

Testimony Concerning Senate Bill 647
Election Law – Incarcerated Individuals – Voter Hotline and Voting Eligibility
(Voting Rights for All Act)
Position: Favorable

To: Senator Brian J. Feldman, Chair
Senator Cheryl C. Kagan, Vice-Chair
Members of the Education, Energy, and the Environment Committee

From: Michael Pinard, Faculty Director; Monique L. Dixon, Executive Director,
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Date: February 24, 2025

On behalf of the Gibson-Banks Center for Race and the Law (“Gibson-Banks Center”) at the University of Maryland Francis King Carey School of Law,¹ we appreciate the opportunity to submit testimony in support of Senate Bill 647 (“SB 647”), which, among other things, would allow individuals incarcerated in Maryland’s prisons the opportunity to vote in state and federal elections. We urge the committee to issue a favorable report because: (1) the right to vote is fundamental to civic inclusion and engagement in our democracy; (2) denying voting rights to Marylanders who are incarcerated connects to a long history of Black disenfranchisement in the United States and also disproportionately impacts Black Marylanders today, given the extreme overrepresentation of Black people incarcerated in Maryland; and (3) extending the franchise in the ways set forth in SB 647 recognizes the shared humanity of our incarcerated and non-incarcerated populations.

The Gibson-Banks Center works collaboratively to re-imagine and transform institutions and systems of racial inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Center examines and addresses racial inequality, including the intersection of race with sex or disability, and advances racial justice in a variety of

¹ This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

issue areas, including the criminal legal system and voting. The Gibson-Banks Center has served as a member of the Maryland Equitable Justice Collaborative (MEJC). Led by Maryland Attorney General Anthony Brown and Maryland Public Defender Natasha Dartigue, the MEJC aims to research, develop, and recommend reforms that reduce the racial disparities in Maryland's incarcerated population.

The right to vote is fundamental. As the United States Supreme Court articulated nearly 140 years ago, voting is “a fundamental political right, because preservative of all rights.”² Thus, it is the highest form of civic engagement. Accordingly, stripping individuals of the ability to vote is a form of civic banishment.

Throughout U.S. history, Black people have been deprived of the ability to vote through various ways.³ Disenfranchisement laws, from their beginning, were anchored in race. During Reconstruction, disenfranchisement was designed to circumvent and subvert the Fourteenth and Fifteenth Amendments to the U.S. Constitution, which extended birthright citizenship to Black formerly enslaved persons and prohibited racial discrimination in voting, respectively. Disenfranchisement also further cemented white supremacy.⁴ These efforts continued during the late nineteenth and twentieth centuries, with any number of tactics deployed to prevent free Blacks from voting, including poll taxes and literacy tests.⁵

Disenfranchisement based on felony convictions has long been among the tools deployed to separate Black citizens from voting booths. With post-Civil War roots, this form of disenfranchisement originally paired with “a slew of criminal laws designed to target [B]lack citizens,”⁶ as “many states enacted broad disenfranchisement laws that revoked voting rights from anyone convicted of any felony.”⁷ Today, disenfranchisement laws based on felony convictions

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ E.g., Anthony C. Thompson, *Unlocking Democracy: Examining the Collateral Consequences of Mass Incarceration on Black Political Power*, 54 HOWARD L. J. 587, 591 (2011) (“Political disenfranchisement of African-American communities has deep roots in the history of the United States.”).

⁴ E.g., Juan F. Perea, *Echoes of Slavery II: How Slavery's Legacy Distorts Democracy*, 51 U.C. DAVIS L. REV. 1081, 1097 (2018) (“Since the Fifteenth Amendment prohibited direct race discrimination in voting, southern whites acted by proxy, shaping criminal law in such a way that disenfranchised newly freed [B]lacks.”).

