outcomes.



Data source: The Vote Split Elections Project (2022).

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THE LANDSCAPE OF BROKEN ELECTIONS IN 2022

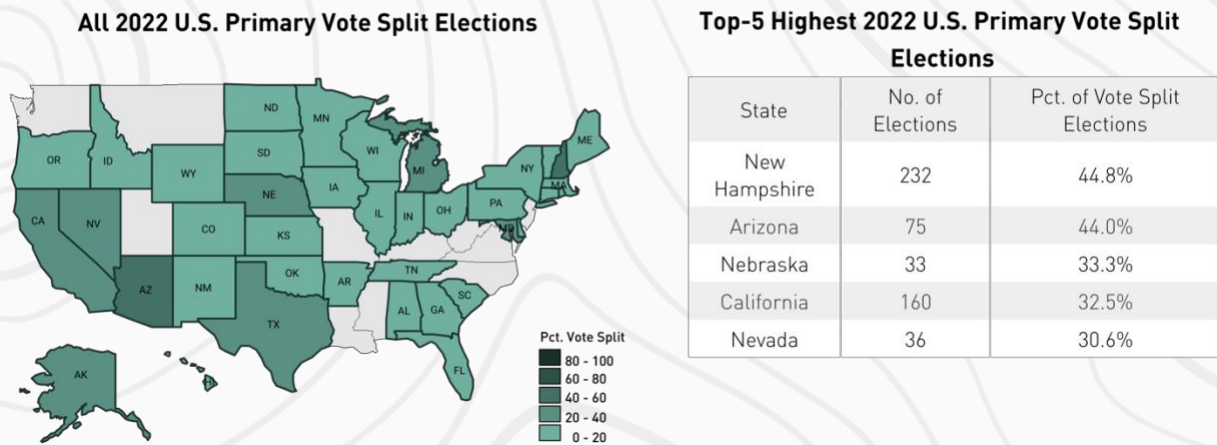
Vote splitting significantly distorts electoral outcomes and can disregard the majority's will, as winning candidates often secure far less than a majority of votes. The 2022 American elections highlighted

numerous instances of vote splitting across various levels of government. When reviewing all 5,662 national primary elections, including state legislative, statewide office, and congressional races, approximately 11.9% involved multiple candidates where the winner did not receive a majority vote. This means about one in ten national elections was a vote split scenario.

As illustrated in the map in **Figure 5**, primaries impacted by vote splitting are not confined to specific geographical areas; they are prevalent in Democratic, Republican, and Swing-vote states alike. States with multi-member districts that use choose-one voting, like Maryland and New Hampshire, experienced vote splitting. For instance, candidates in the New Hampshire State House advanced to the general election with as little as 8.8% of the primary vote because voters are selecting multiple candidates to fill district seats. Even in California, a top-two open primary state, there is a notable incidence of vote split elections. Many other states, particularly in the Midwest, also demonstrate occurrences of vote splitting, indicating that this phenomenon is widespread across the country.

However, as the table in **Figure 5** shows, some states saw a comparative elevation in vote splitting during the 2022 cycle. Out of all states with the three types of elections, New Hampshire emerges as the state with the highest incidence of vote split elections, with 44.8% of its elections experiencing vote splits. Arizona follows closely with 44.0% of its elections resulting in vote splits. Nebraska, California, and Nevada also exhibit significant instances of vote splitting, with percentages ranging from 30.6% to 33.3%. The following subsections break down the prevalence of vote split elections across congressional, statewide, and state legislative primaries.

Figure 5. % of Vote Split Elections in All 2022 Primaries (U.S. Congress, Statewide, State Leg.).



Note: Both the map and the table only include states that had all three types of elections during the 2022 cycle. Data source: The Vote Split Elections Project (2022).

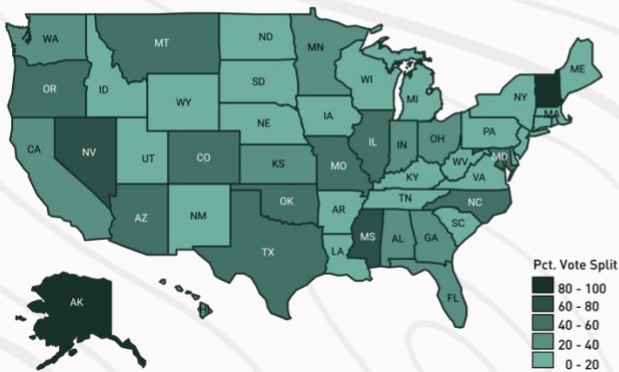
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CONGRESSIONAL PRIMARIES

In the realm of congressional primary elections, vote splitting has significantly distorted electoral outcomes. In the 2022 election cycle, out of 468 congressional primary elections, 28.4% were identified as vote split scenarios, where the winning candidate did not receive a majority of the vote. This means about three in ten congressional elections was a vote split scenario. As shown in **Figure 6**, Congressional primaries are not confined to specific geographical areas; they are prevalent in across every state in the country—with New Hampshire emerging as one of the states with the highest incidence of vote splitting at 100%.

Figure 6. % of Vote Split Elections in 2022 U.S. Congressional Primary Races.

All 2022 U.S. Congressional Primary Vote Split Elections



Data source: The Vote Split Elections Project (2022).

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Top-5 Highest 2022 U.S. Congressional Primary Vote Split Elections

State	No. of Elections	Pct. of Vote Split Elections
New Hampshire	3	100.0%
Alaska	2	100.0%
Vermont	2	100.0%
Mississippi	4	75.0%
Nevada	5	60.0%

The 2022 Republican U.S. Senate primary for New Hampshire was followed closely by political pundits and the media. Don Bolduc, a retired Brigadier General known for his support of Trump-like election conspiracy theories, won with only 36.9% of the vote in a field of 11 candidates.⁵ He narrowly defeated Chuck Morse, the then-New Hampshire Senate President, who garnered 35.7% of the vote and subsequently conceded to Bolduc.⁶ Although he lost at the general election, this primary race stands as an example of how vote split elections are not out of reach within the Senate. Alaska and Vermont also

5 New Hampshire Secretary of State. 2022. "State Primary - U.S. Senate Republican Results."

6 Ray, Siladitya. 2022. "Chuck Morse Concedes to Right-Wing Candidate Bolduc in Closely Fought Republican Senate Primary in New Hampshire." Forbes, September 14, 2022.

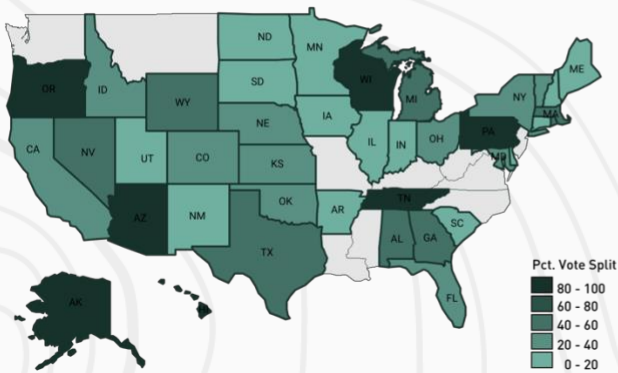
reported 100% incidence rates in their congressional primaries, while Mississippi and Nevada followed with 75% and 60%, respectively.

STATEWIDE PRIMARIES

Like with congressional primary elections, vote splitting has also significantly impacted statewide electoral outcomes. In the 2022 election cycle, out of 190 statewide primary elections, 30% were identified as vote split scenarios, where the winning candidate did not receive a majority of the vote. This means that, like with congressional primaries, three out of ten statewide elections had vote splitting. As both the percentage of vote split heat map and table in **Figure 7** denote, while statewide vote split primary elections are found across the country, there is a higher concentration of statewide races that experienced them in contrast to congressional races. Alaska emerging as a notable example, with 100% of its statewide primary elections experiencing vote splitting.

Figure 7. % of Vote Split Elections in 2022 Statewide Primary Races.

All 2022 U.S. Statewide Primary Vote Split Elections



Top-5 Highest 2022 U.S. Statewide Primary Vote Split Elections

State	No. of Elections	Pct. of Vote Split Elections
Alaska	1	100.0%
Hawaii	1	100.0%
Oregon	2	100.0%
Pennsylvania	2	100.0%
Tennessee	1	100.0%

Note: Both the map and the table only include states that had statewide primary elections during the 2022 cycle. Data source: The Vote Split Elections Project (2022).

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In the 2022 top-four primary for Governor of Alaska, incumbent Republican Governor Mike Dunleavy won with only 40.4% of the vote in a field of ten candidates. His closest competitors, Democrat Les Gara and Independent Bill Walker, garnered 23.1% and 22.8% of the vote, respectively, with the remaining votes split among other candidates. Dunleavy, known for his conservative policies and emphasis on resource

development, managed to secure his position despite the divided electorate.⁷ Les Gara, a former state representative, campaigned on progressive issues including education and social services, reflecting a stark contrast to Dunleavy's platform. Unlike with the Senate race example, Mike Dunleavy went on and won the general election for Governor, showing how a nonminority winners can end up representing a constituency that did not vote for them. Hawaii, Oregon, Pennsylvania, and Tennessee also reported 100% incidence rates in their statewide primaries.

STATE LEGISLATIVE PRIMARIES

As evident by the heat map in **Figure 8**, state legislative primary elections also experienced vote splitting during the 2022 elections cycle. In this election, out of 5,968 state legislative primary elections, 9.4% were identified as vote split scenarios, where the winning candidate did not receive a majority of the vote. This means that about one out of eleven state legislative elections experience a vote split outcome. Like with congressional primaries, New Hampshire stood out with 44.3% of its state legislative primary elections experiencing vote splitting [see: **Figure 8**].

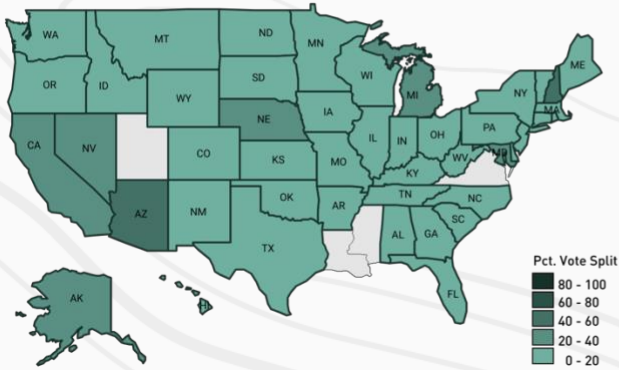
New Hampshire employs a multi-member district system for electing members to its House of Representatives. In this system, multiple representatives are elected from the same district, unlike single-member districts where only one representative is chosen per district. Voters in New Hampshire can vote for as many candidates as there are seats available in their district, and the candidates with the highest number of votes win the seats, even if they do not secure a majority of the total votes cast.⁸ This system often leads to crowded fields with many candidates competing for the available seats, significantly increasing the likelihood of vote splitting. Consequently, votes are frequently divided among many candidates, and the winners are those with the highest relative number of votes, rather than a clear majority.

⁷ [1] Alaska Public Media. 2022. "Early Results Show Dunleavy Leading in Alaska Governor's Race." November 9, 2022; [2] Ballotpedia. 2022. "Alaska Gubernatorial and Lieutenant Gubernatorial Election, 2022."

⁸ Ballotpedia. 2022. "New Hampshire House of Representatives."

Figure 8. % of Vote Split Elections in 2022 State Legislative Primary Races.

All 2022 U.S. State Legislative Primary Vote Split Elections



Top-5 Highest 2022 U.S. State Legislative Primary Vote Split Elections

State	No. of Elections	Pct. of Vote Split Elections
New Hampshire	228	44.3%
Arizona	60	40.0%
Nebraska	24	37.5%
California	100	35.0%
Maryland	188	25.5%

Note: Both the map and the table only include states that had state legislative primary elections during the 2022 cycle. Data source: The Vote Split Elections Project (2022).

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For instance, in New Hampshire’s Rockingham County (District 13) 2022 Republican primary, all top-10 winning candidates secured their primary victories with just 5.9% to 8.8% of the total votes due to a crowded field of 16 candidates—implying that multi-member district systems such as New Hampshire’s is a key contributor to the prevalence of vote splitting. Arizona, Nebraska, California, and Maryland also reported high incidence rates of vote splitting in their state legislative primaries, with percentages of 40.0%, 37.5%, 35.0%, and 25.5%, respectively.

THE VOTE SPLIT ELECTIONS PROJECT

To better understand how vote splitting impacts our electoral process, the CES research team led the collection and development of a novel, comprehensive dataset capturing vote splitting across all primary elections that took place during the 2022 election cycle. This project—**The Vote Split Elections Project**—encompasses elections at three separate levels of office: state legislative, state executive, and congressional contests across the country; totaling 6,626 primary election outcomes.⁹

⁹ As the primary source for the data collection of this project, we relied on reported election outcomes data publicly available on each observed state’s respective secretary of state website.

METHODOLOGY

Out of the total election outcomes we collected, we recorded and analyzed 1,221 individual primary races. These included 563 races at the state legislative level, 190 races at the statewide level, and 468 races at the congressional level.

