

SB540_PGCEX_FAV.pdf

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Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: Senate Bill 540 – Human Relations - Civil Rights Enforcement - Powers of the Attorney General

SPONSOR: The President (By Request - Office of the Attorney General)

HEARING DATE: February 28, 2023

COMMITTEE: Judicial Proceedings

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT

The Office of the Prince George's County Executive **SUPPORTS Senate Bill 540 – Human Relations - Civil Rights Enforcement - Powers of the Attorney General**, which generally (1) grants the Attorney General the power to investigate, prosecute, and remediate any conduct that constitutes a civil rights violation; (2) establishes related procedures and specified remedies for violations; (3) requires coordination with the Maryland Commission on Civil Rights (MCCR); and (4) establishes the Civil Rights Enforcement Fund.

During the civil rights movement of the 1940s through the 1960s, the United States government enacted many anti-discrimination laws, with the aim of protecting individuals from being treated differently due to their race/color, ethnicity, and other protected characteristics. Some of those laws that were enacted to prevent discrimination were the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act and the Fair Housing Act of 1968. More recent anti-discrimination laws enacted were the Title I and Title V of the Americans with Disabilities Act of 1990, and the Genetic Information Nondiscrimination Act of 2008.

We are Prince George's Proud that in 1972 when the County transitioned to the current form of governance, the first law passed by the County Council was Division 12, which is the County's anti-discrimination law, and establishment of the Office of Human Rights. The Office of Human Rights enforces anti-discrimination laws to include Federal anti-discrimination laws in employment as a result of a work-share agreement with the U.S. Equal Employment Opportunity Commission (EEOC). The Office of Human Rights' sister-agency, Maryland Commission on Civil Rights

(MCCR), like the Office of Human Rights investigates complaints of discrimination in employment, housing, and public accommodations. In addition, the Office of Human Rights also investigates discrimination complaints in education, law enforcement, and commercial and residential real estate transactions.

As both the Office of Human Rights and the MCCR protect individuals from discrimination, the enactment of SB 540 will allow the State Attorney General to investigate, prosecute, and remediate on behalf of residents of the State any conduct that constitutes a civil rights violation. SB 540 will not only permit the Attorney General to address structural discrimination in the areas of employment, housing, and public accommodation, but will also establish the Civil Rights Enforcement Fund, which will provide necessary funds to the Office of the Attorney General and the Maryland Commission on Civil Rights to continue educating residents/businesses in the State, to include Prince George's County.

Despite numerous civil rights and anti-discrimination laws passed over the years, there is a rise of hate and discrimination incidents in the United States of America. For example, anti-Asian hate crimes increased 339% last year compared to the previous year and Black Americans remained the most targeted group across most cities. ¹ There is therefore a need for increased vigilance and structure to combat this rise in civil rights violations.

For the reasons stated above, the Office of the Prince George's County Executive **SUPPORTS Senate Bill 540** and asks for a **FAVORABLE** report.

¹ Center for the Study of Hate and Extremism

SB0540 Testimony to Judicial Proceedings.pdf

Uploaded by: Camila Reynolds-Dominguez

Position: FAV



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The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401
February 27, 2023

**Testimony of FreeState Justice in Support
SB0540: Human Relations - Civil Rights Enforcement - Powers of the Attorney General**

To the Honorable William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and the esteemed committee: FreeState Justice is Maryland’s civil rights advocacy organization for lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) Marylanders. We also provide pro bono legal services each year to hundreds of LGBTQIA+ Marylanders who could not otherwise afford an attorney and we advocate more broadly on behalf of the LGBTQIA+ community.

We write today in support of Senate Bill 0540. This bill addresses the bottleneck of resources available to victims of civil rights violations to find recourse. We assist many clients as they file claims with the Maryland Commission on Civil Rights (“the Commission”) after being discriminated against in their places of employment based on their LGBTQIA+ status. Our employment discrimination clients often wait for months to see action from the government as the Commission works through its backlog of cases. Because the Commission has limited resources, when it does get to our clients’ cases, it often cannot investigate their claims as thoroughly or take as aggressive an action as it otherwise could if it were properly staffed and funded.

These same resourcing problems in turn impact LGBTQIA+ Marylanders seeking recourse for discrimination they experience in the housing, public accommodations, and commercial contexts. Many studies show that LGBTQIA+ people face heightened levels of discrimination “in virtually every setting surveyed,”¹ which, based on dozens if not hundreds of our clients’

¹ “... LGBTQI+ individuals continue to experience significantly higher rates of discrimination than non-LGBTQI+ individuals, a trend that holds true in virtually every setting surveyed—including health care, employment, housing, and public spaces. Such discrimination has substantial adverse effects on economic, physical, and mental well-being, and many LGBTQI+ individuals alter their behavior to avoid experiencing discrimination.” [Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022](#). Center for American Progress (Jan 12, 2023).

experiences, is a pattern that holds true in Maryland despite the myriad of laws enacted in this state to protect our community.²

We support SB0540 because it provides relief to the overburdened Commission, and by extension to our community, by allowing the Office of the Attorney General to “investigate, prosecute, and remediate” civil rights violations. The bill would help bridge the state’s civil rights enforcement gap, allowing the Attorney General to use its significant institutional resources in conjunction with the Commission to ensure every Marylander is provided sufficient recourse from any discrimination they might face as members of legally protected classes.

The Office would be able to commence civil actions against discriminators if it has “reasonable cause” to believe that a person violated the Federal or State Constitution, or any Federal or State anti-discrimination laws. The Attorney General’s ability to investigate, execute subpoenas, and compel the production of certain documents would help the Commission and the state ensure all discrimination claims are analyzed fully and fairly. Far from taking power away from the existing Commission, this bill establishes a joint fund for the Commission and the Attorney General for the sole purpose of combatting discrimination. It explicitly states that “nothing ... may be interpreted to impair rights and powers of the Commission,” and directs the Attorney General to implement regulations that “minimize duplication ... and promote collaboration” between the agencies.

