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THE MICHIGAN VOTING RIGHTS ACT

LDF Legal
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I. INTRODUCTION



The Michigan Legislature is currently considering a package of four bills that together constitute the Michigan Voting Rights Act.¹ This landmark legislative package would provide Michigan with strong, comprehensive protections for the right to vote. It would reinforce Michigan’s recent progress toward becoming a national leader on voting rights and inclusive democracy. In addition to addressing critical local needs, the Michigan Voting Rights Act would place Michigan at the forefront of a national movement, building on the recent enactment of comprehensive state voting rights acts in Connecticut, New York, Minnesota and, as well as laws already in force in Virginia, Oregon, Washington, and California.²

Michigan Voting Rights Act (“MIVRA”) brings together powerful measures, adapted both from these other state laws and from the federal Voting Rights Act of 1965, to root out discriminatory barriers to the franchise in Michigan. Its provisions would strengthen democracy for everyone in the state—and be especially important in removing obstacles for Michigan’s eligible voters of color, who have long been denied an equal opportunity to participate in the political process.

The MIVRA would be one of the most comprehensive state voting rights acts in the nation. If enacted, the MIVRA would help Michigan turn the page on a troubling history of discrimination, build upon recent progress achieved through Propositions 3 (2018) and 2 (2022) as well as in the 2023 legislative session, and continue moving toward the goal of truly equitable, inclusive democracy.

II. THE NEED FOR STRONG VOTING RIGHTS PROTECTIONS IN MICHIGAN

Despite recent progress, the State of Michigan is no stranger to racially discriminatory barriers to voting. Michigan’s earliest Constitution denied the franchise to Black men.³ Though Michigan’s explicitly discriminatory laws changed following the Civil War, *de facto* barriers to voting access persisted.⁴ Today, unequal barriers to voter participation remain in the form of long lines,⁵ racially targeted voter intimidation,⁶ and other disparities that negatively impact access.

A. Michigan’s Troubling History of Voting Discrimination

Racial inequality was inscribed in the legal framework creating Michigan’s system of government from the beginning. In Michigan’s 1835 Constitution, the right to vote was only afforded to white men.⁷ The 1850 Constitution extended the franchise to some “civilized... Indians.”⁸ Michigan voters—who, at the time, were all men and overwhelmingly white—twice rejected expanding suffrage to Black men, overwhelmingly voting down a constitutional amendment to do so in 1850⁹ and again in 1867,¹⁰ well after the Civil War was won. Only in 1869, as Michigan simultaneously ratified the Fifteenth Amendment to the United States Constitution, did the state move to grant Black men the right to vote.¹¹ Even then, many Native Americans were denied the right to vote, with Michigan Senator Jacob Howard claiming at the time that he was “not yet prepared to pass a sweeping act of naturalization by which all the Indian [people] . . . are to become my fellow-citizens and go to the polls and vote with me.”¹² It was not

until the passage of the federal Snyder Act in 1927 that all Native Americans born in the state could vote.¹³

Today, Michigan’s Constitution still contains ambiguous, racially tinged language that proponents of various voter-suppressive laws have claimed as legal support for such measures. The “purity clause” in Michigan’s Constitution provides that laws may be passed to “preserve the purity of elections” and to “guard against abuses of the elective franchise.”¹⁴ Originally understood by many Michiganders as coded language implying the “racial purity” of the franchise, today the clause is commonly invoked in defense of laws or policies that disproportionately impact voters of color,¹⁵ including photo voter ID laws and a decision not to count certain timely-mailed absentee ballots.¹⁶



Until Section 5 of the federal Voting Rights Act was immobilized by the Supreme Court in *Shelby County, Alabama v. Holder*,¹⁷ certain localities in Michigan were subject to preclearance, obligating those jurisdictions to obtain approval from the United States Department of Justice or a federal court before making any changes to their voting laws or practices.¹⁸ Recent experience shows that the underlying conditions that made preclearance appropriate remain relevant: as recently as 2007, the U.S. Department of Justice intervened and objected to Buena Vista's effort to close a branch office of the Michigan Secretary of State without first seeking preclearance, noting that the branch office played a critical role in providing residents with photo IDs needed to vote.¹⁹

B. Continued Obstacles and Discrimination in Voting

Michigan voters have faced a range of barriers that disproportionately impact Black and brown citizens, resulting in significant racial disparities in registration and turnout as well as other inequities. Before recent reforms, Michigan voters reported more frequent problems voting via absent-voter ballot than residents of any other state,²⁰ along with strikingly high rates of provisional-ballot rejection that far exceed the national average.²¹ Although Michigan now offers relatively expansive options

for absent-voter voting and same-day registration, these opportunities became available only after a recent ballot initiative led by a coalition of voting rights activists,²² and recent years have seen efforts to undermine this progress.²³

Recent Progress and Continued Need. In recent years, Michigan has made several commendable advances with respect to voting rights. In 2018, a ballot initiative led by a coalition of voting rights activists resulted in Proposal 18-3, a Michigan constitutional amendment expanding early voting and same-day registration.²⁴ Voting rights advocates returned in 2022 to advance another set of reforms into law, this time expanding early voting, protecting the right to vote by affidavit, and expanding the oversight powers of the state Board of Canvassers.²⁵ In 2023, lawmakers passed legislation allowing young people to pre-register to vote and providing automatic voter registration opportunities for people completing prison sentences.²⁶

While these successes should be celebrated, they unfortunately do not mean that Michigan is safe from discriminatory voting practices. Both ballot measures emerged in response to legislative threats to voting rights. Furthermore, while the measures significantly expand voting access, they do not guard against many longstanding discriminatory barriers, including at-large local districts, voter

WHILE THESE SUCCESSES SHOULD BE CELEBRATED, THEY UNFORTUNATELY DO NOT MEAN THAT MICHIGAN IS SAFE FROM DISCRIMINATORY VOTING PRACTICES. BOTH BALLOT MEASURES EMERGED IN RESPONSE TO LEGISLATIVE THREATS TO VOTING RIGHTS.



Voting boxes are brought into City Hall in Flint, Michigan October 20, 2020. (Photo by SETH HERALD / AFP) (Photo by SETH HERALD/AFP via Getty Images)

intimidation, or lack of language access, among other barriers discussed below. Though Proposals 18-3 and 22-2 have expanded the franchise for voters of color, preventing voting discrimination requires more.

Racial Disparities in Political Participation.

As a result of unequal barriers to the franchise significant racial disparities in voter registration and turnout mark Michigan elections. With respect to registration, data published by the U.S. Census Bureau shows that 75.2% of non-Hispanic white citizens in Michigan were registered to vote as of the November 2020 election.²⁷ By contrast, only 72.4% of Black citizens, 58.9% of Latino citizens, and 49.6% of Asian citizens in Michigan were registered to vote as of that election.²⁸

With respect to voter turnout, Census data reveal similar disparities. According to the Census

Bureau, 68.2% of Michigan's non-Hispanic white citizens voted in the 2020 election. This compares to only 63.8% of Michigan's Black citizens, 45.1% of Michigan's Asian citizens, and 54.7% of Michigan's Latino citizens.²⁹

These disparities strongly indicate the presence of unequal barriers in the registration and voting process that impede participation by eligible voters of color in Michigan.³⁰

Voter Suppression. Michigan voters have faced voter suppression at the hands of local election officials. For example, in 2020, the City Clerk in the majority-Black city of Flint failed to open their office for more than half of the 40-day period during which voters could cast absent-voter ballots early at their local clerk's office, and only agreed to open the office to permit absent-voter balloting after facing a

lawsuit from impacted citizens and the ACLU of Michigan.³¹

The risk of voter suppression is especially severe in Michigan because the state has some of the most decentralized elections in the country.³² Under Michigan’s highly decentralized system for election administration, state, county, and municipal governments each hold certain responsibilities, resulting in local policies and practices that can differ widely in each of the state’s 1,603 different jurisdictions, creating a risk that harmful procedures may be adopted without sufficient checks.³³ Examples include a notable case regarding some members of the Wayne County Board of Canvassers attempt to throw out votes in order to overturn the 2020 election results, discussed below.

Racial Vote Dilution. Racial vote dilution occurs when an electoral system weakens the voting power of a racial minority such that they are denied an equal opportunity to elect candidates of their choice. This is often seen in the use of at-large elections, or when map-drawers unfairly “pack” communities of color into too few districts or “crack” them across too many districts, preventing voters of color from exercising a degree of electoral power consistent with their proportion of the electorate.