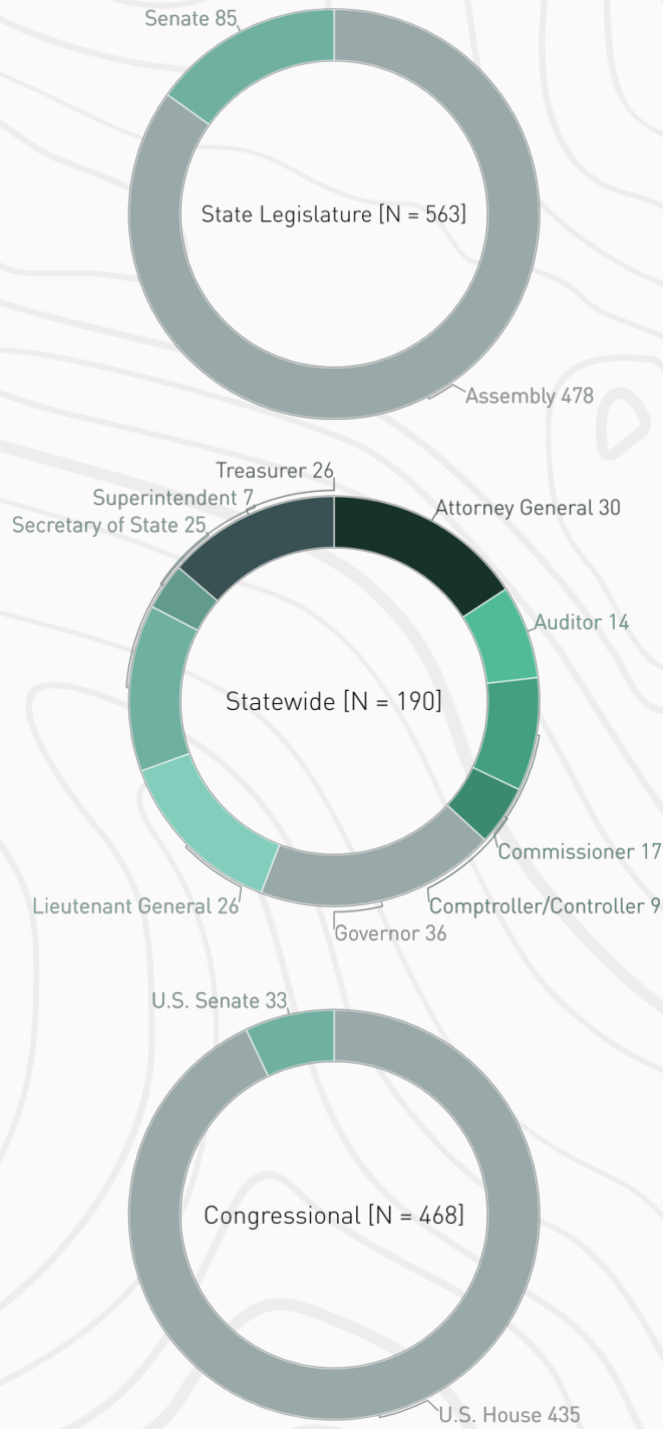
As depicted in **Figure 9**, for the 563 state legislative races, 478 were from state assemblies and 85 from state senates. The 190 statewide office races were broken down into various positions: 30 state attorney general races, 14 state auditor races, 17 state commissioner races, 9 state comptroller or controller races, 36 state governor races, 26 state lieutenant governor races, 25 state secretary of state races, 7 state superintendent of public instruction races, and 26 state treasurer races. Lastly, the 468 congressional races comprised 435 from the U.S. House and 33 from the U.S. Senate.

BEHIND THE NUMBERS

To conduct our analysis, we collected data for a robust set of indicators relevant to each primary race examined. For **state legislative** contests, we gathered data for the following variables: [1] jurisdictional context (state); [2] electoral details (chamber and district identifier); [3] partisan status (partisan or nonpartisan primary); [4] candidate pool size (number of candidates); and [5] outcome metrics (percentage votes for the top four finishers).

For **statewide office** and **U.S. congressional** primary elections, we collected data on: [1] jurisdictional context (state); [2] electoral details (chamber and district identifier); [3] date of primary; [4] incumbent party affiliation; [5] winning candidate's party in the general election; [6] general election competitiveness; [7] open seat status; [8] vote split occurrence (i.e. whether the primary resulted in a vote split); [9] number of candidates; and [10] the percentage votes for the top four finishers.

Figure 9. Data Overview of 2022 Vote Split Elections Project.



Note: N is the total number of elections collected and analyzed for every level of government.

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In addition to analyzing our main variables of interest—i.e. open seat status, general election competitiveness, and vote split occurrence—we also examine the relationship between primary winner party affiliation and subsequent general election outcomes. We determined specific criteria to operationalize these key concepts (i.e. open seat status, general election competitiveness, and vote split occurrence), developing the variables and coded values used in our analysis. Open seat status was defined as the absence of an incumbent candidate running for re-election. General election competitiveness was assessed by examining winning percentage margins; contests with less than a 10% difference between winners and losers were considered competitive. Lastly, vote split occurrence was determined through the analysis of primary vote shares, with races in which the winning candidate secured less than 50% of the total votes cast being coded as vote split elections.

To further investigate the dynamic range and influence of variables that are most correlated with vote splitting in elections, we conducted logistic regression models to statistically infer the relationship between multiple independent variables and the likelihood of a vote split occurring. This allows us to identify significant predictors and empirically evaluate their effects relative to one another.

MAIN FINDINGS

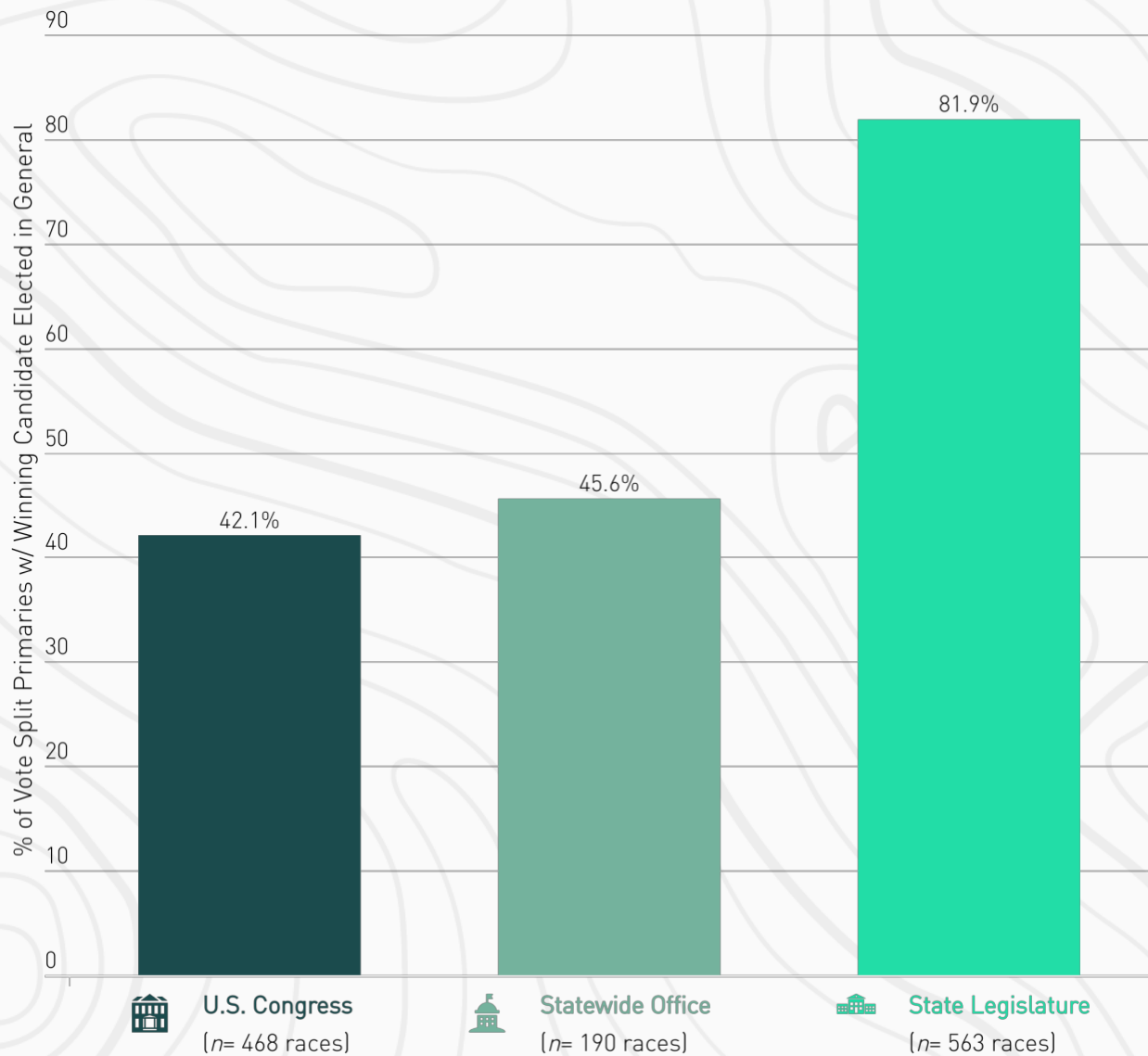
Vote split elections in primaries can impact the representativeness of general elections. In analyzing the 2022 primary elections, a notable trend emerged regarding the success of candidates in vote split races and their subsequent performance in the general elections.

MANY VOTERS ARE MISREPRESENTED: NON-MAJORITY WINNERS WIN ELECTIONS ALL THE TIME

Figure 10 illustrates the percentage of vote split primaries where the winning candidate later succeeded in the general election. As the plot shows, 42.1% of U.S. Congress races, 45.6% of statewide office races, and a notably higher 81.9% of state legislature races resulted in the primary winner securing victory in the general election.

At the state legislative level, we observed that 9.4% of the 563 analyzed races were vote split elections. Among these vote split races, approximately 8 out of 10 winners (81.9%) went on to secure victory in the general election. This high success rate indicates that, despite the fragmented primary vote, candidates who emerge victorious in such scenarios can still maintain strong competitiveness in the general elections. In addition, vote splitting allowed candidates to secure their general election prospects without needing majority support entirely.

Figure 10. % of Vote Split Primaries with the Winning Candidate Later Winning in General Election.



Data source: The Vote Split Elections Project (2022).

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For statewide office races, 30% of the 190 analyzed primaries were identified as vote split elections. Of these, nearly 1 out of every 2 winners (45.6%) succeeded in the general election. This lower success rate compared to state legislative races suggests that while vote split winners have a reasonable chance of prevailing in the general election, they face more substantial challenges in larger, more diverse electorates.

In congressional races, 28.4% of the 468 primaries involved vote splitting. Among these, roughly 4 out of 10 winners (42.1%) went on to win the general election. This success rate underscores the competitive nature of congressional races and highlights the resilience of vote split winners in maintaining their appeal to a broader electorate.

Overall, the data reveals that a considerable proportion of candidates who win vote split primaries can translate their fragmented primary support into general election victories. This phenomenon underscores the importance of understanding vote splitting's impact on electoral dynamics and the strategies candidates must employ to succeed in both primary and general election contexts. These findings highlight how factors such as gerrymandering and incumbency can exacerbate the phenomenon, as most congressional and legislative districts are drawn to maximize partisan advantage. In many districts, the primaries are the only contest that truly matters. As shown in a previous report on crowded U.S. House primaries, most Americans live in partisan-dominated districts where vote splitting often rewards the most partisan candidate. Due to the high reelection rate for incumbents, once a candidate is elected, they rarely lose their seat in a safe district. Unfortunately, the reality of gerrymandering necessitates divisive partisan politics that many Americans find deplorable.

DETERMINANTS OF VOTE SPLIT ELECTIONS

So far, our analysis of real electoral cases has uncovered the possibility that vote split elections are driven by election competitiveness and the presence of incumbents. To test these claims, we take our collected dataset of 1,221 individual primary race outcomes and perform maximum likelihood estimates of classification. Multivariate logistic regression models can be used to understand the relationship between vote split elections—which are coded as binary outcomes in our dataset—and one or many predictor variables—in this case, binary indicators of election competitiveness and incumbent presence found in our dataset. They can estimate the probability of our outcome occurring based on variables and can interpret the direction as well as strength of these relationships.¹⁰ The next two subsections describe the results of our logistic regressions and the impact that the presence of incumbents and electoral competition can have on vote split propensity.

OPEN SEATS

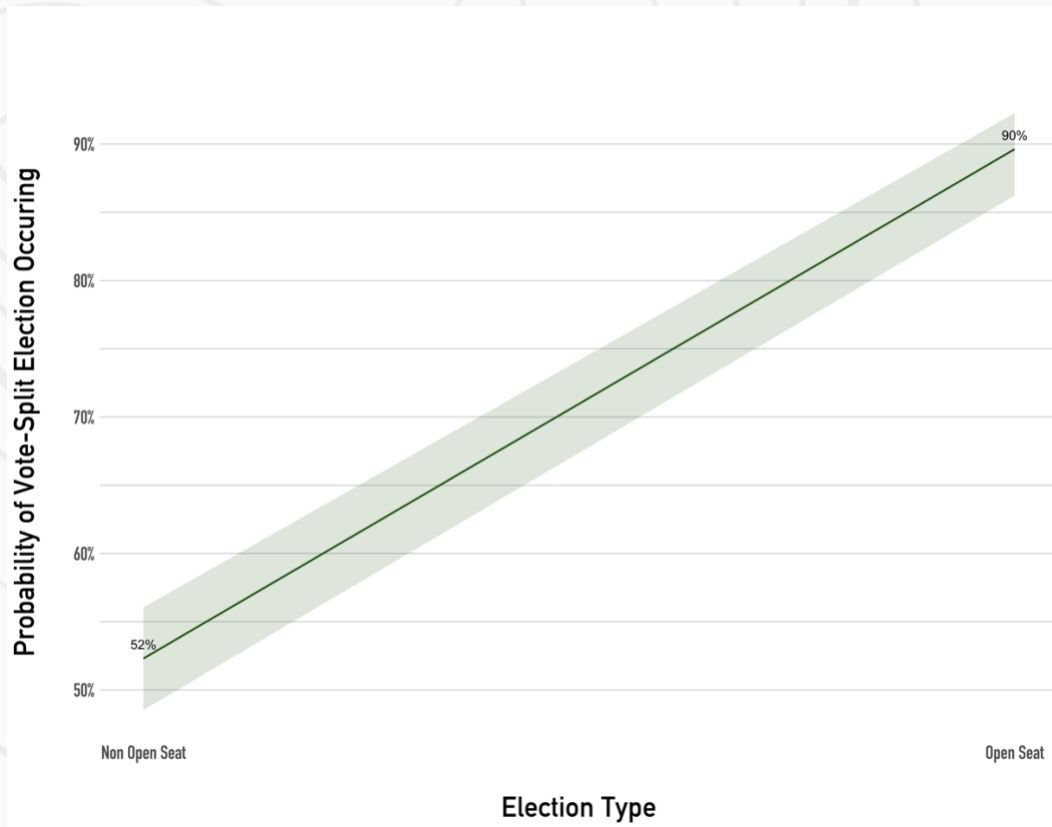
¹⁰ Hosmer, David W., Stanley Lemeshow, and Rodney X. Sturdivant. *Applied Logistic Regression*. 3rd ed. Hoboken, NJ: Wiley, 2013.

