



**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,
Maryland Legal Aid
vschultz@mdlaborg
443.850.6605 (cell)