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March 1, 2023

The Honorable Luke Clippinger
Chairman
Maryland State House
Judiciary Committee
Room 101
House Office Building
Annapolis, Maryland 21401

Re: House Bill 0772 – Human Relations – Civil Rights Enforcement – Powers of the
Attorney General: **Support with Sponsor Amendments**

Dear Chairman Clippinger:

I urge the Judiciary Committee to report House Bill 772 favorably while considering four sponsor amendments. The amendments would clarify the intent of the bill and reduce potential confusion during the bill's implementation.

If enacted into law, this bill would authorize the Office of the Attorney General (“OAG”) to investigate, prosecute, and remediate civil rights violations by private actors, if the OAG has reasonable cause to believe that a person is engaged in a discriminatory act. This bill takes a measured approach to these investigations and specifically does not give my office jurisdiction over governmental entities. And finally, this bill creates a Civil Rights Enforcement Fund from any civil penalties, which would provide funding for enforcement actions and community education—to better educate and protect all Marylanders.

As I said on the day that I was sworn in, “Maryland is America in miniature...we are the fourth most diverse state in the nation, and the most diverse state east of the Mississippi.” Senate Bill 540 gives the OAG the broad authority to protect Marylanders from discriminatory practices to ensure a better present and future for them.

This bill provides the OAG with the authority to protect Marylanders from discrimination based on race, color, religion or creed, sex, age, ancestry or national origin, marital status, physical or mental disability, sexual orientation, or gender identity, as well as discrimination based on genetic information (in employment) and familial status or source of income (in housing). By way of example:

my office would be able to safeguard families from being denied housing because they have children, defend an employee’s right to wear a headscarf at work, protect homeowners from being denied mortgages because they live in a minority neighborhood, preserve accessibility for disabled individuals who require wheelchair ramps, and ensure fair wages for women and people of color. In short, the OAG would be able to “diligently and faithfully, without partiality or prejudice” protect the rights of all Marylanders, just as I swore to do when I took the oath of Office.

This bill seeks to supplement the valiant work done by the Maryland Commission on Civil Rights. For 53 years, the MCCR has been the only state resource for investigations into fair housing, public accommodations, employment discrimination, or commercial practices. The MCCR joins me in recognizing that this bill will help their work to combat discrimination by enlisting the additional efforts of the state’s chief legal officer. Nothing in this bill is designed to usurp or affect the functions of the MCCR. Rather, this bill recognizes that the areas of expertise of the MCCR and the OAG are different. The OAG has the power and the resources to handle large investigations and particularly egregious cases, complementing the work already undertaken by MCCR.¹

In 2017, my predecessor saw the need for those additional resources and protections when he created the Office’s Civil Rights Division. In that same year, the General Assembly passed the Maryland Defense Act, which authorized the OAG to file suit on behalf of Marylanders when “the federal government’s action or inaction . . . threatens the public interest and welfare of the residents of the State with respect to a variety of civil rights and liberties.”² The OAG took that mandate and ran with it. In 2021 alone, the OAG acted under the MDA to protect Marylanders in the areas of public corruption, immigration, public safety, health care, consumer protection, and the environment. The civil rights of Marylanders are equally as important and deserving of my office’s expertise.

The vesting of civil rights authority within the OAG is not novel; it is a recognized best practice throughout the United States.³ At least twenty-one states have civil rights enforcement authority vested within their Attorney General’s offices.⁴ Virginia, Delaware, and the District of Columbia—all jurisdictions that border us—have similar frameworks.⁵ And that reason is simple: the Attorney General is the “People’s Lawyer.” As I recently argued in the *Baltimore Sun*, the people of Maryland deserve to have their lawyer protect their civil rights.⁶

With my support for SB 540, I recommend four amendments. First, I suggest that the bill clarify the entities against whom the OAG may not bring suit. The intent of the bill is to preclude the OAG from exercising jurisdiction over governmental entities, many of which the Office also represents in civil actions. As currently written, the bill precludes OAG action against “a political subdivision.” To ensure this preclusion applies to all governmental entities, I ask that it be amended to preclude

¹ See Barbara Schwabauer, *The Attorney General’s Pattern-or-Practice Authority: A Critical Tool for Civil Rights Enforcement*, 70 DEPT OF JUST. J. FED. L. & PRAC. 5, 13–19 (2022).