An incumbent candidate, or lack thereof, can influence the size of the candidate field on all sides. Incumbents are rarely challenged by more than one candidate from within their party, and the opposition party attracts multiple candidates less frequently when an incumbent is present. When it's an "open seat," meaning that no incumbent is running, or it's a new district, more candidates enter the fray on all sides. The greater the number of candidates, the more likely vote splitting can defy consensus. To test this expectation, we used a multivariate logistic regression across all election categories (i.e., state legislative, statewide office, and congressional elections) to determine the likelihood that an open primary election leads to a vote split.

Our analysis showed a significant increase in the probability of vote splitting in open-seat elections. Specifically, **Figure 11** demonstrates that the probability of a vote split election increases from an estimated 52% when an incumbent is running to 90% when there is no incumbent. This result indicates that open-seat elections are approximately 7.8 times more likely to experience vote splitting compared to elections with incumbents running.¹¹

¹¹ The logistic regression analysis revealed a statistically significant result, with a p-value of less than 0.01, indicating a strong association between having an open seat and having a vote split election. For more details, refer to the Methodology Note.

Figure 11. How Open Seats Increase the Likelihood of Vote Splitting



Note: Plot presented marginal effects in a probability scale to make interpretation less difficult. See the Methodological Note for results in log-odds scale along with its conventional indicators, such as standard errors and p-values. Data source: The Vote Split Elections Project (2022).

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Historically, incumbents rarely lose when they run for reelection. Data on U.S. House of Representatives reelection rates suggest that incumbents running for reelection are almost certain to win, with 94.5% of U.S. House incumbents and 100% of U.S. Senate incumbents winning their 2022 reelection bids. Open seats, on the other hand, change hands between the parties at more than double the rate, attracting a larger field of candidates.

COMPETITIVE ELECTIONS

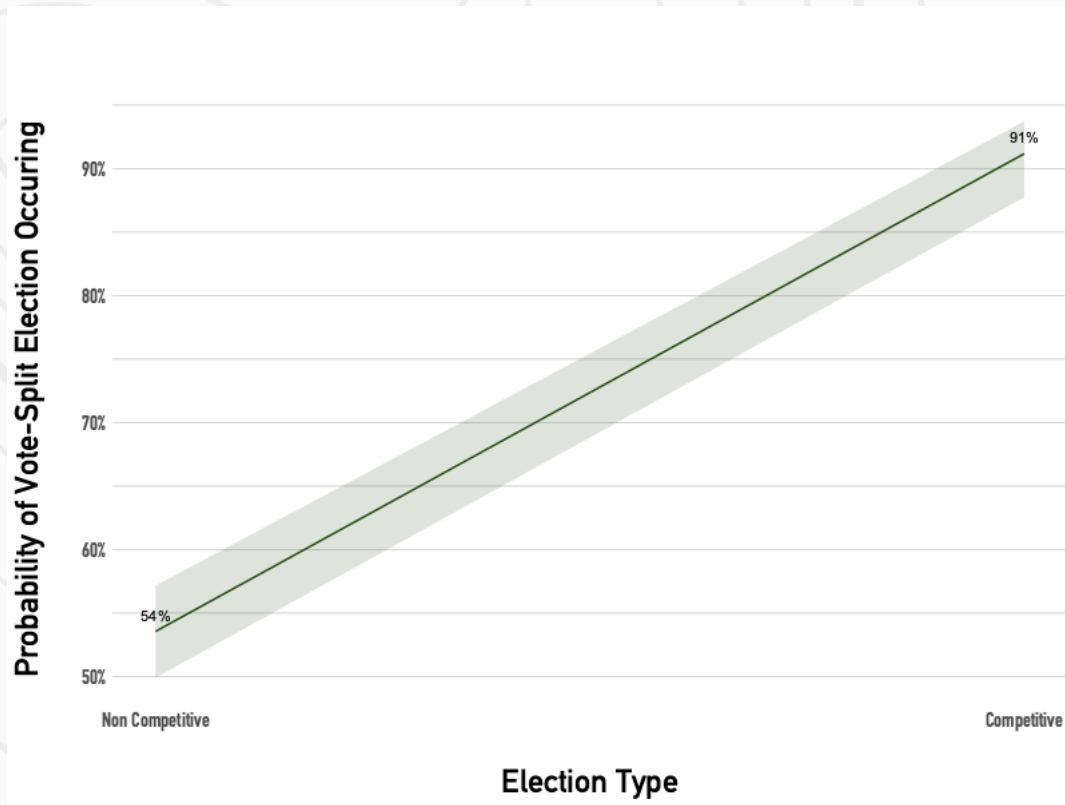
America’s main political parties have spent decades Gerrymandering districts at the congressional and legislative levels, leaving only a select number of competitive districts. The remaining competitive districts determine which party controls Congress and the various legislative chambers. With this report, we show that vote splitting often leaves voters in these few competitive districts to choose between candidates that few people like.

Like with open-seat elections, competitive district elections have higher turnover rates compared to safe districts, which are dominated by a particular partisan candidate. These competitive districts attract more candidates into the contest. Therefore, the combination of crowded and competitive primaries with a plurality voting system increases the frequency of vote split elections. To test this expectation, we used a multivariate logistic regression across all election categories (i.e., state legislative, statewide office, and congressional elections) to determine the likelihood that a competitive primary election leads to a vote split.¹²

Our analysis showed that competitive districts have a significantly higher probability of experiencing vote splitting. **Figure 12** illustrates that competitive districts are estimated to have around a 40% higher probability of a vote split election occurring, with the probability increasing from 54% in non-competitive districts to 91% in competitive ones. When considering the odds ratio, competitive district elections are approximately 8.9 times more likely to experience vote splitting compared to non-competitive districts. While not universal, non-majority winners often amplify extreme political positions that do not reflect the wishes of most voters.

¹² As mentioned in the methodology section, we operationalize a competitive primary in our dataset as a binary indicator of whether the general election for a given primary race has a less than 10% gap in percentage votes between the winner and second-place candidate.

Figure 12. How Competitive Elections Increase the Likelihood of Vote Splitting.



Note: Plot presented marginal effects in a probability scale to make interpretation less difficult. See the Methodology Note for results in log-odds scale along with its conventional indicators, such as standard errors and p-values. Data source: The Vote Split Elections Project (2022).

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The political consequences of these disrupted 2022 primaries were significant, especially for Republicans. Candidates who advanced to the general election ballot via a vote split in the primary performed poorly against their Democratic opponents. Specifically, 90% of Republican candidates who won a primary in a toss-up district via a vote split lost in the general election, as did 80% of Republican U.S. Senate candidates who won their primaries through a vote split. This evidence strongly suggests that vote splitting contributed to the underwhelming performance of Republicans, often referred to as the "fizzled red wave."

A PATH FORWARD: RECOMMENDATIONS FOR REFORM

Our findings highlight the urgent need to address the prevalence of vote splitting in our current elections. By implementing alternative voting methods that mitigate vote splitting, we can ensure that electoral outcomes more accurately reflect the will of the voters. Moreover, reforming our electoral process can

enhance the overall legitimacy of election results, ultimately leading to a more democratic and responsive political system. While many roadmaps exist to this outcome, CES stands behind the belief that data-driven research is essential to identifying the most effective and efficient alternative for voting reform.

Some alternative voting methods, such as ranked-choice voting (RCV), have gained popularity and adoption due to their potential to reduce vote splitting. However, the same increase in popularity has led to a rise in academic research—particularly in the last decade—that has tested its effectiveness as an alternative voting method. While RCV have been found to bring forth benefits that can alleviate several causes of broken elections—such as incentivizing more civil campaigns or increasing voter mobilization efforts¹³—they have also introduced higher costs, such as increasing the cognitive and time efforts of voters to the point of voter confusion or voters incorrectly filling out their ballots.¹⁴ Moreover, recent research has uncovered demographic disparities when using RCV,¹⁵ encapsulating the limitations of this method when it comes to mitigating vote splitting along with other phenomena, such as partisan polarization or spoiler effects.¹⁶

AN ELECTION REFORM THAT WORKS

¹³ See: [1] Bowler, Shaun, Todd Donovan, and David Brockington. *Electoral Reform and Minority Representation: Local Experiments with Alternative Elections*. Columbus, OH: Ohio State University Press, 2003; [2] Donovan, Todd, Caroline Tolbert, and Kellen Gracey. "Self-Reported Understanding of Ranked-Choice Voting." *Social Science Quarterly* 100, no. 5 (2019): 1768–1776; [3] Grofman, Bernard, and Scott L. Feld. "If You Like the Alternative Vote (aka the Instant Runoff), Then You Ought to Know About the Coombs Rule." *Electoral Studies* 23, no. 4 (2004): 641–659; [4] Horowitz, Donald L. *Ethnic Groups in Conflict*. Berkeley, CA: University of California Press, 2000.

¹⁴ See: [1] Atkeson, Lonna Rae, Emily McKown-Dawson, Jason Santucci, and Kimberly L. Saunders. "The Impact of Voter Confusion in Ranked Choice Voting." *Social Science Quarterly* 1, no. 1 (2024): 1–13; [2] Burnett, Craig M., and Vladimir Kogan. "Ballot (and Voter) 'Exhaustion' Under Instant Runoff Voting: An Examination of Four Ranked-Choice Elections." *Electoral Studies* 37 (2014): 41–49; [3] Cormack, Lindsey. "More Choices, More Problems? Ranked Choice Voting Errors in New York City." *American Politics Research* 52, no. 3 (2024): 306–319; [4] Neely, Francis, and Corey Cook. "Whose Votes Count? Undervotes, Overvotes, and Ranking in San Francisco's Instant-Runoff Elections." *American Politics Research* 36, no. 4 (2008): 530–554; [5] Pettigrew, Stephen, and David Radley. "Ballot Marking Errors in Ranked-Choice Voting." SSRN, 2023; [6] Sinclair, Darren, and R. Michael Alvarez. "Who Overvotes, Who Undervotes, Using Punchcards? Evidence from Los Angeles County." *Political Research Quarterly* 57, no. 1 (2004): 15–25.

¹⁵ E.g. [1] Coll, Joshua. "Demographic Disparities Using Ranked-Choice Voting? Ranking Difficulty, Under-Voting, and the 2020 Democratic Primary." *Politics and Governance* 9, no. 2 (2021): 293–305; [2] Donovan, Todd, Caroline Tolbert, and Kellen Gracey. "Self-reported understanding of ranked-choice voting." *Social Science Quarterly* 100, no. 5 (2019): 1768–1776.

¹⁶ See: [1] Atkinson, Nathan, Edward B. Foley, and Scott Ganz. "Beyond the Spoiler Effect: Can Ranked Choice Voting Solve the Problem of Political Polarization?" *University of Illinois Law Review*, forthcoming. Georgetown McDonough School of Business Research Paper No. 4411173, 2023; Taylor, Justin B., Karl Swint, and Samuel Reilly. "The Costs of Democracy: Election Administration Spending on Runoff Elections." APSA Preprints, 2023.

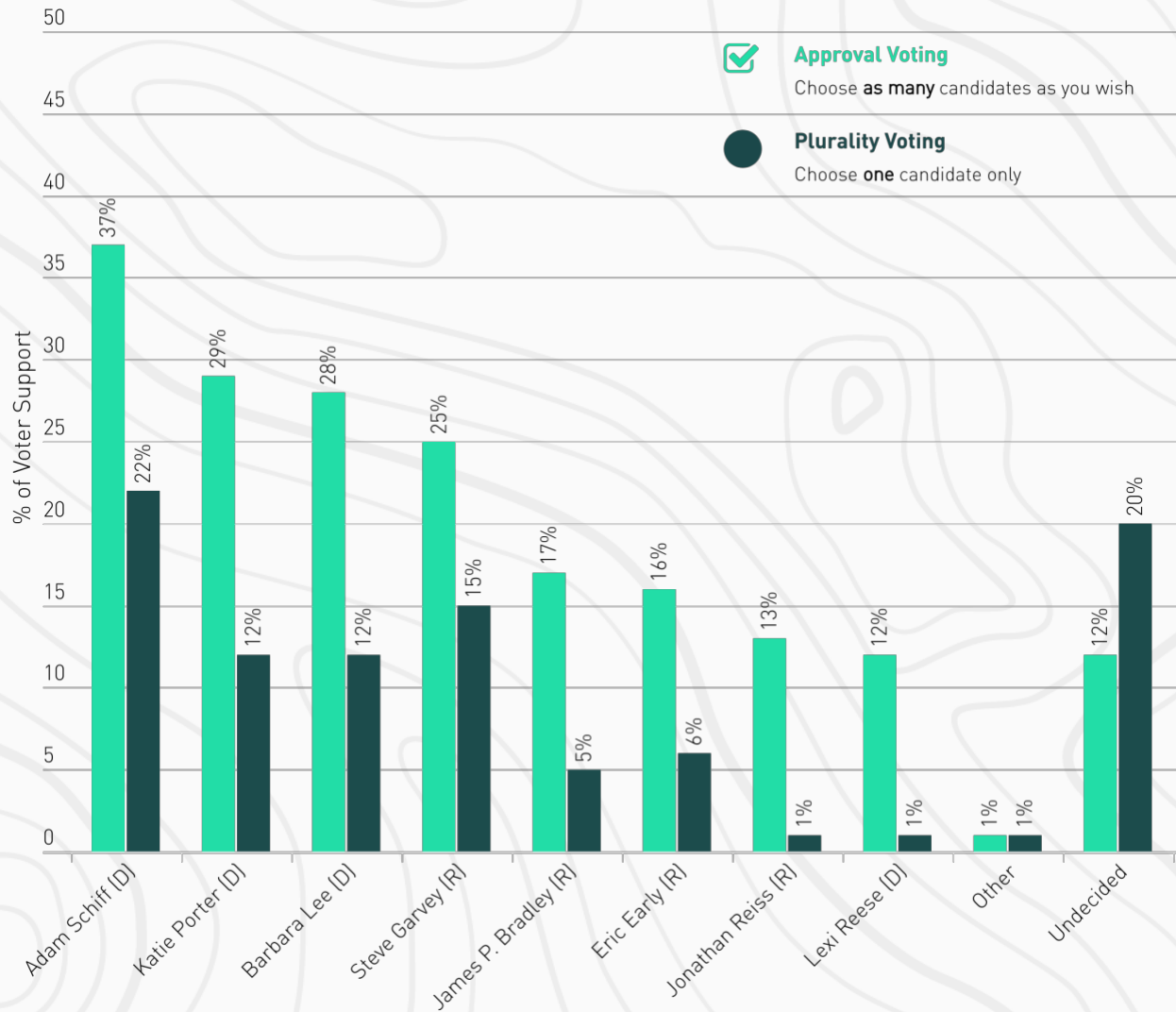
Surrounded by RCV and other alternative voting methods lies a particularly viable solution to the highlighted problems—that being approval voting. Approval voting is a single-winner election method that lets individuals select all candidates they approve of, rather than choosing just one. The candidate with the most votes wins. This method offers a more robust electoral system that addresses issues like the necessity of 'voting for the lesser of two evils.' By allowing voters to select all candidates they approve of, approval voting mitigates the problem of vote splitting, ensuring that the most broadly supported candidates are elected.

