

HB 1422

“Establishing the Maryland Reparations Commission to study and make recommendations relating to appropriate benefits to be made to individuals whose ancestors were enslaved in the State or were impacted by certain inequitable government policies . . .”

FAV

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Good afternoon. My name is Mark Miller. First, a few words about my educational and professional background. After earning a B.A. in Philosophy from Oberlin College in 1975, I received the J.D. from Cleveland-Marshall College of Law in 1983. Law school studies helped open my eyes to the centrality of slavery and racial discrimination in the legal and constitutional history of the United States. In the early 1980's I attended a National Lawyers Guild conference in New York City, where I heard Rep. John Conyers (D-Mich.) plainly lay out the importance of a national commission to study the issue of reparations for slavery and its consequences, an idea which eventually took shape as H.R. 40, first introduced by Rep. Conyers in 1989. Versions of H.R. 40 have been introduced each session of Congress since then. Hearings were held in 2019, and the 117th Congress (2021-2022) saw 196 co-sponsors of H.R. 40. Despite this growing support for a national reparations study commission, the federal political landscape is at least temporarily in a state of some chaos, which makes it especially important now for states and municipalities to develop initiatives that will explore the history and study issues of repair.

I have been licensed to practice law in Ohio since 1984. I moved to Greenbelt in 1996. I worked as a librarian for 20 years and taught research techniques at Montgomery College, before I retired in 2019. I have the honor to serve on the historical research committee of the 21-member Greenbelt Reparations Commission, which was appointed by Greenbelt City Council following a referendum in November 2021 where the Greenbelt electorate voted strongly in favor of establishing a local reparations commission.

Although my testimony here today is informed by my experience on the Greenbelt Reparations Commission, it is my own personal testimony and is not an official statement on behalf of the Commission.

HB 1422, establishing the Maryland Reparations Commission, marks an important step toward mending our damaged society and achieving the promise of equality for African Americans. I urge strong support for this legislation.

Marylanders, and all Americans, need to reckon with our history in order to heal ongoing injuries from the institution of race-based slavery and its legacy.

International norms restated at the Durban World Conference on Racism recognize that race-based enslavement and its legacy constitute “crimes against humanity.”¹ Gross human rights abuses warrant study of reparative measures to redress such harms.

The historical research committee of the Greenbelt Reparations Commission has been researching race-based slavery and its consequences, especially in Maryland and in Prince George’s County, with a particular focus on the lands that would become the City of Greenbelt. The committee has reviewed thousands of archival documents and scholarly articles, conducted interviews, and analyzed quantitative data.²

Research is ongoing and new details are emerging, but the overall shape of the historical record so far is clear.³ Only a few key points will be presented here. Human beings were kidnapped from Africa, transported across the ocean in chains, and sold here as property. In the colonial Province of Maryland in 1664, the Maryland Assembly codified a race-based law providing that enslaved people of African descent were, as a matter of law, to be held in slavery for life and that all persons born of enslaved African-descent mothers would also be held in slavery for life. An enslaved woman’s children were the legal property of the enslaver, who was legally empowered to sell them.

The legal regime of “slavery forever” stood as the law of Maryland for 200 years, until 1864. During much of that time, especially in counties like Prince George’s, enslaved labor was at the very core of the Maryland economy.

The 1808 federal law forbidding the importation of enslaved persons from outside the U.S., despite its salutary purpose to hasten abolition of the slave trade, had the ugly effect of raising the “selling price” of an enslaved individual as chattel property. Maryland

¹ United Nations, 2001 Durban World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration and Programme of Action (2002), https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf.

² The charge of the Greenbelt Reparations Commission includes studying issues of reparations for indigenous people as well as for African Americans, but in order to keep my remarks germane to the subject of HB 1422, my testimony today addresses only the latter.

³ I have avoided including extended source citations and footnotes here, but such information is available from me upon request.

“owners” found a lucrative market for selling enslaved human beings to the Deep South, where demand for labor was increasing. Under Maryland’s race-based life-long slavery law, children born to enslaved African-descent mothers were “owned” for life and could be sold for a profit. This gave “owners” an incentive to promote childbearing by enslaved women. The prevalence of this type of human trafficking prompted Frederick Douglass to call out Maryland as a “breeder state.” In 1857 when Chief Justice Taner, a Marylander, issued the Court’s opinion in the *Dred Scott* case, his most telling reason for holding that enslaved persons of African descent could not be citizens of the United States was that the dominant white society would never accept them. Historical research demonstrates that the dehumanizing narratives that served as rationales for slavery were also extremely harmful and deeply embedded in society. And those narratives survived long after the abolition of slavery itself.

Some people who acknowledge the atrocity of slavery have expressed a concern that any government action that seeks to remedy those harms would amount to a racially discriminatory program because it would “pick winners and losers based on the color of their skin.” But that worry is misguided, for several reasons.

First, contrary to that notion, a thoughtful study of reparations issues based on historical accuracy will benefit our whole society, even beyond the potentially more direct benefits reparatory remedies may offer individuals whose ancestors were enslaved or were otherwise made to suffer harms from racial discrimination

Frederick Douglass observed that slavery was deeply morally harmful to the enslavers themselves. Slavery stained the humanity of anyone who derived benefit from the slavery system. Likewise, the post-emancipation legacy of slavery in the form of race-based unearned privileges has been, and continues to be, morally harmful to the beneficiaries of such privilege, at the same time as it is obviously and more concretely harmful to the victims of discrimination. Improvement of society helps every member. All of us would benefit from living in a society that has the courage to come to terms with its history in order to develop just ways to heal social injury and redress centuries of unjust harm.

So, it would be a mistake to assume reparations to be what economic theorists might call a “zero-sum game,” in which one group “wins” at the expense of another group that “loses.” The system of race-based enslavement was extremely injurious to enslaved persons and their descendants. The Maryland Reparations Commission will likely explore the prospect of broader healing across society, as all members of the community stand to gain through historical truth and a reparations process.

In addition, to worry that remedies to heal injustice would “discriminatorily pick winners and losers” misunderstands the intent and the historical context of the Fourteenth Amendment’s guarantee of equal protection. Such a worry seems ironic in that it simply ignores the centuries-long history of discrimination against African Americans. This has resulted in systematic disadvantages that have often been produced by government policies at federal, state, and local levels.

One example of such a historical policy under scrutiny by the Greenbelt Reparations Commission is the federal housing policies, including the exclusion of African Americans from residing in the federal government’s “garden city” project in 1935-1937 that created Greenbelt. Unequal educational opportunities stemming from the history of resource inequality and school segregation is another example of such a policy. Yet another area of gross racial disparity is found in differential law enforcement and criminal justice practices, leading to shocking rates of overincarceration of African Americans. More generally, historians and economists have traced a deep racial wealth gap, to the history of race-based slavery and its legacy.

In short, abolition of slavery did not bring about a “level playing field.” It became clear right away upon abolition that African Americans were still unfairly prevented from prospering and instead largely found themselves landless, often subject to violent attacks, frequently unemployed or in any case unable to command fair wages, and at risk of arrest and incarceration on discriminatorily applied vagrancy charges. The decade of Reconstruction in states south of Maryland soon gave way to renewed patterns of racial discrimination. Because it had not joined the rebellion, Maryland was not subject to even the limited period of Reconstruction enforced in the Confederacy; for the same reason, the 1863 Emancipation Proclamation had also not applied to Maryland. Patterns of gross racial discrimination have continued over many generations. HB 1422 provides a reasonable approach to exploring possible measures to remedy those injustices.

Thank you for the opportunity to express my support for this important bill.