In at-large elections, every candidate for a multimember body is elected by all the voters in a town, county, or other local government, rather than each candidate running from a specific district with a defined group of voters. The U.S. Supreme Court has recognized that, when combined with racially polarized voting or other relevant factors, this system can wrongfully dilute the voting strength of racial minorities.³⁴

The majority of Michigan cities—and nearly all Michigan school districts—use at-large elections.³⁵ This does not mean that all of these jurisdictions



A voter prepares to his ballot as he walks away from a voters booth at a polling station in Hamtramck, Michigan. (Photo by Joshua Lott/Getty Images)

necessarily have a vote dilution problem; at-large systems can work without discriminatory effects when communities are relatively homogenous or voting patterns are not particularly divergent by race. But at-large voting does pose a clear risk of vote dilution when communities are racially polarized because it prevents minority voters from having an opportunity to elect candidates.

And there are strong indications that at-large elections have caused problems in the state. For example, based on a preliminary analysis, at least four racially diverse counties and at least 20 racially diverse cities and villages appear to have all-white or nearly all-white elected leadership at the local level.³⁶ Of the 20 cities and villages where this preliminary analysis found indications of potential underrepresentation of voters of color, 17 use at-large elections.

In 2017, the United States Department of Justice successfully sued the city of Eastpointe for diluting the voting power of Black residents through its at-large elections in violation of Section 2 of the federal Voting Rights Act.³⁷ The at-large election structure

for the Eastpointe City Council submerged the vote of Eastpointe’s large and growing Black population, denying Black voters—who made up 39% of the city at the time of the lawsuit—any opportunity to elect candidates of their choice.³⁸ Despite Black candidates consistently running for Eastpointe City Council with the support of Black voters, no Black person had ever been elected to the four-person council.³⁹ After the District Court denied Eastpointe’s motion for summary judgement,⁴⁰ the case ultimately settled.⁴¹ The city agreed to implement proportional ranked choice voting as an alternative to expand the electoral power of Black residents.⁴² Four years later, Eastpointe now has its first Black mayor and two Black members of city council.

Underrepresentation of people of color in local government in Michigan is not limited to localities using at-large systems. In addition to the *Eastpointe* case, a federal court also found that Kent County diluted the power of Black and Latino voters in violation of the federal Voting Rights Act during its redistricting process following the 1990 census by providing only one majority-minority district, even though plaintiffs had demonstrated that it would be

possible to draw two such districts.⁴³ The Western District of Michigan and the Sixth Circuit Court of Appeals both found convincing evidence of racially polarized voting⁴⁴ and initially held that the county’s redistricting plan illegally diluted Black and Latino voting power.⁴⁵ However, unfortunately, the Sixth Circuit then reversed its decision, departing from the prevailing view among federal Circuit Courts, and held that the federal VRA did not allow lawsuits to be filed by members of different racial minority groups working together.⁴⁶

As this discussion demonstrates, Michigan voters continue to experience vote dilution well into the current era. Additionally, these cases help show that the federal VRA, in its currently diminished form, is inadequate to protect against all present forms of voting discrimination; in each matter, voters of color had to bring costly actions in federal court, sometimes with multiple appeals, in order to exercise their rights free from discrimination.

Inadequate Multilingual Voting Opportunities. Many voters who are not proficient in English lack protections under the federal VRA,⁴⁷ creating an acute need for additional language assistance in



voting in Michigan. Despite Michigan boasting over 170,000 Arabic speakers, making Arabic the third most common language in the state after English and Spanish,⁴⁸ no federal or Michigan law currently requires that officials provide ballots or election information in the language. In some cities, such as Dearborn where Middle Eastern and North African (MENA) people are a majority of the population, nearly half of residents over 5 years old have little-to-no proficiency in English.⁴⁹ Yet Michigan only recently began making strides to expand access to Arabic speakers and other language minorities. In 2020, the Department of State developed resources in a range of languages, including those not covered by the federal VRA.⁵⁰ In 2022, Dearborn's and Hamtramck's city councils voted to provide ballots in Arabic only after a coalition of local nonprofits tried and failed to advocate through the city clerk's office for expansion.⁵¹

Even for languages that are covered by the federal VRA, voters have had to fight to access legally required language assistance services. The city of Hamtramck did not provide election information or assistance in Bangla until confronted with a lawsuit by the Asian American Legal Defense and Education Fund (AALDEF).⁵² Prior to AALDEF's intervention, the City Clerk offered no election website or ballots in Bangla and provided inadequate translators at polls: thousands of Bangla-speaking Hamtramck residents instead relied on the organizing efforts of the nonprofit organization Detroit Action to receive the language assistance they required.⁵³

Lack of Accessible Polling Places for Voters with Disabilities. Although the federal VRA, the Americans with Disabilities Act, and the Help America Vote Act all create standards for voting accessibility, illegal barriers still stand in the way of many voters with disabilities.⁵⁴ These accessibility issues disproportionately impact voters of color, who, both in Michigan and nationwide, are more

likely than non-Hispanic white people to experience disability.⁵⁵ Detroit Disability Power surveyed 267 polling locations in multiple jurisdictions throughout the Detroit metropolitan area and found only 16% of polling places were fully accessible.⁵⁶ The organization found that 14% of polling locations had stairs with no ramps or blocked ramps, 12% of voting assistance terminals lacked adequate equipment, and only one of 15 jurisdictions surveyed had adequate accessible voting booths at all of their locations.⁵⁷ Impediments were especially egregious in majority-minority communities. In the Black-majority cities of Detroit and Southfield, for example, only 35% and 31%, respectively, of polling places featured accessible entrances.⁵⁸ With 1 in 4 Michigan residents experiencing some kind of disability, these barriers impact hundreds of thousands of voters each year.⁵⁹

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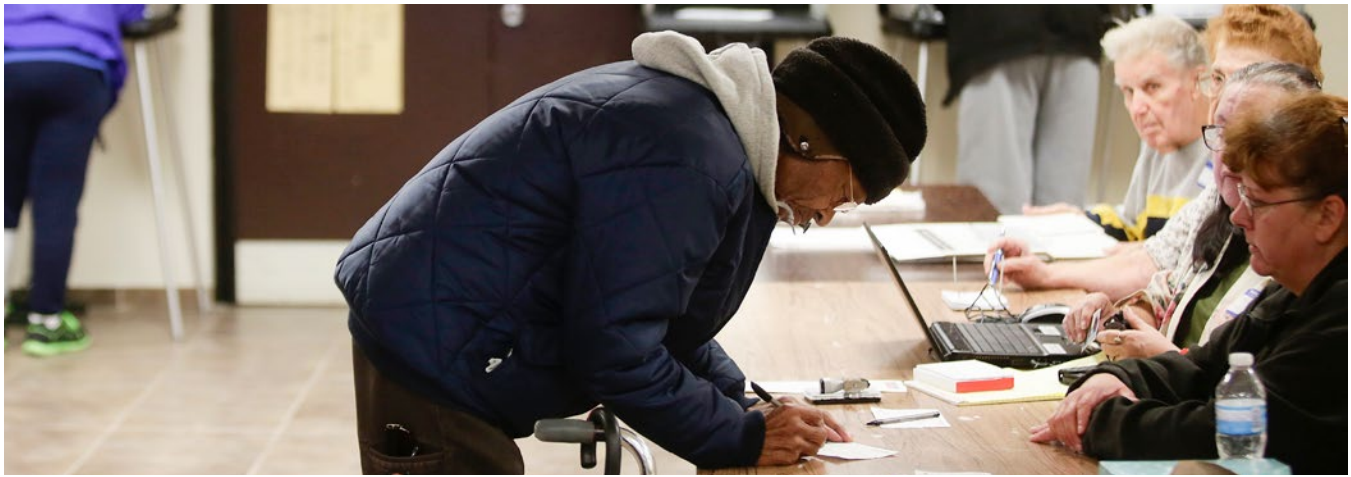
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A voter fills out paper work before receiving his ballot at a polling station during the mid-term elections in Hamtramck, Michigan. (Photo by Joshua Lott/Getty Images)

Voter Intimidation. Michigan has seen racially targeted voter intimidation and misinformation in recent years. During the 2020 election, robocalls targeted Black voters in Detroit and Flint with disinformation that suggested that voting by mail would compromise their personal information.⁶⁰ The perpetrators pled guilty to telecommunications fraud in Ohio⁶¹ and have been charged in Michigan court for related criminal offenses.⁶² These disturbing incidents follow national trends of increased voter intimidation, often targeted at Black and brown voters.⁶³

