

SB 107 FAV.pdf

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Position: FAV



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SB 107: Evidence - Interception of Oral Communications - Fair Housing Testing

Hearing before the Senate Judicial Proceedings Committee on January 13, 2025

Position: SUPPORT (FAV)

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing and their rights to fair and equal treatment by Maryland's landlord-tenant laws, courts, and agencies. The PJC actively works towards instigating systemic changes to establish a society founded on justice. Our focus is on utilizing legal avenues to remove barriers that impede economic and racial equity, through our various projects. PJC seeks the Committee's **Favorable report on SB 107** as this allows tenants easier access to safe and stable housing and also promotes racial equity.

SB 107, which seeks to authorize fair housing testers to legally intercept communications under specific conditions, is much needed legislation that would allow Maryland to enforce our fair housing laws. Maryland has robust fair housing laws that were passed to hold landlords accountable for unfair and illegal practices. This bill would allow the state to actually enforce these laws.

By authorizing fair housing testers to lawfully intercept communications, **SB 107** would offer a vital instrument for identifying and confronting covert discrimination that restricts access to safe, affordable, and quality housing in Maryland. Furthermore, this legislation incentivizes property managers to place greater emphasis on fair housing training, ensuring their staff are well-versed in legal compliance and best practices. This proactive approach in management fosters a more informed and equitable housing market, directly contributing to enhanced housing stability and the economic growth of Maryland families. Access to stable housing is a cornerstone for the well-being and economic advancement of families, and this bill could play a critical role in ensuring such access.

The essence of **SB 107** is in alignment with the objectives of the PJC. It provides a substantial legal framework to reinforce our endeavors in ensuring fair housing practices. This bill passage would be key to ensure fairness and equality in housing, which is central to the PJC's mission of promoting economic and racial justice.

Public Justice Center **supports SB 107** as it would take essential steps to protect renters' privacy, allow easier access to safe and stable housing, and promote racial justice.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee issue a **FAVORABLE report on SB 107**. If you have any questions, please contact Albert Turner, Esq., turnera@publicjustice.org (410) 625-9409 Ext. 250.

Sydnor Testimony fav for SB 107 .pdf

Uploaded by: Charles E. Sydnor III

Position: FAV

CHARLES E. SYDNOR III, ESQ.
Legislative District 44
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DEPUTY MAJORITY WHIP

Judicial Proceedings Committee
Executive Nominations Committee

Joint Committees

Administrative, Executive, and
Legislative Review

Children, Youth, and Families

Senate Chair, Legislative Ethics

Chair

Baltimore County Senate Delegation



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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 107
Evidence – Interception of Oral Communications –
Fair Housing Testing
Before the Judicial Proceedings Committee
January 15, 2025

Good afternoon, Chair Smith, members of the Judicial Proceedings Committee,

Senate Bill 107 (“SB 107”) provides for the interception of oral communications as an evidentiary gathering technique to protect against housing discrimination. This testimony will provide why SB 107 is necessary for the protection and security of our constituents’ civil rights. Senate Bill 107 adds an additional, limited exception where the interest of justice requires the interception of wire, oral, and electronic communication. The Judicial Proceedings Committee voted nine to two in favor of this bill last session.

Senate Bill 107 is intended to strengthen the enforcement of fair housing laws by exempting from the scope of the State’s wiretapping statute work performed by authorized fair housing testers. “Fair housing testing refers to the use of testers who, without any bona fide intent to rent, sell or purchase a property, pose as prospective renters, sellers, or buyers of residential real estate for the purpose of determining whether housing providers and others are complying with the Fair Housing Act”¹ and similar state laws like those within Maryland civil rights provisions in Md. Code Ann., State Gov’t § 20-101, *et seq.* In 2021, the United States Department of Housing and Urban Development (“HUD”) built upon existing law through the Affirmatively Furthering Fair Housing Act (“AFFH”), which amended the prior Fair Housing Act of 1968, requiring “program participants to proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination.”² While Maryland has very stringent housing discrimination laws in place, documenting discrimination and gathering evidence in action has its barriers. One of those barriers is our current limits of the Maryland Wiretap Act, Md. Code Ann., CTS. & JUD. PROC. § 10-401,

¹ [Fair Housing Initiative Program - Education and Outreach Initiative - Test Coordinator Training | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/AFFH).

² <https://www.hud.gov/AFFH>. Last visited 1/10/2025.

et seq.. While federal and state law in many states allow a single party to a communication to record the communication without the knowledge or consent of other parties; Maryland is in a minority of states who do not.³

Senate Bill 107 does two things. First, SB 107 introduces and defines the term “nonprofit civil rights organization” but limits the kinds of organizations that may qualify as a nonprofit civil rights organization under the Maryland Wiretap Act to either:

1. a qualified fair housing enforcement organization⁴ or a fair housing organization⁵ as defined under 24 C.F.R. §125.103; or
2. an organization incorporated under Maryland law as a private, tax-exempt civil rights organization that has at least 2 years’ experience in:
 - a. complaint intake;
 - b. complaint investigation; and
 - c. testing for fair housing violations or enforcement of meritorious claims.

