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Hon. Maya Zegarra  
(ALJ)

**Re: Support for SB 827/HB 1079  
Courts and Judicial Proceedings – Jury Examination**

Emmanuel “Manny”  
Fishelman

Liset Collazo-Dingle

Dear Chairman Smith and Chairman Clippinger:

Lucelia Justinano

Krystle Acevedo

Maria Lino-Callao

Maria Bermudez

Anna Tijerina

By way of this letter, the Maryland Hispanic Bar Association (MHBA) members<sup>1</sup> express their support for a favorable determination on SB 827/HB 1079, which addresses critical issues surrounding *voir dire* in Maryland. This legislation aligns Maryland with U.S. Supreme Court precedent and mitigates the risk of bias in jury selection. SB 827/HB 1079 is a crucial step towards combating bias and improving our legal system. The expansion of *voir dire* will ensure equal representation and foster diversity within our courtrooms by removing potential jurors who are unable to impartially exercise their duty. SB 827/HB 1079 offers a necessary clarification of the scope and purpose of *voir dire* and provides attorneys with essential information to exercise peremptory challenges judiciously without violating constitutional principles.

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<sup>1</sup> Maryland Judiciary members who are MHBA Board members abstained from voting on the issue of this bill in accordance with Maryland Code of Judicial Conduct. The position of the MHBA members reflected on this letter is not the position of the judiciary members of the MHBA Board and members of the MHBA who are in the judiciary.

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The MHBA urges you to support the passage of SB 827/HB 1079 to ensure equal access to a fair and impartial trial by jury. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact the MHBA President, Rebeka Bautista at (301) 381-8286.

Sincerely,

*Rebeka N. Bautista*

Rebeka N. Bautista

President

Maryland Hispanic Bar Association



## 2024 POSITION PAPER

SB 0827 / HB1079

### COURTS - JURY SELECTION - EXPANDED *VOIR DIRE* FAVORABLE

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The requirement that jurors must be fair and impartial, free from conscious or implicit bias for or against any party, is essential to the right to jury trial. *Voir dire* is the process of questioning potential jurors to determine whether they hold any bias or prejudice that would inhibit their ability to render a fair and impartial verdict. Based on the answers to those questions, potentially biased jurors can be identified and excluded from jury service in that case.

Potentially biased jurors can be excluded in two ways. First, the juror can be stricken “for cause,” if the Judge finds that their beliefs or experiences are likely to impair their ability to be fair and impartial. Second, the parties may exercise “peremptory challenges” to exclude jurors whose beliefs and experiences create a risk of implicit bias. The parties may not exclude a juror based solely on their race or gender.

#### **Maryland’s Current *Voir Dire* System Does Not Account for Implicit Bias and Actually Promotes Explicit Bias in Jury Selection**

Under current Maryland law, *voir dire*, “does not exist, even partially, for the purpose of supplying information to trial counsel that may guide them in the strategic use of their peremptory challenges.” See, e.g., Collins v. State, 463 Md. 372, 404 (2019). Maryland’s system of “limited *voir dire*” relies on jurors to self-assess and admit their own biases and does not account for implicit bias. For jurors who are incapable of accurate self-assessment, the only information available to an attorney is that which appears on the jury form – demographic information such as name, age, sex, marital status, employment, and zip code. This creates an environment where jurors may be stricken improperly based on race and gender.

This use of explicit bias in jury selection by Maryland attorneys was not only acknowledged but advocated for in a *Maryland Bar Journal* article titled, “The Art of Litigating: Deselecting Jurors Like the Pros.” This article advised Maryland lawyers to “rate” potential jurors “demographically (age, gender, marital status, etc.) and mark who would be, under stereotypical circumstances, [their] natural enemies and allies.” The U.S. Supreme Court has held that Constitutional right to jury trial does not permit striking prospective jurors solely on the basis of race or gender. See Batson v. Kentucky, 476 U.S. 79 (1986) and J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994). Accordingly, Maryland’s current system of “limited *voir dire*” incentivizes Maryland lawyers to exercise explicit bias in using their peremptory challenges in an Unconstitutional manner. SB 0827 / HB 1079 helps to prevent this by giving attorneys more information that will enable them to use peremptory challenges without violating the Constitution.



## 2024 POSITION PAPER

SB 0827 / HB1079

### Maryland's Current System is an Unconstitutional Outlier

The U.S. Supreme Court has explained that *voir dire* "serves the dual purposes of enabling the court to select an impartial jury and assisting counsel in exercising peremptory challenges." Mu'Min v. Virginia, 500 U.S. 415, 432 (1991). Maryland is an outlier on this topic, directly conflicting with a vast majority of other states and the U.S. Supreme Court caselaw.

### This Bill Combats Unconstitutional Biases

The Maryland Supreme Court refuses to reconsider the limits on *voir dire*, leaving the responsibility to assess the scope and purpose of *voir dire* to the General Assembly. See Davis v. State, 333 Md. 27, 46 (1992). SB 0827 / HB 1079 clarifies the scope and purpose of *voir dire* in Maryland. SB 0827 / HB 1079 secures all Marylanders the right to a fair and impartial trial by a jury free of conscious or implicit bias.

**The Maryland Association for Justice urges a FAVORABLE Report on SB 0827 / HB 1079.**

### About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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