² H.B. 913, 2017 Legis. Sess., 437th Gen. Assemb. (Md. 2017); now codified at MD. CODE ANN., STATE GOV’T §§ 6-105(f), 6-106.1.

³ See Schwabauer, *supra* note 1, at 19.

⁴ See, e.g., 775 ILL. COMP. STAT. ANN. 5/10-104 (2021).

⁵ See VA CODE ANN. § 2.2-520 (2021); DEL. CODE ANN., tit. 29, §§ 2552, 2553 (2020); D.C. CODE ANN. §§ 1-301.81, 2-1401.01, *et seq.* (2022).

⁶ Anthony G. Brown, *Give Maryland A.G.’s Office the Power to Enforce Civil Rights Laws*, Guest Commentary, *The Baltimore Sun* (Feb. 24, 2023), available online at: <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0227-civil-rights-enforcement-ag-office-20230224-wazvxbdswnbd5m7xdy72copkmq-story.html> (last accessed Feb. 27, 2023).

actions against “a political subdivision or any body of state or local government that is established by law.” This broader language would ensure there is no ambiguity regarding the scope of, and limitations on, the OAG’s jurisdiction.

Second, I suggest providing greater specificity as to the statutory provisions concerning MCCR jurisdiction that would remain unaffected by the OAG’s authority. This specification would make clear where there is overlapping jurisdiction between the MCCR and the OAG, and would emphasize that the MCCR would retain its concurrent authority in these areas of overlap.

Third, I suggest clarifying that evidence obtained by subpoena under this section may still be used in a criminal proceeding if the same evidence is independently obtained by some other means. The purpose of this subsection is to avoid violating any individual’s Fifth Amendment rights. As currently written, there could be some ambiguity as to whether materials obtained by subpoena under this section would be admissible in a criminal proceeding, even if criminal investigators obtained the materials independently and through other means. I propose that the bill be amended to clarify that such independently obtained materials would be admissible. This amendment would ensure individuals’ Fifth Amendment rights are protected while avoiding undue interference with independent criminal investigations.

Fourth, I suggest two small amendments to clarify the process and goals of coordination between the MCCR and the OAG. These changes would specify that the two entities will coordinate “and make” referrals in order to minimize “and eliminate” duplication of effort. These minor amendments will make clear that the MCCR and OAG will work closely to advance their shared mission of protecting Marylanders’ civil rights.

For the foregoing reasons, I urge a favorable report of House Bill 772 with amendments. Thank you.

Very respectfully,

Anthony G. Brown

Amendments:

- (1) On page 3, line 8, after “AGAINST A POLITICAL SUBDIVISION” INSERT “OR ANY BODY OF STATE OR LOCAL GOVERNMENT THAT IS ESTABLISHED BY LAW.”
- (2) On page 3, line 10, after “POWERS OF THE COMMISSION UNDER” INSERT “SECTIONS 20-101 THROUGH 20-1037 AND 20-1101 THROUGH 20-1105 OF”
- (3) On page 4, line 17, after “THE EVIDENCE” INSERT “UNLESS THE INFORMATION IS ALSO OBTAINED BY A METHOD INDEPENDENT OF THE SUBPOENA.”
- (4) On page 8, line 14, after “SHALL COORDINATE” INSERT “AND MAKE”
- (5) On page 8, line 14, after “TO MINIMIZE” INSERT “AND ELIMINATE”

Anthony G. Brown: Give Maryland. A.G.'s office the power to enforce civil rights laws | GUEST COMMENTARY

By Anthony G. Brown

For The Baltimore Sun

Feb 24, 2023 at 8:48 am



Maryland Attorney General Anthony Brown speaks to news crews before participating in the crime summit to discuss public safety in Baltimore. (Karl Merton Ferron/Baltimore Sun)

Civil rights violations occur every day in virtually every sphere of our lives, from where we live to how we work. From the obstacles we face accessing health care to whether we are protected — or brutalized — by those charged with keeping us safe. From who bears the brunt of environmental harms to how we cast our votes to elect our leaders.