Michigan's voters of color have faced a long history of voter intimidation, including from government officials and approved election observers. During the 1999 general election in the City of Hamtramck, officially sanctioned election observers harassed dozens of MENA voters, including compelling them to take oaths of allegiance. Several groups, including the self-styled "Citizens for a Better Hamtramck (CCBH)," registered with the City Clerk as challengers with the expressed interest of "keeping the elections 'pure,'" evoking a historically racist concept and echoing troubling language in the Michigan Constitution.⁶⁴ CCBH challenged over 40 voters' citizenship status, apparently targeting individuals based on physical appearance or Arabic names.⁶⁵ The city took no action to prevent the

continued threatening and harassment of voters.⁶⁶ In fact, the chair of an election precinct directed that official election inspectors demand a driver's license and voter registration card from anyone who "looks Arabic," despite these documents not being required.⁶⁷

Baseless and Unlawful Efforts to Delegitimize Michigan Election Results and Disenfranchise Black Voters. In the wake of the 2020 presidential election, former President Trump and his 2020 presidential campaign sought to delegitimize the election and disenfranchise Black voters in Michigan by pressuring Michigan state and local officials to refuse to certify election results and, specifically, not to count votes from Wayne County, Michigan, where Detroit is the county seat.⁶⁸ Indeed, two members of the county's board of canvassers attempted to block the certification of votes, nearly denying the franchise to all voters in the majority-minority county of nearly 1.8 million.⁶⁹ Similarly, following the 2022 election, Kristina Karamo, an unsuccessful candidate for Secretary of State sued to reject absentee ballots from a majority-Black community without offering a "shred of evidence."⁷⁰ Had any of these baseless efforts succeeded, the result would have been the disenfranchisement of hundreds of thousands of Michiganders, the majority of whom were Black.

Recent Efforts to Adopt Discriminatory and Suppressive Voting Legislation. In recent years, the Michigan Legislature has sought to adopt racially discriminatory and suppressive voting legislation targeting people of color. In 2021 alone, the Michigan Secretary of State identified 39 bills that the office determined would “restrict citizens’ voting rights [and] harm elections administration.”⁷¹ For example, one proposal would have removed the option to vote via affidavit ballot if a voter lacked a valid photo ID.⁷² This change likely would have disenfranchised thousands of voters who vote each year by affidavit ballot,⁷³ with Black voters more than five times more likely than other voters to rely on affidavits.⁷⁴ Another bill would have forced the counting of ballots to cease at noon on the day after an election—an arbitrary deadline that, if it had been in effect for the 2020 election, would have disenfranchised thousands of Michigan voters, disproportionately including Black voters.⁷⁵ Other bills attempted to restrict access to absentee ballots, eliminate drop boxes, complicate military overseas voting, and more.⁷⁶ Testimony from the Legal Defense Fund, the ACLU of Michigan, and others explained how these bills would have disproportionately harmed Black voters and other marginalized groups.⁷⁷

Unable to succeed through the legislative process, anti-voter forces in Michigan attempted to circumvent both a popular referendum vote and the Governor’s promised veto on any voter-suppressive bills by using a petition and a process in Michigan’s constitution that would have allowed signatures from only 4% of the state’s voters to send a complex package of restrictive election changes to the legislature, which, under this unusual procedure, could have enacted it without a referendum or the opportunity for a gubernatorial veto—sidelining both the majority of Michigan voters and the regular legislative process.⁷⁸ The petition would have enacted several components of the 2021 bills, including eliminating the affidavit option

for voters without a photo ID, requiring absentee voters to provide their drivers’ license number and partial Social Security number, and prohibiting the Secretary of State and local officials from proactively mailing absentee ballot applications.⁷⁹ Petition organizers initially failed to submit signatures before a key deadline.⁸⁰ Ultimately, the groups abandoned their strategy to subvert the democratic process to pass an unpopular voter-suppression bill following the November 2022 passage of Proposal 2, and after it became clear that the State Board of Canvassers would be unable to verify the signatures before the end of legislative session.⁸¹

C. Current Limitations of the Federal Voting Rights Act

The federal Voting Rights Act was one of the most successful civil rights laws in U.S. history, but it does not fully address the need for voting rights protections in Michigan and other states—especially in its current, weakened form. Although the individual and collective provisions of the federal VRA have been effective at combatting a wide range of barriers and burdens,⁸² federal courts have chipped away at the federal VRA’s protections in recent years, making it increasingly complex and burdensome for litigants to vindicate their rights under the law. As a result, despite the federal VRA’s importance, voters of color often face significant barriers to participating in the political process and electing candidates of their choice.

For nearly 50 years, Section 5 of the federal VRA, the core provision of the legislation, protected millions of voters of color from racial discrimination in voting by requiring certain states and localities to obtain approval from the federal government before implementing a voting change.⁸³ This “preclearance” protection was based on the simple notion that when it comes to a matter as fundamental as the right to vote, an ounce of

prevention is worth a pound of cure; it helped ensure that states or localities with a troubled past could not find new ways to get around existing prohibitions and thus continue to discriminate. As noted above, this included jurisdictions in Michigan.

However, in the 2013 *Shelby County* case, the United States Supreme Court rendered Section 5's "preclearance" process mostly inoperable by striking down Section 4(b) of the VRA, which identified the places where Section 5 applied.⁸⁴ Critically, the Court did not declare preclearance itself unconstitutional, only the framework for determining its geographic application.⁸⁵ But the practical result is that until Congress rewrites the framework,⁸⁶ one of the strongest anti-discrimination provisions ever written lies inert, largely unable to protect voters.⁸⁷

As the late Justice Ruth Bader Ginsburg noted in her dissent to the *Shelby* decision: "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."⁸⁸ Predictably, the *Shelby County* decision unleashed a wave of voter suppression in states that were previously covered under Section 4(b).⁸⁹ The *Shelby* decision allowed state and local governments to roll out discriminatory voter suppression schemes virtually unchecked, including barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements, and last-minute polling place closures and consolidations.⁹⁰ At its pre-*Shelby* strength, Section 5 would have prevented many of the voter suppression schemes that voters of color have encountered since 2013.

This onslaught accelerated after the 2020 election. Despite a global pandemic and persistent racial disparities in voter participation, 2020 saw historic levels of participation both overall and by voters of color.⁹¹ Voters overcame obstacles and unnecessary

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barriers to make their voices heard—and the robust turnout engendered a swift backlash among those who fear the inclusive, multiracial democracy the U.S. can and must become. Following that election, in 2021, state lawmakers in Michigan and other states introduced more than 440 bills with provisions that restrict voting access in 49 states, and 34 such laws were enacted.⁹² This wave of harmful legislation shows no signs of abating—in the 2023 legislative sessions, at least 14 states enacted 17 restrictive voting laws that will be in effect for the November 2024 election.⁹³

Section 2 of the federal VRA offers a private right of action—which means that a person is legally entitled to file a lawsuit—against any voting practice or procedure that "results in a denial or abridgment of the right of any citizen of the United States to vote



Voters check in at a polling station to cast their ballots in Detroit during the midterm elections. (Photo by Matthew Hatcher/SOPA Images/LightRocket via Getty Images)

on account of race.”⁹⁴ Although the constitutionality of Section 2 was recently affirmed by the Supreme Court in *Allen v. Milligan*, Section 2 litigation imposes a high bar for plaintiffs.⁹⁵ Such cases are expensive and can take years to reach resolution.⁹⁶ Section 2 lawsuits generally require multiple expert witnesses for both plaintiffs and defendants.⁹⁷ Plaintiffs and their lawyers risk at least six- or seven-figure expenditures in Section 2 lawsuits.⁹⁸ Individual plaintiffs, even when supported by civil rights organizations or private lawyers, often lack the resources and specialized legal expertise to effectively prosecute Section 2 claims.⁹⁹ Due to these challenges, some potential Section 2 violations are never identified, addressed, or litigated in court.¹⁰⁰

Due to the unique complexity of voting rights lawsuits under Section 2 and the absence of a statutory process to resolve potential violations without litigation—both of which issues the MIVRA would address—federal voting rights claims are also expensive for jurisdictions to defend, regularly costing states and localities considerable amounts of taxpayer money. When Eastpointe faced a lawsuit under Section 2 brought by the Department of Justice, the city estimated it would cost taxpayers \$1 million to defend the at-large election system.¹⁰¹ And costs for federal voting rights lawsuits can be far higher. For example, the East Ramapo Central School District in New York State paid its lawyers more than \$7 million for a Section 2 lawsuit brought

by the local NAACP branch—and, after the NAACP branch prevailed, was ordered to pay over \$4 million in plaintiffs’ attorneys’ fees and costs as well.¹⁰² In *Veasey v. Abbott*, the federal lawsuit in which LDF challenged the State of Texas’s Voter ID law with other civil rights groups and the U.S. Department of Justice (DOJ), the district court and the Fifth Circuit Court of Appeals required Texas to pay more than \$6.7 million toward the non-DOJ plaintiffs’ documented litigation costs.¹⁰³ Should similar voting rights issues arise in Michigan in the future, the MIVRA’s statutory mechanism for resolving potential violations collaboratively, without resort to litigation, could dramatically reduce these costs and the risk involved for local jurisdictions.