In a study conducted with SurveyUSA prior to California's 2024 U.S. Senate primary race (held March 5, 2024), The Center for Election Science surveyed a sample of registered voters in the state of California to assess voters' approval of each candidate running in California's high-profile 2024 U.S. Senate top-two, open seat primary election¹⁷. The results illustrated in the grouped bar chart (see: **Figure 13**) clearly underscore the limitations of plurality voting in accurately and fairly representing who California voters like and approve of most.

Figure 13 plots the weighted responses amongst a sample of Californian voters when asked to select who they would vote for if the primary election for California's U.S. Senate seat were today. Respondents were asked (in randomly assigned order) to 'vote' using both plurality (choose **one** candidate only) and approval (choose **as many** candidates as you wish) voting methods.

¹⁷ The study was conducted by SurveyUSA from 12/07/2023 to 12/10/2023 among a sample of 800 adults from the state of California. Sample is weighted to US Census-derived targets for gender, age, race, education, and home ownership. The full report and statement of methodology is publicly accessible [online here](#).

Figure 13. Grouped Bar Plot of % Candidate Support with Approval and Plurality Voting in CA 2024 U.S. Senate Primary Race.



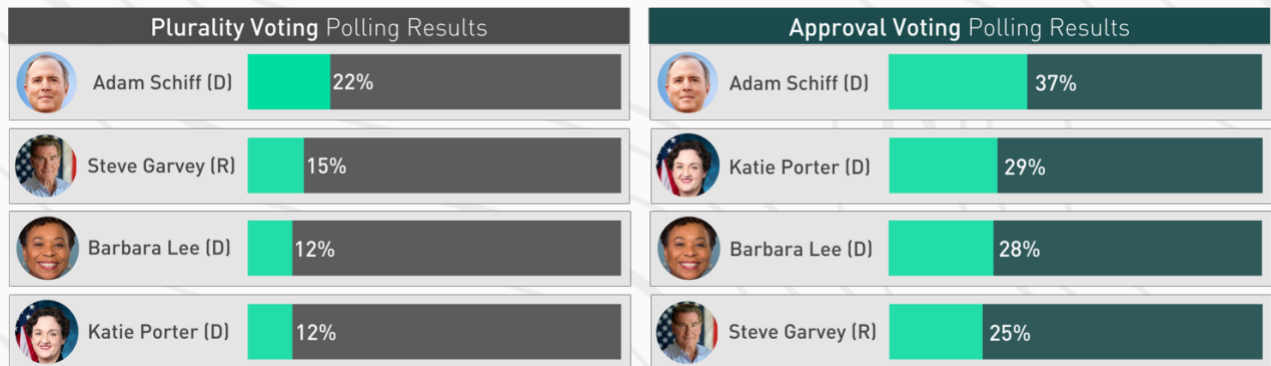
Data source: Study was conducted with SurveyUSA from 12/07/23 – 02/10/23.

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When respondents were permitted to choose all the candidates they approved of, the amount of support for each candidate is more clearly reflected in the results of using the approval voting method (**Figure 13**). In addition to providing a clearer picture of who Californian voters want to represent them, **Figure 13** also reveals how allowing voters to choose and support more than one candidate can generate a much more competitive race without the harmful impact that vote splitting has in the plurality system.

When comparing the percentage of voter support received for each candidate using plurality voting and approval voting, another significant distinction between the two methods emerges—that is, under California’s top-two primary system, the top two candidates advancing to the general election would not be the same. **Figure 14** more clearly highlights the differing electoral outcomes between the two methods, where plurality voting resulted in Democratic candidate Adam Schiff and Republican candidate Steve Garvey moving forward to the general election, while approval voting would result in Democratic candidate Katie Porter coming in second place.

Figure 14. Polling Outcomes of CA 2024 U.S. Senate Primary Plurality vs. Approval Voting.



Data source: Study was conducted with SurveyUSA from 12/07/23 – 02/10/23.

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The polling results shown in **Figure 14** convincingly demonstrate the shortcomings of plurality voting in failing to select winners that voters like and approve of most. The results also demonstrate the potential of approval voting as a viable and actionable solution to the harmful effects of vote splitting. With a better system of voting that not only allows voters to fully express their preferences but is also transparent and fair in accurately capturing voters’ preferences in the final vote tally, the electoral process can become more representative of the people our democracy is intended to serve.

The push for electoral reform has had a long history with plenty of proposed solutions examined in prior research. While relatively less attention has been allocated to voting method reform research, and even lesser so to approval voting systems, prior growing breadth of research has shown that candidates who win under approval voting systems tend to have wider voter support, accurately capturing the preferences of the electorate and maximizing vote satisfaction.¹⁸ Capable of successfully electing the Condorcet winner of an election, approval voting has also been shown to perform better than plurality voting and

¹⁸ Brams, Steven J., and Peter C. Fishburn. 2007. *Approval Voting*. 2nd ed. New York: Springer; Quinn, Kevin M. 2021. "The Impact of Electoral Systems on Political Polarization." *Journal of Political Science*, 45 (2): 123-145.

instant runoff voting systems.¹⁹ In other words, approval voting is shown to facilitate more competitive elections given its ability to accurately reflect and document voters' full support for all candidates in the final reported vote tally—not just the plurality winner.

This suggests that an approval voting method provides an electoral process that better aligns with voters' true preferences, eliminating the strategic necessity to vote for a less-preferred candidate to prevent an undesirable outcome. By taking action to change the way we vote, we can enhance the representativeness of our electoral outcomes, ensuring that elected officials genuinely reflect the will of the people.

CONCLUSION

KEY TAKEAWAYS

The core takeaway from our analysis is straightforward: As long as our elections continue to rely on plurality voting, candidates will continue to secure nominations without broad support, exacerbating our partisan-dominated politics and decreasing overall election representativeness. As our data has shown, there were plenty of instances where candidates won primaries with small shares of the vote across the country at every level. These electoral outcomes can distort voter intent and leave voters to choose between candidates that lack broad appeal in the general election. Moreover, this reality contributes to voters feeling unheard and powerless. Vote splitting defies consensus, dividing like-minded voters along artificial political lines and rewarding partisanship. Ultimately, it contributes to broader dissatisfaction with our politics.

Beyond the individual voter, vote splitting plays a significant role in determining the electoral outcome of the general election and shaping the prevailing political narrative in its aftermath. In 2022, vote splitting occurred disproportionately within the small subset of political contests that comprised the limited battleground between the parties. The results of these primaries, which placed unpopular candidates on the general election ballot, were particularly damaging to Republicans and influenced which party controlled legislative chambers and key seats across the country. The anticipated "red wave" failed to meet expectations in part due to vote splitting.

¹⁹ See: [1] Alós-Ferrer, Carlos, and Đura-Georg Granić. "Two Field Experiments on Approval Voting in Germany." *Social Choice and Welfare* 39 (2012): 171–205; [2] Igersheim, Herrade, Frédéric Durand, Alan Hamlin, and Jean-François Laslier. "Comparing Voting Methods: 2016 US Presidential Election." *European Journal of Political Economy*, 2021; [3] Laslier, Jean-François, and Karine Van der Straeten. "An Experiment of Voting by Assent During the French Presidential Election of 2002." *Revue Française de Science Politique* 54, no. 1 (2004): 99–130.

We continue to explore the impact of vote splitting on elections during the 2024 election cycle. Our experiments in California, Maryland, and Ohio have demonstrated that with a more expressive ballot, such as approval voting, election outcomes would be different, strengthening the case for reform.

Overall, we cataloged more than 1,000 elections impacted by vote splitting in the 2022 cycle, not including county and municipal elections where it also occurs frequently. This is a little-known factor with significant consequences on who represents us. CES is committed to conducting data-driven research that is transparent and accurately reflects the summary of our findings.

SIGNIFICANCE OF PROJECT

Political analysts dissect the factors driving electoral results after every election cycle. Primary elections are often seen as an influential factor, sometimes revealing intra-party ideological divides, as evidenced by the Democrats during parts of the 2016 and 2018 cycles, and Republicans in the Trump era.²⁰ Primary election results, particularly when vote splitting occurs, can indicate disharmony within a political party, with implications for general election prospects. By recording instances of vote splitting across multiple levels of government during a national election, our project has provided a granular level of detail.

This report, along with others planned, will continue to unveil the significant implications that vote splitting has on our politics—strengthening the case for election reform. Thanks to this project, we can depict how vote splitting played a significant role in the outcome of the 2022 midterm elections. Our report and accompanying data set allows reformers to highlight specific examples of primary elections that may have failed to capture a representative assessment of the electorate. Beyond anecdotal examples, we provide a comprehensive account to expose the commonality of vote splitting across state legislative, statewide, and congressional levels of office.

In recent years, many political analysts have observed and discussed the impact of vote splitting in electoral outcomes—particularly in crowded candidate fields. A poignant example was the packed 2016 Republican presidential primary, where Donald Trump emerged victorious despite a record number of votes cast for other candidates.²¹ Despite these mentions, few analysts have devoted significant time to examining the factors driving vote splitting. Our report zeroes in on two critical factors—lack of incumbents and electoral competitiveness—providing the most in-depth analysis of this common feature in American primaries.

By focusing on contests impacted by vote splitting, we present a compelling case that it played a key role in the story of the 2022 election. Our analysis offers an additional explanation for the failure of the

²⁰ Thompson, Alex. "Why Can't the DCCC and the Resistance Get Along?" *Politico Magazine*, March 7, 2018.

²¹ Sullivan, Sean. "Donald Trump Got the Most Votes in GOP Primary History. A Historic Number of People Voted Against Him Too." *The Washington Post*, June 8, 2016.

anticipated Republican "red wave," a surprising and influential outcome. We also lay the groundwork for continued study of vote splitting in future election cycles. For example, what actions, if any, did state parties or federal party committees take to mitigate the potential political impact of vote splitting? Were additional measures taken to limit candidate fields in competitive districts, and were these measures successful?

Voters are unhappy with the quality of their candidate choices.²² While vote splitting cannot be attributed as the sole reason for voter dissatisfaction, we can demonstrate that voters are often forced to choose between candidates in the general election who received only a small mandate from primary voters. This lack of mandate is particularly evident when considering the low overall turnout in primary elections and the prevalence of closed primaries.

Would voting method reform or other systemic reforms to primaries increase voter participation or satisfaction with their eventual choices? Our polls suggest the answer is yes, including over 70% of Maryland and Michigan voters who agreed that voters deserve a better way to choose candidates in the primary²³. However, a full assessment of this factor will be addressed in a future study. The America (Mis)Represented report is a groundbreaking endeavor, examining a common yet overlooked factor in our elections, opening new doors for further study, and providing new evidence in support of reform.

²² Pew Research Center. 2024. "More Than 80% of Americans Believe Elected Officials Don't Care What People Like Them Think." April 30, 2024.

²³ The Center for Election Science (2024).

ABOUT CES

Founded in 2011, **THE CENTER FOR ELECTION SCIENCE (CES)** is a national nonpartisan nonprofit focused on election analysis and voting reform advocacy. CES is committed to translating knowledge and research findings into tangible, real-world changes by empowering the public with accurate, accessible data and analysis about voting systems.

CES studies elections, how people vote in them, and the obstacles—new and old, seen and unseen—that make voters feel disconnected from democracy. While the study of voting often gets overly academic or purely political, CES strives to remain firmly grounded in the practical implications of our research.

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METHODOLOGY NOTE

Table 1: Logistic Regression Results

<i>Dependent variable:</i>	
	Vote Split
Competitive	2.193*** (0.198)
Open Seat	2.064*** (0.177)
Constant	-0.461*** (0.080)
Observations	1,221
Log Likelihood	-653.704
Akaike Inf. Crit.	1,313.408

Note: *p<0.1; **p<0.05; ***p<0.01

Table 1 presents the results of our logistic regression model aimed at understanding the factors influencing the propensity of a vote split election occurring. The analysis includes two binary predictor variables—*Competitive* and *Open Seat*—and a binary outcome variable, *Vote Split*. Our competitive variable was coded as 1 if the general election for a given primary race resulted in a less than 10% gap of percentage votes between the winner and second-place candidate or 0 otherwise. For our open seat variable, it was coded as 1 if there was not an incumbent running in a primary election. The results were estimated using the following model:

$$\log \left(\frac{P(\text{Vote Split} = 1)}{1 - P(\text{Vote Split} = 1)} \right) = \beta_0 + \beta_1 \cdot \text{Competitive} + \beta_2 \cdot \text{Open Seat}$$

Overall, our results suggest that when a primary election is competitive, holding all else constant, the log-odds of a vote split occurring increase by 2.193. Similarly, when a primary election has an open seat, holding all else constant, the log-odds of a vote split occurring increase by 2.064. Our coefficient results indicate that both competitive elections and open seats significantly increase the likelihood of a vote split. The high level of statistical significance for both predictors underscore the robustness of these findings.

SB 342 - Voting Rights Act - CES.pdf

Uploaded by: Nina Taylor

Position: FAV

Senator Brian Feldman, Chair
Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

Dear Chairman Feldman and Members of the Education, Energy, and the Environment Committee:

The Center for Election Science, a leader in the implementation of approval voting, would like to express its support for **Senate Bill 342: Voting Rights Act of 2025 - Counties and Municipalities**. We fully support the legislation's effort to prohibit the imposition or application of a method of electing county and municipal leaders impairs the ability of members of a protected class to elect candidates of the members' choice.

Founded in 2011, the Center for Election Science (CES) is a national, nonpartisan nonprofit focused on voting reform. CES seeks to empower people with voting methods that strengthen democracy. By implementing approval voting, which allows voters to pick all of the candidates they like on their ballot, we believe citizens will be able to more clearly and effectively express their support for candidates who truly represent their communities.

