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**Statement of the Council for Court Excellence
Before the Committee on Judiciary and Public Safety
of the Council of the District of Columbia**

**“Restore the Vote Amendment Act of 2019”
October 10, 2019**

Introduction

Good morning, Chairman Allen, and members of the committee. My name is Patrick McGlone. I am the President of the Board of Directors for the Council for Court Excellence (CCE). I am also Senior Vice President, General Counsel and Chief Compliance Officer of Ullico Inc., which has maintained offices in the District of Columbia for more than three decades. No judicial members of CCE participated in the formulation of this testimony. For the past 37 years, CCE, a nonpartisan, nonprofit civic organization has worked to improve the administration of justice in the courts and related agencies in D.C.

This testimony addresses B23-0324, the “Restore the Vote Amendment Act of 2019.” CCE supports this bill as an opportunity for the District of Columbia to continue to be a national leader in providing opportunities to vote to its justice involved residents.

The District’s legacy on civil rights is marked by two contrasting stories, and that legacy provides relevant context when considering legislation that would extend the franchise to D.C. residents convicted of felony offenses.

On the one hand, D.C. was the first place in the nation where African Americans could vote, as a consequence of an 1867 law that preceded the

passage, in 1870, of the 15th amendment.¹ D.C. was also the first place in the nation to abolish slavery, nine months before the emancipation proclamation,² and it was the first jurisdiction to desegregate schools, as the *Bolling v. Sharpe* ruling came down two years before *Brown v. Board of Education*.³

On the other hand, racially restrictive deed covenants and neighborhood association petitions prevented African Americans from living in several neighborhoods throughout the District through the mid-twentieth century. These covenants prevented African Americans from accessing wealthy neighborhoods, and crammed them into poorer ones.⁴ Children in D.C. were educated in separate schools on the basis of their race until the 1960s. Black police officers could not arrest white offenders.⁵ A 1947 commission described segregation in the District as a system of “countless daily humiliations.” African Americans could not attend movies or plays downtown, work jobs appropriate to their abilities, send their children to decent schools, receive adequate medical care, or stay in most hotels.⁶

The disenfranchisement of D.C. residents convicted of felonies runs counter to the District’s favorable history of legal reforms that advanced equality, and helps perpetuate the District’s ugly legacy of racial prejudice. This bill presents an opportunity for the District to

¹ Panetta, Grace, and Olivia Reaney. “Today Is National Voter Registration Day. The Evolution of American Voting Rights in 242 Years Shows How Far We’ve Come — and How Far We Still Have to Go.” *Business Insider*, 2019. <https://www.businessinsider.com/when-women-got-the-right-to-vote-american-voting-rights-timeline-2018-10>.

² Davis, Damani. “Slavery and Emancipation in the Nation’s Capital.” *Prologue Magazine* 42, no. 1 (2010). <https://www.archives.gov/publications/prologue/2010/spring/dcslavery.html>.

³ Pollak, Louis. “Race, Law & History: The Supreme Court from ‘Dred Scott’ to ‘Grutter v. Bollinger.’” *Daedalus* 134, no. 1 (2005).

⁴ Shoenfeld, Sarah, and Mara Cherkasky. “The Rise and Demise of Racially Restrictive Covenants in Bloomingdale,” 2019. <https://www.dcpolicycenter.org/publications/racially-restrictive-covenants-bloomingdale/>.

⁵ Forman, James. *Locking up Our Own: Crime and Punishment in Black America*. New York: Farrar, Straus and Giroux, 2017.

⁶ “To Secure These Rights: The Report of the President’s Committee on Civil Rights.” Government Printing Office, 1947.

advance a policy that would positively impact its justice-involved residents, while removing a policy that disproportionately harms the civic involvement of African Americans in the District.

There are many good reasons to support this legislation. While few studies attempt to estimate the relationship between felony disenfranchisement and recidivism, those that do indicate that restoring a person's right to vote decreases recidivism. A study in Berkley's *La Raza Law Journal* found that a permanent loss of voting rights increased recidivism rates among individuals with felony convictions by 46.8%.⁷ In another, the Florida Parole Commission found that individuals granted their civil rights re-offended at a rate of 11.1% in 2009 and 2010,⁸ relative to the average re-offense rate in Florida over the same period of time of nearly 27%.⁹

This evidence is far from conclusive, but it buttresses the expectation that civic participation does improve outcomes for returning citizens, and will help those efforts in the District. There is a robust academic literature that indicates that civic reintegration – or the process of making people who have been incarcerated feel like they are members of a community again through things like increased participation in community groups, civil service, voluntarism, and participation in restorative justice sessions – improves reentry outcomes.¹⁰ The ability to vote in elections is a key hallmark of civic integration. Moreover, D.C. residents in the Federal Bureau of Prisons serve time in facilities scattered across the country. Voting offers them one, albeit one important, opportunity to maintain a connection with their community in D.C.

