

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
Baltimore County



James Senate Office Building
11 Bladen Street, Room 216
Annapolis, Maryland 21401
410-841-3612 · 301-858-3612
800-492-7122 Ext. 3612
Charles.Sydnor@senate.state.md.us

Judicial Proceedings Committee

Executive Nominations Committee

Joint Committees

Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair
Legislative Ethics

Chair

Baltimore County Senate Delegation

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony for SB 47
Evidence – Wiretapping and Electronic Surveillance –
Fair Housing Testing
Before the Judicial Proceedings Committee
January 31, 2023**

Good afternoon Chair Smith, members of the Judicial Proceedings Committee,

The [Fair Housing Act](#)¹ (the “FHA”) requires the United States Department of Housing and Urban Development (“HUD”) and its funding recipients, like states and local governments, to affirmatively further FHA policies and purposes. The duty to affirmatively further fair housing requires HUD funding recipients to “take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” because of someone’s race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, and disability.²

In fact, in 2021 the White House issued a [Memorandum to the Secretary of Housing and Urban Development](#), which declared that the affirmatively furthering fair housing provision in the FHA “...is not only a mandate to refrain from discrimination but a mandate to take actions that undo historic patterns of segregation and other types of discrimination and that afford access to long-denied opportunities.”³

One method used by local governments in Maryland to determine whether housing discrimination has occurred is through a process called “paired-testing” or “testing” for short. In a paired-testing, two similarly aged men or women (“testers”) are presented to a provider of real estate services as prospective renters, buyers, or borrowers with “equivalent social and economic characteristics

¹ Title VIII of the Civil Rights Act of 1968.

² <https://www.hud.gov/AFFH>

³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/>

[but] who differ only in terms of the characteristic being tested for discrimination, such as race, disability status, or marital status”.⁴ The testers are charged with gathering information from a targeted provider. In the case of the FHA, the transaction will usually focus on a provider of real estate services. The evidence the testers collect will help analysts determine whether the provider is complying with the FHA or other federal civil rights laws or engaged in unlawful housing discrimination and whether the disparate treatment can provide evidence of housing discrimination.⁵ While the Department of Justice has been able to show that testing can be a very valuable tool to investigate market practices⁶ and uncover unlawful discrimination; here in Maryland our wiretap law⁷ makes it difficult to obtain the evidence the jurors and courts need to enforce our civil rights laws. Senate Bill 47 addresses that limitation.

Senate Bill 47 adds one more circumstance in which the interception of wire, oral, and electronic communication should be available in the interest of justice. While Maryland has very stringent housing discrimination laws in place, catching discrimination in action has its barriers. Similar to the exception that we passed in 2015 allowing law enforcement officers to wear body worn cameras and capture audio, SB 47 is intended to provide a similar exception for testers.

Under current law it is illegal for a person to willfully intercept,⁸ disclose,⁹ or use¹⁰ the contents of any wire, oral or electronic in violation of §10-402. However, §10-402 has multiple exceptions to the general rule. This class of people include “switchboard operator, certain officers, employees, or agents of wire or electronic communication service providers,¹¹ officers, employees, and agents, landlords, custodians of wire or electronic communication service providers,¹² officers, employees, or agents of governmental emergency communications center,¹³ and investigative and law enforcement officers under certain circumstances prescribed in the code.¹⁴

⁴ “Much of the research into housing discrimination... relies on paired testing.... Depending on which part of the housing transaction process is being tested, the matched candidates may only request appointments from housing providers, or they may visit in person.” [Paired Testing and the Housing | HUD USER](#)

⁵ “Since 1992, the [United States] Department of Justice has resolved 109 pattern and practice testing cases with evidence directly generated from the Fair Housing Testing Program, leading to the recovery of more than \$14.3 million, including over \$2.3 million in civil penalties and over \$12 million in other damages. The vast majority of testing cases filed to date are based on testing evidence that involved allegations of agents misrepresenting the availability of rental units or offering different terms and conditions based on race, and/or national origin, and/or familial status.” <https://www.justice.gov/crt/fair-housing-testing-program-1>.

⁶ <https://www.justice.gov/crt/case/united-states-v-guaranteed-auto-sales-d-md>.

⁷ §10-402.

⁸ §10-402(a)(1).

⁹ §10-402(a)(2).

¹⁰ §10-402(a)(3).

¹¹ §10-402(c)(1)(i).

¹² §10-402(c)(1)(ii)(1).

¹³ §10-402(c)(5).

¹⁴ Exceptions for law enforcement officers are noted throughout §10-402(c).

Senate Bill 47 simply expands the class of people engaged in activities already under §10-402(c) by including, under specified circumstances, fair housing testers.¹⁵ This exception can only be used when "the interception [is] made for the purpose of obtaining evidence of a fair housing violation under federal, state or local law."

There is a tremendous hurdle in pursuing discrimination cases, making it very difficult to enforce. However, SB 47 will help provide those attempting to eradicate discrimination by providing us with the oral documentation needed for cases of discrimination.¹⁶ This issue is one that any Marylander can encounter. As such, I ask for you to vote favorably for SB 47.

¹⁵ The exception, as it now stands, would be for fair housing testers that are working for a fair housing testing program operated by the federal, state, or local governments or a nonprofit civil rights organization.

¹⁶ In a New York Times article from August 2022, a Black Maryland couple found an appraiser valued their home differently, and indeed more, if it had a white owner. This issue was not confined to them, or even to a small number of citizens, as The New York Times reported that since 2020 dozens of lawsuits have been filed. However, without being able to capture conversations uncovering potential discrimination, many others may not have their situations remedied. In some instances, it is a proverbial, "He said, She said," without the ability to have recorded evidence of the observation. "Home Appraised with a Black Owner: \$472,000. With a White Owner: \$750,000". The New York Times, August 18, 2022. See also <https://projects.newsday.com/long-island/real-estate-agents-investigation/#nd-promo>.