We think that this legislation is a good solution to a significant resourcing problem that impacts every Marylander that faces discrimination based on their race, color, religion or creed, sex, age, ancestry or national origin, marital status, physical or mental disability, sexual orientation, or gender identity in employment, housing, public accommodations, and commercial contexts.

For these reasons, FreeState Justice supports Senate Bill 0540.

Camila Reynolds-Dominguez
Legal and Policy Intern || FreeState Justice

² State Government Article §§: 20-602 (Equal opportunity protections for sexual orientation and gender identity (SOGI)); 20-606 (Unlawful employment practices section includes protections for SOGI); 20-610 (Workplace protections, for interns, from discriminatory practices includes SOGI)

SB0540 Civil Rights Enforcement FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0540

Human Relations - Civil Rights Enforcement - Powers of the Attorney General

Bill Sponsor: President

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in strong support of SB0540 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

This bill would authorize the Attorney General to investigate and bring civil charges on behalf of the residents of the state against anyone who engages in discriminatory behavior. This would include discrimination in housing, employment or discrimination in public places of accommodation.

Given that many people who experience discrimination of this type do not have the financial means to defend themselves against this type of behavior, which makes the person(s) engaging in that behavior that much more likely to continue. Having the Attorney General's office step in would signal that Maryland does not tolerate discrimination.

This is exactly the kind of people that we are. We value other people and we value the diversity of our residents. We believe that having a fund that will pay for the Attorney General to represent the residents of the state in this way is a very positive thing.

We applaud this bill and recommend a **FAVORABLE** report in committee.

Civil rights enforcements - OAG - testimony - sena

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 540
Lisae C. Jordan, Executive Director & Counsel
February 28, 2023

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 540.

Senate Bill 540 – Civil Rights Enforcement – Authority of the Attorney General

This bill provides the Attorney General with the authority to investigate conduct that violates any federal or State civil rights, and to file civil actions on behalf of the citizens of the State against any non-governmental entity regarding civil rights violations. These civil rights actions encompass a range of discriminatory actions, including sexual harassment. Of particular importance, the Attorney General would be authorized to seek injunctions to prohibit future violations.

Sexual harassment is a form of sex discrimination and, very generally, "sexual harassment" describes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual assault is an extreme form of sexual harassment. The United States Department of Justice estimates that eight percent of rapes occur while the victim is working. Duhart, D. (2001). Violence in the Workplace, 1993-99. Bureau of Justice Statistics. Available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/vw99.pdf>.

The American Association of University Women issued a report on workplace sexual harassment illuminating the impact of this type of discrimination and its threat to women's mental health and physical safety. Findings included:

- Psychologists report that sexual harassment can lead to depression and post-traumatic stress disorder.
- Organizational behaviorists link sexual harassment to an increased risk of long-term physical health problems.

- Sexual harassment erodes women's short- and long-term economic security:
 - o In a survey of 311 women, 38 percent of women who'd been harassed said it contributed to their decision to leave a job early, and 37 percent said it disrupted their career advancement.
 - o When women decrease their hours or leave their job to avoid a harasser, it reduces their wages and ability to save and build wealth.
 - o Older women who leave a job because of harassment often face ageism on the job market and may consequently retire early, missing out on what might have been their peak earning years.
 - o Women who report harassment risk receiving unjust performance reviews, getting ostracized by coworkers and being denied promotions or raises

<https://www.aauw.org/app/uploads/2020/03/Limiting-our-Livelihoods-2-pager.pdf>

These are serious and wide-reaching harms. Enforcement of civil rights laws to prevent and respond to this and other types of discrimination should not be left solely to private litigation. Providing the Attorney General with authority to respond will help ensure that both public and private interests are served. Importantly, this bill would provide the Attorney General with the authority to seek injunctive relief and this is key to ending sexual harassment and preventing future discrimination.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to
report favorably on Senate Bill 540**

SB 540_mgoldstein_fav 2023.pdf

Uploaded by: Mathew Goldstein

Position: FAV



Secular Maryland

secularmaryland@tutanota.com

March 01, 2023

SB 540 - SUPPORT

Human Relations - Civil Rights Enforcement - Powers of the Attorney General

Dear Chair Smith, Vice-Chair Waldstreicher, and Members of the Judicial Proceedings Committee,

The Maryland Commission on Civil Rights, which is understaffed, pursues individual complaints alleging unlawful discrimination. This bill proposes empowering the office of the Attorney General to challenge, at a broader level and larger scale, more systemic discrimination occurring in industries and marketplaces. Other states, including our neighbors Delaware, West Virginia and Virginia benefit from permitting civil rights enforcement powers for its top prosecutors.

Secular Maryland supports bills like this that assist with protecting innocent groups of citizens who are targeted by people motivated by a biased desire to harm them.

Mathew Goldstein
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Bowie, MD

SB 540 - WLCMD - FAV.pdf

Uploaded by: Michelle Siri

Position: FAV

BILL NO.: Senate Bill 540
TITLE: Human Relations - Civil Rights Enforcement - Powers of the Attorney General
COMMITTEE: Judicial Proceedings
DATE: February 28, 2023
POSITION: SUPPORT

Senate Bill 540 provides the Attorney General with the authority to investigate conduct that violates any federal or State civil rights, along with subpoena authority to obtain information in the course of the investigation, in particular in cases of discrimination based on sex. With this authority, the Office of the Attorney General “can undertake its own investigations and commence litigation of alleged civil rights violations without having to rely on the initiation and administrative management of an individual complaint or the finding of another agency.” Additionally, enforcement “can reach systemic discrimination that may go unnoticed at the individual level and, thus, may have never prompted an individual complaint in the first instance.”