⁷ Hamilton-Smith, Guy Padraic, and Matt Vogel. "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism." *Berkeley La Raza Law Journal* 22, no. 3 (2012).

⁸ "Status Update: Restoration of Civil Rights' (RCR) Cases Granted 2009 and 2010." Florida parole Commission, July 1, 2019. <https://www.fcpr.state.fl.us/docs/reports/2009-2010ClemencyReport.pdf>.

⁹ "Florida Prison Recidivism Report: Releases from 2010 to 2016." Florida Department of Corrections, August 2018. <http://www.dc.state.fl.us/pub/recidivism/RecidivismReport2018.pdf>.

¹⁰ Bazemore, Gordon, and Jeanne Stinchcomb. "A Civic Engagement Model of Reentry: Involving." *Federal Probation* 68, no. 2 (2004).

Additionally, controlling for other factors, voting by young adults is associated with higher levels of subsequent income and education, as well as mental health.¹¹

Putting all that together, it is perhaps unsurprising that voting positively affects justice-involved individuals. The question that this legislation poses is whether the positive benefits of voting outweigh the costs of removing a retributive burden placed on those convicted of felony crimes.

While perhaps not a strong sentiment in the District, some have argued that felony disenfranchisement prevents people with poor moral character from voting. This argument wrongly assumes that the moral compasses of people with felony convictions are different from those without felony convictions, and that a given set of beliefs ought to disqualify an individual from voting.¹² However, what evidence exists suggests that people with felony convictions have the same view of the rightness and wrongness of crimes (their own included) as those without felony convictions.¹³ There is no evidence indicating that attaching felony disenfranchisement to a sentence actually deters, or in any way reduces, crime.¹⁴

Alternatively, others have argued that removing the right to vote is a good way to signal the importance of the norms that people with felony convictions have violated. This wrongly

¹¹ Ballard, Parissa, Lindsay Hoyt, and Mark Pachucki. "Impacts of Adolescent and Young Adult Civic Engagement on Health and Socioeconomic Status in Adulthood." *Child Development* 90, no. 4 (2018).

¹² Manfredi, Christopher. "Judicial Review and Criminal Disenfranchisement in the United States and Canada." *The Review of Politics* 60, no. 2 (1998)., see also Clegg, Roger. "Who Should Vote." *Texas Review of Law & Politics* 6, no. 1 (2001).

¹³ Casper, Jonathan. "American Criminal Justice: The Defendant's Perspective." *University of Pennsylvania Law Review* 121, no. 5 (1973).

¹⁴ Hamilton-Smith, Guy Padraic, and Matt Vogel. "The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism." *Berkeley La Raza Law Journal* 22, no. 3 (2012)

presumes that denying the right to vote is a useful medium for the community to send a message to individuals who break laws that their behavior is unacceptable.¹⁵

If it is true that the purpose of disenfranchisement is to send such a signal, we here in the District should think carefully about which message we are really sending, and which of D.C.'s civil rights legacies we support.

To be clear, and to circle back to the important history we discussed earlier, felony disenfranchisement overwhelmingly affects African Americans. Although African Americans in D.C. account for less than half the total population, they are 96% of people with felony convictions.¹⁶ Nationally, African Americans are four times as likely to be disenfranchised by a felony conviction as non-African Americans.¹⁷ In 2017, there were 5,258 D.C. Code offenders in the Federal Bureau of Prisons serving time for felony offenses who were unable to vote.¹⁸ Ninety-nine percent of those individuals were African American, resulting in the disenfranchisement of 1.6% percent of all African American men in the District of Columbia.

Passing the “Restore the Vote Amendment Act of 2019” is the right thing to do. It is a small but important step toward reducing the disparate access to civic rights in the District, and will provide a meaningful opportunity for individuals convicted of felonies to begin the process of civic reintegration. Thank you for your time and attention.

¹⁵ Sigler, Mary. “Defensible Disenfranchisement.” *Iowa Law Review* 99 (2014).

¹⁶ Duane, M., Reimal, E., & Lynch, M. (2017, July). *Criminal Background Checks and Access to Jobs: A Case Study of Washington, DC*. Retrieved from https://www.urban.org/sites/default/files/publication/91456/2001377-criminal-background-checks-and-access-to-jobs_2.pdf

¹⁷ Uggen, Christopher, Ryan Larson, and Sarah Shannon. “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016,” 2016. <https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016/>.

¹⁸ “One-Day Estimate of Justice System-Involved Individuals within the District of Columbia.” Criminal Justice Coordinating Council, 2017.