In our research, we have found that approval voting leads to more equitable and transparent outcomes. We also have found that elected officials that have won elections where approval voting was used were more representative of the communities they lead. To that end, we have attached to this testimony our recent report entitled *America Misrepresented* outlining our findings.

We look forward to continuing our work in Maryland with elections officials on the benefits of approval voting, and wholeheartedly support any efforts making elections more transparent and equitable for all voters. For those reasons, we urge a favorable report of this bill.

For more information on the Center for Election Science's work on approval voting, please visit: electionscience.org.

Sincerely,

Nina Taylor, MA
Chief Executive Officer
Center for Election Science
Nina@electionscience.org

SB0342-EEE-SUPP.pdf

Uploaded by: Nina Themelis

Position: FAV



BRANDON M. SCOTT
MAYOR

Office of Government Relations
88 State Circle
Annapolis, Maryland 21401

SB0342

February 26, 2025

TO: Members of the Senate Education, Energy, and the Environment Committee

FROM: Nina Themelis, Director of Mayor's Office of Government Relations

RE: Senate Bill 342 - Voting Rights Act of 2025 - Counties and Municipalities

POSITION: Support

Chair Feldman, Vice Chair Kagan, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) respectfully requests a **favorable** committee report on Senate Bill (SB) 342.

SB 342 enshrines legal protections that protects members of a protected class by preventing their voting rights from being abridged or diluted. This legislation establishes these protections only in county or municipal elections in which there is polarized voting. The bill also establishes the procedure for proving polarized voting and for enforcement of the legal protections. This legislation is an important component of voting rights expansion, as it will codify a necessary recourse for marginalized and historically underrepresented voters who have had their voting power marginalized through discrimination and suppression.

As voter suppression laws surge across the nation, SB 342 would safeguard against any efforts of voter suppression in Maryland. According to the Brennan Center for Justice, at least 30 states have enacted 79 laws that restrict access to voting since 2020. More commonly, these laws limit mail-in voting or require identification to vote. The objective of these laws is to make voting more difficult and reduce voter turnout. This method of voter suppression (be it intentionally or unintentionally) has been demonstrated to have racially disparate impacts for Black and Hispanic voters at the county level, which is supported by a study presented at the 2018 Election Sciences, Reform, and Administration conference at the University of Wisconsin-Madison.¹ Gerrymandering, the process of redrawing district lines to manufacture desired voting demographics or outcomes, is another form of voter suppression that is addressed through this bill. Gerrymandering works through two methods: *cracking*, or splitting up voters of similar interest across multiple districts to mitigate their collective voting power, and *packing*, or skewing districts to encompass voters of dissimilar interests that are not geographically close to dilute the voting power of a specific demographic. In the event that either of these methods are utilized to abridge the voting power of a protected group, SB 342 would ensure that the affected voters have recourse to a free and fair election in the State of Maryland.

As a result of Baltimore City's commitment to improving the equity of historically marginalized and underrepresented communities in the state, the Baltimore City Administration respectfully requests a **favorable** committee report on Senate Bill 342.

¹ Kuk, J., Hajnal, Z., & Lajevardi, N. (2020). A disproportionate burden: strict voter identification laws and minority turnout. *Politics, Groups, and Identities*, 10(1), 126–134. <https://doi.org/10.1080/21565503.2020.1773280>

Testimony in support of SB0342 - Voting Rights Act

Uploaded by: Richard KAP Kaplowitz

Position: FAV

02/26/2025

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON SB#/0342- POSITION: FAVORABLE

Voting Rights Act of 2025 - Counties and Municipalities

TO: Chair Atterbeary, Vice Chair Wilkins, and members of the Education, Energy and the Environment Committee

FROM: Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony in support of SB#/0342, **Voting Rights Act of 2025 - Counties and Municipalities**

This bill is to create protections from voter suppression tactics being applied to Maryland voting. As reported by the Brennan Center for Justice “There is a large and growing pile of evidence that strict voter ID laws disproportionately impact voters of color.”¹

Extensive work by the ACLU has documented *Why Access to Voting is Key to Systemic Equality*.²

Voting is a fundamental civil right, and it shouldn't be infringed upon, no matter your race or zip code. Although the Voting Rights Act of 1965 prohibits racially discriminatory voting tactics and policies, including diluting the voting strength of racial minorities, Black people and communities of color continue to face numerous obstacles to voting.

This bill facilitates Maryland being proactive against voter suppression techniques that the Brennan Center and ACLU have uncovered and reported on. This bill will act to prohibit the imposition or application of a method for electing the governing body of a county or municipality that impairs the ability of members of a protected class to elect candidates of the members' choice or influence the outcome of an election by diluting or abridging the rights of voters who are members of a protected class.

Maryland can lead the nation in working and resolving these problems.

I respectfully urge this committee to return a favorable report on SB#/0342.

¹ <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>

² <https://www.aclu.org/news/voting-rights/why-access-to-voting-is-key-to-systemic-equality>

SB342_MDSierraClub_fav 26Feb2025.pdf

Uploaded by: Richard Norling

Position: FAV



P.O. Box 278
Riverdale, MD 20738

Committee: Education, Energy, and the Environment
Testimony on: SB 342 Voting Rights Act of 2025 – Counties and Municipalities
Position: Favorable
Hearing Date: February 26, 2025

The Maryland Chapter of the Sierra Club urges a favorable report on SB 342. The bill will add protection in Maryland law to prevent suppression or dilution of the votes of citizens who are in racial, color, or language minority groups.

The Sierra Club and its members care about both the natural and human environments, including ending racial and social injustice. As a grassroots environmental advocacy group, the Sierra Club firmly believes that all eligible voters should have an equal opportunity to participate effectively, without being subjected to procedures or systems that suppress or dilute their votes.

The federal Voting Rights Act, passed in 1965, included significant provisions to prevent suppression or dilution of the votes of citizens who are in racial, color, or language minority groups. Unfortunately, some of those provisions have been weakened by Supreme Court decisions in recent years, the current national administration is reducing enforcement, and the Congress is considering legislation that will undermine the progress made under the 1965 Act.

One way votes of a substantial minority group can sometimes be diluted is when members of a county or municipal legislative body are required to live in and represent districts, but all voters in the county or municipality are allowed to vote for all the district members. This was determined recently by federal courts to be diluting Black citizens' votes in the Town of Federalsburg on Maryland's Eastern Shore; the remedy was to change to having town council members who represent a specific district be elected by just the voters within their district instead of by all voters in the town.¹

The states of California, Connecticut, Minnesota, New York, Oregon, Virginia, and Washington have worked to fill the current and anticipated gaps in federal Voting Rights Act protection by passing their own state voting rights laws. This bill gives Maryland the opportunity to provide similar protections to its citizens.

For those reasons, we urge a favorable report on SB 342.

Rich Norling
Chair, Voting Rights Committee
Rich.Norling@MDSierra.org

Josh Tulkin
Chapter Director
Josh.Tulkin@MDSierra.org

¹ <https://www.washingtonpost.com/dc-md-va/2024/04/04/federalsburg-lawsuit-voting-rights-naacp-apology/>

St. Mary's NAACP Testimony SB0342 .pdf

Uploaded by: Roderick Lewis

Position: FAV

TESTIMONY

February 26, 2025

Committee: Education, Energy, and the Environment

Bill: SB0342 Voting Rights Act of 2025 - Counties and Municipalities

Sponsor: Senator Charles E. Sydnor III (Baltimore County - District 44)

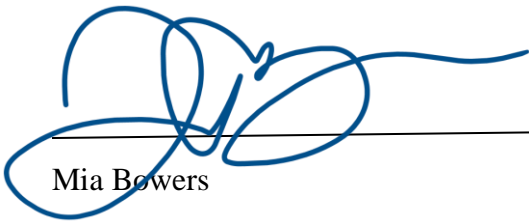
Position: **SUPPORT**

Reason for Position:

The St. Mary's County Branch #7025 strongly encourages a favorable committee vote on SB0342. The Voting Rights Act of 2025 would prohibit local governments from impairing or diminishing the right of a protected class member to vote or influence election outcomes. There are jurisdictions in Maryland where "At-Large" voting is still in place despite also having districts, this creates an environment where the voice of the majority can overpower the voice of a particular district, decreasing voter confidence and causing confusion.

We believe that the citizens of each county commissioner district have the right to select who represents their interests without influence from voters outside of their district. This dilution of voting power is anti-democratic and runs counter to the spirit of the Voting Rights Act. Establishing a Voting Rights Act in Maryland would bring the best parts of the landmark federal legislation and provide must-needed protections against voting discrimination. Maryland could help set the standard for state-level protections for minority voices.

We stand in solidarity with the Maryland State Conference of the NAACP calling for reform. Those who champion democracy and civil rights must do everything they can to strengthen it. This bill is one way the Maryland General Assembly can strengthen democracy in our state. We deserve the right to select the people who represent us at all levels, please help us make that a reality.



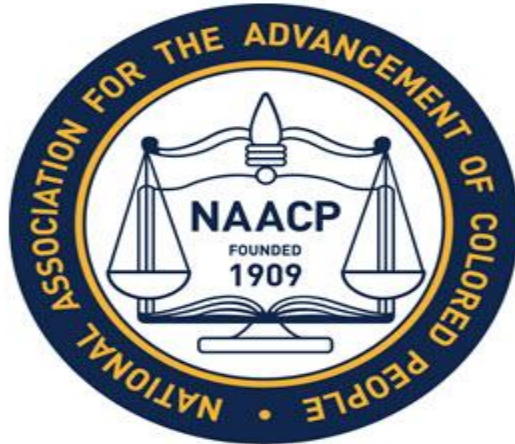
Mia Bowers

St. Mary's Branch, President

Support SB 0342.pdf

Uploaded by: Ryan Coleman

Position: FAV



Randallstown

Po Box 731 Randallstown, MD 21133

February 24, 2025

Education, Energy, and the Environment Committee

2 West Miller Senate Office Building
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: SUPPORT SB 0342 Voting Rights Act of 2025 - Counties and Municipalities

Dear Honorable Chair Brian J. Feldman, VC Cheryl C. Kagan, and members of the committee:

The Randallstown NAACP is a chapter of the NAACP located in Baltimore County. The branch has over 500 members from Baltimore County and 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 voting rights of Black Americans.

The disenfranchisement of Black Americans has long outlasted the end of the Civil War, with modern instances of voter suppression in the form of limitations on absentee and early voting, stricter voter ID requirements, restrictions on voter registration, and other systemic barriers that decrease the voting engagement of minority populations. Today, Black voter disenfranchisement primarily takes the form of voting restrictions and gerrymandering. Two potential avenues may alleviate this issue: organizations to target legislative policies that uphold disenfranchisement, and supportive policy.

The Randallstown NAACP, other groups and elected officials tried to work with the Baltimore County Council on its redistricting plan in 2021. Still they put forward a map that diluted the voting power of Black residents in Baltimore County. Residents had no easy recourse except a federal lawsuit. Many Black Americans do not have the resources to file a lawsuit. In Fact, the plaintiffs needed help from the ACLU to file the lawsuit that ruled the map was unconstitutional. The residents need an easier path to ensure their constitutional rights are preserved. This bill gives the average Marylander an avenue for recourse.

The Randallstown Branch of the NAACP urges a favorable report from the committee on SB 0342. .

yours,

Ryan Coleman
Randallstown NAACP, President
<https://randnaacp.org/>
<https://www.facebook.com/NAACPrandallstown>
<https://www.instagram.com/naacprandallstown>

LDF MDVRA Senate Vote Dilution Testimony 2 24 25.p

Uploaded by: Adam Lioz

Position: FWA

February 26, 2025

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, 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_3bcce20-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

Adam Lioz

NAACP Legal Defense & Educational Fund, Inc.

700 14th Street N.W., Ste. 600

Washington, DC 20005

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.

2.24 Sign On Letter.pdf

Uploaded by: Aseem Mulji

Position: FWA

February 24, 2025

Maryland Senate Education, Energy and the Environment Committee
Miller Senate Office Building, 2 West Wing
11 Bladen St.
Annapolis, MD 21401-1991

RE: Support for S.B. 342 and S.B. 685, part of the Maryland Voting Rights Act

Dear Committee Members,

In 2025 and beyond, the best way we can prepare for attacks on voting rights and democracy at the federal level is to pass the Maryland Voting Rights Act (MDVRA) now. Recent polling shows that the MDVRA and each of its provisions are extremely popular among Maryland voters across race and party lines. Notably, 81% of Maryland voters [support an MDVRA](#), and 80% would like their state representative to prioritize its passage.

At the national level, we are witnessing attacks, not progress, on voting rights. The Trump Administration's Project 2025 agenda includes eliminating the enforcement of protections against voting discrimination, and congressional leadership is pushing anti-voter legislation that creates additional obstacles in voting and disproportionately impacts Black voters and other voters of color. Meanwhile, increasingly hostile federal courts, including the U.S. Supreme Court, have consistently eroded the protections offered by the federal Voting Rights Act of 1965 over the last several decades.

While Maryland has recently implemented several measures that make voting more equitable, Maryland voters still face barriers to the ballot box and discrimination in voting, such as unfair districts or at-large systems that weaken the voting power of Black voters and other voters of color, inaccessible polling locations, and insufficient language assistance for voters who don't speak English comfortably. Recent vote dilution challenges brought against Baltimore County and Federalsburg demonstrate the persistence of these problems in Maryland.

Altogether, the MDVRA will make Maryland's democracy more inclusive by:

- Expanding language assistance in elections for voters with limited English proficiency.
- Enshrining robust protections against discriminatory vote dilution and voter suppression into state law.
- Creating a central public hub for election data and information to promote transparency.
- Preventing the implementation of discriminatory and unlawful electoral changes before they occur.

We urge you to take action immediately on two aspects of this package, and then move to consider the rest.

H.B. 983 / S.B. 685 – Expanding Language-Related Assistance

H.B. 983 / S.B. 685 will ensure that voters with limited English proficiency (LEP) are not excluded from the voting process. This bill provides more access for LEP voters by expanding election-related language assistance in the parts of Maryland where it is not already required by federal law and in languages not already covered by such federal protections.

