



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Maryland

## Testimony for House Bill 1300 & Senate Bill 1000 — Blueprint for Maryland’s Future

*House Appropriations Committee, House Ways and Means Committee,  
Senate Budget and Tax Committee, and Senate Education, Health, and  
Environmental Affairs Committee*

AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION OF  
MARYLAND

MAIN OFFICE  
& MAILING ADDRESS  
3600 CLIPPER MILL ROAD  
SUITE 350  
BALTIMORE, MD 21211  
T/410-889-8555  
or 240-274-5295  
F/410-366-7838

FIELD OFFICE  
6930 CARROLL AVENUE  
SUITE 610  
TAKOMA PARK, MD 20912  
T/240-274-5295

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS  
JOHN HENDERSON  
PRESIDENT

DANA VICKERS SHELLEY  
EXECUTIVE DIRECTOR

ANDREW FREEMAN  
GENERAL COUNSEL

Prepared by: Dana Vickers Shelley, Executive Director; Frank Patinella,  
Senior Education Advocate; and Justin Nalley, Education Policy Analyst

### POSITION: SUPPORT WITH AMENDMENTS

The ACLU of Maryland (ACLU) works to ensure that all children in our state can go to public schools that are equitably and adequately funded; safe, healthy, and conducive for learning; and have a positive school climate, which includes fair and effective discipline policies. We are committed to centering race equity in our work, internally and externally, in order to better support and be accountable to communities of color, whose civil rights and civil liberties are systematically threatened by white supremacy. When looking at the historical impact of education funding on students of color, particularly Black and Brown children, it is imperative that race and wealth equity be the lens through which we evaluate HB1300/SB1000, the *Blueprint for Maryland’s Future – Implementation*.

**We need a “race-brave” approach that centers race and equity at the very core of funding, curriculum, discipline, teacher recruitment, development and accountability.** We must be cautious about a universalist approach. The problem with “all lives matter” isn’t that we shouldn’t value all lives; the problem is that the lives of Black and Brown people are too often not valued. The Blueprint bill must address the needs that all students have, which in the case of children who are Black and Brown, and who live in districts that have struggled with underfunding for generations, means that the state must provide additional funding and culturally relevant programming to them so that those students can also succeed.

**Background on Maryland School Funding: *Bradford v. Maryland State Board of Education*.** The ACLU believes that the Maryland Constitution’s “thorough and efficient” education clause means that all students have the right to “an education that allows them to meet contemporary educational standards” (*Hornbeck v. Somerset Co. et. al.*). In 1994, the ACLU filed *Bradford v. Maryland State Board of Education*, which contended that Baltimore City Public Schools were significantly and chronically underfunded and that the state was in violation of the children’s’ constitutional rights.



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Representing public school children and their parents/guardians in Baltimore City, the *Bradford* lawsuit cited the lowest test scores from elementary to high school levels, lowest graduation rates, and highest number of disadvantaged students in the state.

The Bradford consent decree increased funding for Baltimore City in 1996 and later for all Maryland schools through the “Thornton” education funding law, which passed in 2002. The Thornton law increased education spending by over \$1 billion, phased in over six years, 2002 to 2008. Over that time period, students from districts with low wealth began showing incremental gains on test scores annually. However, these gains have all but evaporated since 2008, when the state cut the Thornton law by preventing funding increases based on inflation. Hundreds of millions in funding, destined for classrooms in Baltimore City and throughout the state, have had a particularly compounded effect on districts with low wealth over the past 12 years, because these districts needed to overcome generations of underfunding by the state.

Currently, Baltimore City Public Schools are underfunded by at least \$342 million each year, according to a funding “adequacy” analysis of the FY17 education budget, by the state’s Department of Legislative Services. The shortfall statewide is over \$1 billion annually, and many Maryland students, particularly Black and Brown students, have struggled to meet state standards in schools and further, meet their college and career aspirations after leaving school. As the legal representatives of the children enrolled in Baltimore City Schools, the ACLU has a responsibility to ensure that children who attend chronically underfunded schools receive the programs and resources they need to have a quality education.

