

Maryland Needs Its Own Voting Rights Act



BILLS SB 878 & HB 1104

BACKGROUND

Maryland has a progressive reputation nationally, yet many of our counties and municipalities have a troubling history when it comes to race and the right to vote.

Maryland's history of discrimination includes English literacy tests, property ownership requirements and entitlements linked to voting, as well as laws that carry forward discrimination in the criminal legal system into our democracy, some of which are still in force today. Some local jurisdictions still use at-large elections which can empower a white majority to capture most or all seats, even where there is a substantial population of Black, Indigenous, and other Voters of Color.

Following the 2020 U.S. Census and redistricting in 2021, several counties faced litigation over unfair gerrymandering – such as in Baltimore County, where a federal court struck down the redistricting plan as racially discriminatory.

WHAT'S THE PROBLEM?

Unfortunately, many voting rights abuses and discriminatory structures persist among Maryland's hundreds of local government entities simply because the legal tools and resources to investigate and prosecute them have been unavailable or too costly. This is happening in part because judicial decisions over the last 30 years – most notably by

an increasingly conservative Supreme Court – have chipped away at protections under the federal Voting Rights Act. One Supreme Court decision struck down the preclearance protections that required states and local governments around the country with a history of discrimination to obtain advanced approval before changing their election rules, while another made it harder for Voters of Color to protect against vote suppression. And this year the Voting Rights Act is once again before the Supreme Court.

WHAT'S THE SOLUTION?

Maryland can enact its own fully effective Voting Rights Act (MDVRA), building on models enacted recently in New York, Virginia, and other states. A MDVRA will protect Voters of Color in the Free State regardless of what direction the Supreme Court pushes federal law.

WHAT WOULD A MARYLAND VOTING RIGHTS ACT INCLUDE?

- 1. Preclearance** – The MDVRA would bring the framework of the most effective civil rights law in American history to Maryland. In passing the federal Voting Rights Act, Congress recognized that case-by-case litigation alone was inadequate – too slow and too costly – to eradicate discrimination

and to prevent its resurgence. Thus, instead of voters having to prove that new election laws and practices are discriminatory, jurisdictions with a history of voter discrimination would need to have election changes – such as redistricting – secure “preclearance” from the Maryland Attorney General or a court to show the new systems will not disadvantage minority voters.

2. Prohibition Against Vote Denial and Dilution – The MDVRA provides a framework to ferret out vote dilution and barriers that deny voting opportunities in a way that is efficient and cost-effective for both voters and local governments within the state, through enforcement either by the State Attorney General or private plaintiffs.

3. Language Access – The MDVRA would require local governments to ensure that non-English speakers are not left behind in the voting process. This section requires that in a locality with a population of two percent or more falling into a language minority, the local government or board of elections provides voting materials in that additional language. No voter should be discouraged from voting because the voting materials were not provided in a language they can understand.

4. Stopping Voter Intimidation – This section provides Marylanders with a civil cause of action against voter intimidation, deception, or obstruction that is more important than ever today, given recent efforts to stoke fear, spread disinformation, and obstruct access to ballot box in naturalized citizen communities and Communities of Color.

5. Statewide Database – The MDVRA offers Maryland an opportunity to bring its elections into the 21st Century by providing a central public repository for election and demographic data with the goal of fostering evidence-based practices in election administration and unprecedented transparency.

6. Making Private Enforcement Feasible – The MDVRA would ensure that there are adequate incentives for voters, advocacy organizations, and public-minded attorneys to protect voting rights by making available fees for attorneys and litigation costs when plaintiffs prevail.

Through a state Voting Rights Act, Maryland can continue its march toward becoming a nationwide leader in promoting equal access to political participation. Maryland can build on the comprehensive framework of the federal VRA and state VRAs already adopted in New York, California, Oregon, Washington, and Virginia. This will enable our state to confront evolving barriers to effective participation, and to root out longstanding discriminatory practices more effectively.

A state VRA will offer affirmative steps to make our democracy more inclusive and robust by creating a fulsome and transparent basis for data-driven evaluation of our election practices.

A Maryland Voting Rights Act will provide a means of ensuring that all voters are able to cast a meaningful ballot, but it will especially help to accelerate the participation of voters of color who have been historically denied an equal opportunity to participate in the political process.

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