The federal regulation which is used to help define what a “nonprofit civil rights organization” is comes from Part 125 of HUD’s regulations; it establishes the rules around its Fair Housing Initiatives Program.⁶ Under this regulation testers must be trained in testing procedures and techniques.⁷ Testers are barred from having “an economic interest in the outcome of the test”;⁸ “be a relative of any party in [the] case”;⁹ “have had any employment history or other affiliation, within one year, with the person or organization to be tested;¹⁰ or “be a licensed competitor of the person or organization to be tested.”¹¹

³ See, e.g., Recording Phone Calls and Conversations: 50-State Survey, available at <https://www.justia.com/50-state-surveys/recording-phone-calls-and-conversations/> (a majority of 36 states permit one-party consent to record including the District of Columbia, West Virginia, Virginia, and Delaware (although there is a conflict between statutes).

⁴ A qualified fair housing enforcement organization means “any organization, whether or not it is solely engaged in fair housing enforcement activities, that (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims at the time of application for Fair Housing Initiative Program assistance.

For the purpose of meeting the 2-year qualification period for the activities included in paragraph (2) of this definition, it is not necessary that the activities were conducted simultaneously, as long as each activity was conducted for 2 years. It is also not necessary for the activities to have been conducted for 2 consecutive or continuous years. An organization may aggregate its experience in each activity over the 3-year period preceding its application to meet the 2-year qualification period requirement.” 24 C.F.R. §125.103.

⁵ A fair housing organization means “any organization, whether or not it is solely engaged in fair housing enforcement activities, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Upon the receipt of Fair Housing Initiative Program funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.” 24 C.F.R. §125.103.

⁶ While noting each of these requirements, one requirement, 24 CFR 125.107(a) is currently under review by HUD.

⁷ 24 CFR 125.107(b).

⁸ 24 CFR 125.107(c)(1).

⁹ 24 CFR 125.107(c)(2).

¹⁰ 24 CFR 125.107(c)(3).

¹¹ 24 CFR 125.107(c)(4).

Second, under the proposed §10-402(c)(12), SB 107 creates a narrow, limited exception to the Maryland Wiretap Act for specially defined fair housing testers. In sum, SB 107 would create the 12th narrow, limited exception to the scope of the Maryland Wiretap Act which already exempts other specialized persons for specific public policy purpose. This narrow addition of actors except from the scope of the Maryland Wiretap Statute is extremely important in helping to enforce our fair housing laws not just for residents of Maryland but also honest landlords and real estate professionals who do not discriminate but are put at a competitive disadvantage by those who do discriminate.

Senate Bill 107 would give nonprofit civil rights organization the reliable evidence needed to successfully help uphold our fair housing laws. Due to the nature of our all-party consent laws fair housing testers are prohibited from recording their conversations during their testing and using the recordings as evidence. This presents a tremendous hurdle in effective enforcement of discrimination cases, making fair housing laws nearly unenforceable. To help cure such deficiencies, SB 107 incorporates the use of audio recording in fair housing (civil rights) testing, providing the documentation needed to prosecute discrimination cases and ensure Maryland's housing marketplace is free from discrimination and residents and honest merchants alike are not harmed by those who seek to discriminate without review.

According to the HUD and based on its experience investigating fair housing complaints:

testers today generally audio and/or video record their testing experiences, meaning that the recordings—not the testers' testimony—are of utmost importance in most fact-finding hearings. Recording fair housing tests has become ubiquitous as cost of devices and technology has gone down and the utility of such recordings has become evident.... In many cases, sharing recorded evidence of fair housing testing facilitates early resolution and settlement, negating the need to interrogate tester credibility. And in housing discrimination cases that go to trial, the main role of testers as witnesses is to introduce the recorded evidence of the interaction, not to recount their experience in detail. In short, testing evidence often speaks for itself and a tester merely needs to be credible enough for the judge or jury to believe their testimony that the recording being presented is an authentic recording of the events at issue in the case.¹²

For the aforementioned reasons I have provided, implore you to vote favorably for SB 107.

¹² The Federal Register, *Removing Criminal Conviction Restrictions for Testers in FHIP – and FHAP-Funded Testing Programs*, Office of Fair Housing and Equal Opportunity, HUD <https://www.federalregister.gov/documents/2023/10/31/2023-23678/removing-criminal-conviction-restrictions-for-testers-in-fhip--and-fhap-funded-testing-programs>.

Sample Cases of Rental and Sales Discrimination based on Race, Color, National Origin, Familial Status and Religion and Rental and Sales Discrimination based on Disability resolved with Testing:¹³

On December 29, 2021, the court entered a [consent decree](#) in *United States v. Lone Wolf Housing Authority* (W.D. Okla.). The [complaint](#), filed on December 15, 2020, alleged that the defendants discriminated on the basis of race in violation of the Fair Housing Act and Title VI of the of the Civil Rights Act of 1964 when they rejected a housing application from complainant and her minor child on the pretext of lack of available housing and when they further misrepresented the availability of housing to a [Black tester](#) after showing numerous available units to the white companion tester. The consent decree requires defendants to pay \$75,000 in monetary damages to the complainant, her child, and the fair housing organization that conducted testing. The Housing Authority must also implement nondiscriminatory procedures, train all employees and board members on fair housing, maintain records of applications and availability, and report to the United States on their compliance with the terms of the Consent Decree. The case was referred to the Division after the Department of Housing and Urban Development received a complaint, conducted an investigation, and issued a charge of discrimination.