The Women’s Law Center of Maryland (WLC) supports Senate Bill 540 and believes the Office of the Attorney General could play a pivotal role in addressing several issues at the heart of the WLC’s mission, including sexual harassment within the workplace and the persistence of the gender pay gap. Given the pervasiveness of both these issues, as well as the systemic barriers often preventing victim redress, enforcement of civil rights laws to prevent and respond to this and other types of discrimination should not be left solely to private litigation. Providing the Attorney General with authority to respond will help ensure that both public and private interests are served. Importantly, this bill would provide the Attorney General with the authority to seek injunctive relief and this is key to preventing future discrimination.

According to the Equal Employment Opportunity Commission (EEOC), at least one in four women have been sexually harassed in the workplace. Workplace harassment is alleged in nearly 30% of all complaints filed with the federal agency, yet many workers, particularly those in low-wage jobs are loathe to report it, fearing retaliation and humiliation. Even fewer are willing to take those reports further by filing charges with the agency or attempting to litigate the harassment, as the lawsuits are often too expensive, too likely to increase retaliation, and too likely to fail due to the unreasonably high legal standards required to prove unlawful levels of harassment. On our Employment Law Hotline, we often hear from callers who have experienced discrimination but are unable to afford the time, expense, or risk to job security associated with bringing suit. Knowing that the Attorney General had authority to pursue such claims could have a positive chilling effect on employers who continue to tolerate such offensive behavior.

Similarly, and despite positive changes in the law, working women continue to suffer from a gender pay gap that effects their earnings and their families. Women’s incomes in Maryland still lag behind those of their male counterparts: women earn on average only \$0.86 to every dollar earned by men. For women of color, the pay gap is even larger – African American women take home \$0.68 and Latina women earn only \$0.46 for every dollar a white man makes. The gap is wider for working mothers and exists even in the public sector, where women on average earn 10% less than their male colleagues. The gender pay gap requires attention on multiple fronts, and the Attorney General could play a pivotal role in eliminating it in Maryland.

For the above reasons, the Women’s Law Center of Maryland urges a favorable report for SB 540.

SB 540 – Human Relations–Civil Rights Enforcement–

Uploaded by: Nancy Soreng

Position: FAV



TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SB 540 – Human Relations–Civil Rights Enforcement–Powers of the Attorney General

Position: Favorable

By: Nancy Soreng, President

Date: February 28, 2023

The League of Women Voters is a nonpartisan organization that believes the civil rights of all people should be protected regardless of race, color, gender, religion, national origin, age, sexual orientation, or disability.

Residents of Maryland are subject to unlawful discrimination for which they often have no recourse. For example, a vendor may systematically discriminate against people because of their race. When this happens, an individual probably would not have the resources, time or ability to investigate the vendor and to commence a lawsuit. Even if an individual has such resources and their lawsuit succeeds, this would not stop the vendor from discriminating against others.

The Attorney General is elected by Maryland residents and works on their behalf. SB 540 would authorize the Attorney General to commence a civil action against a person who engages in unlawful discrimination if “after a preliminary investigation” they find “reasonable cause to believe that any person committed a civil rights violation.” SB 540 empowers the Attorney General to seek an injunction, to prevent the person from engaging in the unlawful behavior, as well as a civil penalty.

SB 540 establishes a “special nonlapsing fund” that consists of money obtained through civil rights lawsuits and money appropriated to the fund in the state budget. The Attorney General may use the fund for enforcement actions and for “education and outreach in the community relating to civil rights violations.”

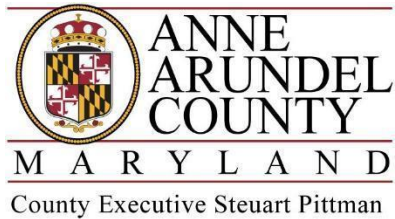
The Attorney General is distinctively able to carry out SB 540. The Office of the Attorney General’s staff and attorneys have broad experience investigating complex cases of wrongdoing and handling lawsuits that result from such investigations. The special fund would provide the Attorney General resources to combat unlawful discrimination and to protect Marylanders.

The League urges a favorable report for SB 540.

Anne Arundel County_FAV_SB 540.pdf

Uploaded by: Peter Baron

Position: FAV



February 28, 2023

Senate Bill 540

**Human Relations - Civil Rights Enforcement - Powers of the Attorney
General**

Judicial Proceedings Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** Senate Bill 540 - Human Relations - Civil Rights Enforcement - Powers of the Attorney General. This Bill would authorize the Attorney General to investigate, prosecute, and remediate certain civil rights violations, to intervene in certain causes of action, establish penalties and authorize the Attorney General to obtain relief in civil actions, conciliation agreements, and settlement agreements, and recover investigation and litigation costs.

This legislation provides an important tool for the investigation and enforcement of civil rights violations that goes beyond the ability of the Maryland Commission on Civil Rights, which handled over 2,000 complaints last year. By enabling the Attorney General to investigate discrimination in mortgage lending, check-cashing and fraudulent business practices, and authority to enforce federal and state civil rights laws, this Bill will enable the investigation of discrimination in instances where individuals may not be aware that they were victims of discriminatory practices, as well bring Maryland in line with its neighboring jurisdictions. Funds collected in enforcement actions would go to investigation and prosecution efforts, as well as education and outreach, expanding the scope and effectiveness of civil rights enforcement.

For all of these reasons, Anne Arundel County respectfully requests a **FAVORABLE** report on Senate Bill 540.

SB 0540 - Maryland Legal Aid - FAVORABLE.pdf

Uploaded by: Victoria Schultz

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

Senate Bill 0540

Human Relations – Civil Rights Enforcement – Powers of the Attorney General

In the Senate Judicial Proceedings Committee

Hearing on February 28, 2023

Position: FAVORABLE

Maryland Legal Aid (MLA) submits its written and oral testimony on SB 540 in response to a request from Chair Will Smith.

