

**Written Testimony of
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**To the
Maryland Senate Education, Health, and Environmental Affairs Committee
Concerning Senate Bill 372
Election Law-Correctional Facilities-Voter Registration and Voting**

March 5, 2020

The Brennan Center emphatically supports Senate Bill 372, which will eliminate barriers to voting for Marylanders held in jail awaiting trial or incarcerated solely for a misdemeanor. For decades, the Brennan Center has worked at the state and federal levels to make voting free, fair, and easy for all eligible voters and to push back against restrictive voting policies that make it harder for individuals involved with the criminal justice system to vote, through research, legislative and executive advocacy, and public education.¹ We commend this Committee for considering this legislation and urge you to move the bill to a floor vote as quickly as possible.

The Committee will hear live testimony from a number of others today about the obstacles voting-eligible detained Marylanders face while trying to exercise their right to vote. Below, I highlight two reasons why the Brennan Center supports Senate Bill 372.

1) Many detained Marylanders are legally eligible to vote.

Under current law, individuals in pre-trial detention awaiting trial and those incarcerated solely for a misdemeanor offense are eligible to vote. However, there is no formalized process for registering eligible voters or distributing ballots, absentee or otherwise, to detained Marylanders wanting to exercise their fundamental right to vote. As a result, countless eligible voters, who have not even been convicted of a felony, and in most cases have not been convicted of any offense at all, are disenfranchised each election cycle while detained. And because of

¹ The Brennan Center for Justice at NYU School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice. The Brennan Center's work on eliminating barriers to effective voter participation has been widely cited by legislators, government agencies, academic journals, and the media, and our experts have testified frequently before Congress and state legislatures across the country. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law.

racial bias in the state's criminal justice system, these barriers disproportionately impact communities of color² and low-income Marylanders.³

In *O'Brien v. Skinner*, the U.S. Supreme Court held that eligible voters cannot be denied the right to vote while they are detained.⁴ The Court has elsewhere recognized that “the right of suffrage is a fundamental matter in a free and democratic society.”⁵ By enacting Senate Bill 372, the Maryland General Assembly will ensure that the voting rights of *all* eligible voters are fully realized.

2) Maryland is out of step with a growing number of jurisdictions that promote civic participation by eligible detained voters.

Jurisdictions across the country are increasingly taking steps to protect the right to vote of eligible detained voters.

In Arizona⁶ and Colorado,⁷ the Secretaries of State have promulgated rules requiring local election officials to coordinate with their county's sheriff's office to facilitate voting by eligible detained voters. In Washington, D.C., the Department of Corrections provides voter registration assistance to qualified individuals who are not registered to vote,⁸ and the Board of Elections has helped detained voters at the D.C. Jail cast absentee ballots.⁹ And in Illinois, lawmakers passed legislation designating the Cook County Jail, the state's largest jail, as a polling location and requiring other jails to establish voting processes during elections for

² While Black people make up 62% of Baltimore City's population, *see* 2014-2018 American Community Survey 5-Year Estimates: Demographic and Housing Estimates, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=Baltimore%20city,%20Baltimore%20city,%20Maryland&tid=ACSDP5Y2018.DP05&g=0600000US2451090000&hidePreview=false&vintage=2018&cid=DP05_0001E&layer=county subdivision (last accessed Mar. 4, 2020), data provided by the Maryland Department of Public Safety and Correctional Services indicates that 87% of the 1,940 individuals committed to the Baltimore City Jail on February 13, 2020 were Black.

³ A 2016 study of Maryland's monetary bail practices found that Black people “were charged \$181 million in premiums, more than double the premiums of all other races combined.” *See* Annalies Winny, *Study: Money Bail System Disproportionately Impacts Poor, Black Communities*, THE BALTIMORE SUN (Nov. 17, 2016), <http://www.citypaper.com/blogs/the-news-hole/bcpnews-study-money-bail-system-disproportionately-impacts-poor-black-communities-20161117-story.html>.

⁴ *O'Brien v. Skinner*, 414 U.S. 524 (1974).

⁵ *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

⁶ ARIZONA SECRETARY OF STATE, DRAFT ELECTIONS PROCEDURES MANUAL 69 (Oct. 2019), https://azsos.gov/sites/default/files/EPM_2019_FINAL.pdf.

⁷ COLORADO SECRETARY OF STATE, POLICY AND PROCEDURE MANUAL 7 (2019), <https://www.sos.state.co.us/pubs/elections/policyManual/ElectionsPolicyManual.pdf>.

⁸ D.C. Code Ann. § 24-211.08.

⁹ Mark Segreaves, *Non-Felon Prisoners Vote at DC Jail*, NBC WASHINGTON (Nov. 2, 2016), <https://www.nbcwashington.com/news/local/non-felon-prisoners-vote-at-dc-jail/111940/>.

eligible detained voters.¹⁰ Local government and jail officials have also taken steps to help eligible detained voters participate in the electoral process in Alaska,¹¹ Los Angeles,¹² New York City,¹³ and Philadelphia.¹⁴

The right to vote forms the core of American democracy. And a strong, vibrant democracy requires the broadest possible base of voter participation. By enacting Senate Bill 372, the Maryland General Assembly has the opportunity to eliminate avoidable barriers and ensure that all eligible detained Marylanders have access to the resources they need to register, cast a ballot, and have a say in our country's democracy. You can and should take the first step today by voting to pass Senate Bill 372 out of committee.

¹⁰ S.B. 2090, 101st Gen. Assemb., 1st Reg. Sess. (Ill. 2019).

¹¹ James Brooks, *Pilot Program Aids Voter Registration, Absentee Balloting for Eligible Prisoners in Alaska*, JUNEAU EMPIRE (July 14, 2018), <https://www.juneauempire.com/news/pilot-program-aids-voter-registration-absentee-balloting-for-eligible-prisoners-in-alaska/>.

¹² Caleigh Wells, *Did You Know You Can Vote From Jail? County Inmates Didn't*, LAIST (Sep. 25, 2018), https://laist.com/2018/09/25/did_you_know_you_can_vote_from_jail_county_inmates_didnt.php.

¹³ Ray Downs, *NYC Begins Effort to Register Jail Inmates to Vote*, UPI (Aug. 7, 2018), https://www.upi.com/Top_News/US/2018/08/07/NYC-begins-effort-to-register-jail-inmates-to-vote/1101533692793/.

¹⁴ Cherri Gregg, *Philly Prisons Ramp Up Voter Education for Inmates*, CBS PHILLY (Apr. 27, 2017), <https://philadelphia.cbslocal.com/2017/04/27/philly-prisons-ramp-up-voter-education-for-inmates/>.