



SB 47 - Evidence – Wiretapping & Electronic Surveillance – Fair Housing Testing

Hearing before the Senate Judicial Proceedings Committee on January 31, 2023

Position: SUPPORT (FAV)

SUPPORT: Senate Bill 47 is a narrowly drafted bill that will substantially enhance efforts to prevent unlawful housing discrimination.

ACDS serves as Anne Arundel County’s nonprofit housing and community development agency, helping Anne Arundel County residents and communities thrive through the provision of safe and affordable housing opportunities, programs to prevent and end homelessness, and community development initiatives. In fulfilling this role, ACDS advises the County on housing and community development legislation and policy initiatives related to affordable, safe and habitable housing for County residents. ACDS also administers grants to nonprofit partners and directly develops and implements programming in furtherance of the County’s priorities and goals.

Discrimination in housing results in reduced access to opportunities and leads to higher levels of residential segregation. It also perpetuates the racial wealth gap, the homeownership gap, and the gap in intergenerational income mobility. Federal, state and local laws unequivocally prohibit discrimination in housing, but Maryland’s general prohibition on recording conversations without the consent of all parties is a significant barrier to effective enforcement of those laws. Although Maryland enacted the [HOME Act](#)¹ to supplement federal laws and many local jurisdictions, including [Anne Arundel County](#),² have enacted fair housing laws designed to prevent housing discrimination, the [National Fair Housing Alliance 2022 Trends Report](#)³ reports that *housing discrimination complaints increased in 2021 to the highest number in at least 25 years*. Similarly, annual reports of the [Maryland Commission on Civil Rights](#)⁴ reveal a *significant spike in fair housing complaints in Maryland in each of the years since the start of the COVID-19 pandemic*.

Fair housing testing is the most effective tool for uncovering evidence of housing discrimination. Testing involves two individuals who separately seek the same housing service from the same housing provider within a short period of time. They may be looking for a rental property, for example, or a home to purchase. Fair housing testers present with similar backgrounds in every respect, *except* one of them is a member of a class that is protected by anti-discrimination laws and the other is not. In most states, fair housing testers are able to record their interactions with the housing providers during the course of

¹ <https://mgaleg.maryland.gov/mgawebwebsite/Laws/StatuteText?article=gsg§ion=20-705>

² https://codelibrary.amlegal.com/codes/annearundel/latest/annearundelco_md/0-0-0-99500#JD_1-9-103

³ <https://nationalfairhousing.org/wp-content/uploads/2022/11/2022-Fair-Housing-Trends-Report.pdf>

⁴ <https://mccr.maryland.gov/Pages/Publications.aspx>

the in person and telephone tests for analysis and use after the exchanges. A comparison of differences in the way the two housing testers are treated is used to determine whether discrimination has taken place.

Fair housing testing is much less useful in Maryland than in most other states as a result of Maryland’s two-party consent requirement for recording conversations.

This bill would allow fair housing testers working with a fair housing program to record the conversations that take place during the course of fair housing tests without first getting the consent of the party who is the subject of the test. Fair housing testers in most states are able to record their conversations with housing providers and use those recordings as evidence of the interaction for purposes of future education of the test subject and their employer and, if necessary, as proof in contested compliance proceedings. However, in Maryland, evidence of housing discrimination uncovered during testing is limited to notes taken by testers and the testers’ subsequent recounting of what happened. Even with good note taking, the lack of a recording results a “he said-she said” situation, which makes using fair housing testing much less useful than it otherwise would be. While contemporaneously taken notes may be used to support a claim of discrimination, proof by oral or video recording is much stronger and far more effective for proving statements and conduct.

If fully utilized (including recording), fair housing testing has the capacity addresses both the difficulty in identifying and the difficulty in proving discrimination. Relying on reporting by those against whom a housing provider has discriminated is ineffective for actually rooting out housing discrimination in our communities and tackling the problem. *Individuals who have been discriminated against often do not know the discrimination has taken place* - one homebuyer or renter would have no way of knowing if they were shown different properties or given conflicting information compared to another person similarly situated in every respect except for the person’s membership or non-membership in a protected class. Even when an individual does believe they have been discriminated against, many do not complain for a multitude of reasons, including fear of retaliation and a perception that complaining may be futile. *When an individual does submit a complaint, proving the validity of the complaint is difficult to do without objective evidence* that they were treated differently from others, which is rarely accessible to the person complaining since they are not privy to the housing provider’s interactions with others.

With reports of housing discrimination rising faster than ever before, every tool available to ensure enforcement of fair housing laws needs to be put to use. By allowing the recording of fair housing tests without requiring the consent of the subject of the test, this bill would allow fair housing testing to be used to its full potential.

For the reasons noted above, ACDS urges the Committee to issue a FAVORABLE report on SB 47.