Thank you for the opportunity to testify on this bill, which will provide much needed enforcement authority for the Office of the Attorney General to enforce violations of civil rights laws occurring in our state. My name is Vicki Schultz, Executive Director of Maryland Legal Aid (MLA). MLA is a nonprofit law firm that last year alone provided free civil legal services to more than 80,000 low-income and vulnerable Marylanders. Our 12 offices serve residents in each of Maryland's 24 jurisdictions and handle a range of fundamental civil legal matters, including housing, family law, public benefits, bankruptcy, debt collection, and criminal record expungements. MLA urges support for this bill because it gives the Attorney General's Office critical tools to combat discrimination that is often difficult if not impossible to prove by the victims of that discrimination, and even by nonprofits such as ours.

MLA clients live in low-income communities throughout our state. Low-income communities suffer the legacy impacts of discrimination that is well-documented and was often enshrined in public policy throughout much of our history. Those harmful practices include redlining, lack of access to credit and employment opportunities, disproportionate school discipline and suspensions, and often intrusive state regulation of families. Regrettably and yet inescapably, our clients continue to experience and suffer harms due to discrimination.

Overt and intentional discrimination was the initial focus of civil rights enforcement when the laws were passed to reverse a history of state and private policies and practices that denied people access to public places, housing, employment, and other fundamental access to live fully and freely in our society. However, present day discrimination often does not show up as overt discrimination. To ably and adequately enforce civil rights laws in today's environment, one must show either discriminatory treatment or that a policy or practice has a discriminatory effect. With discriminatory effect, the court looks at a policy or practice that appears neutral on its face and determines whether it is implemented with discriminatory effect and impact when applied to a protected class of people by race, gender, sexual orientation, disability, ethnicity or religion, for example. Therefore, a claim of discriminatory effect that evidences a disparate impact based on a protected class generally requires substantial resources to investigate. A plaintiff must do an in-depth analysis of large amounts of evidence to prove their case—and that is before we even get to the question of an adequate remedy that will apply to all victims and sufficiently deter a bad actor.

I was engaged in such enforcement when I was a Deputy Assistant Attorney General in the Civil Rights Division of the Justice Department overseeing the enforcement of our fair housing and fair lending laws during the first term of the Obama Administration. The Civil Rights Division at that time was able to bring meaningful and historic discrimination cases based on both intentional and disparate impact discrimination. Those enforcement actions yielded both monetary relief to victims and, significantly, injunctive relief to make sure defendants changed their discriminatory practices and policies. Several of the Department's largest discriminatory fair lending cases with which I was involved, such as those against Wells Fargo and Bank of America/Countrywide, required multi-year investigations involving tens of thousands of records to establish the discriminatory impact the bank's practices had on Black and Hispanic borrowers during the mortgage crisis. They also required substantial monitoring after settlement to make sure defendants complied.

There is a vital role for state AGs, and specifically Maryland's Attorney General, our State's top law enforcement officer, to play in conducting these complex investigations, bringing these important cases, and ensuring on-going compliance after the fact. Our Attorney General has a strong interest in ensuring that all those doing business in Maryland are held accountable for any discriminatory conduct and for violating the law. The Maryland Civil Rights Commission is focused on individual complaints and vital outreach and education. Their efforts are important and complementary to the authority that OAG now seeks. Maryland will be well served to have the Commission and Attorney General actively rooting out discrimination in our state—and they will find support from MLA when they do.

From my current vantage point leading MLA, we are on the ground everyday representing low-income and vulnerable Marylanders throughout our state in the very communities that were harmed by decades of discriminatory policies and practices by both state and private actors. In fact, Baltimore shamefully led the nation by passing the first segregation laws in the country that separated residents into Black and white neighborhoods by law. MLA's clients, over the organization's more than 100-year history, were and are most likely to have experienced and been impacted by the discriminatory policies and practices once enshrined in law before the passage of civil rights laws and still present today. Consequently, it is our client population that continues to require and who need the protections of civil rights laws against housing, lending, employment, and educational discrimination.

The reality, however, is that MLA resources are often insufficient to do the type of investigatory work required to bring civil rights claims while it also honors its commitment to provide individual representation in civil legal matters. Moreover, as the only Legal Services Corporation (LSC) funded entity in Maryland, MLA is uniquely prohibited from bringing class actions, also a barrier to bringing civil rights enforcement actions that adequately address systemic harm. However, MLA has insights and information that it could refer to the Office of the Attorney General regarding the misconduct our clients face, and we look forward to doing so.

For example, MLA handles wage theft cases where an employer illegally denies or withholds wages from an employee. Those cases have often involved discrimination based on ethnicity or

national origin. We have represented clients with disabilities who face similar challenges. Most recently, we represented a veteran who was an amputee but whose apartment unit did not comply with the Americans with Disabilities Act. Others in that apartment complex potentially faced that illegality as well. Moreover, with the new Access to Counsel in Evictions law that provides low-income clients with a right to access counsel when facing eviction, MLA and other legal services providers will have an increased number of clients in eviction matters. Already, MLA has seen more illegal and potentially discriminatory conduct among certain landlords. In partnership with OAG, we could more effectively vindicate these clients' civil rights.

MLA wholeheartedly supports providing civil rights enforcement authority to the Office of the Attorney General. Doing so will enable the OAG to bring resources and expertise to bear on these potential claims of discrimination and fill a gap that currently exists in our state law. Further, the Maryland General Assembly will have taken yet another step toward creating a more equitable society where all may live and thrive free of discrimination. Maryland Legal Aid urges a favorable report for SB 540.

