

**Testimony to the Senate Judiciary Committee
SB47: Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing
Position: Favorable**

January 27, 2023

The Honorable Senator William Smith, Chair
Senate Judiciary Committee
3 West, Miller Senate Office Building
Annapolis, Maryland 21401

cc: Members, Judiciary Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a statewide coalition of individuals and organizations that advances financial justice and economic inclusion for Maryland consumers through research, education, direct service, and advocacy. Our 8,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

SB47 would strengthen the ability of fair housing enforcement organizations to enforce anti-discrimination laws in Maryland by allowing recordings of fair housing tests. Economic Action's Fair Housing program, launched in 2021, conducts controlled fair housing tests to identify and document discrimination in the housing market. Fair housing testing involves sending two or more trained testers out to rent an apartment, inquire about a mortgage, or purchase a home. Test Coordinators assign testers an undercover identity that ensures the testers are alike in every meaningful way barring one characteristic – one tester will be a member of a protected class while the other tester is not. For example, both testers may be women in their 40s with two children and \$80,000 in annual income, but one tester is Black while the other is white. Testers are instructed to contact a housing agent about renting an apartment, qualifying for a mortgage, or purchasing a home. When there are differences in the way the testers are treated, that may be evidence of housing discrimination. Economic Action Maryland is able to use the tests as evidence of discrimination in fair housing complaints lodged with HUD or in a civil court case.

HUD's recommended fair housing testing methodology involves equipping testers with recording devices so their interactions with housing agents are captured faithfully. Recording testers' interactions with housing providers creates incontrovertible evidence. Unfortunately in Maryland, we are constrained by Maryland's all party consent requirement. Instead of using recordings to document tests, our testers must rely on their memory of the event to write a detailed report soon after the interaction. This curtails the types of tests we are able to conduct to enforce fair housing laws. Furthermore, written reports are unable to capture the tone of the interaction, and may be easily undermined by defense counsel. Testing experts say that, "Recordings are a critical tool in our enforcement arsenal to eliminate this scourge and ensure that all people have the right to obtain housing on a non-discriminatory basis."

Maryland's all-party consent law unfairly shields housing providers from having their commercial speech recorded, even when that speech includes discriminatory misrepresentations and statements designed to

2209 Maryland Ave · Baltimore, MD · 21218 · 410-220-0494

info@marylandconsumers.org · www.marylandconsumers.org · Tax ID 52-2266235

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discourage, steer, or deny housing opportunities to people based on race, national origin, and other protected characteristics. SB 47 would allow government and nonprofit civil rights agencies like Economic Action Maryland to record interactions between trained fair housing testers and housing providers, strengthening fair housing enforcement capabilities statewide.

We urge you to give SB47 a favorable report .

Best,

Robyn Dorsey
Fair Housing Director