Vanessa E. Atterbeary, Chair
Jheanelle K. Wilkins, Vice Chair
House Ways and Means Committee
Maryland House
February 24, 2025

Testimony of Campaign Legal Center in Support of House Bill 1043

I. INTRODUCTION

Campaign Legal Center ("CLC") is pleased to offer this testimony in support of House Bill 1043, a key piece of the Maryland Voting Rights Act legislative package ("H.B. 1043" or the "MDVRA"). 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 strongly supports H.B. 1043 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 that H.B. 1043 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 H.B. 1043, 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. Importantly, they can also empower state courts to apply a wider range of locally tailored remedies that better serve historically disenfranchised communities.

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 focus on improvements specifically related to vote dilution and vote suppression 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 step in and ensure their voters have the legal tools necessary to defend their freedom to vote.

---

[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).

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.

H.B. 1043 will apply more efficient processes and procedures for enforcing the voting rights of traditionally disenfranchised communities, saving Maryland time and money. The bill also makes it less costly for historically disenfranchised communities and local governments to collaboratively develop remedies before resorting to expensive litigation.

III. REASONS TO SUPPORT H.B. 1043

H.B. 1043 innovates 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 creates a private cause of action for both vote dilution and vote suppression that are less costly and less burdensome means of enforcing voting rights for historically disenfranchised communities. Additionally, its notice requirements encourage collaboration between voters and local governments, enabling tailored remedies that address the specific needs and demographics of each jurisdiction. As discussed below, the following features of the MDVRA are reasons to support the bill:

- H.B. 1043's pre-suit notice provisions allow jurisdictions to proactively remedy potential violations.
- H.B. 1043 provides express statutory guidance to ensure courts interpret voting-related conflicts of law in favor of the right to vote.
- H.B. 1043 provides a framework for determining whether vote dilution or vote denials have occurred that is tailored to the barriers to voting historically disenfranchised communities face at the local level.

- H.B. 1043 prioritizes remedies for voting discrimination that enable historically disenfranchised communities to equally participate in the franchise.

A. H.B. 1043 avoids lengthy litigation by allowing jurisdictions to proactively remedy potential violations.

As set forth in § 15.5–205(B)(2) of H.B. 1043, a prospective plaintiff must send a jurisdiction written notice of a violation and wait 60 days before bringing a lawsuit. During that time, both parties must collaborate in good faith to find a solution to the alleged problem. §§ 15.5–205(B)(4)(II). The jurisdiction may also remedy a potential violation on its own initiative and gain safe harbor from litigation for at least 150 days. §§ 15.5–205(B)(4)(III)(2). The MDVRA recognizes that many jurisdictions will seek to enfranchise communities facing discriminatory policies by remedying potential violations. Such notice and safe-harbor provisions will enable them to do so without the costs and delay of lengthy litigation.

H.B. 1043 also provides for limited cost reimbursement for pre-suit notices, in recognition of the fact that notice letters often require community members to hire experts to perform statistical analysis, and to ensure that such expenses do not prevent people from enforcing their civil rights. § 115.5–206. Similar provisions are already part of state VRAs in California, Oregon, New York, Connecticut, and Minnesota.

In contrast, no such pre-suit notice and safe-harbor provisions exist in Section 2 of the federal VRA. As a result, voters often spend considerable time and money investigating potential violations of the federal VRA, the cost of which is later borne by Maryland taxpayers. Indeed, in Maryland, advocates have noted the lack of incentive for counties to negotiate to resolve problems of voting discrimination, stating that the resultant cost of a federal VRA lawsuit is "[a] payment that could have been avoided if [the Maryland county] had been willing to negotiate, rather than litigate."[7]

B. H.B. 1043 will provide guidance to Maryland judges as they interpret laws, policies, procedures, or practices that govern or affect voting.

The MDVRA specifies that judges should resolve ambiguities in Maryland state and local election laws in favor of protecting the right to vote. § 15.5–102. This is essentially a codification of the existing protections of the Maryland Constitution and Declaration of Rights, which recognize that vigorous political participation is the foundation of our democracy and that the right to vote is preservative of all other rights.

---

[7] Deja Parker, *Town of Federalsburg sued for voting discrimination, 30 days to respond*, WMDT (Feb. 24, 2023), https://www.wmdt.com/2023/02/town-of-federalsburg-sued-for-voting-discrimination-30-days-to-respond/.

Article I, § 1 of the Maryland Constitution states that "every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote . . . ." Article 7 of the Maryland Declaration of Rights expands on this promise and states "[t]hat the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage."

H.B. 1043 's instruction to courts to construe laws in favor of the right to vote is in line with the spirit of the Maryland Constitution and Declaration of Rights. This clarification provides a default pro-voter rule for judges interpreting laws, policies, procedures, or practices that govern or affect voting, which will reduce litigation costs by avoiding unnecessary arguments over statutory interpretation. State VRAs in Washington, New York, Connecticut, and Minnesota contain a similar instruction.