On April 5, 2021, the court entered a [consent decree](#) resolving *United States v. Village Realty of Staten Island Ltd.* (E.D.N.Y.). The [complaint](#), filed on September 30, 2020, alleged that the defendants violated the Fair Housing Act (FHA) on the basis of race when Defendant Denis Donovan, a sales and rental agent at Village Realty, treated African-Americans who inquired about available rental units differently and less favorably than similarly-situated white persons. The complaint also alleged that Defendant Village Realty is vicariously liable for Donovan's discriminatory conduct. The consent decree requires the defendants to adopt nondiscriminatory standards and procedures, undergo fair housing training, contribute \$15,000 to a victim fund, and pay a civil penalty. The complaint was based on testing evidence developed by the Section's Fair Housing Testing Program.

On January 3, 2023, the court entered a [consent order](#) in *United States v. Perry Homes, Inc.* (W.D. Pa.). The [amended complaint](#), which was filed on October 8, 2021, alleged that defendants Perry Homes Inc., Robert Whittington and Allyson Whittington discriminated on the basis of disability in violation of the Fair Housing Act by implementing a policy of excluding emotional support animals from rental properties they owned or operated in Cranberry, Zelienople, and Harmony, Pennsylvania. The original complaint was filed on July 23, 2021. The case is based on a HUD complaint that was filed by Southwestern Pennsylvania Legal Services ("SWPLS"), a non-profit legal aid organization whose mission includes combating housing discrimination, after the organization conducted fair housing testing. The consent order requires the defendants to pay SWPLS \$15,000 in damages, to comply with the Fair Housing Act, adopt a reasonable accommodation policy, publicize the policy in applications, leases, tenant renewals, and in its

¹³ <https://www.justice.gov/crt/recent-accomplishments-housing-and-civil-enforcement-section#jp%20rental%20and%20sales%20race%20and%20color>. Last visited 1/22/2024.

rental office, provide training for its employees, and comply with other equitable terms. The case was referred to the Division after the Department of Housing and Urban Development (HUD) received the complaint, conducted an investigation, and issued a charge of discrimination.

IL Written Testimony - SB 107 - Favorable.pdf

Uploaded by: Chris Kelter

Position: FAV



SB 107: Evidence - Interception of Oral Communications - Fair Housing Testing

Testimony of the Maryland Independent Living Network

SUPPORT

Senate Judicial Proceedings Committee, January 15, 2025

The Maryland Independent Living Network is a coalition of the Maryland Statewide Independent Living Council and the seven Maryland-based Centers for Independent Living (CIL). CILs are created by federal law. CILs work to enhance the civil rights and quality of services for people with disabilities. There are seven CILs located throughout Maryland, operated by and for people with disabilities. CILs provide Information and Referral, Advocacy, Peer Support, Independent Living Skills training, and Transition Services to individuals with disabilities in their communities.

The Independent Living Network submits this written testimony in **support** of SB 107.

People with disabilities are a protected class under the federal and state housing and accommodation laws.

Fair housing complaints are disproportionately filed by people with disabilities. Nearly half of housing complaints reported to the U.S. Department of Housing & Urban Development in 2019 were disability-based.

Accordingly, the disproportionate number of complaints that are disability-based indicates that fair housing is not readily available for people with disabilities. For inclusive housing in Maryland to be more readily available, wider testing of fair housing and appropriate evidence gathering authority is needed.

SB 107 permits the collection of oral communication as evidence if an individual is working as a fair housing tester in a fair housing testing program in certain circumstances and that evidence may be used for the purpose of enforcing federal, State and local fair housing laws.

The Maryland Independent Living Network appreciates the consideration of these comments.

The Maryland Independent Living Network strongly **supports** SB 107 and urges a **favorable** report.

Contact Information:

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BRHP Support for SB 107 Fair Housing Testing.pdf

Uploaded by: Emily Hovermale

Position: FAV



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www.brhp.org

January 15, 2025

Judicial Proceedings Committee
Maryland State Senate
Miller Senate Office Building
Annapolis, Maryland 21401

**RE: Baltimore Regional Housing Partnership Support for SB 107, Evidence -
Interception of Oral Communications - Fair Housing Testing**

Dear Chair Smith, Vice Chair Waldstreicher and Honorable Members of the Senate Judicial Proceedings Committee:

On behalf of the Baltimore Regional Housing Partnership (BRHP), thank you for the opportunity to submit testimony in support of SB 107, which seeks to authorize fair housing testers to legally capture oral communications under specific conditions.