H.B. 983 / S.B. 685 builds on the federal VRA by requiring local governments to provide voting materials in languages spoken by at least 2% of the population in a locality. This is a lower population threshold than in the federal VRA, which would extend language assistance to more Maryland communities. H.B. 983 / S.B. 685 also requires assistance in more languages that are commonly spoken in Maryland but are not included in federal law, such as Amharic. Nearly four in five Maryland voters (79%) [support](#) expanding language assistance for voters with a limited understanding of English. If enacted, this legislation would help position the Free State as a leader in protecting the right to vote.

H.B. 1043 and S.B. 342 - Combating Racial Vote Dilution

We urge you to build upon H.B. 1043 and S.B. 342 to pass the strongest possible protections against election systems that drown out the voices of voters of color and prevent them from electing their preferred representatives, known as racial vote dilution. This legislation builds on the federal Voting Rights Act by providing a framework for both voters and local governments in Maryland to efficiently and cost-effectively identify and eliminate racial vote dilution.

The strongest version of this legislation will make this type of litigation less time-intensive and less costly than litigation under the federal VRA—not only for plaintiffs but also for local governments and all parties. More than three-quarters of Maryland voters (77%) [support](#) protections against racial vote dilution. If enacted, this legislation would immediately position the Free State as a leader in protecting the right to vote.

The MDVRA builds upon successful state VRAs that have already passed in Virginia, California, Washington, Oregon, New York, Connecticut, and Minnesota. Similar bills are also actively under active consideration in New Jersey and Colorado. The MDVRA will carry this momentum forward and provide some of the most robust state-level voting protections 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,

1199SEIU United Healthcare Workers East, Maryland/DC
Advance Maryland
AFSCME Maryland Council 3
Alpha Phi Alpha Fraternity, Inc. Iota Upsilon Lambda Chapter
Alpha Phi Alpha Fraternity, Inc., Pi Upsilon Lambda Chapter, Prince George's County
American Civil Liberties Union of Maryland
Anne Arundel County NAACP
Baltimore County Progressive Democrats Club
Baltimore Renters United
Bannockburn Reason For Action (BRA) Indivisible
CAIR Maryland
Cambridge Indivisible
Campaign for Justice Safety & Jobs (CJSJ)
CANDLE
Common Cause Maryland
Definitive Mechanical LLC
Gibson-Banks Center for Race and the Law, University of Maryland Carey Law School
Indivisible Central Maryland
Indivisible Howard County
Jews United for Justice
League of Women Voters of Maryland
Maryland League of Conservation Voters
Mid-Atlantic Association of Alpha Phi Alpha Chapters
National Council of Jewish Women, Maryland
Organizing Black
Out for Justice
Ranked Choice Voting Maryland
SEIU Local 500
Showing Up for Racial Justice Baltimore (SURJ)
UNITE HERE Local 7
Wilder Strategy

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Advancement Project
Alpha Phi Alpha Fraternity Inc.
Asbury UMC DC
Asian and Pacific Islander American Vote (APIAVote)
Black Girls Vote
Campaign Legal Center
CT Shoreline Indivisible
Delta Sigma Theta Sorority, Inc.
Demos
Fair Elections Center

FairVote
Institute for Responsive Government Action
LatinoJustice PRLDEF
NAACP Legal Defense and Educational Fund, Inc. (LDF)
Popular Democracy
Public Justice Center
State Innovation Exchange (SiX)
RepresentUs
The Workers Circle
Transformative Justice Coalition
We Choose Us

Fair Elections Ctr Testimony FAV with amendments S

Uploaded by: Emily Davis

Position: FWA



**Maryland Senate
Education, Energy, and the Environment Committee
February 26, 2025
Submitted February 24, 2025
SB 342 (FAV with amendments)**


Thank you for the opportunity to submit testimony in support of SB 342, which prohibits vote dilution. Fair Elections Center is a nonpartisan, nonprofit organization dedicated to removing barriers to registration and voting through advocacy and impact litigation.

Although Maryland law features important pro-voter policies, it contains no protection against racial vote dilution. Racial vote dilution occurs when electoral practices, such as at-large elections or unfair district maps, weaken the voting strength of voters of color, effectively denying them meaningful political representation. While Section 2 of the federal Voting Rights Act of 1965 has a long history of combatting racial vote dilution and voter suppression, its protections have been weakened in recent years by the federal courts. The strongest version of SB 342 builds on the protections provided in the federal VRA by implementing streamlined standards and procedures that both protect the freedom to vote and make this type of litigation less time-intensive and costly than litigation under the federal VRA.

In addition to protecting access to the ballot box, prohibiting vote dilution helps create a more inclusive and accountable democracy. When voters of color are systematically prevented from electing their preferred candidates, entire communities are left without a voice in decisions that directly impact their lives. Combatting vote dilution is a necessary step toward making the vision of a government that is truly of, by, and for the people a reality.

Protections against vote dilution, along with the rest of the Maryland Voting Rights Act package, will help ensure no eligible Marylander is left behind at the ballot box. Fair Elections Center urges swift passage of this bill with amendments. If you would like further information, please feel free to contact Michelle Kanter Cohen, Policy Director and Senior Counsel at Fair Elections Center, at mkantercohen@fairelectionscenter.org.

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2025.02.26 - MDVRA Senate Vote Dilution Written Te

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Position: FWA



Brian J. Feldman, Chair
Cheryl C. Kagan, Vice Chair
Senate Education, Energy, and the Environment Committee
Maryland Senate
February 26, 2025

**Testimony of Campaign Legal Center in Support of Senate Bill 342 with
Amendments**

I. INTRODUCTION

Campaign Legal Center (“CLC”) is pleased to offer this testimony in support of Senate Bill 342, a key piece of the Maryland Voting Rights Act legislative package (“S.B. 342” or the “MDVRA”), and accompanying amendments to strengthen it. 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, New York, Connecticut, and Minnesota, and brought the first-ever litigation under the Washington Voting Rights Act in Yakima County, Washington.

CLC supports the strongest version of S.B. 342 because it will allow historically disenfranchised communities across Maryland to participate equally in the election of their representatives. CLC’s testimony will focus on the various procedural benefits S.B. 342, with the anticipated sponsor’s amendments, will provide to voters and local governments alike in enforcing voting rights and protecting historically disenfranchised communities.

II. BACKGROUND

States can offer new hope for voters by adopting state voting rights acts that improve upon their federal counterpart. By passing a strengthened S.B. 342, Maryland can reduce the cost of enforcing voting rights and make it possible for historically disenfranchised communities to enforce their rights. States can clarify

that government-proposed remedies do not get deference as they might in federal court.

Passage of the MDVRA will mark a new era of voter protections for the people of Maryland by 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 VRA rather than the federal VRA is an improvement, specifically related to 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.¹

Despite this success, “litigating Section 2 cases [is still] expensive and unpredictable.”² 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 right to vote and participate fully in American democracy.

Since the U.S. Supreme Court’s 2013 decision in *Shelby County v. Holder*,³ communities across the country have faced a resurgence of voter suppression tactics. The ruling gutted the preclearance requirement of the federal VRA, enabling states with a history of discrimination to implement restrictive voting laws without federal oversight.⁴ As a result, polling place closures, voter roll purges, and new barriers to registration have disproportionately impacted Black, Indigenous, and other historically disenfranchised communities.⁵ In *Brnovich v. Democratic National Committee*, the Court further weakened the VRA by making it even harder for voters to challenge discriminatory laws in court.⁶ This decision left voters with fewer legal avenues to defend their rights. Meanwhile, Congress has repeatedly failed to restore and strengthen the federal VRA by neglecting to pass the John R. Lewis Voting Rights Advancement Act. These developments have left millions of voters vulnerable to discrimination and suppression. In response to this national landscape, states must

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

² Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 COLUM. L. REV. 2143, 2157 (2015).

³ 570 U.S. 529 (2013).

⁴ *Id.*

⁵ See, e.g., Jasleen Singh & Sara Carter, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, Brennan Ctr. For Just. (June 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights>.

⁶ 594 U.S. 647 (2021).

step in and ensure their voters have the legal tools necessary to defend their freedom to vote.

As historically disenfranchised communities continue to encounter significant barriers to exercising their rights, more states are stepping up to protect ballot access by passing their own state VRAs. With Congress struggling to enact reforms and courts weakening the federal VRA, state-level protections have become essential for addressing discriminatory voting practices and ensuring a more inclusive and accountable democracy. These laws equip voters with tools to challenge unfair election policies while enabling local governments to avoid litigation by proactively addressing potential violations. Even if the federal VRA is restored and strengthened, state VRAs will remain crucial tools for addressing the unique needs of each state.

Momentum for state VRAs is growing. California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), and Minnesota (2024) have already enacted such protections, while states like Colorado, New Jersey, Florida, Michigan, and Arizona are working to follow suit. Maryland should take advantage of this opportunity and join these other states in ensuring all of its citizens have equal access to the democratic process.

A strengthened S.B. 342 will provide Marylanders more efficient processes and procedures to enforce their voting rights, saving the state time and money while ensuring equal access to the democratic process.

III. REASONS TO SUPPORT S.B. 342

With the proposed amendments, S.B. 342 will innovate on the federal VRA, as well as other state VRAs, by providing voters with stronger tools to challenge discriminatory policies and streamlining the procedural mechanisms for these kinds of claims. It would create a private cause of action for vote dilution that is a less costly and less burdensome means of enforcing voting rights for historically disenfranchised communities. It would also enable the adoption of tailored remedies that address the specific needs and demographics of each jurisdiction. As discussed below, the following features of S.B. 342 are reasons to support the bill:

- S.B. 342 provides a framework for determining whether vote dilution has occurred that is tailored to the barriers to voting historically disenfranchised communities face at the local level.
- S.B. 342 provides remedies for racial vote dilution that enable historically disenfranchised communities to equally participate in the franchise.

A. S.B. 342 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 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.⁷ 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.

With the anticipated sponsor's amendments, S.B. 342 would improve on the federal VRA in key respects: it would ensure that integrated as well as segregated communities can influence elections and elect their candidates of choice and provide plaintiffs an alternative to proving racially polarized voting; it would set out practical guidelines for courts to properly assess racially polarized voting.

Unlike the federal VRA, the strongest version of S.B. 342 does not require historically disenfranchised communities to be segregated residentially to receive protections under the statute. Like the state VRAs passed in California, Washington, Oregon, Virginia, New York, and Connecticut, S.B. 342 does not demand that the protected class facing discriminatory voting policies prove that it is sufficiently large and geographically compact before being able to proceed with its lawsuit. § 8–904(C). 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 historically disenfranchised communities persist.⁸ Thus, many communities 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, S.B. 342 with sponsor's amendments takes this reality into account.⁹

Decades of experience litigating cases under Section 2 of the Voting Rights Act have shown that the numerosity and compactness requirements for vote dilution claims are an unnecessary barrier to remedying significant racial discrimination in voting. S.B. 342 will allow violations to be remedied quickly and at much less expense to taxpayers than existing federal law and make it easier for historically disenfranchised communities to vindicate their rights and obtain remedies to resolve racial vote dilution. In previous federal VRA cases in Maryland, voters have had to

⁷ *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

⁸ *Why Maryland Needs Its Own Voting Rights Act*, ACLU Maryland (2024), https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga25_english.pdf.

⁹ Like VRAs in other states, the proposed amendment to S.B. 324 would allow courts to consider whether a community is sufficiently numerous and geographically segregated in determining a remedy to a vote dilution violation. § 8–904(C).

spend time and money defending against allegations that protected class members were not sufficiently segregated to meet this condition, despite evidence making it clear that voters were denied the equal opportunity to elect their candidate of choice.¹⁰

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 amendments to S.B. 342 provide for 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. § 8–903(B)(1)(i). S.B. 342, and the strengthening amendments, also set out reliable and objective standards for courts to apply in their assessment of RPV. § 8–904.

But where election results used to assess RPV are unavailable, the amendments to S.B. 342 also allow affected voters to show that they are nevertheless denied equal opportunity to participate in the political process under the totality of the circumstances. § 8-903(B)(1)(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 U.S. 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.¹¹

B. S.B. 342 expands the remedies that historically disenfranchised communities can seek to ensure their electoral enfranchisement.

If a violation of S.B. 342 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government § 8–905(B). This part of the bill recognizes that dilution tactics take many different forms and are not solely limited to traditional methods of voter discrimination.

¹⁰ See *Baltimore County Branch of the NAACP v. Baltimore County, 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.”).

¹¹ See, e.g., *Gingles*, 478 U.S. at 47.

The amendments to S.B. 342 also specify that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 8–905(B). This directly responds to an egregious flaw in federal law, where Section 2 has been interpreted by federal courts to grant government defendants the “first opportunity to suggest a [legally acceptable] remedial plan.”¹² 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.¹³ 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.¹⁴ 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. With amendments, S.B. 342 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 the strongest version S.B. 342 and strengthen voting rights for all Marylanders. With the anticipated sponsor’s amendments, S.B. 342 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.

Respectfully submitted,
/s/ Marisa Wright
Marisa Wright, Legal Fellow
Lata Nott, Director, Voting Rights Policy
Aseem Mulji, Senior Legal Counsel

¹² *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994).

¹³ *Id.*

¹⁴ No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).

Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

SB 342 - Voting Rights Act of 2025 – Counties and

Uploaded by: Morgan Drayton

Position: FWA

February 26, 2025

Testimony on SB 342
Voting Rights Act of 2025 – Counties and Municipalities
Education, Energy, and the Environment

Position: Favorable with Amendments

Common Cause Maryland is in support of SB 342, which – along with the sponsor amendments – would enact the strongest possible protections against racial vote dilution at the state level. Racial vote dilution occurs when electoral practices, such as unfairly drawn district maps or discriminatory voting systems, weaken the voting power of voters of color, effectively denying them meaningful political representation. The protections provided in these bills are essential to ensuring that all Marylanders, particularly those from historically disenfranchised communities, have an equal opportunity to elect representatives of their choice.

The Voting Rights Act of 1965 was one of the most transformative civil rights laws in U.S. history. At its height, Section 2 of the federal VRA addressed the long history of discrimination in voting by prohibiting racial vote dilution and voter suppression. However, federal courts, including the U.S. Supreme Court, have severely limited the federal VRA’s protections in cases like *Shelby County v. Holder* (2013) and *Brnovich v. DNC* (2021). Meanwhile, the federal government is not only failing to protect against discrimination in voting but is instead advancing anti-voter policies.