Respectfully submitted,

Vicki Schultz, Executive Director,
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2023-02-28 SB 540 (Support with Sponsor Amendments

Uploaded by: Anthony Brown

Position: FWA

ANTHONY G. BROWN
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February 28, 2023

The Honorable William C. Smith, Jr.
Chairman
Maryland State Senate
Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 0540 – Human Relations – Civil Rights Enforcement – Powers of the
Attorney General: **Support with Sponsor Amendments**

Dear Chairman Smith:

I urge the Judicial Proceedings Committee to report Senate Bill 540 favorably while considering four sponsor amendments. The amendments would clarify the intent of the bill and reduce potential confusion during the bill's implementation.

If enacted into law, this bill would authorize the Office of the Attorney General (“OAG”) to investigate, prosecute, and remediate civil rights violations by private actors, if the OAG has reasonable cause to believe that a person is engaged in a discriminatory act. This bill takes a measured approach to these investigations and specifically does not give my office jurisdiction over governmental entities. And finally, this bill creates a Civil Rights Enforcement Fund from any civil penalties, which would provide funding for enforcement actions and community education—to better educate and protect all Marylanders.

As I said on the day that I was sworn in, “Maryland is America in miniature...we are the fourth most diverse state in the nation, and the most diverse state east of the Mississippi.” Senate Bill 540 gives the OAG the broad authority to protect Marylanders from discriminatory practices to ensure a better present and future for them.

This bill provides the OAG with the authority to protect Marylanders from discrimination based on race, color, religion or creed, sex, age, ancestry or national origin, marital status, physical or mental disability, sexual orientation, or gender identity, as well as discrimination based on genetic information (in employment) and familial status or source of income (in housing). By way of example: my office would be able to safeguard families from being denied housing because they have children,

defend an employee’s right to wear a headscarf at work, protect homeowners from being denied mortgages because they live in a minority neighborhood, preserve accessibility for disabled individuals who require wheelchair ramps, and ensure fair wages for women and people of color. In short, the OAG would be able to “diligently and faithfully, without partiality or prejudice” protect the rights of all Marylanders, just as I swore to do when I took the oath of Office.

This bill seeks to supplement the valiant work done by the Maryland Commission on Civil Rights. For 53 years, the MCCR has been the only state resource for investigations into fair housing, public accommodations, employment discrimination, or commercial practices. The MCCR joins me in recognizing that this bill will help their work to combat discrimination by enlisting the additional efforts of the state’s chief legal officer. Nothing in this bill is designed to usurp or affect the functions of the MCCR. Rather, this bill recognizes that the areas of expertise of the MCCR and the OAG are different. The OAG has the power and the resources to handle large investigations and particularly egregious cases, complementing the work already undertaken by MCCR.¹

In 2017, my predecessor saw the need for those additional resources and protections when he created the Office’s Civil Rights Division. In that same year, the General Assembly passed the Maryland Defense Act, which authorized the OAG to file suit on behalf of Marylanders when “the federal government’s action or inaction . . . threatens the public interest and welfare of the residents of the State with respect to a variety of civil rights and liberties.”² The OAG took that mandate and ran with it. In 2021 alone, the OAG acted under the MDA to protect Marylanders in the areas of public corruption, immigration, public safety, health care, consumer protection, and the environment. The civil rights of Marylanders are equally as important and deserving of my office’s expertise.

The vesting of civil rights authority within the OAG is not novel; it is a recognized best practice throughout the United States.³ At least twenty-one states have civil rights enforcement authority vested within their Attorney General’s offices.⁴ Virginia, Delaware, and the District of Columbia—all jurisdictions that border us—have similar frameworks.⁵ And that reason is simple: the Attorney General is the “People’s Lawyer.” As I recently argued in the *Baltimore Sun*, the people of Maryland deserve to have their lawyer protect their civil rights.⁶

With my support for SB 540, I recommend four amendments. First, I suggest that the bill clarify the entities against whom the OAG may not bring suit. The intent of the bill is to preclude the OAG from exercising jurisdiction over governmental entities, many of which the Office also represents in civil actions. As currently written, the bill precludes OAG action against “a political subdivision.” To ensure this preclusion applies to all governmental entities, I ask that it be amended to preclude actions against “a political subdivision or any body of state or local government that is established by

¹ See Barbara Schwabauer, *The Attorney General’s Pattern-or-Practice Authority: A Critical Tool for Civil Rights Enforcement*, 70 DEPT OF JUST. J. FED. L. & PRAC. 5, 13–19 (2022).

² H.B. 913, 2017 Legis. Sess, 437th Gen. Assemb. (Md. 2017); now codified at MD. CODE ANN., STATE GOV’T §§ 6-105(f), 6-106.1.

³ See Schwabauer, *supra* note 1, at 19.

⁴ See, e.g., 775 ILL. COMP. STAT. ANN. 5/10-104 (2021).

⁵ See VA CODE ANN. § 2.2-520 (2021); DEL. CODE ANN., tit. 29, §§ 2552, 2553 (2020); D.C. CODE ANN. §§ 1-301.81, 2-1401.01, *et seq.* (2022).

⁶ Anthony G. Brown, *Give Maryland A.G.’s Office the Power to Enforce Civil Rights Laws*, Guest Commentary, *The Baltimore Sun* (Feb. 24, 2023), available online at: <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0227-civil-rights-enforcement-ag-office-20230224-wazvxbdswnbd5m7xdy72copkmaq-story.html> (last accessed Feb. 27, 2023).

law.” This broader language would ensure there is no ambiguity regarding the scope of, and limitations on, the OAG’s jurisdiction.

Second, I suggest providing greater specificity as to the statutory provisions concerning MCCR jurisdiction that would remain unaffected by the OAG’s authority. This specification would make clear where there is overlapping jurisdiction between the MCCR and the OAG, and would emphasize that the MCCR would retain its concurrent authority in these areas of overlap.

