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Maryland House of Delegates
February 11, 2026

Testimony of Campaign Legal Center in Support of House Bill 350

I. INTRODUCTION

Campaign Legal Center ("CLC") is pleased to offer this testimony in support of House Bill 350 ("H.B. 350"). H.B. 350 codifies essential protection against racial vote dilution in local election systems and, in doing so, enacts one of the core components of a state-level voting rights act.

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, Minnesota, and Colorado, and it brought the first-ever lawsuit under the Washington Voting Rights Act in Yakima County, Washington, and under the Virginia Voting Rights Act in Virginia Beach, Virginia.

CLC strongly supports H.B. 350 because it will enable historically disenfranchised communities across Maryland to protect their right to participate equally in the election of their representatives. The bill will fill a critical gap in Maryland law, which currently does not contain any statutory protection against racial vote dilution in local election systems. CLC's testimony will highlight in particular how H.B. 350 offers a more reliable, effective, and cost-efficient means for resolving vote dilution violations than the current federal framework under Section 2 of the Voting Rights Act of 1965.

II. BACKGROUND

States can offer new hope for voters by adopting state voting rights acts that improve upon the model of the federal Voting Rights Act of 1965 ("VRA") with several key improvements. By passing H.B. 350, Maryland can reduce the cost of enforcing voting rights, clarify that government-proposed remedies do not get deference as they might in federal court, and make it possible for historically disenfranchised communities to enforce their rights.

The federal VRA was 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 collect vast amounts of extraneous evidence as part of Section 2's totality-of-the-circumstances analysis, and litigation often devolves into protracted disputes about what the law requires in the first place, given Section 2's sparse text and sometimes contradictory case law. As a result, these cases require extended discovery, lengthy trials, and exorbitant costs for litigants and taxpayers alike. Given the heavy burden of litigating claims under Section 2, many vote dilution violations go unaddressed. States can address this problem by codifying parallel protections in state law that are clearer and more workable to enforce.

The need for state-level protection is underscored by the steady erosion of voting rights guarantees at the federal level. Since the U.S. Supreme Court's 2013 decision in *Shelby County v. Holder*,[3] jurisdictions with histories of discrimination have been able to implement restrictive voting policies, including dilutive election systems and redistricting maps, without federal oversight. In *Brnovich v. Democratic National Committee*, the Court further weakened Section 2 of the federal VRA by making it even harder for voters to challenge discriminatory laws in court.[4] And the Supreme Court is now considering multiple cases that could wipe away Section 2's remaining protections. In *Louisiana v. Callais*, opponents of the federal VRA asked the Court to find that compliance with Section 2's vote-dilution prohibition is itself

[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] 594 U.S. 647 (2021).

unconstitutional. In *Turtle Mountain Band of Chippewa Indians et al., v. Howe* and other cases, voting rights opponents have asked the Court to find that private individuals cannot file suit at all under Section 2, leaving them without the ability to enforce their own voting rights.

At the same time, Congress has not acted to restore or strengthen the federal VRA, failing repeatedly to pass the much-needed John R. Lewis Voting Rights Advancement Act. And the current presidential administration has dismantled the voting rights enforcement arm of the Civil Rights Division of the U.S. Department of Justice. 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.

Momentum for state VRAs is growing. California (2002), Washington (2018), Oregon (2019), Virginia (2021), New York (2022), Connecticut (2023), Minnesota (2024), and Colorado (2025) have already enacted such protections, while states like New Jersey, Florida, Michigan, and Alabama are working to follow suit. Maryland should take advantage of this opportunity and join these other states in ensuring all of its voters have equal access to the democratic process.

H.B. 350 will provide Marylanders with a more reliable, effective, and efficient mechanism to enforce their voting rights, saving the state time and money while ensuring equal access to the democratic process.

III. REASONS TO SUPPORT H.B. 350

H.B. 350 will innovate on the federal VRA, as well as other state VRAs, by providing voters with better tools to challenge discriminatory policies and streamlining the procedural mechanisms for these kinds of claims. It would create a private cause of action for vote dilution that is a less costly and less burdensome means of enforcing voting rights. It would also enable the adoption of tailored remedies that address the specific needs and demographics of each jurisdiction.

A. <u>H.B. 350 provides a framework for determining vote dilution in a way that is efficient and cost-effective for both voters and jurisdictions.</u>

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) the minority group is politically cohesive; and (3) white bloc voting usually prevents minority voters from electing their candidates of choice (the latter two of these requirements collectively understood as a showing of racially polarized

voting).[5] 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. 350 would improve on the federal VRA in at least three key respects: (i) it ensures that integrated as well as segregated communities can influence elections and elect their candidates of choice, (ii) it sets out practical guidelines for courts to properly assess polarized voting, and (iii) it expressly allows coalition claims.

