

Testimony Concerning House Bill 1239
Fair Housing and Housing Discrimination – Regulations, Intent, and Discriminatory Effect
Position: Favorable

To: Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice Chair
Members of the Judicial Proceedings Committee

From: Monique L. Dixon, Executive Director and Michael Pinard, Faculty Director,
Gibson-Banks Center for Race and the Law

Date: March 24, 2025

On behalf of the Gibson-Banks Center for Race and the Law (“Gibson-Banks Center” or “Center”) at the University of Maryland Francis King Carey School of Law,¹ we appreciate the opportunity to submit testimony in support of House Bill 1239 (HB 1239), which would, among other things, codify existing fair housing case law allowing persons to challenge housing policies or practices that have a discriminatory effect. We urge the committee to issue a favorable report because the bill would: (1) affirm the availability of discriminatory effects analysis under Maryland fair housing laws; and (2) address historical racial discrimination and persistent racial inequalities in housing in the state.

The Gibson-Banks Center works collaboratively to re-imagine and transform institutions and systems of racial inequality, marginalization, and oppression. Through education and engagement, advocacy, and research, the Center examines and addresses racial inequality, including the intersection of race with sex or disability, and advances racial justice in a variety of issue areas, including housing.

HB 1239 would codify existing fair housing case law and affirm the availability of discriminatory effects analysis, also known as disparate impact theory, to prove housing discrimination

Marylanders are protected from housing discrimination under both federal and state antidiscrimination laws. The provisions of Maryland’s housing antidiscrimination law are

¹ This written testimony is submitted on behalf of the Gibson-Banks Center and not on behalf of the University of Maryland Francis King Carey School of Law or the University of Maryland, Baltimore.

“substantially equivalent or similar” to the federal Fair Housing Act (FHA), as amended,² and Maryland courts have been guided by federal case law interpreting FHA when considering the state’s analog.³

In *Texas Department of Housing and Community Affairs et. al v. The Inclusive Communities Project, Inc., et. al*, 576 U.S. 519 (2015), the U.S. Supreme Court held that a person could prove discrimination under the FHA using disparate impact theory.⁴ This theory challenges a housing policy or practice that is applied neutrally, i.e., without the intent to discriminate, but has an unjustified, disproportionately adverse effect on individuals protected by the Act, such as racial groups or persons with disabilities.⁵ In support of its holding, the Court noted that nine federal courts of appeals had concluded that “the Fair Housing Act encompassed disparate-impact claims.”⁶ Additionally, the Court noted that in 2013, the U.S. Department of Housing and Urban Development (HUD) issued a regulation “interpreting the FHA to encompass disparate-impact liability,”⁷ by formally establishing the three-part burden-shifting test for determining when a practice with a discriminatory effect violates the Fair Housing Act.”⁸

In 2020, however, during the Trump administration, HUD issued a new regulation that made it more difficult for individuals protected by the FHA to challenge housing practices that had a discriminatory effect, or disparate impact.⁹ Defenders of fair housing filed a lawsuit challenging the regulation and in October 2020, a federal court issued a nationwide preliminary

² See, Fair Housing Act, 42 U.S.C. §§ 3601 *et. seq.* (prohibiting discrimination in the sale, rental, advertising, or financing of housing because of race, color, national origin, religion, sex, familial status, or disability.). Maryland’s housing antidiscrimination law provides protection to more protected classes, such as marital status and gender identity. See, MD. CODE ANN, STATE GOV’T §§ 20-701 *et seq.* (prohibiting discrimination in the sale, rental, advertising or financing of housing because of because of race, color, religion, sex, familial status, national origin, marital status, sexual orientation, gender identity, disability, source of income, or military status).

³ See *e.g.*, *Wallace H. Campbell & Company, Inc. v. Maryland Comm’n on Human Relations*, 202 Md. App. 650, 667-68 (Ct. App. 2011) (noting that the Maryland legislature enacted Article 49B § 22(a)(9) (now MD Code Ann, State Gov’t §20-706) to include provisions that prohibit discriminatory housing practices in a “manner substantially equivalent or similar to the federal Fair Housing Amendments Act of 1988.” Accordingly, the Maryland appellate court was “guided by the case law interpretation of the Federal statute when ...[it] examine[d] the State analog.”)

⁴ 576 U.S. 519, 545-46 (2015). An aggrieved person may also prove discrimination under the FHA using the disparate treatment theory “where a plaintiff must establish that the defendant had a discriminatory intent or motive...” *Id.* at 524.

⁵ *Id.* at 524-25 (explaining that “a plaintiff bringing a disparate impact claim challenges practices that have a ‘disproportionately adverse effect on minorities’ and are otherwise unjustified by a legitimate rationale.”).

⁶ *Id.* at 535-36.

⁷ *Id.* at 527.

⁸ U.S. Department of Housing and Urban Development, *Implementation of the Fair Housing Act’s Discriminatory Effects Standard*, 78 Fed. Reg. 11460 (Feb. 15, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-02-15/pdf/2013-03375.pdf>.