Above and beyond its complexity and cost, litigation under Section 2 of the federal VRA simply cannot keep up with the urgency of the political process. Because elections occur frequently, discriminatory electoral maps or practices can harm voters almost immediately after governments change voting rules. However, on average, Section 2 cases can last two to five years, and unlawful elections often take place before a case can be resolved, subjecting voters to irreparable harm.¹⁰⁴ In *Milligan*, for example, though the Supreme Court ultimately held that Alabama’s congressional map violated the VRA, the state had already selected a class of representatives in Congress using the illegal map in 2022, nearly a year before the decision.¹⁰⁵

III. EQUITABLE VOTING RIGHTS PROTECTIONS HAVE CONCRETE BENEFITS.

Solving the problems identified above and providing equitable access to the ballot are necessary in a democracy. In addition, addressing discrimination can have powerful, downstream benefits in economic equality and health. For example, researchers have concluded that the federal VRA's preclearance program, by making elected officials more accountable to Black voters, brought about improvements in governmental policy and hiring practices that “reduced the wage gap between [B]lack and white workers by around 5.5 percentage points” in covered counties.¹⁰⁶ Recent analyses show that incremental improvements in diversity in

local representation translate into more equitable educational and policy outcomes.¹⁰⁷ And Professor Thomas A. LaVeist of Tulane University, in a landmark study, identified the federal VRA as a causal factor in reducing infant mortality in Black communities where the law's protections had led to fairer representation.¹⁰⁸ For these reasons, the American Medical Association has recognized voting rights as a social determinant of health and declared support for “measures to facilitate safe and equitable access to voting as a harm-reduction strategy to safeguard public health.”¹⁰⁹



Photo by Michael Nigro/Pacific Press/LightRocket via Getty Images

IV. THE MIVRA PROVIDES COMPREHENSIVE PROTECTIONS TO ADDRESS DISCRIMINATORY BARRIERS TO THE FRANCHISE.

The MIVRA would implement several critical measures modeled on the federal VRA and similar state laws, expanding the tools available to Michigan voters facing discrimination. It would:

- Provide efficient, practical ways to identify and resolve barriers to equal participation in local democracy.
- Expand language assistance for voters with limited English proficiency and promote transparency by creating a central, publicly accessible hub for election data and information.
- Ensure that voters receive advance notice of several key election administration decisions that may affect their rights—and provide a mechanism to protect voters with disabilities when a demonstrated need is shown in a jurisdiction.
- Allow courts to require judicial preapproval before voting changes can go into effect in jurisdictions that have violated voting rights laws.

Each of these provisions is powerful and critically needed in Michigan.

A. Causes of Action to Address Vote Suppression and Dilution

Senate Bill 401, one of four bills that together constitute the MIVRA, provides voters of color, as well as organizations that represent or serve them, with a private right of action—which means that an affected person or organization is legally entitled to file a lawsuit—against localities that adopt policies or practices that result in the impairment or dilution of minority voting strength.¹¹⁰ The bill incorporates common-sense improvements on federal law, modeled on provisions in similar laws in Connecticut, New York, California, and other states, to make it more efficient for voters with meritorious claims to prove their cases in Michigan state courts. The Attorney General can also enforce these protections on behalf of voters.

Voter suppression. Section 7 of S.B. 401 provides an efficient framework for litigating voter suppression claims.¹¹¹ The bill allows voters of color to address practices when they create improper barriers to people of colors' access to the ballot, including, among other things, inaccessible or insufficient polling locations, changes to dates and times of local elections, or failure to provide translations as required by law.¹¹² These provisions are especially important in Michigan, where voters of color have been routinely and disproportionately



affected by long lines at polling places.¹¹³ They could also help address the recent problem of partisan actors attempting to undermine, wrongfully refuse to certify, or decertify election results in majority-Black jurisdictions.

Vote dilution. Section 9 of S.B. 401 is designed as an effective means of identifying and resolving racial vote dilution claims.¹¹⁴ Modeled on the success of the California Voting Rights Act, as well as measures enacted recently in Connecticut and New York, the MIVRA will create a clear and straightforward framework for challenging methods of election for local office that dilute minority voting strength.¹¹⁵ This provision will allow voters of color to seek a change to their jurisdiction’s at-large, districted, or alternative methods of election, if those methods interact with the presence of racially polarized voting¹¹⁶ or other circumstances to impair equal voting rights and create a situation in which “the candidates or electoral choices preferred by a protected class would usually be defeated,” and if one or more changes to the method of election would likely mitigate those harms.¹¹⁷ The MIVRA will make this type of litigation less time-intensive and less costly than litigation under the federal VRA—not only for plaintiffs, but for jurisdictions and all parties.

These provisions are especially important in Michigan, where the majority of cities use at-large elections—which have substantial potential to discriminate against voters of color who are not able

to form a majority in a jurisdiction, either on their own or with other likeminded voters. In addition, the MIVRA’s text makes clear that “coalition” claims—when two or more racial minority groups who face similar forms of voting discrimination file a lawsuit together—are available.¹¹⁸ This is critical in Michigan where, due to a flawed interpretation of the federal VRA by the Sixth Circuit, such claims cannot currently be brought in federal court.¹¹⁹

Notification of potential violations and safe harbor for local governments. Section 13 of S.B. 401 contains important “safe harbor” and notification provisions that protect local governments who wish to prevent discrimination and work collaboratively with their constituents to resolve potential violations without litigation.¹²⁰ Prospective plaintiffs under the MIVRA’s voter suppression and vote dilution causes of action will generally be required to notify municipalities in writing of any alleged violation before commencing the action in court.¹²¹ Municipalities are then afforded a “safe harbor” period of 50 days during which they may take steps to cure the alleged violation without exposure to litigation. These provisions incentivize municipalities to resolve violations amicably, collaboratively, and outside of court. In California, a similar notification and safe harbor procedure has proven highly successful at accomplishing these goals—at least 140 California jurisdictions have voluntarily resolved potential voting rights violations since the California Voting Rights Act was enacted.¹²²

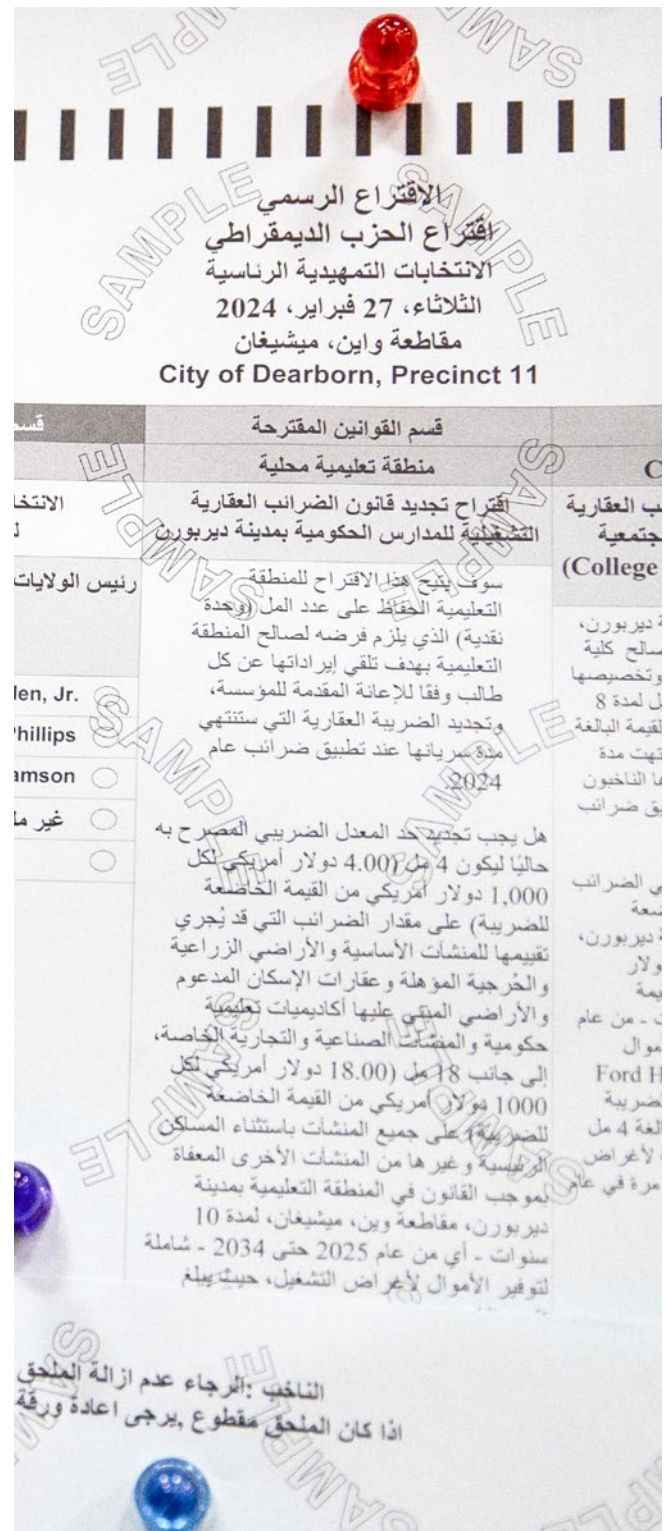
B. Public Notice of Changes to Key Electoral Procedures