Maryland has a generally progressive reputation nationally. However, many of our state’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 Black and Brown voters 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 election systems 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 strongest version SB 342 builds on the protections provided in the federal VRA by implementing streamlined standards and procedures that both protect the freedom to vote and make this type of litigation less time-intensive and costly than litigation under the federal VRA. Although Maryland law features important pro-voter policies, it contains no protection against racial vote dilution, and recent challenges to racially dilutive voting systems in Federalsburg and Baltimore County underscore the crucial need for these kinds of protections.

A clear-cut example of vote dilution within our redistricting process occurred as recently as 2022. A group of Baltimore County voters joined with Common Cause Maryland, the Baltimore County branch of the NAACP, and other partners to file a federal lawsuit to challenge a racially discriminatory and unlawful redistricting plan that was approved by the Baltimore County Council in December 2021.

According to 2020 U.S. Census data, roughly 30 percent of Baltimore County residents are Black and nearly half of residents are people of color, reflecting the growing diversity within the county. Despite this, five out of seven districts in the plan the Council originally approved were majority white and a sixth had a 49.41 percent white plurality in its voting age population. This meant that an excessive number of Black voters were packed into the single majority-Black district within the county. After hearing the evidence, a Baltimore County judge filed a preliminary injunction requiring the map to be redrawn to ensure more proportional representation for the county's Black residents. A prohibition against vote dilution will help prevent issues like this from becoming law, saving both voters and local governments time and money spent on costly litigation.

We know that when voters of color are systemically prevented from electing their preferred candidates, entire communities – our friends and neighbors – are left without a voice in decisions that will directly impact their lives. Combatting vote dilution at the state level is a very necessary step towards a more inclusive, representative state government that is truly by and for the people.

In addition to protecting access to the ballot box, prohibiting vote dilution helps create a more inclusive and accountable democracy. When voters of color are systematically prevented from electing their preferred candidates, entire communities are left without a voice in decisions that directly impact their lives. Combatting vote dilution is a necessary step toward making the vision of a government that is truly of, by, and for the people a reality. Indeed, more than three-quarters of Maryland voters (77%) [support](#) protections against racial vote dilution.

Protections against vote dilution, along with the rest of the Maryland Voting Rights Act package, will help ensure no eligible voter in Maryland is left behind at the ballot box.

For these reasons, we urge a favorable report on SB 342.

SB 342 Voting Rights Act of 2025.pdf

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Position: FWA



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

SB 342 Voting Rights Act of 2025 – Counties and Municipalities

POSITION: Favorable with Amendments

By: Linda Kohn, President

Date: February 26, 2025

The League of Women Voters was founded on the concept that voter participation is the essential element of a successful democracy. Our organization has worked for over 100 years to ensure the right to vote for every citizen. SB 342 seeks to protect Marylanders from the devastating effects that the continuing gutting of the 1065 Voting Right Act will have, as well as address the damage done by district packing and voter dilution.

SB 342 seeks to address critical issues that Maryland has been facing in regard to racial vote dilution. This would allow communities who believe that they are being unfairly split the ability to seek remedies and ultimately vote for a person who they believe represents them. In Baltimore County, this was mainly seen in 2022 when, even though the ability was there, it took a lawsuit and public pressure for the county to recognize that it was purposefully diluting the voting power of the Black community by not drawing a map with two minority-majority districts. SB 342 would give guidance on how to not only avoid that but also how to remedy it should it occur again.

Furthermore, SB 342 would give litigators the guidance they need to sue if issues arise again regarding vote dilution. According to the attorneys who represented several Maryland organizations during the Baltimore County redistricting fight, although it was obvious that the maps still did not comply with the federal Voting Rights Act, there was legal precedent to ensure that there was a remedy.¹ SB 342 would give guidance not only to those suing but also to the courts on how a violation must be rectified.

SB 342 will also include sponsor amendments to address a few concerns that LWVMD believes are paramount to enacting the bill.

LWVMD urges a favorable report on SB 342 with the additional amendments.

1

<https://marylandmatters.org/2022/03/10/in-baltimore-county-redistricting-case-plaintiffs-say-new-council-map-doesnt-comply-with-voting-rights-act/>

SB342_Venkatraman_Williamson_FWA.pdf

Uploaded by: Nithin Venkatraman

Position: FWA

Maryland Senate
Education, Energy, and the Environment
February 26, 2025

Testimony in Support of SB342 with Amendments

Chair Feldman, Vice Chair Kagan, and Members of the Senate Education, Energy, and the Environment Committee,

As students at the Election Law Clinic at Harvard Law School, we are pleased to offer this testimony in support of the Maryland Voting Rights Act of 2025. We write to provide the Committee with more information on the Act’s prohibitions on vote dilution, rooted in our experience working on litigation under other State Voting Rights Acts (“SVRAs”) and the Federal Voting Rights Act (“FVRA”).¹

Maryland needs a State Voting Rights Act with strong protections against suppressive and dilutive policies to counter the erosion of federal voting rights protections. For 60 years, the FVRA has protected peoples’ rights to engage in the political process. But these historic protections are dwindling. The U.S. Supreme Court has stripped away the preemptive protections of preclearance² and has raised the bar to successfully prove vote dilution and denial claims.³ Several lower federal courts have also further undermined the FVRA. In 2023, the Fifth Circuit Court of Appeals ruled that multiple racial minorities cannot bring a “coalition district” claim together under Section 2 of the FVRA, breaking with decades of precedent and practice and making it harder for racial minorities to come together to express their shared political preferences.⁴ That same year, the Eighth Circuit Court of Appeals ruled that private parties cannot sue to enforce Section 2 of the FVRA, despite over 50 years of contrary precedent.⁵

With federal protections withering, SB342 is a necessary bulwark against voter suppression and dilution on account of race. This testimony focuses on SB342’s vote dilution provisions, sections 8-903 and 4-603, and explains the elements of a vote dilution claim under the Act. We also discuss how the MDVRA uses decades of voting rights litigation experience to improve on the FVRA and provide Marylanders necessary protections in the face of eroding

¹ As part of our work with the clinic, we have assisted in vote dilution litigation under the Federal Voting Rights Act and the New York Voting Rights Act. *See, e.g.,* *Nairne v. Ardoin*, 715 F.Supp.3d 808 (M.D. La. 2024); *Serratto v. Town of Mount Pleasant*, No. 55442/2023 (Sup. Ct. N.Y.); *Clarke v. Town of Newburgh*, 2025 WL 337909 (N.Y. App. Div. 2025).

² *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013) (finding the pre-clearance formula set out in Section 4 of the FVRA to be unconstitutional as a violation of the equal dignity of the states).

³ *See, e.g.,* *Bartlett v. Strickland*, 556 U.S. 1, 14–17 (2009) (requiring that to comply with the Gingles 1 prong, plaintiffs must show that a demonstration district exists in which the identified minority comprises 50% plus one vote of the CVAP); *Brnovich v. Dem. Nat’l Comm.*, 141 S. Ct. 2321, 2338–40 (2021) (setting out five additional guideposts that courts may consider when reviewing vote denial claims).

⁴ *Petteway v. Galveston Cnty., Texas*, 86 F.4th 214, 217 (5th Cir. 2023), reh’g en banc granted, opinion vacated, 86 F.4th 1146 (5th Cir. 2023) (“The text of Section 2 does not support the conclusion that distinct minority groups may be aggregated for purposes of vote-dilution claims.”).

⁵ *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204, 1206–07 (8th Cir. 2023) (finding that Section 2 of the FVRA does not include a private right of action).

federal rights. We respectfully request that this Committee report SB342 **favorably with amendments.**

I. Proving a Vote Dilution Claim.

Vote dilution occurs when one or more groups of voters are denied an equal opportunity to convert their votes into political power by electing candidates that their community supports. Vote dilution operates by packing and cracking voters of a protected class so other groups maintain outsized influence over an elected body. SB342 enables plaintiffs to prove a vote dilution claim by showing (A) evidence of racially polarized voting (“RPV”) and (B) an undiluted benchmark plan that mitigates the alleged impairment. If the plaintiffs succeed, a court can grant a remedy.

A. Racially Polarized Voting (“RPV”).

RPV analysis is a standard part of litigation under Section 2 of the FVRA. RPV occurs when racial minorities prefer different candidates to those preferred by the racial majority, and the racial majority usually votes as a bloc to defeat the racial minority group’s candidates of choice.⁶ One of the most common empirical methods courts use to assess the presence of RPV is a statistical test called “King’s Ecological Inference,” or King’s EI. Ecological inference is the process of using aggregate (i.e. “ecological”) data to infer conclusions about individual-level behavior when no individual-level data are available.⁷ Over time, Ecological Inference has become the “gold standard for racially polarized voting” in federal voting rights litigation.⁸

Sections 8-904 and 4-604 allow plaintiffs to prove RPV through evidence of election results for local, state, or federal elections, or other evidence of the protected class’s electoral preferences, and does not require litigants to explain why RPV exists. Rather, the proposed MDVRA recognizes that where RPV exists and a protected class is systematically unable to elect a candidate of choice, discrimination in access to representation has occurred.

B. Objective benchmarks.

Plaintiffs must also provide an objective benchmark that will mitigate their alleged harm. That requirement flows from §8-903(B)(2), which requires plaintiffs to show that “the method of election dilutes or abridges the voting strength of members of a protected class.” Plaintiffs make that showing by producing a non-dilutive alternative election plan to the

⁶ Thornburg v. Gingles, 478 U.S. 30, 56 (1986).

⁷ Alexander A. Schuessler, *Ecological Inference*, 96 PROC. NATL. ACAD. SCI. 10578, 10578 (1999)

⁸ See, e.g., Baltimore Cnty. Branch of Nat’l Ass’n for the Advancement of Colored People v. Baltimore Cnty., MD, No. 21-CV-03232-LKG, 2022 WL 657562, at *8 & n. 4 (D. Md. Feb. 22, 2022), *modified*, No. 21-CV-03232-LKG, 2022 WL 888419 (D. Md. Mar. 25, 2022) (favorably discussing plaintiffs’ EI evidence and noting that “[c]ourts have referred to ecological inference analysis as the ‘gold standard’ for racially polarized voting analysis”).

Court. California and Washington have interpreted similar language in their State VRAs the same way.⁹

II. SB342’s vote dilution claims provide more meaningful protections for voters of all races than the FVRA.

SB342’s vote dilution standard applies the practical wisdom of hundreds of vote dilution claims litigated under Section 2 of the FVRA over decades. SB342 also meaningfully improves on the protections currently provided by the FVRA, which have been limited in harmful ways and are subject to escalating attacks in federal courts. The MDVRA builds on the FVRA by allowing claims by a broader set of protected classes, explicitly protecting their right to sue, enabling them to aggregate their claims to increase their power, and providing important guidance to courts applying the law.

A. SB342 allows communities to bring vote dilution claims even if they are not racially segregated.

Under the FVRA, plaintiffs must show that a protected class is sufficiently numerous and geographically compact to constitute a majority in a reasonably configured single-member district.¹⁰ That hurdle means communities can only bring federal dilution claims in racially segregated areas. Sections 8-904(A) and 4-604(A) do away with that requirement and allow protected classes to obtain relief without being residentially segregated. That choice is consistent with the realities of modern racial vote dilution: though residential segregation is decreasing, racially polarized voting remains high.¹¹ But because the FVRA requires minority groups to be geographically compact, federal protection for minority voters will decrease as protected communities become less segregated—even if they cannot win representation because of the prevailing method of election.¹² Residential desegregation does not mean that protected classes do not face burdens on their voting rights. SB342 recognizes and addresses that reality in the face of declining federal protections.

B. SB342 provides an unambiguous private right of action.

Though private plaintiffs successfully brought and won suits under the FVRA for decades, their ability to bring such claims is now under attack in the federal judiciary. In 2021, Justice Gorsuch cast doubt on the availability of a private right of action in Section 2 of the FVRA.¹³ The U.S. Court of Appeals for the Eighth Circuit recently followed Justice

⁹ See *Pico Neighborhood Assn. v. City of Santa Monica*, 15 Cal. 5th 292, 314–15 (Ca. 2023); *Portugal v. Franklin Cnty.*, 1 Wash.3d 629, 638–39 (Wash. 2023).

¹⁰ *Gingles*, 478 U.S. at 50. See also *Allen v. Milligan*, 599 U.S. 1, 18-20 (2023) (upholding and applying *Gingles*).

¹¹ See Nicholas O. Stephanopoulos, *Race, Place, and Power*, 68 STAN. L. REV. 1323, 1348, 1358 (2016).

¹² See Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1334–35 (2016) (citing *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986)).

¹³ *Brnovich*, 141 S. Ct. at 2350 (Gorsuch, J., concurring).

Gorsuch and concluded that Section 2 of the FVRA does not authorize private suits.¹⁴ It came to this conclusion despite the fact that most Supreme Court jurisprudence relating to the Voting Rights Act of 1965 arose from cases brought by private parties.¹⁵ If other federal courts follow suit, Marylanders will lose their ability to enforce their right to meaningful participation in federal court. SB342 addresses this problem. Sections 8-905 and 4-605 explicitly provide a private right of action so that members of the public can sue to seek remedies for vote dilution, ensuring that protected classes can protect their voting rights. While this explicit right would have seemed unremarkable just a few years ago, it is now notable and potentially critical to protecting voting rights in Maryland.

C. SB342 allows claims to be brought at lower costs than the FVRA

Federal voting rights act litigation is notoriously complex and expensive. The burden of proof for FVRA vote dilution claims is exceedingly high and rigid, and often requires expert witnesses, specialized lawyers, and voluminous evidence to litigate.¹⁶ As a result, federal litigation costs regularly stretch into the millions of dollars—costs that are borne not just by the plaintiffs, but by the defending jurisdiction and the courts deciding the case.¹⁷ The MDVRA simplifies vote dilution claims by allowing parties to rely solely on RPV without a costly “totality of the circumstances” analysis as required under federal law. The RPV and totality of the circumstances analyses often point in the same direction. Still, federal courts require both analyses in every vote dilution case even if one type of evidence would be sufficient. Simplifying the dilution claim will reduce the need for experts and the time necessary to sift through often voluminous case records, saving the litigants money as compared to federal litigation.

III. Conclusion

We respectfully request a **favorable report with amendments** on SB342.

