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**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the House Environment and Transportation Committee
In Support of House Bill 1239
February 28, 2025**

Marylanders are protected from discrimination in housing by state, local, and federal law. It is illegal to deny someone equal access to housing based on a broad range of demographic characteristics, including race, gender, sexuality, gender identity, disability, or familial status. In 2023, the General Assembly extended protections against discrimination to include persons who use a government voucher to pay rent when it enacted the Housing Opportunities Made Equal or “HOME” Act.

Nevertheless, housing discrimination in Maryland continues to persist. Maryland is amongst the most diverse state in the nation,¹ yet it remains highly segregated.² Segregation has an impact on every aspect of life. The ability to live where one chooses affects access to nutrition or health care,³ defines what school a student can attend, limits access to work or transportation, and impacts recreational and cultural opportunities. Housing discrimination also impacts the value of a home based on the race of the owner, which has a serious impact on wealth inequality and the creation of generational wealth.⁴

Discrimination has become more subtle. No longer are there signs posted on the lawn of an apartment building that Blacks or Jews or other racial groups are not welcome, and restrictive covenants have long been outlawed. Landlords, persons selling real estate, and homeowner

¹ <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>

² Maryland Segregation Map, https://hdpulse.nimhd.nih.gov/data-portal/physical/map?race=00&race_options=raceall_1&sex=0&sex_options=sexboth_1&age=001&age_options=ageall_1&statefips_options=area_states&demo=01005&demo_options=res_seg_2&physicaltopic=100&physicaltopic_options=physical_2&statefips=24

³ Huang SJ, Sehgal NJ (2022) Association of historic redlining and present-day health in Baltimore. PLoS ONE 17(1): e0261028. <https://doi.org/10.1371/journal.pone.0261028> (last visited January 24, 2024).

⁴ D. Kamin, Home Appraised With a Black Owner: \$472,000. With A White Owner: \$750,000, New York Times (August 18, 2022); <https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html> (last visited January 28, 2024)

associations have found other ways to exclude persons with demographic characteristics that they deem “undesirable.” People in protected classes are not told that they are not welcome because of their race gender, family status, sexuality, gender identity, or disability. Instead, they are told that the property is no longer available, that they must pass an onerous background check, or that the cost is higher than advertised.

Discrimination can also occur when there is a policy that applies generally to all tenants, but has a disparate impact on persons with a protected demographic characteristic. In these circumstances, a housing provider may not intend to discriminate, but the effect is just as significant. A policy for example that imposes a limit on the number of people who can occupy an apartment to match the number of bedrooms, may discriminate based on familial status; a policy prohibiting renting to tenants who have a felony conviction on their record regardless of the offense or how long ago may discriminate against Black tenants because of the race bias built into the criminal legal system; a policy that a tenant is subject to eviction if a crime occurred on the property may discriminate against women domestic violence victims; or a policy against unrelated persons occupying a unit might discriminate against a person with a disability who needs a live-in care giver.

The United States Supreme Court has recognized that under the Fair Housing Act, disparate impact can constitute unlawful discrimination in certain circumstances. The Court created a careful balance between the values of our anti-discrimination laws and the legitimate business interests of housing providers. The courts have adopted a three-part burden shifting test. First, is there a policy of general application that has a discriminatory effect on a protected class? If so, the court moves to the second step of whether there are legitimate business interests being achieved by the policy? And finally, the burden shifts back to the question of whether the policy is the least restrictive mechanism to reasonably achieve the business objective.⁵

Disparate impact theory is under attack, and the threat has increased under the Trump Administration. Long in the cross hairs of conservative groups, Project 2025, which is serving at the roadmap for the Trump Administration, calls for an end to disparate impact theory across the government.⁶ Challenges to federal disparate impact regulations have been struck down by some courts⁷ and Presidential executive orders regarding diversity, equity, inclusion, and accessibility that sweep so broadly that they may cover efforts to address the discriminatory effects of a policy set the stage for federal regulation to eliminate disparate impact under federal law. During the first Trump Administration, the federal government attempted to limit the use of disparate impact under the Fair Housing Act.⁸

Disparate impact remains the law, however, its future is unknown. As the federal government grows hostile to civil rights enforcement, the importance of Maryland’s laws

⁵ *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

⁶ Heritage Foundation, Mandate for Leadership, Project 2025, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf

⁷ *Louisiana v. United States*, 712 F. Supp. 820 (W.D. La. 2024)

⁸ Center on Budget and Policy Priorities, Reversing Harmful Trump Policies Will Advance Housing Justice, January 26, 2021

increase. While we believe that disparate impact is available under current law, HB 1239 ensures that there is no ambiguity. For these reasons, we urge a favorable report.