**To ensure that the state fulfills its constitutional guarantee of ensuring adequately funded schools, House Bill 1300/Senate Bill 1000 must center race and wealth equity in its approach to funding, but it also must consider how far some school districts will have to jump in order to achieve adequacy.**

This is not a simple matter of a rising tide of statewide funding lifting all boats. We must recognize that generations of underfunding have left some boats tattered and taking on water. Any funding proposal must prioritize helping those districts, which are the furthest from funding “adequacy,” to reach the baseline, so that all Maryland’s students may rise together. This is especially critical when we consider that it is Black and Latinx students in particular being left behind.

**The ACLU supports HB1300/SB1000 – Blueprint for Maryland’s Future – with amendments and looks forward to working with the Committees to ensure that students who need the most support,**



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**benefit from the goals and ideals outlined by the Kirwan Commission's work.**

**Our concerns focus on four priorities:**

1. Wealth equity and funding adequacy in the formula;
2. Accountability measures that are collaborative and constructive rather than punitive;
3. Centering race equity to ensure that the policies in the bill are designed to ensure equitable outcomes for Black and Brown children and children from families with low-wealth; and
4. An open process for the Committees' review and amendment of the bills.

**PRIORITY #1: Education Funding Must Be Both Adequate and Equitable**

The state education funding formula serves as the foundation for ensuring that schools throughout Maryland have the teachers, support staff, comprehensive academic programming, and resources needed to deliver a constitutionally guaranteed "thorough and efficient" education for every student in the state. It is clear that all students in Maryland need additional funding to improve their outcomes in PreK-12 schools and beyond, in their college and careers. While the funding formula in the proposed bill appears to be an improvement over the current "Thornton" funding law, there remain inequities, and we now have the opportunity to address them. More is needed to ensure that the new education funding formula will comprehensively address decades of underfunding by the state to districts with low income. More is needed to address the wide opportunity gaps experienced by students who are Black and Brown, who are from families with low income, and who are English language learners.

**The Formula: Foundation Per Pupil, Weighted Categories, and Concentrated Poverty.** While the Blueprint bill calls for a large infusion of dollars into the 1) Foundation, 2) Weighted Categories, and 3) Concentrated Poverty categories of the formula, it is unclear whether or not it provides adequate funding to ensure proper staffing levels and ratios to support the full range of programming needed in schools. The ACLU generally supports the increase in the Foundation Per Pupil amount, Special Education weight, Pre-K funding, and the expansion of the Concentration of Poverty grants over the ten year phase-in period.

However, the decrease in weights for Compensatory Education (97% of the Foundation to 77% over the phase-in period) and English Language Learners (99% to 87%) raises serious concerns. This decrease makes the formula less equitable. This means that there is less of an increase in funding for students



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from families with low-income and immigrant families, compared to what they received in these Weights in the “Thornton” formula. While the Concentration of Poverty grants are significant and greatly needed, those grants will only help to mitigate this equity concern for students who are in schools that have over 55% enrollment of students from families with low income. **Why is there a decrease in Compensatory Education and ELL weights?**

This decrease is compounded by how the Foundation does not recognize the disparities in funding needs among districts to ensure proper school facilities maintenance, which is required by COMAR. According to the state’s Public School Construction Program staff, it costs three times as much to maintain and operate old and deficient schools compared with newer schools. The disturbing reality of this situation was on the front page of newspapers nationwide when over 80 school buildings in Baltimore City had to be closed for an entire week due to broken or faulty heating systems during the winter of 2018. The new funding formula must ensure that students have safe and healthy school buildings. No students in Maryland should have to rely on supplemental appropriations – or donations from the private sector – to ensure that they can learn in school. **The ACLU is urging the committee to work with the state’s Public School Construction Program staff to develop a multiplier in the Foundation based on average facility age and/or overall deficiencies to ensure that all districts have the funding necessary to properly maintain and operate their school facilities.**

Students must not be shortchanged by schools having to satisfy special education requirements at the expense of a comprehensive fine arts program, or having large class sizes because a school needed more social workers, or neglecting facility maintenance to hire more paraprofessionals. Given that the education funding formula, once passed, is likely to be in place for at least a generation, the legislature has a responsibility to ensure that the formula meets adequacy.

