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SB47: Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

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

Position: SUPPORT (FAV)

Public Justice Center (PJC) is a nonprofit public interest law firm that assists over 800 renters each year. We stand with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. PJC seeks a favorable report on SB 47.

SB47 would strengthen the ability of fair housing enforcement organizations to enforce anti-discrimination laws in Maryland by allowing recordings of fair housing tests. Fair housing “tests” such as those conducted by Economic Action Maryland involve 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. 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. A fair housing organization is then able to use the tests as evidence of discrimination in fair housing complaints filed with HUD or in a judicial action.

More robust fair housing testing supported by SB 47 is particularly critical to enforce the often-violated HOME Act. Passed in 2020, the HOME Act prohibits certain landlords from discriminating against tenants based on their source of income. At Public Justice Center, we have fielded many calls from tenants who say that a prospective landlord began treating them differently once the prospective landlord found out that the tenant used a Housing Choice Voucher to help pay the rent. However, without the kind of recorded testing facilitated by SB 47, it is difficult to find sufficient evidence to move forward with a case against such a landlord.

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 that enforcement organizations 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 agree: "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 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 to record interactions between trained fair housing testers and housing providers, strengthening fair housing enforcement capabilities statewide.

Public Justice Center urges the Committee's report of Favorable on SB 47.