C. H.B. 1043 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.[8] 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.

H.B. 1043 improves on the federal VRA in several ways: it ensures that integrated as well as segregated communities can influence elections and elect their candidates of choice; it provides plaintiffs an alternative to proving racially polarized voting; it sets out practical guidelines for courts to properly assess racially polarized voting; and it clarifies that coalitions made up of two or more protected classes may bring vote dilution claims.

Unlike the federal VRA, H.B. 1043 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, H.B. 1043 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. § 15.5–202(C). Following the passage of civil rights legislation, residential segregation has decreased in some areas of the United States, yet racially polarized voting and

[8] *Thornburg v. Gingle*s, 478 U.S. 30, 50–51 (1986).

underrepresentation of historically disenfranchised communities persist.[9] 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, H.B. 1043 takes this reality into account.

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. H.B. 1043 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 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 H.B. 1043 provides 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. § 15.5–202(B)(1)(I). And the MDVRA sets out reliable and objective standards for courts to apply in their assessment of RPV. § 15.5–202(D).

But where election results used to assess RPV are unavailable, the MDVRA also allows affected voters to show that they are denied equal opportunity to participate in the political process under the totality of the circumstances. § 15.5–202(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

---

[9] *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.

[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").

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]

Finally, the MDVRA allows two or more protected classes of voters within an election district to bring a coalition claim, if they can demonstrate that their cohesive political preferences are diluted under the challenged district map or method of election. §§ 15.5–101(L); 15.5–202(D)(1)(II). Coalition claims reflect the MDVRA's spirit and intent to protect all historically disenfranchised communities from discriminatory voting rules and election systems, whether they impact one or more racial or ethnic groups. If two or more communities vote in a bloc together, organize to elect candidates together, and suffer from vote dilution together, they should be able to work together to prove it and combat it.

D. H.B. 1043 provides a framework for determining denials of the right to vote that provides clarity to courts and voters alike.

In addition to combatting vote dilution, the MDVRA strengthens protections against practices that deny or impair a protected class's access to the ballot. Under the federal VRA, voters may challenge practices that "result[] in a denial or abridgement" of the right to vote on account of race or color.[12] The Supreme Court, however, greatly limited the kinds of claims that voters could make in *Brnovich*. Specifically, the Supreme Court set forth additional "guideposts" for proving vote denials that have no bearing on whether vote denial has occurred and that will make Section 2 claims even more costly and time-consuming to litigate.[13] Furthermore, the lack of clarity provided in *Brnovich* leaves federal courts in the lurch about the appropriate way to interpret vote denial claims under Section 2.

H.B. 1043 fills this doctrinal gap by prohibiting a local government from enacting any voting practice that deny or impair the right to vote of a protected class. § 15.5–201(A). A violation is established by showing *either* that that the practice results in a material disparity in the ability of the protected class to participate in the electoral process, *or* that, under the totality of circumstances, the practice results in an impairment of the ability of the protected class to participate in the franchise. § 15.5–201(A)(1–2). Under the federal VRA, on the other hand, voters have to show (among other things) *both* a disparity *and* an impairment under the totality of the circumstances. This innovation will allow historically disenfranchised communities to show that voting discrimination has occurred without having to jump over unnecessary burdens of proof. Furthermore, because the standard is explicitly delineated under H.B. 1043, state courts will have the necessary guidance about how to determine whether a violation has occurred.

---

[11] *See, e.g.*, *Gingles*, 478 U.S. at 47.
[12] 52. U.S.C. § 10301.
[13] *Brnovich*, 594 U.S. at 666.

E. H.B. 1043 expands the remedies that historically disenfranchised communities can seek to ensure their electoral enfranchisement.

If a violation of H.B. 1043 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government and prioritize the full and equitable participation access of voters. § 15.5–204(B)(1). This part of the bill recognizes that vote denial and vote dilution tactics take many different forms and are not solely limited to traditional methods of voter discrimination. Examples of such remedies from the language of § 15.5–204(B)(1)(I–XIV) of H.B. 1043 include replacing a discriminatory at-large system with a district-based or alternative method of election; new or revised redistricting plans; adjusting the timing of elections to increase turnout; and adding voting hours, days, or polling locations.

H.B. 1043 also specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 15.5–204(B)(2)(II). 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 devise a [legally acceptable] remedial plan."[14] 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.[15] 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.[16] 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. H.B. 1043 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

[14] *Cane v. Worcester County*, 35 F.3d 921, 927 (4th Cir. 1994).
[15] *Id.*
[16] No. 21-CV-03232-LKG, 2022 WL 888419, at *1 (D. Md. Mar. 25, 2022).

We strongly urge you to enact H.B. 1043 and strengthen voting rights for all Marylanders. H.B. 1043 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
Aseem Mulji, Senior Legal Counsel
Lata Nott, Director, Voting Rights Policy
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005