BRHP is a non-profit organization that expands housing choices for low-income families who have historically been excluded from housing in well-resourced neighborhoods by helping them access and transition successfully to safe, healthy, and economically vibrant communities. As the Regional Administrator for the Baltimore Housing Mobility Program, BRHP currently provides over 4,300 low-income families rental assistance in the form of Housing Choice Vouchers coupled with counseling support for families as they move from areas of concentrated poverty to areas of opportunity in Baltimore City and the five surrounding counties.

As administrators of a rental assistance program, we consistently hear from participants about persistent fair housing discrimination, despite Maryland's anti-discrimination laws. Proving such discrimination, however, often remains a significant challenge. SB 107 offers an essential tool for addressing this issue by allowing fair housing testers to gather evidence of covert housing discrimination, which continues to undermine access to safe and equitable housing in Maryland.



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Fair housing testers are trained individuals who pose as prospective renters or buyers to detect violations of fair housing laws. By visiting properties, making inquiries, and documenting interactions, testers uncover whether housing providers are in compliance with the law or engaging in discriminatory practices based on protected characteristics, such as race, disability, or source of income.

Currently, Maryland is one of only 11 states requiring all parties' consent to record conversations. This restriction hampers the effectiveness of fair housing tests, as testers cannot record their interactions without the consent of housing providers—who are often the potential violators. Recording conversations is particularly critical in cases where verbal discrimination may otherwise go unverified. SB 107 would create a limited exception to Maryland's all-party consent rule, permitting one-party consent for recording conversations when the recorder is a participant in the conversation as a fair housing tester for a fair testing program. This aligns Maryland with the majority of states and strengthens the tools available to expose and address discriminatory practices while encouraging property managers to prioritize fair housing training and ensure compliance with legal standards.

Housing discrimination perpetuates residential segregation and limits housing choice. By equipping testers with the ability to gather credible evidence, SB 107 supports Maryland's efforts to combat these disparities and promote fair housing for all residents. For these reasons, I respectfully urge the Committee to give SB 107 a favorable report and thank you for considering this important legislation.

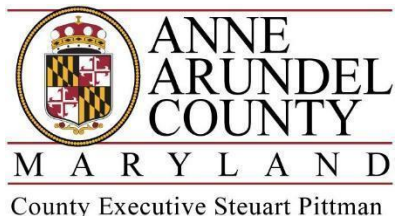
Sincerely,

Adria Crutchfield
Executive Director

Anne Arundel County _FAV_SB107.pdf

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Position: FAV



January 15, 2025

Senate Bill 107

Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

Senate Judicial Proceedings Committee

Position: FAVORABLE

Anne Arundel County **SUPPORTS** Senate Bill 107 – Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

This Bill will significantly enhance efforts to combat unlawful housing discrimination by removing the two-party consent requirement for recording conversations for fair housing testers. Fair housing testing is the best tool for uncovering unlawful housing discrimination, yet Maryland remains at a significant disadvantage compared to most other states, which do not have a two-party consent requirement. As a result, fair housing testers in other states are able to record their interactions with housing providers, something that this Bill would permit.

Housing discrimination increases residential segregation, the racial wealth gap, the homeownership gap, and the gap in intergenerational income mobility, while decreasing access to opportunity. Even with local and state laws to prevent housing discrimination, housing discrimination complaints have been increasing and increased in 2021 to the highest number in at least 25 years. Fair housing testing, when fully utilized to be most effective, addresses both the difficulty in identifying and the difficulty in proving discrimination, as people who have been discriminated against often do not know the discrimination has occurred, may not complain for a variety of reasons, and the difficulty of proving the validity of the complaint without objective evidence.

Given the significant problems created by housing discrimination and the growing number of complaints of housing discrimination, every tool available to investigate and enforce compliance with fair housing laws should be employed. Permitting the recording of fair housing tests without requiring the consent of the subject of the test would allow fair housing testing to be used to its full potential. For all of these reasons, I respectfully request a **FAVORABLE** report on Senate Bill 107

A handwritten signature in blue ink, appearing to read "Steuart Pittman".

Steuart Pittman
County Executive

SB107

Uploaded by: Eugene Peterson

Position: FAV

Anne Arundel County Human Relations Commission Testimony SB0107

The Fair Housing Act protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. Additional protections apply to federally-assisted housing.

The Anne Arundel Human Relations Commission enthusiastically endorses Senate Bill SB0107, Evidence - Interception Of Oral Communications - Fair Housing Testing introduced by Senator Sydnor. The Commission feels Maryland should join thirty nine states that allow one party consent taping of conversations:

Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Last year the Anne Arundel County Office of Equity And Human Rights partnered with the Anne Arundel County Department Of Community Development and conducted Fair Housing testing. It is the Commission's belief that Senator Sydnor's proposed legislation would enhance our ability to identify barriers to the provision of Fair Housing opportunities to County residents.

The proposed legislation would make it easier for Anne Arundel County to identify and address insidious practices like steering.

Steering involves guiding prospective home buyers or renters towards or away from certain neighborhoods based on race, religion or other characteristics.

This practice violates the individual's right to choose where they want to live and perpetuates segregated patterns of living.