Third, I suggest clarifying that evidence obtained by subpoena under this section may still be used in a criminal proceeding if the same evidence is independently obtained by some other means. The purpose of this subsection is to avoid violating any individual’s Fifth Amendment rights. As currently written, there could be some ambiguity as to whether materials obtained by subpoena under this section would be admissible in a criminal proceeding, even if criminal investigators obtained the materials independently and through other means. I propose that the bill be amended to clarify that such independently obtained materials would be admissible. This amendment would ensure individuals’ Fifth Amendment rights are protected while avoiding undue interference with independent criminal investigations.

Fourth, I suggest two small amendments to clarify the process and goals of coordination between the MCCR and the OAG. These changes would specify that the two entities will coordinate “and make” referrals in order to minimize “and eliminate” duplication of effort. These minor amendments will make clear that the MCCR and OAG will work closely to advance their shared mission of protecting Marylanders’ civil rights.

For the foregoing reasons, I urge a favorable report of Senate Bill 540 with amendments. Thank you.

Very respectfully,

Anthony G. Brown

Amendments:

- (1) On page 3, line 8, after “AGAINST A POLITICAL SUBDIVISION” INSERT “OR ANY BODY OF STATE OR LOCAL GOVERNMENT THAT IS ESTABLISHED BY LAW.”
- (2) On page 3, line 10, after “POWERS OF THE COMMISSION UNDER” INSERT “SECTIONS 20-101 THROUGH 20-1037 AND 20-1101 THROUGH 20-1105 OF”
- (3) On page 4, line 17, after “THE EVIDENCE” INSERT “UNLESS THE INFORMATION IS ALSO OBTAINED BY A METHOD INDEPENDENT OF THE SUBPOENA.”
- (4) On page 8, line 14, after “SHALL COORDINATE” INSERT “AND MAKE”
- (5) On page 8, line 14, after “TO MINIMIZE” INSERT “AND ELIMINATE”

Anthony G. Brown: Give Maryland. A.G.'s office the power to enforce civil rights laws | GUEST COMMENTARY

By Anthony G. Brown

For The Baltimore Sun

Feb 24, 2023 at 8:48 am



Maryland Attorney General Anthony Brown speaks to news crews before participating in the crime summit to discuss public safety in Baltimore. (Karl Merton Ferron/Baltimore Sun)

Civil rights violations occur every day in virtually every sphere of our lives, from where we live to how we work. From the obstacles we face accessing health care to whether we are protected — or brutalized — by those charged with keeping us safe. From who bears the brunt of environmental harms to how we cast our votes to elect our leaders.

- A Black couple's home is appraised at \$472,000. When a second appraiser is led to believe a white family owns the house, he values it at \$750,000.

- An [abortion clinic](#) outside Baltimore faces break-ins and harassment, including the stalking of an administrator's child. The incidents are among a recent [128% increase](#) in assaults against abortion clinics and patients.
- A [Maryland employer](#) terminates a long-time, high-performing employee who experiences hearing and vision loss from a genetic disorder.
- A [Maryland hospital](#) cancels a surgical procedure and refuses to treat a transgender man.
- A [female warehouse dispatcher](#) at a Baltimore County auto dealership is fired after she objects to receiving a lower salary than her male counterpart.
- Residents of a predominantly Black neighborhood are exposed disproportionately to toxic fumes from Baltimore's biggest single source of [air pollution](#).
- The city's low-lying areas most vulnerable to [increased flooding and sewage backups](#) from climate change are disproportionately communities of color.
- And our hearts break again as another Black man dies at the [hands of police](#).

Safeguarding our fundamental rights has been a long and painful struggle, beginning with the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968, which were conceived to combat racial discrimination, though more recently have been expanded to also target discrimination based on sexual orientation and gender identity. The country has made slow and uneven progress, and we remain far from achieving our founding and aspirational ideals of liberty, equity and justice for all. Those who are the targets of discrimination, who for generations have been the focus of dehumanizing bias and hatred, suffer the most. But none of us is better off in a world still so distant from our ideals.

Yet we would not have achieved even this imperfect progress — where we constantly fall short but keep striving to do better — without the critical and sometimes heroic efforts of those given the authority and responsibility to enforce these laws. Recognizing that a law in and of itself cannot bring about reform unless accompanied by robust enforcement, Congress created the Civil Rights Division of the Department of Justice in 1957 at the same time it enacted the first civil rights statute of the modern era. In the nearly 70 years since, the U.S. Attorney General has deployed this enforcement arm to stop all manner of discrimination, from [Alabama landlords](#) steering Black tenants to different housing projects; to patterns and practices of police misconduct and racial bias in [Ferguson, Missouri](#); to denying a [transgender student](#) access to educational facilities in California.

But the Department of Justice cannot possibly stand vigilant against every act of discrimination across our 50 states, or by itself protect the rights of 332 million

people, including 6 million Marylanders. Successful federal enforcement must be supported and reinforced by state law enforcement partners. A nearby example of what a difference additional enforcement can make is former District of Columbia Attorney General Karl Racine's \$10 million penalty imposed on three real estate firms in the [largest housing discrimination case](#) in U.S. history. Over half of this country's state attorneys general have some degree of authority to enforce [civil rights](#) and/or investigate [patterns or practices](#) of law enforcement misconduct. It is time for Maryland to join their ranks.

We have an exemplary [Commission on Civil Rights](#) in Maryland that does terrific work addressing individual complaints of discrimination. But the Office of the Attorney General must become a partner in its efforts. Just as the federal Equal Employment Opportunity Commission works in tandem with the Department of Justice, each functioning as a force-multiplier for the other, so too should my office work alongside the commission to effect broader and more systemic change. We will be able to build upon the commission's work on behalf of individual Marylanders to root out widespread discrimination on behalf of all Marylanders.

To this end, I have asked the General Assembly, as a top priority for my first session as attorney general, to pass legislation affording my office this authority.