### **The ACLU is asking the committees to:**

- Produce a detailed analysis of the full formula, showing the staffing type and levels, programs, and services covered by each part of the formula.
- To make necessary changes to any part of the formula to ensure that the formula will provide a constitutionally “thorough and efficient” education.
- To ensure quicker and larger phase-in of dollars for the counties furthest from funding “adequacy”.

**Wealth Equity: Progressive vs. Regressive Formula.** The Kirwan Commission reported that Maryland’s current funding formula – when considering both local and state contributions to education – is regressive. Unacceptably, students in districts with low income currently receive



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approximately 5% less than those in wealthy districts, despite the enormous disparity in needs between the two groups. The proposed formula maintains these wealth-equalization calculations and the Department of Legislative Services reported that the proposed formula will have a 1.098 rating in FY30, in terms of progressivity. While this rating is acceptable, certain Maryland districts with low wealth have expressed publicly that covering their local share for education under this bill will be a significant struggle. While the ACLU supports all districts, including ones that are low-wealth, contributing significantly more to education, more needs to be done to ensure that the proposed formula is feasible for districts struggling to emerge from generations of underfunding by the state.

There are several ways that the state can direct more funding to districts with low wealth and high-needs. In addition to sharing in the cost of the Foundation Per Pupil, the proposed formula requires local districts to cover their share in the Weighted Categories. While the ACLU supports full funding for these categories, requiring districts with low wealth to contribute their full share is inequitable. Districts with low-wealth have the largest populations of Compensatory Education, ELL, and Special Education students, which means that they are disproportionately burdened financially.

### **To ensure equity for students learning in districts with low-wealth, the ACLU asks that the state:**

- Cover the Weighted Categories for districts with low wealth, in full or in part;
- Increase the Guaranteed Tax Base (GTB) to 95% to direct more state dollars to low-wealth districts;
- Remove funding “floors”, which provide more funding to wealthy districts than what should be given, based on the wealth calculation in the formula. This change would make more state dollars available to those districts that have greater needs and lower fiscal capacity.

### **PRIORITY #2: Race Equity in Accountability**

State and local mutual accountability will allow for successful implementation of the new Blueprint for Maryland’s Future; however, the Blueprint bill does not take into account the starting positions for each county. As of fiscal year 2017, 20 of the 24 counties in Maryland had an adequacy gap of tens of millions to hundreds of millions. Given the state’s constitutional responsibility to fully fund the education of every child in Maryland, it is troubling that the Blueprint bill makes localities subject to withholding of 25% or more of the increase in state funding, if their implementation plan is not satisfactory and student performance is not increased. This punitive measure against school systems amounts to a debtors’ prison, in which school systems with low wealth, and the students there



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seeking to learn, are forced to suffer from not having the infrastructure already in place due to decades of disinvestment as they seek to implement wide-ranging implementation plans. It is the state's constitutional duty to ensure that every student has the resources required to meet state standards.

**The ACLU urges the state to remove the penalty of 25% or more funding withholding for local school systems in implementation and to create a more equitable accountability measure. These measures must include:**

- An Equity Audit, a tool to identify and address the source of a school or school district's disparities in achievement, discipline, and/or access to high quality services;
- Timeline and Guidance – a strategy of implementation, including definitions and timelines, for each recommendation; and “supplement, not supplant” provisions in enabling legislation to ensure that new dollars support specific new programs;
- Community Partnerships and Stakeholders – school community representatives and non-profit organizations working with districts and the state to monitor any gaps in policy, administrative plans and student experience, and ensure that resources align with recommendation goals;
- Require that any participating early childhood program be subject to the same regulations as public prekindergarten programs, including the ban on suspensions and expulsions, in order to access public funds.