In conclusion, the Anne Arundel Human Relations Commission strongly urges Committee members to give this proposed legislation a strong, positive vote and send it forward.

Eugene Peterson
Chair
Anne Arundel County
Human Relations Commission

OAG SB 107 In Favor 2025.pdf

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Position: FAV



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Chief, Civil Rights Division

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

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.

SB107_MoCoDHHS_Frey_FAV.pdf

Uploaded by: Leslie Frey

Position: FAV



Montgomery County

Office of Intergovernmental Relations

ROCKVILLE: 240-777-6550

ANNAPOLIS: 240-777-8270

SB 107

DATE: January 13, 2025

SPONSOR: Senator Sydnor

ASSIGNED TO: Judicial Proceedings

CONTACT PERSON: Leslie Frey

(leslie.frey@montgomerycountymd.gov)

POSITION: FAVORABLE (Department of Health and Human Services)

Evidence – Interception of Oral Communications - Fair Housing Testing

Senate Bill 107 makes it lawful for a person to intercept an oral communication if the person is working as a fair housing tester for a fair housing testing program operated by the federal, state, or local government or a non-profit civil rights organization, so long as the person is party to the communication and the interception is made for the purpose of obtaining evidence of a fair housing violation under federal, state, or local law.

The Montgomery County Department of Health and Human Services (MCDHHS) supports Senate Bill 107 as it is a commonsense action to ensure that those working to ensure fair housing practices are followed can do their jobs and document wrongdoing by landlords. Currently, it is very difficult to collect evidence of landlords who violate fair housing laws and/or source of income discrimination laws that is admissible in court proceedings. MCDHHS receives numerous reports of landlords telling prospective renters that they do not accept housing vouchers, however, the prospective renters do not have this evidence of discrimination. Being able to record conversations between local governments administering fair housing programs and acting as fair housing testers and landlords in order to obtain evidence of discrimination would help the County enforce fair housing and source of income laws that protect renters.

We respectfully urge the committee to issue a favorable report on Senate Bill 107.

SB 107 - Fair Housing - FAV - REALTORS.pdf

Uploaded by: Lisa May

Position: FAV



Senate Bill 107 – Evidence – Interception of Oral Communications – Fair Housing Testing

Position: Support

Maryland REALTORS® takes all allegations of discrimination in the housing market seriously. As a result, we offer our support for SB 107, to allow for the use of electronic recordings to enforce potential fair housing violations in the state.

While the federal Fair Housing Act was passed nearly six decades ago, reports of discrimination persist today in areas of the home buying and selling process, as well as in the provision of rental housing. The Maryland Commission on Civil Rights Annual Report outlines continued Fair Housing complaints in the areas of disability discrimination, harassment, and race, and that those inquiring about possible discrimination are disproportionately Black, Muslim, and Female.

When this bill was first introduced in the 2023 Session, Maryland REALTORS® requested amendments to more clearly define which organizations could use recordings and for what purposes testing may be conducted. Both 2024's SB 57 and SB 107 as introduced include those clarifications, and now more closely align with federal requirements as instituted by the U.S. Department of Housing and Urban Development (HUD).

At all levels of the REALTOR® organization, there is a strong awareness of those issues and a determined focus on addressing them. We thank the sponsor for his efforts to reduce any bias which may occur in the housing market and respectfully ask for your support of Senate Bill 107.

**For more information contact
lisa.may@mdrealtor.org or christa.mcgee@mdrealtor.org**

CLS Support for SB0107 Final.pdf

Uploaded by: Lisa Sarro

Position: FAV



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**SB 0107 Evidence – Interception of Oral Communications - Fair
Housing Testing
Hearing Before the Judicial Proceedings Committee
January 15, 2025**

Position: FAVORABLE

To the Honorable Members of the Judicial Proceedings Committee:

Community Legal Services submits this testimony in support of SB0107, which would provide an important step forward in efforts to eliminate housing discrimination in Maryland by allowing fair housing testers to record oral communications which occur during testing for fair housing violations. This legislation would bring fair housing testing in Maryland in line with testing methods used by the U.S. Department of Justice (DOJ), the U.S. Department of Housing and Urban Development (HUD), and most other states.

Community Legal Services (CLS) is a nonprofit organization that provides free legal services in a broad range of substantive areas to individuals and families who meet certain income-eligibility restrictions. Much of what we do involves supporting housing stability for individuals and families facing potential eviction and families simply trying to find and keep stable housing in their communities. Ever increasing home prices and soaring rents make it more than a little difficult to acquire and keep stable housing in Maryland. Housing discrimination – whether in home buying, home appraisal, or renting - often presents an additional barrier to fair housing for the clients we represent, many of whom belong to classes protected by federal, State, and local fair housing laws.

Maryland has a housing crisis. There is not nearly enough housing, especially affordable housing, to meet the needs of our residents, and Maryland needs to use every tool available to expand the housing available to its residents. Fair housing testing is the most effective tool for uncovering evidence of housing discrimination. However, this tool cannot be used to its full potential in Maryland because of Maryland’s restrictions on recording oral communications. This bill would make a narrow exception to allow recording exclusively for fair housing testing so the best evidence of discrimination – a recording of the discrimination occurring in real time – can be utilized to enforce and educate about fair housing laws. By rooting out and preventing fair housing as a barrier to access to housing, Maryland will expand the pool of available housing for Maryland residents.

