



Testimony for the House Ways and Means Committee

February 24, 2025

HB 1043 – Maryland Voting Rights Act of 2025 – Voter Suppression and Vote Dilution

FAVORABLE

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The ACLU of Maryland supports HB 1043, 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. Racial vote suppression occurs when voters of color are prevented from exercising the right to vote entirely.

Since 1965, the federal Voting Rights Act has protected voters of color against laws designed to dilute or suppress 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 or unfair redistricting maps, voters can challenge that discrimination in federal court. However, these cases are 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

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.*

policies that make it harder for individuals to exercise their right to vote like the SAVE Act.³ As a result, the federal VRA is at significant risk of being further weakened or destroyed entirely. Further, 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 protections 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 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 Voting Rights Act, Black voters have forced reform of those systems and empowered residents to

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>.

elect Black candidates to public office, often for the first time in the history of their 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 a mandate to attempt pre-litigation negotiation, 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 opportunities available to create more fair districting processes under HB 1043.

Finally, while some Maryland jurisdictions can demonstrate harms, they are not able to get relief because they don't meet certain requirements under the federal VRA. For example, in places where the Black community is not geographically

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).

compact, challenges to at-large systems are impeded by the Supreme Court's test created in *Thornburg v. Gingles*,⁸ as narrowly interpreted by the Court's conservative majority in *Bartlett v. Strickland*.⁹ This test requires plaintiffs to prove that minority voters can make up a majority in a compact electoral district in order for a challenge to succeed. This means that, in counties like Harford County and municipalities like Delmar with large but dispersed Black populations, the federal VRA offers no remedy for vote dilution. Because Black voters do not always live in geographically compact areas, these communities are unable to satisfy the test imposed by the Supreme Court to successfully challenge the at-large system. This leaves Black voters without a remedy even when there is a demonstrated violation of the VRA. The Maryland VRA would address this issue, removing the geographic compactness requirement, and opening the door to more creative solutions so that Black voters are not powerless to elect their candidates of choice.

If passed, HB 1043 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. HB 1043 builds on existing pro-voter laws in Maryland, adding protections 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.

HB 1043 also offers protections against vote suppression, combatting standards, policies, and practices that deny or abridge the right to vote. By adding these protections, Maryland localities would be held accountable for changes to their elections that disproportionately suppress votes in communities of color. Governments would also be incentivized to work with advocates and community members to solve problems before they impact any elections by engaging in a pre-suit notice process, saving time and money for everyone involved.

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

Passed alongside the rest of the Maryland Voting Rights Act package, the protections against vote dilution and suppression in HB 1043 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 HB 1043.

⁸ 478 U.S. 30 (1986).

⁹ 556 U.S. 1 (2009).