- A Black couple's home is appraised at \$472,000. When a second appraiser is led to believe a white family owns the house, he values it at \$750,000.

- An [abortion clinic](#) outside Baltimore faces break-ins and harassment, including the stalking of an administrator's child. The incidents are among a recent [128% increase](#) in assaults against abortion clinics and patients.
- A [Maryland employer](#) terminates a long-time, high-performing employee who experiences hearing and vision loss from a genetic disorder.
- A [Maryland hospital](#) cancels a surgical procedure and refuses to treat a transgender man.
- A [female warehouse dispatcher](#) at a Baltimore County auto dealership is fired after she objects to receiving a lower salary than her male counterpart.
- Residents of a predominantly Black neighborhood are exposed disproportionately to toxic fumes from Baltimore's biggest single source of [air pollution](#).
- The city's low-lying areas most vulnerable to [increased flooding and sewage backups](#) from climate change are disproportionately communities of color.
- And our hearts break again as another Black man dies at the [hands of police](#).

Safeguarding our fundamental rights has been a long and painful struggle, beginning with the landmark Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1968, which were conceived to combat racial discrimination, though more recently have been expanded to also target discrimination based on sexual orientation and gender identity. The country has made slow and uneven progress, and we remain far from achieving our founding and aspirational ideals of liberty, equity and justice for all. Those who are the targets of discrimination, who for generations have been the focus of dehumanizing bias and hatred, suffer the most. But none of us is better off in a world still so distant from our ideals.

Yet we would not have achieved even this imperfect progress — where we constantly fall short but keep striving to do better — without the critical and sometimes heroic efforts of those given the authority and responsibility to enforce these laws. Recognizing that a law in and of itself cannot bring about reform unless accompanied by robust enforcement, Congress created the Civil Rights Division of the Department of Justice in 1957 at the same time it enacted the first civil rights statute of the modern era. In the nearly 70 years since, the U.S. Attorney General has deployed this enforcement arm to stop all manner of discrimination, from [Alabama landlords](#) steering Black tenants to different housing projects; to patterns and practices of police misconduct and racial bias in [Ferguson, Missouri](#); to denying a [transgender student](#) access to educational facilities in California.

But the Department of Justice cannot possibly stand vigilant against every act of discrimination across our 50 states, or by itself protect the rights of 332 million

people, including 6 million Marylanders. Successful federal enforcement must be supported and reinforced by state law enforcement partners. A nearby example of what a difference additional enforcement can make is former District of Columbia Attorney General Karl Racine's \$10 million penalty imposed on three real estate firms in the [largest housing discrimination case](#) in U.S. history. Over half of this country's state attorneys general have some degree of authority to enforce [civil rights](#) and/or investigate [patterns or practices](#) of law enforcement misconduct. It is time for Maryland to join their ranks.

We have an exemplary [Commission on Civil Rights](#) in Maryland that does terrific work addressing individual complaints of discrimination. But the Office of the Attorney General must become a partner in its efforts. Just as the federal Equal Employment Opportunity Commission works in tandem with the Department of Justice, each functioning as a force-multiplier for the other, so too should my office work alongside the commission to effect broader and more systemic change. We will be able to build upon the commission's work on behalf of individual Marylanders to root out widespread discrimination on behalf of all Marylanders.

To this end, I have asked the General Assembly, as a top priority for my first session as attorney general, to pass legislation affording my office this authority.

We want to do our part. We must help in the continuing struggle to create a world in which children grow up untouched by any form of discrimination. A world in which they are free to choose where to live and who to love. With equal rights to clean air and water, good jobs, adequate health care, and protection from harm. With our full support for who they are and who they want to be.

Anthony G. Brown (oag@oag.state.md.us) is Maryland's attorney general.