⁵ E.g., Michael J. Klarman, *The Plessy Era*, 1998 SUP. CT. REV. 303, 309 (1998) (“Beginning around 1890, southern states adopted legal measures as poll taxes and literacy tests to supplement the substantial de facto disenfranchisement of [B]lacks already accomplished through violence and fraud.”); Malia Brink, *Fines, Fees, and the Right to Vote*, 45 HUM. RTS. 12, 12 (2020) (“In the Jim Crow era, states enacted a number of laws to impede [B]lack people from voting, including residency and property restrictions, literacy tests, and poll taxes.”).

⁶ ERIN KELLY, BRENNAN CENTER FOR JUSTICE, RACISM AND FELONY DISENFRANCHISEMENT: AN INTERTWINED HISTORY 1 (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/racism-felony-disenfranchisement-intertwined-history>. See Thompson, *supra* note 3, at 592 (disenfranchisement based on felony convictions “has had a direct impact on [B]lack voter participation in the political process since the period immediately following the Civil War when state laws were enacted in order to disenfranchise [B]lacks”).

⁷ KELLY, *supra* note 6, at 1.

continue to have an impact on Black people.⁸ According to the Sentencing Project, “[o]ne in 22 African Americans of voting age is disenfranchised, a rate more than triple that of non-African Americans.”⁹

While sobering, this context is necessary to grasp the urgency of SB 647, as it aims to remove the remaining vestige of disenfranchisement in Maryland based on criminal convictions. Until 2007, Maryland was among the few remaining states that imposed lifetime disenfranchisement on individuals based on their criminal records. Legislative advances over the past 18 years have led to Marylanders regaining their voting rights upon their release from incarceration.¹⁰

Now is the time to remove Maryland’s remaining vestige of disenfranchisement by enacting SB 647 and extending voting rights to Marylanders housed in Maryland’s prisons. As is now well known, Maryland incarcerates the highest percentage of Black people in the United States. Approximately 72% of Maryland’s incarcerated population is Black, which more than doubles the State’s overall Black population.¹¹ Thus, carceral disenfranchisement and race are tightly intertwined in Maryland, as “[v]oting eligible Black Marylanders are nearly six times as likely as white Marylanders to lose their right to vote due to incarceration for a felony conviction.”¹²

Maryland should join Maine, Vermont, Washington, D.C., and the Commonwealth of Puerto Rico, the U.S. jurisdictions that allow individuals who are incarcerated to vote. Washington

⁸ E.g., Gabriel J. Chin, *Reconstruction, Felon Disenfranchisement, and the Right to Vote: Did the Fifteenth Amendment Repeal Section 2 of the Fourteenth Amendment*, 92 GEO. L.J. 259, 261-262 (2004) (“Criminal disenfranchisement . . . remains the major basis for the disproportionate disenfranchisement of African-American adults.”).

⁹ CHRISTOPHER UGGEN ET AL., THE SENTENCING PROJECT, LOCKED OUT 2024: FOUR MILLION DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION 2 (2024), <https://www.sentencingproject.org/app/uploads/2024/10/Locked-Out-2024-Four-Million-Denied-Voting-Rights-Due-to-a-Felony-Conviction.pdf>.

¹⁰ See BRENNAN CENTER FOR JUSTICE, VOTING RIGHTS RESTORATION EFFORTS IN MARYLAND: A SUMMARY OF CURRENT FELONY DISENFRANCHISEMENT POLICIES AND LEGISLATIVE ADVOCACY IN MARYLAND (2020) (summarizing these legislative advances), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-maryland>.

¹¹ See MARYLAND DEP’T. PUB. SAFETY AND CORR. SVCS, DOC DATA DASHBOARD, FY 2023 POPULATION OVERVIEW, DOC INMATE DEMOGRAPHICS (Black people comprised 71.54% of the incarcerated population in FY 2023), https://www.dpccs.state.md.us/community_releases/DOC-Annual-Data-Dashboard.shtml. See also, Lisa Woefl, *As pandemic eases, share of Black inmates in Maryland prisons peaks*, MARYLAND MATTERS, Apr. 17, 2024 (reporting that Black people comprised less than one-third of Maryland’s overall population in 2023), <https://marylandmatters.org/2024/04/17/as-pandemic-eases-share-of-black-inmates-in-maryland-prisons-peaks/>.

