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Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the Senate Judicial Proceedings Committee
In Support of Senate Bill 107
January 15, 2025

Senate Bill 107, if enacted, will provide an important tool to address housing discrimination in Maryland. The bill will allow a very limited exception to the two-party consent requirement to record a conversation for the purposes of testing in aid of the enforcement of fair housing laws. In many cases, the recording of a fair housing test will be the best evidence admissible in court that discrimination is occurring and will facilitate effective remediation. On behalf of the Civil Rights Division of the Office of the Attorney General of Maryland, I offer support for the Bill.

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

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).

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

Fair housing testing has long been used to root out discrimination. Testing involves the use of trained individuals who apply for housing to measure whether persons with a particular protected characteristic are treated differently than a person without the characteristic. Often, this will involve matched pairs – persons who are similarly situated except for the tested demographic characteristics – to measure whether they receive the same information or opportunity.

Testing was a strategy pioneered by Dr. Martin Luther King in Chicago. In 1966, before the enactment of the Fair Housing Act, Dr. King helped found the Chicago Open Housing Movement which recruited Black volunteers to apply for housing in real estate offices only to be told that the listed properties in white neighborhoods were unavailable and steered to Black areas of the City.⁵ The evidence from these tests were an important part of the record that led to the passage of the Fair Housing Act after Dr. King's assassination.

The Courts have long recognized testing evidence in fair housing cases. More than 40 years ago in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), the Supreme Court found that testers who were subject to racial steering violated the Fair Housing Act. Since then, testing evidence has been routinely used in state and federal courts. It is a common practice by both fair housing organizations and government enforcement agencies.⁶

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 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. Without testing, an applicant or prospective purchaser does not know that the next white person who walks through the door will be told something very different.

It is also important to note that SB 107 does not permit wiretapping or the recording of calls to which the tester is not a party. The Bill only allows recording if the tester is a party to the call and only for fair housing testing and for no other purpose. Testing can be performed without a recording. The testimony of the tester is important evidence. However, a recording of the

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)

⁵ N. Moore, The Test Used to Expose Housing Discrimination and Its Chicago Roots, WBEZ (December 19, 2018); <https://www.wbez.org/stories/the-test-used-to-expose-housing-discrimination-and-its-chicago-roots/5c44b3ac-562c-455f-946d-0453098555ed> (last visited January 28, 2024).

⁶ The Civil Rights Division of the United States Department of Justice has a Fair Housing Testing program. See, <https://www.justice.gov/crt/fair-housing-testing-program-1>

conversation is much stronger. The judge or jury can hear directly what is said, conflicts in testimony can be resolved, and lapses in memory avoided. The existence of recorded evidence will reduce the need for litigation and promote the early and effective resolution of disputes.

The General Assembly gave the Attorney General the power to enforce all State and federal civil rights laws. To implement this authority, in 2024 the Attorney General created the Civil Rights Division. The elimination of housing discrimination is among our key priorities. Fair housing testing will be an important approach in our enforcement efforts. The enactment of Senate Bill 107 will facilitate our work and allow us to be more efficient and effective.