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Equal Rights Center Urges Passage of HB 392

The Equal Rights Center (ERC) is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide. For almost forty years, the ERC has used civil rights testing as a tool to pursue enforcement of the Fair Housing Act and state and local fair housing laws in its service area, which includes the state of Maryland, District of Columbia, Northern Virginia, and Jefferson County, West Virginia. The Equal Rights Center appreciates this opportunity to submit testimony to the Senate Judicial Proceedings Committee regarding HB 392.

The Equal Rights Center supports the passage of HB 392 Evidence-Wiretapping and Electronic Surveillance – Fair Housing Testing because the bill would strengthen our ability and our clients’ abilities to hold housing providers accountable for illegal housing discrimination in Maryland.

Civil rights testing is an effective, objective, and credible investigative tool to collect data about discrimination in our communities. It usually involves one or more people covertly engaging in a transaction or interaction. Fair housing testing would usually include one or more people covertly engaging in a housing-related transaction or interaction, such as renting or buying a home. For example, fair housing testing may be used to identify potential discrimination by a property manager, leasing agent, or other real estate professional towards a renter or homebuyer as they attempt to rent or buy a home.

Advocates have been using testing to uncover discrimination for at least sixty years – in the 1960s Dr. King used testing as a strategy to uncover housing discrimination as part of the Chicago Freedom Movement. Testing is still used today by civil rights organizations, such as the ERC, to identify discrimination, especially more subtle forms of discrimination which may be difficult for an individual to recognize on their own. For example, comparing the experiences of similarly situated Black and white testers as they interact with a landlord can help uncover problems like different terms and conditions being offered on the basis of race. Civil rights testing is critical for collecting data on compliance with civil rights laws.

Furthermore, civil rights testing is specifically allowable under federal law. The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) use testing to uncover systemic discrimination. HUD also funds multi-million-dollar programs that support testing efforts by non-profit organizations. The program was created in 1987 and has provided funds for fair housing organizations nationwide to conduct testing in their service area. The ERC

has received such funding for many years, and its fair housing program includes testing investigations throughout Maryland.

The ERC is unable to record tests in Maryland because Maryland requires two-party consent to record. Instead, testers must write detailed narratives of their experiences, relying on memory and notes taken during the test. **Though our testers are trained extensively in accurate and objective report writing, we know there is always the potential that someone will question a report's credibility in a way that a recording would not be.** Furthermore, testing in Maryland is more resource intensive because it takes testers much more time to write complete narratives than if they were able to record their interactions.

On the other hand, Virginia, West Virginia, and the District of Columbia only require the consent of one party to record fair housing tests. When the ERC conducts tests in D.C., Virginia and West Virginia, testers typically use audio recordings to record their interactions with housing providers. ERC staff listen to the recordings to determine if there is evidence of discriminatory policies, statements, and/or practices. If the ERC determines steps must be taken to hold the housing provider accountable, the presence of the recording can significantly increase the likelihood of a positive outcome. The recording helps address the often stark power imbalance between the victim of discrimination and housing provider. It is more difficult for the housing provider to challenge the credibility of the victim of discrimination or the organization bringing forward the complaint when the discrimination is recorded for all parties to hear.

Everyone stands to benefit when fair housing tests are recorded. Test recordings will only provide stronger evidence that fair housing compliant housing providers are following their obligations. In our experiences, being confronted with recorded evidence of illegal discrimination has led non-compliant housing providers to be more willing to mitigate the harm they've caused quickly. Human rights offices in one party consent jurisdictions report to the ERC that test recordings significantly aid with their investigations of fair housing complaints. Finally, individual clients have shared that they feel more prepared to navigate the often lengthy administrative complaint process if there is testing evidence that substantiates their allegations.

Recordings should not be a prerequisite for proving housing discrimination, but they can play a critical role in demonstrating what discrimination sounds like. As a result, we urge lawmakers in Maryland to take advantage of all the tools at their disposal when it comes to stamping out illegal discrimination by passing HB 392.