S.B. 404 draws on a model employed within the Virginia Voting Rights Act to ensure that voters receive notice of changes that may affect their voting rights.¹²³ S.B. 404 requires local election officials to provide at least 20 days of advance notice before adopting changes to enumerated electoral changes, including changes to a local jurisdiction's method of election, redistricting changes, or programs to remove voters from registration rolls. S.B. 404 establishes similar notice requirements, with appropriate timelines, for certain voting rights actions at the local level involving third parties, like elector challenges. Finally, S.B. 404 provides that the Secretary of State will notify voters of other voting-related actions reported to the Secretary by local jurisdictions.

C. Language Assistance

Senate Bill No. 403¹²⁴ provides expanded election assistance to voters with limited English proficiency. The protections in the federal VRA only apply to assistance in certain places and in a limited number of languages—notably, languages including Arabic and Haitian Creole are excluded.¹²⁵ To address these gaps in federal law and better enfranchise voters with limited English proficiency, the MIVRA provides updated statutory thresholds which cover a broader set of municipalities and enhances language assistance in any language for which a need is demonstrated.¹²⁶

This is especially vital in Michigan, where, for example, more than 1 in every 100 residents speaks Arabic, making it the second most common non-English language.¹²⁷ Many Arabic speakers cannot read English well enough to understand a ballot, and this population tends to experience poverty at greater rates than other Americans.¹²⁸ Though Michigan has one of the largest Arabic-speaking



A sample ballot for the Democratic party presidential primary is seen in a voting site as Democrats and Republicans hold their Michigan primary presidential election in Dearborn, Michigan, United States. (Photo by Mostafa Bassim/Anadolu via Getty Images)

populations in the United States,¹²⁹ Arabic-speakers are afforded no protections or support under federal law.

In addition to protections for speakers of more languages, people living in more Michigan communities need access in languages already covered by federal law. The VRA only requires four municipalities in Michigan to provide language assistance in voting (in Spanish or Bangla), even though Michigan is a state that enjoys significant language diversity.¹³⁰ As other states and localities (including California, Connecticut, and New York)¹³¹ have done, Michigan can and should provide language assistance well above the federal statutory minimum. The MIVRA further ensures that most multilingual materials will be produced centrally by the Secretary of State to centralize resources and avoid encumbering local election administrators.

D. Judicial Preapproval of Voting Changes After Violations

The MIVRA provides a remedial “judicial preapproval” process, informed by the structure of Section 3(c) of the federal Voting Rights Act, to allow courts to require judicial preapproval before voting changes can go into effect in local governments that have violated voting rights laws. The judicial preapproval procedures will empower courts to prevent potential violations of the MIVRA from taking effect in the first place for up to ten years after an initial violation.

E. Establishment of the Michigan Voting and Elections Database and Institute

Senate Bill No. 402¹³² will establish the Michigan Voting and Elections Database and Institute, which will provide a publicly accessible database to maintain and administer a central repository of elections, voting, and demographic data available to the public, and to foster, pursue, and sponsor research on existing laws and best practices in voting and elections.¹³³ The database will be administered by one or more universities in the state, in collaboration with the Secretary of State.¹³⁴ This database can provide voters with public information that is critical for voting rights analysis but can often be difficult to access, including redistricting maps in electronic format, Census data on racial demographics, locations of polling places, anonymized voter files, and district-level election results.¹³⁵

Currently, over 1,600 distinct jurisdictions maintain information about the redistricting plans, demographic information, and other key items of data necessary to analyze voting rights issues at the local level. Because this data is dispersed across so many sources and often requires time-consuming “freedom of information” requests to obtain, everyday Michiganders rarely have access to these public datasets, maps, and information. Making these items easily accessible will foster unprecedented transparency in Michigan’s elections and facilitate evidence-based practices across the state. In concert with the MIVRA’s other measures, the database and institute will empower Michigan voters and community groups to identify and resolve potential voting rights problems, while also helping election administrators and local officials to understand and address such issues proactively.



A voter casts his ballot in a school gymnasium in Lansing, Michigan. (Photo by John Moore/Getty Images)

F. Support for Voters with Disabilities

Section 24 of S.B. 401 creates a process to identify and resolve alleged violations of state or federal laws protecting the voting rights of voters with disabilities and, if needed, to appoint local accessibility monitors. If a local government has violated the rights of voters with disabilities or failed to remedy a potential violation brought to its attention, a voter with a disability, an organization representing voters with disabilities, or the attorney general may, after first bringing the potential violation to the local government's attention and providing an opportunity for a voluntary remedy, bring an action seeking the appointment of a monitor for up to 10 years.¹³⁶ Moving forward, following a violation of law affecting the rights of voters with disabilities, state courts may appoint a monitor to ensure that future violations do not occur. These monitors, provided at the locality's expense, will investigate all accessibility-related complaints and report on any violations. If they identify a violation, monitors may initiate circuit court hearings seeking relief or fines or commence a

thorough investigation.¹³⁷ This rapid and robust relief is appropriate and necessary, given that current laws have failed to resolve frequent accessibility issues facing Michiganders with disabilities.

Additionally, S.B. 404, another component of the MIVRA, creates additional support for voters with both physical and cognitive disabilities. Section 726a of the bill provides elderly and disabled voters the ability to request curbside voting, easing challenges that may persist for people with mobility impairments even in accessible polling places.¹³⁸ Section 751 offers any voter the opportunity to bring an individual to assist them into the voting booth.¹³⁹ Voters with visual or cognitive disabilities may struggle with reading and completing their ballot, making this provision essential.¹⁴⁰ Finally, Section 753 allows for nonpartisan nonprofits to provide transportation to the polls for voters.¹⁴¹ This provision overturns Michigan's needlessly restrictive ban on transportation services for voters¹⁴² and recognizes the essential role transportation services play for elderly and disabled voters—and for other voters with disabilities who may lack the resources to conveniently travel to a voting location.

V. CONCLUSION

By enacting the MIVRA, Michigan can turn the page on its discriminatory past, cement its emerging national leadership as a pro-voter state, and help combat a newly rising tide of voter suppression efforts through its powerful example. Equitable voting rights protections, like those in the federal VRA and state-level voting rights acts, have had powerful effects in making the democratic process fairer, more equal, and more inclusive. These effects include reducing racial turnout disparities,¹⁴³ making government more responsive to the needs and legislative priorities of communities of color,¹⁴⁴ and increasing diversity in government office,¹⁴⁵ so that elected representatives more fully reflect the communities they serve. This has in turn improved public health and quality of life for Black Americans and other people of color.



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Legal Defense Fund (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voting discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

American Civil Liberties Union (“ACLU”) of Michigan

The American Civil Liberties Union of Michigan (ACLU) is the Michigan affiliate of a nationwide nonpartisan organization of approximately 1.6 million members dedicated to protecting the liberties and civil rights guaranteed by the United States Constitution. The ACLU of Michigan regularly and frequently participates in litigation in state and federal courts seeking to protect the constitutional rights of people in Michigan.

This document was most recently updated on June 12, 2024.