For these reasons, **Community Legal Services urges this committee to submit a favorable report on SB0107.** Please feel free to reach out to Lisa Sarro, Director of Litigation and Advocacy, with any questions at sarro@clspsc.org.

Housing - sexual harassment - senate - 2025 - MCA

Uploaded by: Lisae C Jordan

Position: FAV



Working to end sexual violence in Maryland

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Testimony Supporting Senate Bill 107
Lisae C. Jordan, Executive Director & Counsel
January 15, 2025

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 146.

Senate Bill 107 – Housing Discrimination Investigations – Sexual Harassment

Senate Bill 107 provides for an additional tool for housing discrimination investigations by permitting audio recording by investigators who are government entities or nonprofit organizations with specified experience or a person subject to the discrimination.

Sexual harassment is a form of discrimination and all too common in the housing context. Tenants and prospective tenants have faced unwanted comments, touching, and assault, as well as requests for sexual favors as a condition of maintenance or in return for rent. In Baltimore City at Gilmore Homes, maintenance workers demanded sexual favors from women in order to get repair work done to their apartments. Those who refused to perform sexual favors were subjected to life-threatening living conditions. <https://www.wbaltv.com/article/victims-sought-in-sex-for-repairs-baltimore-public-housing-scheme/7096427>

The US Department of Justice provides many examples of these cases in their Sexual Harassment in Housing Initiative, <https://www.justice.gov/crt/sexual-harassment-housing-initiative-recent-cases#Donahue>. These include, for example:

Shambayati harassed female tenants and prospective tenants by making repeated and unwelcome sexual comments and advances, inappropriately touching their bodies without their permission, entering their homes without their permission, requesting sexual acts in exchange for rent or other housing-related benefits, and taking retaliatory actions against female tenants who rejected his sexual advances or complained about the harassment.

Richard Donahue offered to reduce monthly rental payments in exchange for sex, made unwelcome sexual comments and advances, and evicted or threatened to evict female tenants who objected to or refused his sexual advances.

Bruno engaged in harassment that included demanding or pressuring female applicants to engage in sexual acts to obtain rental privileges, asking to take and taking pictures and videos of the bodies of his tenants and their female children, and establishing, maintaining and forcing his tenants and their minor female children to view “dungeons” or “sex rooms” in the rental properties.

Bruno engaged in harassment that included demanding or pressuring female applicants to engage in sexual acts to obtain rental privileges, asking to take and taking pictures and videos of the bodies of his tenants and their female children, and establishing, maintaining and forcing his tenants and their minor female children to view “dungeons” or “sex rooms” in the rental properties.

These types of discriminatory acts typically take place in private, with no witnesses other than those involved. SB107 would help obtain evidence to accurately and thoroughly evaluate discrimination and discourage harassment.

**The Maryland Coalition Against Sexual Assault
urges the Judicial Proceedings Committee to
report favorably on Senate Bill 107**

MD Testing Law Testimony Sara Pratt 2025 SB 107.pd

Uploaded by: Sara Pratt

Position: FAV

Written Testimony of Sara Pratt
HB 392
Supporting Passage of the Legislation

I am testifying on my capacity as someone who has worked on fair housing issues, and on testing specifically, for over 45 years. I am testifying on my own behalf and not on behalf of my employer or any organization.

In 1977, I participated in the first national fair housing testing audit funded by HUD. I was working with the Kentucky Commission on Human Rights, and we used audit-based testing to identify whether there was discrimination based on race or national origin in rental and sales transactions. I went on to work as Director of Fair Housing Enforcement at HUD, and while at HUD, part of my job was overseeing the Fair Housing Initiatives Program (FHIP), which funds private fair housing organizations nationally, as well as the Fair Housing Assistance Program (FHAP), which supports fair housing enforcement by state and local governments. I retired from HUD in 2015 as Deputy Assistant Secretary for Fair Housing Enforcement and Programs. I am currently Counsel with the law firm of Relman Colfax PLLC in Washington, D.C. and I evaluate and litigate cases based on testing evidence.

I have reviewed over 5000 tests for discrimination in fair housing cases over my career, including tests of real estate sales and rental practices, as well as lending and homeowners insurance practices. I was an expert witness on testing in the case of *NFHA v. Prudential Insurance Company*, 208 F. Supp. 2d 46 (D.D.C. 2002).

I also authored *Discrimination Against Persons with Disabilities: Testing Guidance for Practitioners* (<https://www.hud.gov/sites/documents/dss-guidebook.pdf>) for a national Housing Discrimination Study project conducted by the Urban Institute under contract for HUD. I have overseen testing in circumstances where testers' experiences were recorded and those where they were not recorded.

Testing to determine whether or not housing discrimination is occurring is a long-standing and powerful fair housing enforcement and education tool.