We want to do our part. We must help in the continuing struggle to create a world in which children grow up untouched by any form of discrimination. A world in which they are free to choose where to live and who to love. With equal rights to clean air and water, good jobs, adequate health care, and protection from harm. With our full support for who they are and who they want to be.

Anthony G. Brown (oag@oag.state.md.us) is Maryland's attorney general.

SB 540_MCCR_Hughes_FAV.docx.pdf

Uploaded by: Glendora Hughes

Position: FWA



State of Maryland Commission on Civil Rights

Respect...Integrity...Effective Communication

February 28, 2023

Senate Bill 540 – Human Relations – Civil Rights Enforcement – Powers of the Attorney General

POSITION: Support with Amendments

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 the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, health services, and state contracts based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

SB 540 will authorize the Office of the Attorney General to actively participate in the Maryland civil rights enforcement arena to investigate, prosecute, and remediate certain civil rights violations under certain circumstances as well as authorize the Attorney General to intervene in certain causes of actions. SB 540 will permit the Attorney General to issue subpoenas, establish certain penalties, obtain certain relief, and conciliate agreements. The Attorney General would be authorized to recover certain investigation and litigation cost. This bill will also establish a Civil Rights Enforcement Fund which has the purpose of providing funding for the costs of investigating and prosecuting civil rights violations and also fund education and outreach to the community relating to said violations. The Attorney General and the Maryland Commission on Civil Rights (“the Commission”) may seek reimbursements from the fund.

The Commission’s authorizing law, State Government Article, Title 20 is amended by SB 540 to provide the Attorney General with specific civil rights enforcement authority. SB 540 does not authorize the Attorney General to bring civil rights actions on behalf of an individual or against the State or local government that are under the sole jurisdictional authority of the Commission. SB 540 makes it clear that there is nothing in the bill that may be interpreted to impair the rights and powers of the Commission. An amendment recommended by the Commission to strengthen this intent of the bill will be offered by the sponsor.

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

Governor
Wes Moore

Lt. Governor
Aruna Miller

Commission Chair
Stephanie Suerth, MPA,
CCEP

Commission Vice Chair
Janssen E. Evelyn, Esq.

Commissioners
Diane E. Bernier
Eileen M. Levitt, SPHR,
SHRM-SCP
Rabbi Binyamin
Marwick
Magdalena S. Navarro,
MSc
Jeff Rosen
Gina McKnight-Smith,
PharmD, MBA
Isabella Firth Shycoff

Officers
Executive Director
Alvin O. Gillard

Deputy Director
Cleveland L. Horton II

Assistant Director
Martine Chery

General Counsel
Glendora C. Hughes

**Director of Education
& Outreach**
Kara N. Hunt, Ph.D.

The Attorney General's Office and the Commission have worked cooperatively on the language of SB 540, just as we will be in carrying out the bill's mandate. The two agencies will coordinate efforts in areas of overlapping jurisdiction to minimize duplication and collaborate in matters that may fall within this category. However, there are so many areas of civil rights enforcement that the involvement of the Attorney General is welcome because the Commission lacks jurisdiction, and the agency is unable to address the violations. For example, the commission lacks jurisdiction in the areas of education, voting rights, hate crimes and human trafficking just to name a few. A multi-prog enforcement effort is needed to protect the rights of Marylanders from civil and human rights violations that unfortunately continue.

It is important as we continue to pursue a mission of promoting and protecting civil rights for all Marylanders that we have the tools in place to address the myriad of injustices we continue to see on so many different fronts. We believe this legislation helps to fill existing voids in addressing issues and arenas which are not jurisdictional for the Maryland Commission on Civil Rights, while not duplicating roles and responsibilities.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB 540. 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 improve and promote civil rights in Maryland.

SB 540_MDCC_Human Relations-Civil Rights Enforceme

Uploaded by: Andrew Griffin

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 540

Human Relations – Civil Rights Enforcement – Powers of the Attorney General

Senate Judicial Proceedings Committee

Tuesday, February 28, 2023

Dear Chairman Smith and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,400 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families.

As introduced, SB 540 makes several changes relating to the Attorney General's authority on civil rights enforcement and pattern-and-practice civil rights violations. SB 540 applies to private sector circumstances while another separate bill, SB 658, is the identical bill applying to the public sector.

The Maryland Chamber's primary concern stems from SB 540, Section 20-1045 which re-writes Maryland law on the standards for seeking injunctive relief. Section 20-1046 (C) (1) authorizes the reimbursement of the Attorney General or the Commission on Civil Rights (the Commission) for the costs of the "...investigation and litigation..." This similar provision does not appear in SB 658, the legislation dealing with the public sector.

While the Maryland Chamber has concern over the change in SB 540 allowing for the reimbursement of investigation and litigation costs as it is highly unusual, we are also unsure why the public and private sectors are being treated differently as it relates to civil rights investigations. We would strongly urge the committee to amend SB 540, Section 20-1046(C)(1) to mirror the same provision in SB 658.

For these reasons, the Maryland Chamber of Commerce respectfully requests a **unfavorable report** on **SB 540**, as introduced.

SB 0540 – Human Relations - Civil Rights Enforceme

Uploaded by: Christopher Costello

Position: UNF

February 28, 2023

Hon. William Smith
Chair, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401
Will.Smith@semate.state.md.us

RE: SB 0540 - Human Relations - Civil Rights Enforcement - Powers of the Attorney General- Oppose

Dear Chair Smith:

The Howard County Chamber of Commerce (Chamber) is a business organization dedicated to economic, business, and community development in Howard County and the Central Maryland region. In advancing our mission, we advocate for policies that lead to job creation and investment.