Endnotes

- 1 S.B. 401, 102d Leg., Reg. Sess. (Mich. 2023), <http://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/htm/2023-SIB-0401.htm>; S.B. 402, 102d Leg., Reg. Sess. (Mich. 2023), <http://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/htm/2023-SIB-0402.htm>; S.B. 403, 102d Leg., Reg. Sess. (Mich. 2023), <http://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/htm/2023-SIB-0403.htm>; S.B. 404, 102d Leg., Reg. Sess. (Mich. 2023), <http://www.legislature.mi.gov/documents/2023-2024/billintroduced/Senate/htm/2023-SIB-0404.htm>. This document’s discussion of the four bills that make up the MIVRA is based on the authors’ understanding, as of the time of publication, of these bills’ proposed amended forms. Throughout the paper we will note where the anticipated amended provision differs significantly from the introduced version of the legislation.
- 2 See Conn. House Bill No. 6941, P.A. No. 23-204, §§ 410-418 (enacted June 12, 2023), https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06941&which_year=2023 (“CTVRA”); N.Y.S. Senate Bill S1046E / N.Y.S. Assembly Bill A6678E (enacted June 20, 2023), <https://www.nysenate.gov/legislation/bills/2021/A6678> (“NYVRA”); Va. House Bill No. 1890 (2021 Session), <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SBI395>; Ore. Rev. Stat. § 255.400 et seq.; Wash. Rev. Code Ann. § 29A.92.900 et seq.; Cal. Elec. Code, California Voting Rights Act of 2001, § 14027 (2002); see also Testimony of Professor J. Morgan Kousser Before the Subcomm. on the Constitution, Civil Rights and Civil Liberties of the U.S. House Comm. on the Judiciary, Legislative Proposals to Strengthen the Voting Rights Act (Oct. 17, 2019), at 2, <https://docs.house.gov/meetings/JU/JU10/20191017/110084/HHRG-116-JU10-Wstate-KousserJ-20191017.pdf> (noting the “striking success of minorities in using the state-level California Voting Rights Act”).
- 3 Mich. Const. of 1835, art. II, § 1.
- 4 See *infra* Section II.B, “Racial Vote Dilution.”
- 5 Since 2018, several jurisdictions in Michigan frequently see hours-long lines. See, e.g., Beth LeBlanc, Sarah Rahal & Jennifer Chambers, *Long lines, hour-long waits prompt criticism at Michigan polls*, Detroit News (Mar. 10, 2020), <https://www.detroitnews.com/story/news/politics/2020/03/10/michigan-localities-juggling-rise-same-day-voter-registration/5004002002/>; Ryan Stanton, *Hours-long lines on University of Michigan campus as students scramble to vote*, MLive (Nov. 9, 2022), <https://www.mlive.com/politics/2022/11/hours-long-lines-on-university-of-michigan-campus-as-students-scramble-to-vote.html>.
- 6 See *infra* Section II.B, “Voter Intimidation.”
- 7 Mich. Const. of 1835, art. II, § 1.
- 8 Mich. Const. of 1850, art. VII, §§ 1, 6.
- 9 Emil Olbrich, *The Development of Sentiment on Negro Suffrage to 1860*, 3 Bull. Univ. Wisc. 1, 97-98 (1912). After Black suffrage was removed from the draft 1850 Constitution by a vote of 46 to 13 at convention, a resolution passed to put the question to the voting public as a potential amendment to the Constitution they were concurrently voting to adopt. The amendment failed 32,026 to 12,840, while the Constitution itself was adopted by a vote of 36,169 to 9,433.
- 10 Chris Jaehnig, *African American Michigan: The Reconstruction Era*, Daily Mining Gazette (May 9, 2020), <https://www.mininggazette.com/news/features/2020/05/african-american-michigan-the-reconstruction-era/>.
- 11 *Id.*
- 12 *Native American Voting Rights Project*, Native Am. Fund, <https://narf.org/cases/voting-rights/> (last visited September 13, 2023) (slurs omitted).
- 13 *Voting Rights for Native Americans*, Libr. Cong., <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-native-americans/> (last visited September 13, 2023).
- 14 Mich. Const. art. II, § 4 (2) (amended 2018).
- 15 See Joshua Perry, *The Messy History of Michigan’s “Purity Clause”*, 120 Mich. L. Rev. 22, 22–23, 30-34 (2022).

