

Testimony in Support of SB 372: Proposal to Improve Access to the Ballot for Eligible Incarcerated and Formerly Incarcerated Voters in Maryland.

Good afternoon Members of the Committee. My name is Dana Paikowsky, and I am testifying today in support SB 372.

I am a voting rights lawyer and Equal Justice Works Fellow at the Campaign Legal Center (“CLC”) where my practice focuses primarily on ballot access issues in jails. I work with policymakers and state and local advocates every day, supporting their efforts to combat jail-based disenfranchisement across the country. I am also currently co-counsel in *Mays v. LaRose*, a case challenging the constitutionality of an Ohio law that denies ballot access to voters jailed in the days preceding an election. I have also studied this issue academically and my research was published in the Harvard Civil Rights-Civil Liberties Law Review last summer.

In 1974, in *O’Brien v. Skinner*, the Supreme Court affirmed that states cannot deny eligible voters access to the ballot simply because they are in jail. This precedent remains binding today. The right to vote from jail, then, should be well-established in our constitutional law.

Despite that fact, voting from jail remains incredibly difficult for the over 11,000 people incarcerated on a daily basis in Maryland jails and 750,000 people jailed across the country.

Lack of access to information, and the prevalence of misinformation, is a major barrier to voting in jails. Jailed voters often do not know they are eligible to vote or how to cast a ballot while incarcerated. Because jailed voters are barred from accessing the internet, have restricted access to phones, visitation, and commissary—necessary for procuring envelopes and stamps—and often must rely on delay-prone jail mail systems, finding answers to these questions and obtaining and submitting absentee ballot request forms and ballots in a timely manner can be prohibitively difficult.

Moreover, those who are responsible for administering elections in jails—the local election officials and jail staff who must assist jailed voters who hope to cast ballots—also often do not realize that people in jail are eligible to vote or know the process by which jailed voters can cast ballots. When these officials make mistakes or are unprepared to serve jailed voters, the voters have no other recourse; they face certain disenfranchisement. Especially for those incarcerated close to Election Day, there is little room for error.

HB0568 addresses many of these problems by building crucial election infrastructure in jails. Not only does it empower jailed voters with information, it ensures that the state and local officials tasked with facilitating voting in jails are well-informed of the rights of jailed voters and their role in providing ballot access. Additionally, it builds the infrastructure necessary to provide jailed voters with ready access to the ballot and removes the often prohibitive barriers of requiring jailed voters to individually request information, obtain the necessary forms, purchase stamps and envelopes, and take the other steps otherwise necessary to vote.

Essentially, it creates guardrails to ensure Maryland is not mistakenly or inadvertently depriving jailed voters of their constitutional right to vote.

In so doing, SB 372 will ensure Maryland’s democracy is inclusive and representative.

Jails disproportionately incarcerate a microcosm of historically marginalized voters—people of color, low income people, people with disabilities, and people struggling with homelessness. HB0568 moves us forward by making voting more available and accessible to those who have been excluded for too long.

HB0568 is good policy, ensuring democratic accountability and fostering democratic participation.

Elected officials make decisions every day that impact jailed voters: legislators make the laws that jailed voters are charged with breaking, district attorneys prosecute them, state judges adjudicate their cases, and sheriffs police them on the streets and run the jails in which they are incarcerated. Jailed voters' exposure to the criminal justice system makes them uniquely qualified to evaluate these officials; their participation is crucial if the ballot box is truly to be a site of democratic accountability.

And even brief periods of incarceration in jails lead to many of the same collateral consequences as incarceration in prisons—including increased risks of loss of employment, custody of children, and housing, negative mental and physical health impacts, and decreased likelihood of future political participation. There is evidence that voting can have mitigating effect on at least some of these collateral consequences by giving incarcerated voters a sense of power, agency, and connection to their community. Indeed, among those who have been convicted of felonies, political participation decreases the likelihood of recidivism.

For all of these reasons, I urge you all to approve SB 372.

Every election, Maryland incarcerates thousands of eligible voters—depriving them of their liberty and making voting difficult or impossible; the time has come for the State to give these eligible voters the infrastructure they need to exercise their fundamental right to vote.