### **PRIORITY #3: Race Equity in Education Policies**

The outcomes from the Massachusetts Education Reform Act of 1993, which serves as an inspiration for the work of the Kirwan Commission, is evidence that a race-blind approach to school funding and policies will not deliver the results intended by the Blueprint recommendations. Universal solutions only serve to entrench existing inequities.

Hoping that those most disadvantaged will make some gains, while the achievements of those already at an advantage compound, will make the imbalance in student performance even worse than it is now. If the recommendations embraced by the Maryland General Assembly in 2018 are to be realized, it is imperative that we take a “race-brave” approach that centers race and equity at the very core of funding, curriculum, discipline, teacher recruitment, development and accountability. **While the ACLU supports the inclusion of Restorative Approaches in the bill, these are other major areas that must be focal points of the bill.**



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- **Curriculum requirements that include a Culturally Responsive Pedagogy.** The proposed policies requiring teachers to demonstrate a differentiation of instruction and cultural competence is a good start, but it does not go far enough to ensure that both the curriculum and instruction are responsive to Maryland's diverse student population. Instead, the ACLU proposes that curriculum requirements include a pedagogy that recognizes and responds to cultural differences among students and provides guidance on alternative methods of teaching.
- **Increase diversity of educators and support staff.** The ACLU supports the Kirwan Commission's recommendations to turn teaching in Maryland into a high-status profession, but we believe HB1300/SB1000 falls woefully short in ensuring that students have teachers that are both high quality and that reflect the diversity of our students. **ACLU supports amendments that have been proposed to:**
  - Fund grants for Historically Black Colleges and Universities, Hispanic Association of Colleges and Universities, and Minority Serving Institutions, and alternative certification programs with a track record of preparing diverse and high-quality teachers and leaders, to support their efforts to prepare candidates for success in the classroom, including as measured by new licensure exams;
  - Require all future general education teachers to take at least one course and demonstrate competencies in teaching English language learners;
  - Create incentives and pathways for people in communities of color to become teachers by expanding teaching scholarships and loan assistance for diverse candidates, and providing a salary supplement to bilingual educators.
- **Increase access to high quality teachers for students of color.** Evidence shows that students with high needs are more likely to have inexperienced teachers or those teaching outside their area of expertise. Requiring districts to report disaggregated data on teacher assignments and take meaningful action to address inequities will help ensure that students of color are receiving comparable instruction. Additionally, districts should be required to prioritize access to strong teachers for students of color and students from families with low income to help these students achieve adequacy over a shorter timeline.



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#### **PRIORITY #4: Open and Meaningful Process and Debate to Amend the Blueprint Bill**

We recognize that there is a deadline by which the bodies must act. However, we also recognize the need for Marylanders to have as much faith in the review process as they do in the outcomes the bill seeks to achieve. For this reason, we believe it is critical that there be an open and meaningful process as the Committees proceed to debate, amend, and rewrite the proposed legislation. This process should include multiple workgroup meetings with opportunities to hear amendments from stakeholders and advocates. These meetings should be open to the public and available on live stream.

Most Marylanders recognize that this is a critical moment for our State, as decisions made in this session will likely impact the next two generations of school children. And it will have a lasting impact on the entire state of Maryland and its economy. The state cannot afford to repeat past mistakes and treat race and wealth equity as afterthoughts. The ACLU is hopeful that the Committee will take the time to work with advocates – including those most affected by the bill – and make changes that will lay a strong foundation for an excellent education system that will meet the needs of every student in the state.