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- 16 *League of Women Voters of Mich. v. Sec’y of State*, 959 N.W.2d 1 (Mich. Ct. App.), *appeal denied*, 946 N.W.2d 307 (Mich.), *and reconsideration denied*, 948 N.W.2d 70 (Mich. 2020).
- 17 570 U.S. 529, 557 (2013). Previously, preclearance applied in perpetuity to jurisdictions that used a “test or device” to restrict access to polls at the time the VRA was passed.
- 18 When Congress expanded the Voting Rights Act to include discrimination against language minority groups (see 52 U.S.C. § 10303), two Michigan localities fell under its purview. At the time of the Act’s passage, both Buena Vista and Clyde townships featured large populations of Spanish-speaking migrant workers who were subjected to English literacy tests that prevented them from exercising their right to vote. Members of the Buena Vista NAACP alleged that the township used language requirements to perpetuate the dominance of white leaders in local politics at a time when members of the town’s Black majority first began to run for office. Mark Tower, *Supreme Court decision on Voting Rights Act: The impact on elections in Buena Vista Township*, MLive (Jun. 27, 2013), <https://www.mlive.com/news/saginaw/2013/06/supreme-court-decision-on-voti.html>.
- 19 *Section 5 Objection Letter Concerning Buena Vista Township (Saginaw Cty.)*, U.S. Dep’t of Just. (Dec. 26, 2007), https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_071226.pdf.
- 20 *Id.* at 68.
- 21 U.S. Election Assist. Comm’n, *Election Administration and Voting Survey: 2018 Comprehensive Report 33-34* (June 2019), https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf (reporting that 70.98% of provisional ballots cast in the 2018 general election in Michigan were rejected, as compared to 20.78% nationwide).
- 22 David Eggert, *Group submits signatures for ballot measure to expand voting in Michigan*, Detroit Free Press (July 9, 2018), <https://www.freep.com/story/news/local/michigan/2018/07/09/signatures-michigan-voting-measure/769754002/>.
- 23 See Samuel Spital, Steven Lance, Lisa Cylar Barret & Janey J. Lamar, Re: Objection to Proposed Summary for the “Secure MI Vote” Initiative Petition (NAACP Legal Def. Educ. Fund ed., 2021), <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-Objection-to-Proposed-Summary-Secure-MI-Vote-Initiative-Petition-9-16-21.pdf>; Jonathan Oosting & Mike Wilkinson, *What to know about Secure MI Vote initiative: security or suppression?*, Bridge Mich. (Sep. 23, 2021), <https://www.bridgemi.com/michigan-government/what-know-about-secure-mi-vote-initiative-security-or-suppression>
- 24 David Eggert, *Group submits signatures for ballot measure to expand voting in Michigan*, Detroit Free Press (July 9, 2018), <https://www.freep.com/story/news/local/michigan/2018/07/09/signatures-michigan-voting-measure/769754002/>
- 25 House Fiscal Agency, *Ballot Proposal 2 of 2022* (2022), https://www.house.mi.gov/hfa/PDF/Alpha/Ballot_Proposal_2_of_2022.pdf
- 26 Kyle Davidson, *Lawmakers close out year with election reforms like 16 and 17 year old voting pre-registration*, Michigan Advance (Nov. 14, 2023); Michelle Jokisch Polo, *New Michigan law means people leaving prison will automatically be registered to vote*, NPR (Dec. 16, 2023), <https://michiganadvance.com/2023/11/14/lawmakers-close-out-year-with-election-reforms-like-16-and-17-year-old-voting-pre-registration/>; <https://www.npr.org/2023/12/16/1219695211/new-michigan-law-means-people-leaving-prison-will-automatically-be-registered-to>.
- 27 U.S. Census Bureau, *Voting and Registration in the Election of November 2020* (April 2021), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html> (Table 4b, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020).
- 28 *Id.*
- 29 *Id.*
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- 30 Moreover, recent research indicates that the Census Bureau’s statistics on turnout may overestimate the incidence of voting among communities of color, suggesting that racial turnout disparities may be even greater than Census data reveals. See Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout*, J. Pol. (2021), https://static1.squarespace.com/static/5fac72852ca67743c720d6a1/t/5ff8a986c87fc6090567c6d0/1610131850413/CPS_AFS_2021.pdf.
- 31 *Flint Voters Sue their City Clerk for Violating Right to Vote by Absentee Ballot*, Am. C.L. Union Mich. (July 17, 2020), <https://www.aclu.org/press-releases/flint-voters-sue-their-city-clerk-violating-right-vote-absentee-ballot>. By refusing to open the office, voters were effectively denied the right to vote in person by absentee ballot. Other voters reported not receiving an absentee ballot in the mail after applying. Amidst the early days of the COVID-19 pandemic, these failures were especially egregious, as many voters sought to avoid potential vectors for infection and opted to exercise their absentee rights instead. Although the Clerk’s office opened in response to the lawsuit, the office proceeded at trial and lost; a Michigan circuit court issued a writ of mandamus commanding the Clerk’s office to exercise its proper duties under Michigan law. Order at 2-3, *Barkey v. Brown*, No. 20-114457-CZ (July 27, 2020), https://www.aclumich.org/sites/default/files/field/documents/absentee_voting_rights_in_flint_and_detroit_-_barkey_v_brown_-_order.pdf.
- 32 See *Michigan’s Elections System Structure Overview*, Mich. Dep’t State, https://www.mml.org/pdf/information/elections-structure_of_michigan_elections_system_sos.pdf (last visited Sept. 14, 2023).
- 33 *Id.* At the state level, the Secretary of State supervises election officials, the Board of State Canvassers oversee statewide candidate petitions and ballot proposals, and the Bureau of Elections provides technical assistance and oversight. At the county level, clerks receive candidate petitions, campaign finance disclosures, and train precinct inspectors, County Election Commissions provide election materials, and Board of County Canvassers conduct oversight on votes within the jurisdiction. At the city and town level, clerks directly administer all elections, Election Commissions establish precincts, appoint inspectors, and provide election material, and Boards of Canvassers provide oversight of votes.
- 34 *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).
- 35 See Mich. Municipal League, *Handbook for Municipal Officials* 10 (2015), <https://mml.org/pdf/resources/publications/ebooks/HMO%20-%20complete%20book.pdf> (“Most Michigan cities have at-large elections for councilmembers, rather than ward elections where voters in each ward (geographic section of the city) elect a councilmember or members.”); Ballotpedia, *Analysis of school district and board member characteristics, 2022* (Aug. 24, 2022), https://ballotpedia.org/Analysis_of_school_district_and_board_member_characteristics,_2022 (reporting that 99.11% of seats on Michigan’s school boards are elected at large).
- 36 For example, according to the U.S. Census Bureau, the citizen voting-age population (CVAP) of Center Line, Michigan, is 26% Black, 4% Asian American, and 2% Latino; yet the city’s mayor, mayor pro-tem, and all three council members appear to be white.
- 37 Complaint at 3, *United States v. City of Eastpointe*, No. 2:17-cv-10079 (E.D. Mich. Jan 10, 2017) WL 106900.
- 38 *Id.* at 4.
- 39 *Id.* at 4-5.
- 40 *United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 614 (2019).
- 41 Joint Motion for Entry of Consent Judgement and Decree, *United States v. City of Eastpointe*, No. 2:17-cv-10079 (E.D. Mich. June 5, 2019), ECF No. 61, <https://www.justice.gov/opa/press-release/file/1170166/download>.
- 42 *Id.* at 2.
- 43 *Nixon v. Kent Cty.*, 34 F.3d 369, 372 (6th Cir. 1994).
- 44 Racially polarized voting is a pattern of voting along racial lines in which voters of one race tend to share the same preferences in candidates or electoral outcomes, which are different from the candidates or electoral outcomes preferred by voters of a different race.
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- 45 *Id.* at 378-79; *Nixon v. Kent Cty.*, 790 F. Supp. 738, 750 (W.D. Mich. 1992).
- 46 *Nixon*, 76 F.3d 1381, 1393 (6th Cir. 1996); *but see League of United Latin Am. Citizens, Council No. 4386 v. Midland Indep. Sch. Dist.*, 812 F.2d 1494, 1500–02 (5th Cir. 1987) (accepting coalition claims), *reh'g granted*, 818 F.2d 350 (5th Cir. 1987), and *vacated*, 829 F.2d 546 (5th Cir. 1987); *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (same), and *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F.3d 280, 281 (2d Cir. 1994) (same).
- 47 See 52 U.S.C. §10503(e) (“For purposes of this section, the term ‘language minorities’ or ‘language minority group’ means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.”). See also Hansi Lo Wang, *A federal law requires translated voting ballots, but not in Arabic or Haitian Creole*, NPR (June 26, 2022), <https://www.npr.org/2022/06/24/1083848846/bilingual-ballots-voting-rights-act-section-203-explained>.
- 48 *Michigan, Language and Education*, Migration Pol’y Inst. <https://www.migrationpolicy.org/data/state-profiles/state/language/MI> (last visited Sept. 14, 2023).
- 49 Niraj Warikoo, *Census: Arab Americans now a majority in Dearborn as Middle Eastern Michiganders top 300K*, Detroit Free Press (Sept. 26, 2023), <https://www.freep.com/story/news/local/michigan/wayne/2023/09/26/arab-americans-now-a-majority-in-dearborn-new-census-data-shows/70929525007/>.
- 50 *Michigan Department of State provides resources for non-English speaking voters*, Mich. Dep’t State (June 5, 2023), <https://www.michigan.gov/sos/resources/news/2020/10/31/michigan-department-of-state-provides-resources-for-non-english-speaking-voters>.
- 51 Frances Kai-Hwa Wang, *Why Arabic ballots are now being offered in Michigan and what this means for voter access in the U.S.*, (Nov. 4, 2022) <https://www.pbs.org/newshour/politics/with-ballots-in-arabic-how-one-community-is-voting-with-dignity-in-michigan> (last visited Sept. 14, 2023).
- 52 *U.S. District Court for the Eastern District of Michigan Enters Consent Decree and Order in Voting Rights Act Lawsuit—Hamtramck’s Bengali Language Election Program Ordered for Four Years*, Asian Am. Legal Def. Educ. Fund (July 13, 2021) <https://www.aaldef.org/press-release/u.s.district-court-for-the-eastern-district-of-michigan-signs-and-enters-consent-decree-and-order-in-voting-rights-act-lawsuit-hamtramck-s-bengali-language-election-program-ordered-for-four-years/>.
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- 54 Detroit Disability Power, *Poll Audit Report*, <https://www.detroitdisabilitypower.org/pollaudit> (last visited Jan. 25, 2023).
- 55 Mich. Dept. of Health & Human Services, *Michigan BRFSS Surveillance Brief: Disability and Race/Ethnicity Among Michigan Adults 2* (Mar. 2021), https://www.michigan.gov/-/media/Project/Websites/mdhhs/Folder4/Folder30/Folder3/Folder130/Folder2/Folder230/Folder1/Folder330/MiBRFSS_Disability_Newsletter.pdf?rev=a7b76ab1ff60402fae6aef1f558a0fd2 (reporting a rate of disability that is significantly higher among Latino Michiganders, and somewhat higher among Black Michiganders, than the corresponding rate among their white counterparts; with Black respondents were particularly likely to report vision or self-care disabilities); see also *Adults with Disabilities: Ethnicity and Race*, Ctrs. for Disease Control & Prevention <https://www.cdc.gov/ncbddd/disabilityandhealth/materials/infographic-disabilities-ethnicity-race.html> (last visited Sept. 14, 2023).
- 56 Detroit Disability Power, *supra* note 54.
- 57 *Id.*
- 58 Detroit Disability Power & Carter Ctr., *Improving Voting Accessibility for Detroit Voters with Disabilities 14-15* (Jun. 22, 2023), https://www.detroitdisabilitypower.org/files/ugd/03370b_9dc91e1f6bac410bbdbdedcfffbf1cc7.pdf.
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- 59 *Poll Audit Report*, Detroit Disability Power, <https://www.detroitdisabilitypower.org/pollaudit> (last visited Sept. 14, 2023).
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- 61 *Michigan's top court to look at 2020 election robocall case*, CBS Detroit (Nov. 3, 2022), <https://www.cbsnews.com/detroit/news/michigans-top-court-to-look-at-2020-election-robocall-case/>
- 62 Ryan J. Foley, *Conservative hoaxers face charges over false voter robocalls*, AP News (Oct. 1, 2020), <https://apnews.com/article/election-2020-technology-arrests-michigan-voting-rights-5f035e2a68394f9765d9c0d500538d94>
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- 64 Complaint at 2, *United States v. City of Hamtramck*, No. 00-73541 (E.D. Mich. Aug. 4, 2000), ECF No. 1, <https://www.justice.gov/crt/case-document/file/1184211/download>
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- 68 *LDF Files Lawsuit Against President Trump and the Trump Campaign's Attempts to Overturn the Election by Disenfranchising Black Voters in Michigan*, NAACP Legal Def. Educ. Fund (Nov. 20, 2020), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-president-trump-and-the-trump-campaigns-attempts-to-overturn-the-election-by-disenfranchising-black-voters-in-michigan/>; *Federal Court Permits LDF Lawsuit Against President Trump, Trump Campaign, Republican National Committee to Proceed*, NAACP Legal Def. Educ. Fund (Nov. 29, 2022), <https://www.naacpldf.org/press-release/federal-court-permits-ldf-lawsuit-against-president-trump-trump-campaign-republican-national-committee-to-proceed/>.
- 69 Madeline Halpert, *Michigan's results official but harm done to Black voters may linger*, Bridge Mich. (Nov. 24, 2020), <https://www.bridgemi.com/michigan-government/michigans-results-official-harm-done-black-voters-may-linger>. One of the four-person Board's two Republican members initially voted against certification and then attempted to rescind her subsequent vote in favor of certification unsuccessfully.
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- 74 Phoebe Henninger & Marc Meredith, *Who Votes Without Identification? Using Individual-Level Administrative Data to Measure the Burden of Strict Voter Identification Laws*, 18 J. Empirical L. Stud. 256-86 (2021). The ACLU of Michigan noted that the margin of victory in Michigan elections is often narrower than the total number of affidavit voters, meaning this change alone could shift election outcomes against the preference of Black voters. Both the Fifth and Fourth Circuit have struck down comparable voter ID laws, finding a “stark, racial disparity” in the impact of such bills. Kovach, *supra* note 72.
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- 83 52 U.S.C. § 10304.
- 84 See *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 557 (2013).
- 85 *Id.* at 557.
- 86 The Court invited Congress to do so its *Shelby* opinion. *Id.*
- 87 Preclearance is still available as an optional remedy for a finding of intentional discrimination, through what is known as the “bail-in” process. 52 U.S.C. §10302(c). This type of preclearance as a remedy for a specific legal violation is similar to the program in the MIVRA.
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110 As above, these descriptions of S.B. 401, 402, 403, and 404 refer to the authors' understanding of the forthcoming substitute versions of the bills. See *supra* note 1.