¹² RACHEL DIDER-JOLIE & KRISTEN M. BUDD, PH.D., THE SENTENCING PROJECT, WHY WE MUST RESTORE VOTING RIGHTS TO OVER 16,000 MARYLANDERS 1 (Jan. 31, 2025), <https://www.sentencingproject.org/app/uploads/2025/02/Why-We-Must-Restore-Voting-Rights-to-Over-16000-Marylanders.pdf>. Also, “[t]he disenfranchisement rate of Maryland’s voting eligible Latino population is twice that of the white voting eligible population. *Id.*

D.C. extended the franchise to this population in 2020.¹³ As the D.C. Council recognized when passing this law, “[v]oting is a way to maintain [community] connections and to feel stronger ties to one’s community while incarcerated.”¹⁴

Countries throughout the world are similarly instructive. According to the Sentencing Project, Human Rights Watch, and the ACLU, 35 countries do not deny voting rights under any circumstances based on criminal convictions. These countries include Canada, Denmark, Ghana, Iran, Israel, Lithuania, Mozambique, Namibia, South Africa, Spain, Switzerland, and Namibia.¹⁵ In this regard, a 2002 decision from the Supreme Court of Canada offers important lessons, as it speaks to the humanity of extending the franchise to incarcerated individuals as well as the perpetuation of racial harms of not doing so. In *Sauvé v. Canada (Chief Electoral Officer)*, the Court overturned a law that denied the right to vote to individuals who were sentenced to prison for more than two years.¹⁶ Rejecting the argument that “only those who respect the law should participate in the political process,” the Court declared that disenfranchising incarcerated individuals “on the basis of moral unworthiness is inconsistent with the respect for the dignity of every person that lies at the heart of Canadian democracy. . . .”¹⁷ The Court also lamented that such disenfranchisement “removes a route to social development and undermines correctional law and policy directed towards rehabilitation and integration.”¹⁸ In addition, the Court observed that the law had “a disproportionate impact on Canada’s already disadvantaged Aboriginal population[,]” given their disproportionate incarceration.¹⁹

To be clear, voting in prison is *more* than extending the franchise to individuals who are incarcerated. Those of us who cherish our voting rights understand that the franchise is much more than circling the box for our chosen candidate. We value civic inclusion and speaking directly in furtherance of our democracy. Likewise, through voting, Marylanders who are incarcerated would understand that their voices matter and that they are valued members of our shared community who deserve a voice in the affairs of the polity.

For these reasons set forth above, we ask for a favorable report on SB 647.

¹³ D.C. CODE § 1-1001.07(c)(1)(B)(ii) (“[The Department of Corrections] shall automatically register each qualified elector in its care or custody in the Central Detention Facility or Correctional Treatment Facility to vote.”).

¹⁴ Council of the District of Columbia, Committee on the Judiciary & Public Safety, Committee Report on B23-0324 (the “Restore the Vote Amendment Act of 2020”), 7 (Sept. 24, 2020) (citing hearing witness testimony), https://lms.dccouncil.gov/downloads/LIMS/42718/Committee_Report/B23-0324-Committee_Report1.pdf?Id=111813.

¹⁵ THE SENTENCING PROJECT, HUMAN RIGHTS WATCH, AND ACLU, OUT OF STEP: U.S. POLICY ON VOTING RIGHTS IN GLOBAL PERSPECTIVE Tbl. 2, 21-28 (2024), <https://www.sentencingproject.org/app/uploads/2024/08/Out-of-Step-U.S.-Policy-on-Voting-Rights-in-Global-Perspective.pdf>. Also, 21 other countries only deny voting rights to individuals incarcerated for specific crimes, such as treason and elections-related offenses. *Id.*

¹⁶ *Sauvé v. Canada (Chief Electoral Officer)* [2002] 3 S.C.R. 519 (Can).

¹⁷ *Id.* at 522.

¹⁸ *Id.* at 523.

¹⁹ *Id.*