HUD has supported fair housing testing as an investigative tool for many years. It initiated an enforcement demonstration project beginning on January 1, 1980, 45 years ago, to identify what role fair housing organizations could play in working with HUD. Through the project, HUD funded nine groups over a two-year period to receive complaints, conduct testing related to complaints, and develop testing-based studies of discrimination in their communities.¹ The project demonstrated the critical role of testing—with funding to conduct testing, every organization increased its volume of complaints and supported enforcement, while producing a large number of studies of discrimination in local communities. HUD concluded, “The principal result of the experimental ‘fair housing study’ activity was that it demonstrated that testing can be a

¹ HUDUSER, The Fair Housing Demonstration Project, 1983, available at <https://www.huduser.gov/portal/Publications/pdf/HUD%20-%203093.pdf>.

highly productive device for identifying and developing hard evidence concerning the more blatant and pervasive forms of unlawful discrimination.”

In 1984, HUD sponsored a national conference—in which I participated—directed at discussion and expansion of fair housing testing.² With over 250 attendees including fair housing organization representatives, FHAP agencies, researchers and government officials, the topics included individual and systemic testing strategies, standing of fair housing organizations, and testing-based enforcement strategies. Reports from that conference confirmed an elevated level of effective use of testing to support enforcement and identified typical defenses raised against testing.

Defenses that testing was entrapment,³ claims that testers violated an agent's right to be free from unreasonable searches⁴, arguments that tester activity constituted interference with economic relations, trespass, unjust enrichment, and libel have been rejected by courts over the years.

Courts have also increasingly recognized the role fair housing organizations and their testers play in fair housing enforcement. The Supreme Court has recognized the importance of testers in identifying discrimination and has recognized that testers have standing to sue for fair housing act violations. See *Havens Realty Corp., v. Coleman*, 455 U.S. 363, 373 (1982).

² HUD Conference on Fair Housing Testing, *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/HUD-Conference-on-Fair-Housing-Final-Summary-Report.pdf>

³ Testing is not entrapment because the concept of entrapment is not applicable because all that a tester does is to offer “a favorable opportunity” for a violation to occur. *Newbern v. Lake Lorelei, Inc.*, 308 F. Supp. 407, 415 (S.D. Ohio 1968) (in addressing fair housing claims brought under 42 U.S.C. §§ 1981-1982, the court, analogizing to the use of informants in criminal cases, but found that entrapment did not arise because informers merely provide “a favorable opportunity” for discrimination to occur); *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975) (rejecting entrapment defense and holding “[t]he evidence resulting from the experience of testers is admissible to show discriminatory conduct on the part of the defendants. The Fair Housing Act of 1968 was intended to make unlawful simpleminded as well as sophisticated and subtle modes of discrimination. It is the rare case today where the defendant either admits his illegal conduct or where he sufficiently publicizes it so as to make testers unnecessary. For this reason, evidence gathered by a tester may, in many cases, be the only competent evidence available to prove that the defendant has engaged in unlawful conduct.”)

⁴ There is no reasonable expectation of privacy when a tester participates in an application process that is open to members of the public. In effect, the landlord has consented to showing the tester the property and discussing it with the tester. See *U.S. v. Wisconsin*, 395 F. Supp. 732 (D. WI. 1975), state government effort to restrict testing activity inconsistent with the Fair Housing Act and prohibited under the Supremacy Clause, holds that a prohibition on testing “chills the exercise of the right to equal housing opportunity” and is “an obstacle to the accomplishment of the principal objective of Congress in passing the Fair Housing Act, that is, to provide fair housing throughout the United States.”

Indeed, by 1983, courts were increasingly likely to consider, and rely upon, evidence collected by testers. As the Federal Court of Appeals for the Seventh Circuit recognized in *Richardson v. Howard*, 712 F.2d 319, 321-22 (7th Cir. 1983) (citations and footnote omitted), “This court and others have repeatedly approved and sanctioned the role of ‘testers’ in racial discrimination cases. It is frequently difficult to develop proof in discrimination cases and *the evidence provided by testers is frequently valuable, if not indispensable . . . The evidence provided by testers both benefits unbiased landlords by quickly dispelling false claims of discrimination and is a major resource in society’s continuing struggle to eliminate the subtle but deadly poison of racial discrimination.*”

My personal review of the reported cases where courts and administrative law judges relied on testing evidence showed that in virtually all cases with testing evidence, judges credited the evidence and relied on that evidence in making decisions.

Testers are routinely trained to be objective observers of the experiences they encounter during a test; they are trained to present themselves as bona fide applicants for housing, they are given particular assignments by a test coordinator and provided with test-appropriate income and employment information and instructed about what type of unit they are interested in and what their qualifications. In effect, they are indistinguishable from other applicants for housing whether they communicate via email, telephone, on-line or in-person. Testers must record their interactions, and new technology has made it easier to record testing evidence through telephone calls and in person.

There are significant advantages to recording testing transactions that strengthen fair housing enforcement and increase the efficacy of testing evidence:

First, recording assures that details of a transaction are accurately captured. It is impossible for a tester to recall and write down everything that happens during the course of a test. A recording assures that all of the details are documented and that any concern that discrimination has occurred can be verified.

