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Judicial Proceedings Committee

Joint Committees

Children, Youth, and Families

Ending Homelessness



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THE SENATE OF MARYLAND  
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**Senator Charles E. Sydnor III**  
**Testimony for SB 413**  
**Voting Rights Act of 2022 – Counties and Municipalities**  
**Before: Education, Health, and Environmental Affairs Committee**  
**February 23, 2022**

Good afternoon Chair Pinsky, members of the Education, Health, and Environmental Affairs Committee,

In 1985, then Attorney General Stephen H. Sachs, who just last week departed this life, completed an 111-page audit of 11 heavily black counties which found Racial discrimination and polarization in a number of Maryland's southern and Eastern Shore counties. "Although it found only Somerset with discrimination patterns severe enough to violate the Voting Rights Act, the audit said exclusion of blacks from the electoral process is widespread. Between 1962 and 1982, for example, according to the study, a total of 282 commissioners and county council members were elected in the 11 counties, but only one was black. The counties' voting-age populations are on the average about 21 percent black."<sup>1</sup>

At the time, it was reported by the Washington Post that the audit reported that "There is a "special sense of isolation among members of the black community... a sense that they are governed, but do not participate in governing, and that important public issues are decided for them, not by them."

Fast forward to the more recent present and you will Del. Brian Crosby (D-St. Mary's) charging during the 2020 election that the lack of a second early voting center in his county amounted to "voter suppression" and Montgomery County's White Oak residents repeatedly asking election officials for an early voting center in the majority-minority neighborhood in recent years.<sup>2</sup>

More recently when it came to redistricting, a Baltimore County Commission, formed by our County Council proposed a redistricting plan that would maintain a white majority in six of seven Council districts by "packing" a supermajority of Black voters (70 plus percent) into its single majority Black district, a tactic the U.S. Supreme Court has counseled against. Advocacy organizations, my colleagues and I persuaded the County Council to amend the map to better reflect the demographics of the county. Instead of doing that, the Council amended the map

<sup>1</sup> <https://www.washingtonpost.com/archive/local/1985/07/19/voting-bias-found-in-some-md-counties/58882df1-ecdf-4fc2-919a-37c2505a56be/>

<sup>2</sup> <https://www.marylandmatters.org/2019/10/08/state-board-will-consider-additional-early-voting-site-in-montgomery-but-not-baltimore/>

creating an even more precarious council districts in its map. The Council's response led me and a few other Baltimore County citizens to join the ACLU, League of Women Voters of Baltimore County, the Baltimore County Branch of the NAACP, and Common Cause - Maryland in filing a federal lawsuit challenging the racially discriminatory and unlawful redistricting plan approved by the Baltimore County Council last December.

Our case was recently argued before United States District Judge Lydia Kay Griggsby to issue an injunction overturning Baltimore County's racially discriminatory redistricting plan and requiring the County to reconfigure its election system in compliance with the Voting Rights Act. The County Council's dilution of Black voters would illegally allow white voters, who make up barely half of the County's population and will soon be a minority, to control six of the council's seven seats for the next decade. We expect a decision to come down any hour now; however, the task to make a municipality or county act in accordance to federal law should not be left to private citizens.

The federal Voting Rights Act gives our US Attorney General the ability to sue any government which violates the federal Voting Rights Act, but the reality is, that office does not have the capacity to get involved in every violation that occurs. So similar to the California Voting Rights Act of 2001, SB 413 grants express authority to the Maryland Attorney General to seek injunctive relief, damages or other relief to enforce the bill when a County or municipality violates the Voting Rights Act of 2022. This is a power that should be in the hands of the chief law enforcement officer of the state and places this authority where it belongs.

SB 413 prohibits Maryland counties and municipalities from imposing or applying a method for electing its representatives in a manner that impairs a Protected Class member<sup>3</sup> from electing a candidate of that member's choice or impairs that protected class member's ability to influence the outcome of an election as a result of the dilution or the abridgment of that Protected Class member's voting rights. The legislation provides that intent to discriminate is not required to establish a violation and it provides five probative factors which may be used to establish whether a violation occurred. Those probative factors are noted under sections 8-903(D) and 4-603(D).<sup>4</sup>

To prove that a violation of the Voting Rights Act of 2022 occurred, the Attorney General would have to establish (1) elections in the Maryland county or municipality exhibit Polarized Voting<sup>5</sup>

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<sup>3</sup> Section 8-901(C) of the legislation defines "Protected Class" as a "class of voter who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act of 1965 and related federal case law."

<sup>4</sup> These include (1) a history of discrimination, (2) the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of a method of election, including at large elections, (3) the denial of access to the processes determining which groups of candidates will receive financial or other support in a given election, (4) the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health that hinders the ability to participate effectively in the political process, and (5) the use of overt or subtle racial appeals in political campaigns.

<sup>5</sup> Section 8-901(C) of the legislation defines "Polarized Voting" as "voting in which there is a difference, as defined in federal case law regarding enforcement of the federal Voting Rights Act of 1965, in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of electorate." Sections 8-904 and section 4-604 of the legislation provide a framework for a court to determine whether Polarized Voting has occurred.

and (2) the method of election dilutes or abridges the voting strength of a protected class member's ability to influence the outcome of an election.

When making a determination whether Polarized Voting occurred, the court must consider: (1) the methodologies for estimating group voting behavior, as approved in federal case law, to enforce the federal Voting Rights act of 1965, (2) elections of the governing body of the county or municipality, (3) ballot question elections, (4) elections where at least one candidate is a member of a protected class, and (5) other electoral choices that affect the right and privileges of the protected class member.

For the aforementioned reasons, I am asking that this committee provide a favorable report for SB 413.