Election Law Clinic
HARVARD LAW SCHOOL

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Testimony on HB 350

Maryland Voting Rights Act of 2026 – Counties and Municipal Corporations

Education, Energy and Environment 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 350, the Voting Rights Act of 2026 - Counties and Municipal Corporations ("HB 350"). 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 ("VRA") 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]

I. SVRAs as a Response to the Weakening FVRA

Maryland needs a Voting Rights Act with strong protections against dilutive policies to counter the erosion of federal voting right protections. For 60 years, the FVRA 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 preclearance[5] and has raised the bar to successfully prove Section 2 vote dilution claims.[6] Lower federal courts have also further undermined the FVRA. The Fifth Circuit Court of Appeals ruled in 2023 that

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[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).

multiple racial minorities cannot bring a "coalition district" claim together under Section 2 of the FVRA, breaking precedent and practice and making it harder for racial minorities to come together to express their shared political preferences.[7] That same year, the Eighth Circuit Court of Appeals ruled that private parties cannot sue to enforce Section 2 of the FVRA.[8]

Today, federal protections against vote dilution face the largest threat since the creation of the FVRA in a case under review by the Supreme Court – *Louisiana v. Callais* (2025). If decided adversely, this case could unravel Section 2's application to redistricting and jeopardize meaningful representation for communities of color. With federal protections shrinking, SVRAs offer the best protection for Maryland residents exercising their right to vote.

SVRAs offer states the ability to tailor a voting rights act to fit the needs of their communities. Eight states have passed SVRAs across the country, and at least two more bills are being considered in other state legislatures this session. ELC has seen firsthand how impactful SVRAs can be to fill the void left by the weakened FVRA *and* expand protections that are not currently offered under the FVRA. In New York, we are actively representing Black and Hispanic voters that have challenged the at-large voting system used for electing members to the Newburgh Town Board as a violation of the New York Voting Rights Act.[9] The at-large system denies Hispanic and Black voters an opportunity to elect candidates of their choice to the Town Board. Without New York's SVRA, these individuals likely would not have had the chance to challenge an electoral system that dilutes their votes. Marylanders deserve a similar chance to ensure that their local governments give them an equal opportunity to elect representatives of their choice

II. HB 350: Protection against Vote Dilution

Maryland statutes currently contains no protections against racial vote dilution. HB 350 fills this gap, building on the protections of the FVRA. HB 350 offers clear standards and streamlined procedures, securing Marylanders the ability to bring claims to protect their rights.

First, HB 350 provides an explicit cause of action to address vote dilution. Though private plaintiffs successfully brought and won suits under the FVRA for decades, their ability to bring such claims is now under attack by the federal judiciary. 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 Eighth Circuit followed Gorsuch's invitation to strike and held that

[7] 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").
[8] 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).
[9] Clarke v. Town of Newburgh, No. 50325/2025 (Sup. Ct. N.Y. for Westchester Cnty); *see also* Serratto v. Town of Mount Pleasant, No. 55442/2023 (Sup. Ct. N.Y. for Westchester Cnty).
[10] Brnovich v. Dem. Nat'l Comm., 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J., concurring).

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 350 addresses this problem. Section 15.7-106 explicitly provides a private right of action to individual voters.

Second, HB 350 allows Marylanders to bring claims at lower costs than the FVRA. Claims under the FVRA are notoriously 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.[12] HB 350 simplifies vote dilution claims by allowing parties to rely on a range of evidentiary factors, including those that do not demand extensive resources or expert witnesses.

Finally, in addition to making vote dilution claims clearer to Marylanders, HB 350 offers courts more guidance in how adjudicate these claims. Federal courts applying the FVRA often struggle to conduct the rigorous analysis required for vote dilution claims. Courts may outweigh some evidence while unreasonably excluding other evidence. HB 350 specifies the type of factors that a court may consider and importantly instructs courts what evidence may *not* preclude a finding of vote dilution. These standards will promote greater uniformity in application and provide Marylanders, municipalities, and the courts with clear guidance on what constitutes vote dilution.

Provisions similar to those in HB 350 have been critical to our SVRA litigation in other states. They create a clear, less burdensome and more efficient way to vindicate voting rights for Marylanders. ELC believes Maryland should pass HB 350 to ensure that everyone has equal access to meaningful political participation. We respectfully request a **favorable report without amendments** on HB 350.

Respectfully submitted,

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[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] 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).