Howard County Chamber members support civil rights laws and the need to enforce compliance with these laws and regulations. Maryland and the federal government currently have extensive civil rights laws that provide numerous forums for persons to file complaints and have those complaints investigated and remediated, if found to be in violation of such laws. However, what the Attorney General is proposing in HB 772/SB 540 raises several concerns:

- that the mission of the Maryland Human Relations Commission will be circumvented and/or preempted;
- the new authority may be used to alter existing or create new public policy for civil rights;
- should employers be subjected to duplicative federal and state claims, investigations, and discovery; and
- if businesses were to be overwhelmed by unwarranted punitive, litigation and fines that would exacerbate the negative perception of Maryland's business climate.

SB 0540 would expand the authority of the Attorney General to assume the responsibility to investigate, and prosecute civil rights violations committed under state or federal law. This is a dramatic departure from the normal duties of the Attorney General, which are described in the Maryland Manual as follows:

“The Attorney General heads the Office of the Attorney General (formerly known as the State Law Department) which was established in 1916 (Chapter 560, Acts of 1916). The Attorney General serves as legal counsel to the [Governor](#), the [General Assembly](#), the [Judiciary](#), and to all State agencies (except the [State Ethics Commission](#), which appoints its own counsel; the [Commission on Civil Rights](#); and the [Public Service Commission](#), whose counsel are appointed by the Governor).”

**SB 0540 – Human Relations - Civil Rights Enforcement - Powers of the Attorney General–
Oppose**

February 24, 2023

p. 2

If there is a justification for the Attorney General to assume the responsibility of Maryland special investigator and prosecutor for civil rights, the bill should include language indicating that this new authority: be limited to extraordinary systemic civil rights violations of statewide significance that the federal and state agencies are unable to adequately investigate and enforce. The Attorney General should work with public, local, state, and federal agencies to identify systemic civil rights violations. When such civil rights violations are confirmed, the Attorney General may elect to bring a civil rights action.

For the reasons outline above, the Chamber request an unfavorable vote.

Sincerely,

A handwritten signature in black ink that reads "Leonardo McClarty". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Leonardo McClarty, CCE
President/CEO, Howard County Chamber

SB 540 Unfavorable_HCC.pdf

Uploaded by: Leonardo McClarty

Position: UNF

February 24, 2023

Hon. William Smith
Chair, Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401
Will.Smith@semate.state.md.us

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February 24, 2023

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Leonardo McClarty, CCE
President/CEO, Howard County Chamber

SB 0540_HoCoSAO_Unfavorable_HumanRelations_Civil R

Uploaded by: Rich Gibson

Position: UNF



SENATE BILL 0540

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

POSITION: UNFAVORABLE FOR SB 0540

February 27, 2023

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association (hereinafter MSA). I have been a prosecutor for nineteen years and I am writing today to request an unfavorable report for Senate Bill 0540.

The framers of the Constitution of Maryland understood the need for prosecutorial independence. They wisely created a system that placed the power over the local prosecutor directly and exclusively into the hands of the communities they serve. This bill if enacted has the potential to undermine the voice of the local impacted community with regard to their elected State's Attorney. From our perspective, the problematic language is contained within section G on page 2 – "Law Enforcement Agency has the meaning stated in §3-201 of the Public Safety Article."

Public Safety Article § 3-201 defines law enforcement agency as:

"(d) (1) "Law enforcement agency" means a governmental police force, sheriff's office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State."

While not explicitly included, this language is generic enough to allow for an interested party to interpret it to include the local State's Attorneys. This concern is not contrived. Currently in Missouri, the State Attorney General has initiated an action for the removal of the St. Louis Circuit Attorney, Kim Gardner (the equivalent position of a State Attorney in Maryland) on the basis of a "pattern of failure in the discharge of her duties." Kim Gardner contends that she is enforcing the law consistent with the values of her local community. We don't have to go to nearly a thousand miles to the west to see the potential harm this

bill would expose us to in Maryland. Within the last year, our former Governor, Larry Hogan, publicly voiced his concern with the way in which former Baltimore City State's Attorney, Marilyn Mosby, exercised her discretion via a pattern of not pursuing certain cases. Fortunately, we have never in Maryland had a situation where prosecutorial independence was jeopardized precisely because there was no legal mechanism that would allow it. This is at the heart of why we oppose this bill; its enactment would create a potential pathway for a motivated actor for political or other purposes to undermine prosecutorial independence and the will of the voters.

Additionally, prior to creating new powers within a government entity, it is important to examine what, if any, other entities have that same power, and if other entities have that power, are they fulfilling that role in this space? The Civil Rights Division of the Department of Justice has pattern and practice prosecution authority under § 14141 of the Violent Crime Control and Law Enforcement Act of 1994. They have used that power in Maryland to address issues where evidence suggested the practices of the offending organization were depriving people of civil rights guaranteed in the Constitution. Specifically, this power was used recently in both Baltimore City (2016) and Prince George's County (2004). What evidence exists that the Department of Justice is not fulfilling its obligations to the people of Maryland?

Finally, for purposes of clarity, we wish to state emphatically and directly that prosecutors of this State are committed to the equal and fair administration of our laws. There should be no safe space for bigotry, or the mistreatment of people based upon race, religion, gender, national origin, or any other superficial division, used by some to separate one human being from another. Furthermore, we welcome government oversight to ensure those protected rights are not infringed. Our issue is not with this power, but rather is focused on what entities have this power and potential for misuse by those entities. This bill, if enacted into law, will bestow tremendous power upon whomever is in the role of Attorney General not just today but into the future. Similar power has been used to oppress (political and racial) minority voices in the community. Communities who have elected local prosecutors, because their positions and values mirror their own, only to have a State governmental entity disagree with the pattern in how those local prosecutors exercise their authority. Governor Desantis and

State Attorney Andrew Warren of Hillsborough County, Florida (Tampa) and Missouri Attorney General Andrew Bailey and St. Louis Circuit Attorney Kim Gardner are two current examples of circumstances we wish to avoid in Maryland.

For these reasons, **the members of the Maryland State's Attorneys' Association respectfully request an unfavorable report for Senate Bill 0540.**