111 See S.B. 401, *supra* note 1, § 7.

112 *Id.* at § 7.

113 See *supra* note 5 & accompanying text.

114 S.B. 401, *supra* note 1, § 9.

115 *Id.* at § 9 (2) (a).

116 As defined in the MIVRA, the term “racially polarized voting” refers to “voting in which the candidate or electoral choice preferred by protected class members diverges from the candidate or electoral choice preferred by other electors.” *Id.* at § 3 (h).

117 *Id.* at § 9 (2), (3). This description is based on the anticipated version of S.B. 401, which makes technical changes to the relevant provisions in the bill as introduced.

118 *Id.* at §§ 3 (j); 9 (4) (d).

119 *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996).

120 *Id.* at § 13.

121 *Id.* at § 13 (1). There are limited exceptions to this notification requirement, such as when another party has submitted a substantially similar notice letter. *Id.* at § 13 (6).

122 Laws. Comm. C.R. S.F. Bay Area, *Voting Rights Barriers & Discrimination In Twenty-First Century California: 2000-2013* 7 (2014), <https://www.reimagineerpe.org/files/Voting-Rights-Barriers-In-21st-Century-Cal-Update.pdf>.

123 These provisions, which are modeled in part on the Virginia Voting Rights Act, were not included in S.B. 401 as introduced but are included in the anticipated version.

124 See S.B. 403, *supra* note 1. Packaged as a separate bill titled “A bill to provide for language assistance for elections,” S.B. 403 is a key component of the MIVRA.






125 See Hansi Lo Wang, *A federal law requires translated voting ballots, but not in Arabic or Haitian Creole*, NPR (June 26, 2022), <https://www.npr.org/2022/06/24/1083848846/bilingual-ballots-voting-rights-act-section-203-explained>.

126 S.B. 403, *supra* note 1, at § 3 (1). Under the MIVRA's language-assistance provisions, a municipality is covered if: more than 600 of its total eligible voters speak a language other than English and have limited English proficiency; more than 100 of its total eligible voters speak a language other than English and have limited English proficiency and those residents comprise at least 2.5% of the voting eligible population; or, in the case of local governments that contain all or part of a reservation, more than 2.5% of enrolled Native Americans of voting age within the reservation have limited English proficiency.

127 *Arabic The Most Popular Foreign Language In Michigan*, CBS New Detroit (July 7, 2017), <https://www.cbsnews.com/detroit/news/arabic-the-most-popular-foreign-language-in-michigan/>

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- 128 Brenda Fathy Abdelall, *Not Enough of a Minority?: Arab Americans and the Language Assistance Provisions (Section 203) of the Voting Rights Act*, 38 U. Mich. J.L. Reform 930-31 (2005), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1368&context=mjlr>.
- 129 Mohamad Moslimani, *5 facts about Arabic Speakers in the U.S.*, Pew Research Center (May 18, 2023), <https://www.pewresearch.org/short-reads/2023/05/18/5-facts-about-arabic-speakers-in-the-us/>
- 130 Federal law “covers those localities where there are more than 10,000 or over 5 percent of the total voting age citizens in a single political subdivision . . . who are members of a single language minority group, have depressed literacy rates, and do not speak English very well.” *Section 203 of the Voting Rights Act*, U.S. Dept. of Justice, <https://www.justice.gov/crt/language-minority-citizens> (last updated Mar. 11, 2020). The municipalities currently covered under federal law are the townships of Clyde and Covert, and the cities of Fennville and Hamtramck. Voting Rights Act Amendments of 2006, Determinations Under Section 203, 86 Fed. Reg. 69.613 (Dec. 8, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26547.pdf>.
- 131 See Ca. Sec’y of State, *Language Requirements for Election Materials*, <https://www.sos.ca.gov/elections/voting-resources/language-requirements>; NYVRA § 4; NYC Civic Engagement Commission, *Language Access Plan*, <https://www1.nyc.gov/site/civicingagement/about/language-access-plan.page>.
- 132 See S.B. 402, *supra* note 1. Packaged as a separate bill titled, “A bill to create a voting and elections database and institute,” S.B. 402 is a constituent component of the MIVRA.
- 133 *Id.* at § 5(1).
- 134 *Id.*
- 135 *Id.* at § 5(4).
- 136 S.B. 401, *supra* note 1, at § 24. The anticipated version of S.B. 401 includes the requirement that a notification letter must be sent to provide the local government with an opportunity to remedy a potential violation before an action may be initiated under this section, whereas S.B. 401 as introduced does not.
- 137 *Id.*
- 138 See S.B. 404, *supra* note 1, at § 726a.
- 139 *Id.* at § 751.
- 140 Danielle Root & Mia Ives-Rublee, *Enhancing Accessibility in U.S. Elections*, Ctr. for Am. Progress (Jul. 8, 2021), <https://www.americanprogress.org/article/enhancing-accessibility-u-s-elections/>.
- 141 S.B. 404, *supra* note 1, at § 753.
- 142 See Mich. Comp. Laws § 168.931(1)(f) (2020). This controversial ban is unique to Michigan and was unsuccessfully challenged in court for violating the First and Fourteenth Amendments. *Priorities USA v. Nessel* 628 F. Supp. 3d 716, 722 (E.D. Mich. 2023).
- 143 Zachary L. Hertz, *Analyzing the Effects of a Switch to By-District Elections in California*, MIT Election Lab (July 19, 2021), https://electionlab.mit.edu/sites/default/files/2021-07/hertz_2020.pdf.
- 144 Sophie Schllit & Jon C. Rogowski, *Race, Representation, and the Voting Rights Act*, 61 Am. J. Pol. Sci. 513 (July 2017).
- 145 Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 Urb. Affs. Rev. 731, 757 (2021), https://www.collingwoodresearch.com/uploads/8/3/6/0/8360930/cvra_project.pdf; see Pei-te Lien et al., *The Voting Rights Act and the Election of Nonwhite Officials*, 40 Pol. Sci. & Pol. 489 (July 2007), <https://www.jstor.org/stable/20452002>; Paru R. Shah et al., *Are We There Yet? The Voting Rights Act and Black Representation on City Councils, 1981-2006*, 75 J. Pol. 993 (2013).
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