First, unlike the federal VRA, H.B. 350 does not require historically disenfranchised communities to be residentially segregated in order to receive protections under the statute. Like the state VRAs passed in California, Washington, Oregon, Virginia, New York, Connecticut, and Colorado, H.B. 350 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. § 15.7–104(C). Following the passage of civil rights legislation, residential segregation has decreased in some areas of the United States, yet racially polarized voting and underrepresentation of historically disenfranchised communities persist.[6] Thus, many communities that do not face residential segregation may still lack equal opportunity to elect candidates of choice to their local government. By not requiring minority communities to be segregated to prove minority vote dilution, H.B. 350 takes this reality into account.[7]

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. 350 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.[8]

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

[6] *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.

[7] Like VRAs in other states, H.B. 350 would allow courts to consider whether a community is sufficiently large and geographically compact in determining a remedy to a vote dilution violation. § 15.7–104(C).

[8] *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,

Second, unlike the federal VRA, H.B. 350 sets out clear guidance in the statute itself about how to assess polarized voting. Polarized voting—also known as racially polarized voting (RPV) in the federal context—means that there is a significant divergence in the electoral choices or candidate preferences of protected class voters, as compared to other voters.

Because RPV is considered a "linchpin of a Section 2 vote dilution claim,"[9] federal courts have developed guidance about what type of evidence is (and is not) relevant to establishing the existence of RPV. H.B. 350 helpfully codifies these guardrails in statutory text, which helps to focus the inquiry, provide clarity to judges and litigants, and avoid needless legal disputes. § 15.7–104(A)-(B). For example, the bill makes clear that reasons for *why* RPV may exist are irrelevant to the question of whether voting patterns are polarized in a jurisdiction.[10] § 15.7–104(B)(3)(II). This allows state courts to avoid needless and expensive legal disputes arising in Section 2 litigation about whether partisan preferences should have an impact on polarized voting analysis.

Third, H.B. 350 expressly defines a "protected class" to include two or more protected classes, thereby allowing voters of more than one racial or language-minority group who collectively endure unlawful vote dilution to litigate their claim efficiently in a single suit. § 15.7–101(C). Some federal courts have chosen to impose a burdensome "single-race limitation" on vote dilution claims, disallowing claims against election systems that dilute the combined voting strength of more than one racial or language-minority group.[11] But such claims, known as "coalition claims," are cognizable in most other federal circuits. By resolving this question in the statutory text itself, H.B. 350 eliminates uncertainty stemming from the federal circuit split and clarifies that coalition claims are permitted in Maryland, reducing unnecessary litigation over threshold legal questions and enabling more efficient resolution of vote dilution claims in diverse communities.

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.").

[9] *Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1207 (5th Cir. 1989).

[10] *Gingles*, 478 U.S. at 51, 62–63, 74 (plurality) (The "legal concept of racially polarized voting incorporates neither causation nor intent. It means simply that the race of voters correlates with the selection of a certain candidate or candidates" and "the reasons [minority] and white voters vote differently have no relevance to the central inquiry of § 2."); *see id.* at 100 (O'Connor, J., concurring). *See also Gomez v. City of Watsonville*, 863 F.2d 1407, 1416 (9th Cir. 1988) (holding that courts should look "only to actual voting patterns" to determine whether voting is racially polarized and not speculate as to the reasons why); *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 935 (4th Cir. 1987).

[11] *Nixon v. Kent Cnty.*, 76 F.3d 1381, 1387 (6th Cir. 1996); *Petteway v. Galveston Cnty.*, 86 F.4th 1146 (5th Cir. 2023).

B. H.B. 350 expands the remedies that historically disenfranchised communities can seek to ensure their electoral enfranchisement.

If a violation of H.B. 350 is found, the court shall order appropriate remedies that are tailored to address the violation in the local government. § 15.7–106(B). This part of the bill recognizes that dilution tactics take many different forms, and remedies must therefore be appropriately fitted to the local needs of each jurisdiction.

H.B. 350 also specifies that courts may not defer to a proposed remedy simply because it is proposed by the local government. § 15.7–106(C)(2). This directly responds to the practice of federal courts, rooted in federalism concerns not present in state court, to grant government defendants the "first opportunity to suggest a [legally acceptable] remedial plan."[12] 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.[13] 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.[14] 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. 350 avoids this problem by allowing the court to consider remedies offered by *any* party to a lawsuit, and by 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

We strongly urge you to enact H.B. 350 and strengthen voting rights for all Marylanders. H.B. 350 signifies a pivotal inflection point for the state of Maryland to

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

lead in protecting voting rights, offering a more efficient and lower-cost layer of oversight for communities.

Respectfully submitted,
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