⁹ U.S. Department of Housing and Urban Development, *HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard*, 85 Fed. Reg. 60288 (Sept. 24, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-09-24/pdf/2020-19887.pdf>; See generally, Ed Gramlich, *Disparate Impact*, National Low Income Housing Coalition (comparing the HUD’s 2013 and 2020 disparate impact regulations), https://nlihc.org/sites/default/files/2023-03/2023AG8-03_Disparate-Impact.pdf.

injunction preventing HUD from implementing it.¹⁰ In March 2023, the Biden administration restored the 2013 discriminatory effect regulation.¹¹

HB 1239 would codify existing case law acknowledging that the discriminatory effects analysis is a tool one may use to prove housing discrimination. It would also ensure the availability of discriminatory effects liability under Maryland law at a time when the new Trump administration will likely take steps to limit or eliminate it.¹²

Maryland’s history of racial discrimination and persistent racial inequalities in housing opportunities demonstrate the need for HB 1239.

Maryland has a shameful history of racial discrimination in housing and the vestige of this discrimination continues today. In 1910, Baltimore became the first city in the nation to pass a residential segregation ordinance that prohibited Black people from moving into a “white” neighborhood, inspiring a wave of similar laws in cities across the country.¹³ After the Supreme Court declared such laws unconstitutional in *Buchanan v. Warley*,¹⁴ private real estate actors across the state advanced the cause of residential segregation through practices such as racially restrictive covenants, which prohibited the resale of property to Black people.¹⁵

The problem of racially segregated housing in Maryland worsened in the 1930s when the federal government, through the Home Owners’ Loan Corporation (HOLC), published a color-coded map that graded communities according to the financial risks they posed to lenders and investors.¹⁶ Black communities were “redlined,” meaning that they were colored red on the HOLC maps, indicating that they were the least desirable candidates for mortgages and other

¹⁰ *Massachusetts Fair Housing Center, et al. v. United States Department of Housing and Urban Development, et al.*, Memorandum and Order Regarding Plaintiffs’ Motion for Preliminary Injunction Under 5 U.S.C. § 705 to Postpone the Effective Date of HUD’s Unlawful New Rule, Civil Action No. 20-11765-MGM (D-MA Oct. 25, 2020).

¹¹ U.S. Department of Housing and Urban Development, *Reinstatement of HUD’s Discriminatory Effects Standard*, 88 Fed. Reg. 19450 (Mar. 31, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-03-31/pdf/2023-05836.pdf>.

¹² The Trump administration’s policy agenda mirrors the Heritage Foundation’s *Mandate for Leadership, Project 2025*, https://static.project2025.org/2025_MandateForLeadership_FULLL.pdf, which calls for an end to disparate impact theory as a tool for proving discrimination under several federal antidiscrimination laws.

¹³ DENNIS PATRICK HALPIN, A BROTHERHOOD OF LIBERTY BLACK RECONSTRUCTION AND ITS LEGACIES IN BALTIMORE, 1865-1920, 162-176 (2019), Matthew Yglesias, *How Baltimore Invented Neighborhood Segregation*, VOX (May. 10, 2015), <https://www.vox.com/2015/5/10/8578077/baltimore-segregation-pietila>; Garrett Power, *Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-1913*, 42 MD. L. REV. 289 (1983), <https://digitalcommons.law.umaryland.edu/mlr/vol42/iss2/4/>.

¹⁴ 245 U.S. 60 (1917).

¹⁵ See, e.g., Power, *supra* note 13, at 319; MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT DIVISION OF JUST COMMUNITIES, SEPARATE AND UNEQUAL NEIGHBORHOODS 13 (2024) [Hereinafter SEPARATE AND UNEQUAL], <https://dhcd.maryland.gov/Just-Communities/Documents/Baseline-Report.pdf> (“Racially restrictive covenants, clauses in residential deeds barring the sale of homes to non-whites, were common in Montgomery County . . .”)

¹⁶ David Armenti & Alex Lothstein, *Baltimore’s Pursuit of Fair Housing: A Brief History*, MARYLAND CENTER FOR HISTORY AND CULTURE, <https://www.mdhistory.org/baltimores-pursuit-of-fair-housing-a-brief-history/>.

investments.¹⁷ Black residents in these areas accordingly struggled to access loans and suffered discrimination from mortgage lenders and real estate brokers as well as overall disinvestment.¹⁸

Sadly, racial inequalities in housing continues in Maryland. In 2024, the Maryland Department of Housing and Community Development Division of Just Communities conveyed that Marylanders of color, including Black Marylanders, face “bias in the rental housing market, mortgage lending, and housing valuation, and disparities in housing stability, homeownership retention, and intergenerational wealth creation.”¹⁹ Additionally, a newly published report by the Abell Foundation presents evidence of racial bias in home appraisals that undervalues homes in predominantly Black communities in the Baltimore metropolitan area.²⁰

By codifying discriminatory effects analysis for proving discrimination under Maryland’s housing antidiscrimination law, HB 1239 would help to ensure that Marylanders are protected from various forms of housing discrimination.

For the above reasons, we urge you to issue a favorable report on HB 1239.

¹⁷ *Id.*

¹⁸ *See id.*; SEPARATE AND UNEQUAL, *supra* note 15, at 7.

¹⁹ SEPARATE AND UNEQUAL, *supra* note 15, at 2.

²⁰ Ira Goldstein with Alana Kim, *Evidence of Racial Bias in Home Appraisals in the Baltimore Metropolitan Area*, The Abell Foundation (March 2025), https://abell.org/wp-content/uploads/2025/03/2025_Abell-Foundation_Appraisal-Bias_vf-digital.pdf.