* * *

Respectfully submitted,

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Election Law Clinic
Harvard Law School

Nithin Venkatraman, Student
Election Law Clinic
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¹⁴ Arkansas NAACP, 86 F.4th 1204, 1206–07 (8th Cir. 2023).

¹⁵ J. Christian Adams, *Two Quirky Appellate Decisions on Section 2 of the Voting Rights Act*, THE FEDERALIST SOCIETY (Dec. 19, 2023), <https://fedsoc.org/commentary/fedsoc-blog/two-quirky-appellate-decisions-on-section-2-of-the-voting-rights-act>.

¹⁶ Leah Aden, *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, LDF, https://www.naacpldf.org/wp-content/uploads/Section-2-costs-08.13.18_1.pdf (last visited Feb. 20, 2025).

¹⁷ *Id.*



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SB 342 NAACP (002).pdf

Uploaded by: Ricarra Jones

Position: FWA



Testimony on S.B. 342-Voting Rights Act of 2025 - Counties and Municipalities Education, Energy, and the Environment

Position: Favorable with Amendments

The Maryland State Conference of the NAACP strongly urges you to build upon SB 342 to enact the strongest possible protections against racial vote dilution in Maryland. Racial vote dilution occurs when electoral practices, such as at-large elections or unfair district maps, weaken the voting strength of voters of color, effectively denying them meaningful political representation. The protections provided in these bills are essential to ensuring that all Marylanders, particularly those from historically disenfranchised communities, have an equal opportunity to elect representatives of their choice.

The Voting Rights Act of 1965 was one of the most transformative civil rights laws in U.S. history. At its height, Section 2 of the federal VRA addressed the long history of discrimination in voting by prohibiting racial vote dilution and voter suppression. However, federal courts, including the U.S. Supreme Court, have severely limited the federal VRA's protections in cases like *Shelby County v. Holder* (2013) and *Brnovich v. DNC* (2021). Meanwhile, the federal government is not only failing to protect against discrimination in voting but is instead advancing anti-voter policies.

The strongest version SB 342 builds on the protections provided in the federal VRA by implementing streamlined standards and procedures that both protect the freedom to vote and make this type of litigation less time-intensive and costly than litigation under the federal VRA. Although Maryland law features important pro-voter policies, it contains no protection against racial vote dilution, and recent challenges to racially dilutive voting systems in Federalsburg and Baltimore County underscore the crucial need for these kinds of protections.

In addition to protecting access to the ballot box, prohibiting vote dilution helps create a more inclusive and accountable democracy. When voters of color are systematically prevented from electing their preferred candidates, entire communities are left without a voice in decisions that directly impact their lives. Combatting vote dilution is a necessary step toward making the vision of a government that is truly of, by, and for the people a reality. Indeed, more than three-quarters of Maryland voters (77%) [support](#) protections against racial vote dilution.

Protections against vote dilution, along with the rest of the Maryland Voting Rights Act package, will help ensure no eligible voter in Maryland is left behind at the ballot box. For these reasons, we urge a favorable report on SB 342.

Thank You,

Ricarra Jones

Maryland State Conference of the NAACP

SB 342_FAV w AMEND_ACLU-MD.pdf

Uploaded by: Zoe Ginsberg

Position: FWA



Testimony for the Senate Education, Energy, and Environment Committee

February 26, 2025

SB 342 – Maryland Voting Rights Act of 2025 – Counties and Municipalities

FAVORABLE WITH SPONSOR’S AMENDMENTS

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The ACLU of Maryland supports SB 342, which seeks to protect Maryland voters from racial vote dilution by passing strong protections against racially dilutive voting practices. These protections are essential for ensuring that all Marylanders, especially those from historically marginalized communities, have equal opportunities to elect their candidates of choice and be represented in government.

Racial vote dilution occurs when an election system or other policy denies voters of color an equal opportunity to elect candidates they support. This means that voters of color can cast ballots, but that their votes do not have equal power or weight compared to white voters.

Since 1965, the federal Voting Rights Act has protected voters of color against laws designed to dilute their vote.¹ In particular, Section 2 of the federal VRA prohibits voting practices that dilute the votes of Black communities.² This meant that, if states and localities engage in discriminatory electoral practices like at-large elections with racially polarized voting or unfair redistricting maps, voters can challenge that discrimination in federal court. However, litigation under the federal VRA is becoming less effective as courts undermine key VRA provisions in cases like *Shelby County v. Holder* (2013) and *Brnovich v. DNC* (2021). Further, Congress has failed to update the federal VRA to counteract these cases and, instead, is focused on advancing legislation like the SAVE Act, which makes it

¹ Myrna Pérez, *Voting Rights Act: The Legacy of the 15th Amendment*, Brennan Center for Justice, (June 30, 2009), <https://bit.ly/3cjDezF>.

² 52 U.S.C. § 10301. Critically, Section 2 does not require voters to prove they were victims of intentional discrimination. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Court explained that Congress was overturning *Mobile v. Bolden*, 446 U.S. 55 (1980), when it enacted the 1982 VRA amendments. *Mobile* had declared that minority voters had to prove an election mechanism was “intentionally adopted or maintained by state officials for a discriminatory purpose,” in order to satisfy either § 2 of the VRA or the Fourteenth or Fifteenth Amendments. *Thornburg*, 478 U.S. at 35. In response to *Mobile*, Congress revised § 2 to clarify that a violation could be established “by showing discriminatory effect alone...” *Id.*

harder for individuals to exercise their right to vote.³ As a result, the federal VRA is at significant risk of being further weakened or destroyed entirely. Additionally, litigation under Section 2 is complex, costly, and time-intensive, meaning that some Section 2 violations go unnoticed or unaddressed. Because of this risk, we must pass state protections to ensure continuing safeguards for all Marylanders.

Maryland has a troubling history of racial suppression, and laws that have the purpose or effect of discriminating against Black voters and other voters of color remain prevalent. Common examples include redistricting plans that violate minority voting strength, use of certain at-large election systems that maintain dominance by the white majority, polling locations with insufficient resources, and failure to provide adequate assistance at the polls. These voting practices persist because the federal VRA cannot fully combat them. As a result, voters of color in Maryland are significantly less likely to be represented by the candidate of their choice than white voters. As of 2024, fifty four percent of Maryland municipalities have substantial POC populations and twenty-three percent of those municipalities have all-white governments, indicating a high risk that voters of color in those communities have not been able to elect candidates of their choice.⁴

The federal VRA has provided recourse in many parts of the state. Challenges against discriminatory at-large elections have recently succeeded in Worcester and Somerset Counties, Salisbury, Pocomoke City, Berlin, Snow Hill, Hurlock, Easton, and Princess Anne.⁵ Through legal challenges filed under the federal VRA, Black voters have forced reform of those systems and empowered residents to elect Black candidates to public office, often for the first time in the history of their

³ The SAVE Act would require every voter to show proof of citizenship with their current name whenever they register to vote or change their registration. Passage of this Act would effectively end online and mail-in voter registration, since voters would not be able to prove their citizenship remotely. It would also significantly complicate the voting process for individuals who change their names after marriage or following transition, since they may not have updated documentation that reflects their new legal names. These burdens would fall more heavily on younger voters, voters of color, low-income voters, and elder voters.

⁴ *Why Maryland Needs Its Own Voting Rights Act*, ACLU of Maryland, (Feb. 20, 2024), https://www.aclu-md.org/sites/default/files/mdvra_need_public_onepager_mdga24.pdf.

⁵ *See Cane v. Worcester Cnty., Md.*, 35 F.3d 921 (4th Cir. 1994); *Letter to U.S. Dept. of Justice*, ACLU of Maryland (Mar. 24, 2010); "Redistricting, Ensuring Election Fairness," ACLU of Maryland, (Apr. 10, 2012), <https://www.aclu-md.org/en/cases/redistricting-ensuring-election-fairness>; Sam Janesch, 'We want a voice:' *Federalsburg's Black residents become latest Eastern Shore voters to get a long-awaited shot at representation*, BALTIMORE SUN (Jun. 21, 2023), <https://www.baltimoresun.com/politics/bs-md-pol-shore-voting-rights-20230616-xot2c5fehfcblzfy3ilzu6uri-story.html>. https://www.aclu-md.org/sites/default/files/field_documents/somerset_perez_letter.pdf; *Redistricting, Ensuring Election Fairness*, ACLU of Maryland (Apr. 10, 2012), <https://www.aclu-md.org/en/cases/redistricting-ensuring-election-fairness>; Sam Janesch, 'We want a voice:' *Federalsburg's Black residents become latest Eastern Shore voters to get a long-awaited shot at representation*, BALTIMORE SUN (Jun. 21, 2023), <https://www.baltimoresun.com/politics/bs-md-pol-shore-voting-rights-20230616-xot2c5fehfcblzfy3ilzu6uri-story.html>.

community.⁶ However, as the following case studies demonstrate, there is substantial need to improve upon the protections provided in the federal VRA.

The town of Federalsburg provides a key case study. Federalsburg had maintained a discriminatory at-large election system for decades. Despite the fact that the town's population was half-Black, the town had never elected a Black candidate to office until after a federal court redrew the town into districts. Following the adoption of the new plan, the town elected their first two Black representatives to the town council. The town fought these reforms tooth and nail, demonstrating how resistant localities can be to implementing racially fair election systems. In Federalsburg, it was only due to the immense courage of the town's Black residents, the resources spent creating a fair system by the plaintiffs, pressure from a federal judge, and the Black community's organizing that a fair system became possible. This reform took decades. With a streamlined cause of action and clearer guidance, the MDVRA could have brought about the same result in a faster, less expensive manner.

Meanwhile, in Baltimore County, the efforts of Black voters to challenge a racially dilutive redistricting plan were stymied because the federal VRA provided insufficient protections. The County has a population that is nearly one-third Black and 48% POC but had only ever had one Black representative at a time.⁷ Despite months of warnings about the unfairness of their proposed redistricting plans, the County Council implemented a racially discriminatory voting plan that packed Black voters into a single super-majority Black district while maintaining significant white majorities in six of the seven council districts. After protracted litigation, a federal judge granted a preliminary injunction stating that the Baltimore County plan likely violated the federal VRA. However, because the Fourth Circuit has interpreted the federal VRA to require deference to government preferences for remedies, the judge permitted the County to continue to pack one district with Black voters while keeping six other districts majority-white. As a result, even after costly litigation, every one of the six Black candidates running in majority-white districts in 2022 lost, leaving Black voters no better off than they were at the outset—with just one Black Council member, elected without opposition from the packed Black district. This outcome shows the weaknesses of the federal VRA and demonstrates the need to create more fair districting processes under SB 342.

If passed, SB 342 would build on the protections in the federal VRA by implementing streamlined standards and procedures that protect the freedom to vote and simplify the process of correcting discriminatory practices through litigation. SB 342 builds on existing pro-voter laws in Maryland, adding protections

⁶ See e.g., *NAACP of Caroline Cnty v. Town of Federalsburg*, 23-CV-00484-SAG, (D. Md. Feb. 22, 2023).

⁷ *Baltimore County Branch of the NAACP v. Baltimore County*, No. 21-CV-03232-LKG, 2022 WL 657562, 2 (D. Md. Feb. 22, 2022).

against racial vote dilution. The protections go beyond what is available under the federal VRA and would better protect Marylanders against discriminatory practices that are all-too common in our communities. By adding these protections, Maryland localities would be held accountable for changes to their elections that disproportionately suppress votes in communities of color.

These interventions are extremely popular: more than three-quarters of Maryland voters (77%) support providing protections against racial vote dilution.

The amendments proposed by the sponsor will make SB 342's protections more flexible and clearer, resulting in more equitable litigation that is more cost effective for all parties. These amendments provide a clear, flexible benchmark for measuring vote dilution, mitigating the risk that state courts create inconsistent outcomes or rely on harmful federal case law. The amendments also provide clearer guidance regarding remedies and establishing a violation, helping to avoid distractions while litigating.

Passed alongside the rest of the Maryland Voting Rights Act package, the protections against vote dilution in SB 342 will help ensure that no eligible voter in Maryland is left behind at the ballot box.

For these reasons, we urge a favorable report on SB 342 and support the sponsor's amendments.

2025 SB0342 Testimony Against 2025-02-26.pdf

Uploaded by: Alan Lang

Position: UNF

Testimony Against SB0342

Honorable Senators

Please enter an unfavorable report against SB0342.

I am against prohibiting the imposition or application of a method for electing the governing body of a county or municipality that impairs the ability of members of a protected class to elect candidates of the members' choice or influence the outcome of an election by diluting or abridging the rights of voters who are members of a protected class.

This bill seems to make it easy to claim that if a group in a protected class cannot get the candidate they want elected, then the election process or the precinct boundaries must have diluted their ability to get the outcome they desired or polarized voting must have occurred.

If so, then many election results can be questioned and delay the results as suits are brought to change the outcome. This bill could bring chaos to an election process already suspected by many to have integrity.

Please vote against HB0342.

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February 26, 2025

SB 342 - MML - OPP.pdf

Uploaded by: Angelica Bailey Thupari

Position: UNF



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 26, 2025

Committee: Senate Education, Energy, and the Environment

Bill: SB 342 - Voting Rights Act of 2025 - Counties and Municipalities

Position: Oppose

Reason for Position:

The Maryland Municipal League (MML) respectfully opposes Senate Bill 342, which creates additional administrative burden and potential legal exposure, and reduces local autonomy for local governments conducting elections.

The proposed law prohibits the imposition of election methods that impair the ability of protected class members to elect their candidates of choice. This could lead to municipalities needing to change how they elect their governing bodies from long-standing electoral methods they believe are effective or fair. Municipalities view this as an overreach that interferes with local autonomy without sufficient justification, which reduces their ability to tailor electoral systems to their specific needs and contexts.

This measure also allows the Attorney General to file legal actions to challenge alleged voting issues more easily, which could lead to a significant increase in lawsuits against municipalities. Participating in these suits, even if the municipality prevails, utilizes valuable limited resources.

For these reasons, the League respectfully requests that the Committee provide Senate Bill 342 with an unfavorable report. For more information, please contact Angelica Bailey Thupari, Director of Advocacy and Public Affairs, at angelicab@mdmunicipal.org or (443) 756-0071. Thank you for your consideration.

The Maryland Municipal League uses its collective voice to advocate, empower and protect the interests of our 160 local governments members and elevates local leadership, delivers impactful solutions for our communities, and builds an inclusive culture for the 2 million Marylanders we serve.