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House Bill 1239 - Fair Housing and Housing Discrimination - Regulations, Intent, and Discriminatory Effect Position: Support

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for enforcing Maryland’s laws prohibiting discrimination in employment, housing, public accommodations, state contracts, commercial leasing, and health services based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, source of income, and military status.

House Bill 1239 codifies disparate impact theory, an incredibly valuable tool established by *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) that has been instrumental in the enforcement of federal, State, and local housing anti-discrimination laws for decades. Disparate impact theory holds that a housing practice is unlawful if it adversely affects one group of protected people more than another despite the practice being applied neutrally and without intent to discriminate. HB1239 carves out an exception for housing practices justified by a legitimate business necessity that do not have other less discriminatory means of accomplishing that necessity.

Because HB1239 codifies existing case law, it will not have an impact on the way MCCR currently enforces Maryland’s housing anti-discrimination protections found in Title 20 of the State Government Article. Rather, HB1239 insulates Maryland from potential legal challenges seeking to overturn *Griggs* and, more specifically, the use of disparate impact theory that the U.S. Supreme Court says is a violation of both the Civil Rights Act of 1964 and the Fair Housing Act of 1968.

Historically, approximately 30% of MCCR’s annual complaint intakes are housing discrimination matters¹. As we at the Commission have seen over the years, it is becoming increasingly more common for housing providers to engage in covert acts of discrimination as opposed to overt, blatantly discriminatory acts. These housing practices, when taken at face value, appear neutral and harmless. However, when implemented, these practices have

¹ In FY2024, MCCR received 676 total complaints, 247 of which were complaints alleging unlawful housing discrimination. This is a sharp increase from FY2023 when MCCR received 661 total complaints, 167 of which alleged unlawful housing discrimination.

“Our vision is to have a State that is free from any trace of unlawful discrimination.”

a disproportionately adverse impact against protected classes covered by Maryland law, such as individuals with disabilities and racial minorities². Another increasing trend that's held true for many years, according to MCCR's Annual Reports³, is a housing provider retaliating against a tenant for filing a grievance, such as with a governmental enforcement agency like MCCR, attempting to rectify the alleged discriminatory practice⁴. If disparate impact theory were to be overturned, many victims of unlawful housing discrimination seeking relief would be left without protection by the spirit of Maryland law. HB1239 makes disparate impact theory both the spirit and the letter of the law.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on HB1239. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to promote and improve fair housing and civil rights in Maryland.

² In FY2024, disability, race, and source of income complaints were the top 3 identified protected classes with 294, 96, and 63 allegations, respectively.

³ <https://mccr.maryland.gov/Pages/Publications.aspx>

⁴ In FY2024, retaliation in housing complaints was alleged 56 times. Harassment, meanwhile, was #2 among all complaints with 109 allegations.