

February 9, 2025

Testimony on HB 219**Maryland Voting Rights Act of 2026 – Voter Intimidation and Suppression****Government, Labor and Elections Committee****Position: FAV**

On behalf of the Election Law Clinic at Harvard Law School (“ELC”), and at the request of regulated lobbyist Common Cause Maryland, we are pleased to offer this testimony in support of House Bill 219, the Maryland Voting Rights Act of 2026 - Voter Intimidation and Suppression (“HB 219”). ELC aims to build power for voters and recognizes that the struggle for voting rights is a struggle for racial justice. Much of ELC’s work centers on State Voting Rights Acts (“SVRAs”), and clinical students have developed expertise in the area. ELC staff have written about how State Voting Rights Acts can help achieve the important goal of fair representation at the local level,¹ and have represented plaintiffs in federal Voting Rights Act (“FVRA”) and State Voting Rights Acts litigation.² ELC currently represents four Latino voters in the Town of Mount Pleasant, New York in their vote dilution claim under the John R. Lewis New York Voting Rights Act and six Black and Latino voters in the Town of Newburgh also making a vote dilution claim under the John R. Lewis New York Voting Rights Act.³ ELC has also co-authored amicus briefs, explaining the constitutionality of the Washington Voting Rights Act.⁴

Maryland needs a Voting Rights Act with strong protections against suppressive policies to counter the erosion of federal voting right protections. For 60 years, the VRA protected the rights of people to engage in the political process. But these historic protections are dwindling. The US Supreme Court has stripped away the preemptive protections of preclearance⁵ and has raised the bar to successfully prove vote dilution claims.⁶ Lower federal courts have also further undermined the FVRA. The Eighth Circuit Court of Appeals ruled that private parties cannot sue

¹ See Ruth Greenwood, *Fair Representation in Local Government*, 5 IND. J. L. & SOC. EQUALITY 197 (2017); Ruth Greenwood & Nicholas Stephanopoulos, *Voting Rights Federalism*, 73 EMORY L. J. 299 (2023).

² See *Holloway v. Virginia Beach*, 531 F. Supp. 3d 1015 (E.D. Va. 2021), *vacated and remanded as moot*, 42 F.4th 266 (4th Cir. 2022); *Aguilar v. Yakima County*, No. 20-2-0018019 (Wash. Superior Ct. for Kittitas Cnty.).

³ *Serratto v. Town of Mount Pleasant*, No. 55442/2023 (Sup. Ct. N.Y. for Westchester Cnty); *Clarke v. Town of Newburgh*, No. 50325/2025 (Sup. Ct. N.Y. for Westchester Cnty).

⁴ See Brief of Law School Clinics Focused on Civil Rights as Amici Curiae, *Portugal v. Franklin Cnty.*, 530 P.3d 994 (Wash. 2023); Brief for OneAmerica as Amicus Responding to Intervenor-Defendant’s Motion for Judgment on the Pleadings, *Portugal v. Franklin Cnty.*, No. 21-2-50210-11 (Wash. Super. Ct. for Franklin Cnty. Dec. 2, 2021).

⁵ *Shelby County 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).

⁶ 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); and *Brnovich v. Dem. Nat’l Comm.*, 141 S. Ct. 2321, 2338–2340 (2021) (setting out five additional guideposts that courts may consider when reviewing vote denial claims).

to enforce Section 2 of the FVRA, which includes voter suppression claims.⁷ When voters *have* been permitted to litigate suppression claims via Section 2, federal courts have interpreted Section 2 to impose a severe barrier on such claims.⁸ With federal protections withering, state voter protections will become increasingly important to limit voter suppression.

I. Protections against Voter Intimidation and Deception

HB 219 offers protections beyond the FVRA that are crucial in the modern era. Since 2020, we have seen a rise in threats and violence around the election process. HB 219 codifies a criminal prohibition against voter intimidation that allows victims to bring their own cases. This bill will streamline the process for these cases, strengthening voter protections amid a rising incidence of intimidation.

HB 219 further creates a civil cause of action to protect voters from intimidation, including robust protections against deceptive conduct. This bill also extends protections beyond Section 11(b) of the FVRA, which shields voters from intimidation but fails to provide protections from voter deception. Voter deception, or the use of false or misleading messages in order to interfere with voting, is also on the rise.⁹ Election misinformation can undermine confidence in our elections and suppress turnout, particularly among voters of color. HB 219 can mitigate the effects of election misinformation on Maryland voters and protect them attempts to interfere with their right to vote.

II. Protections against Voter Suppression

HB 219 provides an explicit cause of action to address voter suppression. In 2021, Justice Gorsuch cast doubt on the availability of a private right of action in Section 2 of the FVRA.¹⁰ The Federal Court of Appeals of the Eith Circuit followed Gorsuch's invitation to strike and held that Section 2 does not accord a private right of action.¹¹ If other federal courts follow suit, Marylanders will lose their ability to enforce their right to meaningful participation in Federal court. HB 219 addresses this problem. Section 15.3-302 explicitly provides a private right of action to individual voters and organizations that represent or serve them. 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. HB 219 also provides a clear legal standard for voter suppression claims. This legal standard is based on similar protections against voter suppression that have been adopted in other states including New York¹² and Minnesota.¹³

⁷ 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).

⁸ Brnovich v. Dem. Nat'l Comm., 141 S. Ct. 2321, 2338–2340 (2021).

⁹ Brennan Center, election misinformation <https://www.brennancenter.org/election-misinformation>

¹⁰ Brnovich v. Dem. Nat'l Comm., 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring).

¹¹ 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).

¹² NYVRA, N.Y. Elec. L. § 17-206(b).

¹³ MNVRA, Minn. Stat. § 200.57.

ELC has litigated voter suppression claims in state and federal courts. Notably, in Montana, ELC, along with co-counsel, represented a group of Native American-led organizations and Native tribes in a suit regarding new state legislation that would have made it substantially harder for Native Americans to vote. The Montana courts struck down the laws as violating several provisions of the Montana constitution. While the case was ultimately a success, plaintiffs had to rely on the Montana Constitution because it afforded more protections to voters than the FVRA. HB 219 will ensure that Marylanders have protections that also go beyond the federal FVRA and ensure their right to vote. Drawing on our experience combating discriminatory voter suppression, ELC believes Maryland should pass HB 219 to safeguard Marylanders from suppressive election policies and practices.

We respectfully request a **favorable report without amendments** on HB219.

Respectfully submitted,

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