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To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer  
Office of the Attorney General

Re: SB 47 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing  
Testing – **Support**

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The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report SB 47.

Senate Bill 47 makes it lawful for fair housing testers to record communications in order to obtain evidence of violations of federal, state, and local fair housing laws. The bill covers testers who are working for a fair housing program operated by the federal government, the State, a local government, or a non-profit civil rights organization. The testers must also be a party to the recorded communication.

This bill would provide a valuable evidentiary tool for proving discriminatory housing practices. Discrimination in housing is usually subtle, rather than overt. This can make it difficult to prove. For example, housing providers often give prospective tenants different information regarding unit prices, availability, deposits and fees, application processes, and other variables that affect would-be tenants' interest and access. Testing allows fair housing programs to identify when different information is provided to testers of different protected classes.

Making it lawful for testers to record their communications with housing providers would significantly strengthen the evidence of this discrimination. It would allow fair housing programs to put forward complete recordings, rather than relying on testers' written reports or oral testimony. Recordings provide direct evidence that is difficult to refute or misrepresent; they show the discriminatory actions directly, rather than through the voice of another.

The Office of the Attorney General is seeking, through separate legislation, authority to enforce state and federal civil rights laws, including those prohibiting discrimination in housing. Senate Bill 47 would ensure that the Office of the Attorney General has the same tools at its disposal as the U.S. Department of Justice, which regularly uses testers' recorded communications in its fair housing litigation. The DOJ exercises this authority nationwide, including in Maryland, where it is not bound by the Wiretap Act because of federal preemption and the Supremacy Clause of the Constitution. This bill would allow the Attorney General to employ those same critical investigative tools that the federal government already has at its disposal.

The Office of Attorney General urges a favorable report on SB 47.

cc: Committee Members