Second, recording assures that testers are operating as they are trained to operate, as if they were real applicants, following the background they were assigned and asking the appropriate questions for the test. Reviewing a recording of a test is one way to provide quality assurance in the testing process.

Third, when a recording is admissible in court proceedings, it is valuable and reliable evidence about discrimination, and it may be available when a tester has moved out of town or is otherwise no longer available to testify.

Finally, such credible evidence helps to encourage parties to resolve complaints outside of court, because parties are more readily able to come to an agreement on the underlying facts.

In short, the evidence that courts have already found to be reliable and usable in fair housing cases is even more reliable and helpful to cases when it has been recorded.

Forty states⁵ have single person consent laws that permit recording of communications relating to testing. Fair housing groups in those jurisdictions routinely use various electronic recording strategies to document telephone and in person tests. I have seen time and again the crucial role that such recordings play in helping defendants, judges, and juries identify, understand, and respond to housing discrimination.

We support the authority that would be given in SB 107 to permit single party consent for recording fair housing testing communications. The bill would align Maryland with positions taken by 40 other states and make its position consistent with their position. It would allow recorded tests to be used and relied on in judicial and administrative proceedings in Maryland. It would encourage earlier settlements and more clear understandings about how discrimination may be occurring. And it would contribute to stronger enforcement of fair housing laws across Maryland.

⁵ Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

SB0107-Fair Housing Testing (FAV).pdf

Uploaded by: Spencer Dove

Position: FAV



State of Maryland Commission on Civil Rights

Respect...Integrity...Effective Communication

Senate Bill 107 – Evidence - Interception of Oral Communications - Fair Housing Testing Position: Support

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights (“MCCR”; “The Commission”) is the State agency responsible for enforcing Maryland’s laws prohibiting discrimination in employment, housing, public accommodations, state contracts, commercial leasing, and health services based on race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, source of income, and military status.

Senate Bill 107 adds Section 10–402(c)(12) to the Courts and Judicial Proceedings Article to allow persons working as fair housing testers to intercept communications for the purpose of obtaining evidence of a fair housing violation. This bill applies only to fair housing testers from the government or a nonprofit civil rights organization who are also a party to the communication.

Fair housing testers are trained individuals who discreetly pose as prospective renters or buyers to gather information on fair housing violations by housing providers. By visiting the property, making observations, and speaking with housing agents, testers can obtain evidence on whether the provider is in compliance with non-discrimination laws, or whether they deny housing to people based on protected characteristics, such as race or disability.

Maryland is one of only eleven states that requires all parties’ consent to record communications. The current requirement in Maryland prohibits testers from recording their own interactions with housing providers or forces them to get the consent of the potential violator, thus defeating the purpose of the test. SB 107 would provide a limited one-party recording exception to Maryland’s general all-party consent rule. This carve out would align with the majority of other states that permit interception when the recorder is a party to the conversation.

One-party recording laws have proven effective in discovering fair housing violations. A 2019 study in New York—a one-party consent state—recruited housing testers to record their meetings with real estate agents and found that the testers of color were subjected to differential treatment more than white testers. Black testers experienced this discrimination 49% of the time, Latino testers 39% of the time, and Asian testers 19% of

“Our vision is to have a State that is free from any trace of unlawful discrimination.”

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the time. In addition to revealing violations, documenting testers' interactions through recordings also reduces issues with credibility, truthfulness, and accuracy. Such recorded evidence helps promote fairer outcomes both for prospective tenants and for providers.

Additionally, allowing testers to gather recordings of conversations is vital to pursuing difficult cases that otherwise may fail due to a lack of corroborating evidence. For example, landlords may tell prospective tenants with Section 8 vouchers that their building is not HUD-approved for Section 8 housing, while in reality, HUD does not provide blanket Section 8 approval to entire properties. Instead, Section 8 eligibility is individual to a particular person, who may generally seek housing at any private housing property. But evidence of these misrepresentations is hard to come by. SB 107's exception is therefore needed to substantiate investigations and put an end to fair housing rights violations.

For these reasons, the Maryland Commission on Civil Rights urges a favorable vote on SB 107. Thank you for your time and consideration of the information contained in this letter. MCCR looks forward to the continued opportunity to work with you to promote and improve fair housing and civil rights in Maryland.

Equal Rights Center SB 107 Testimony.pdf

Uploaded by: Susie McClannahan

Position: FAV



January 13, 2025

Equal Rights Center Urges Passage of SB 107

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 four decades, 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 SB 107.

The Equal Rights Center supports the passage of SB 107 Evidence-Interception of Oral Communications – 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. Fair housing testing usually includes one or more people covertly engaging in a housing-related transaction or interaction, such as renting or buying a home. It may be used to identify potential discrimination by a property manager, leasing agent, or other real estate professional.

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 SB 107.

Testimony.FredFreiberg.MarylandSenate.JudicialProc

Uploaded by: Fred Freiberg

Position: FWA

**Testimony of Fred Freiberg to the Senate Judicial Proceedings Committee
SB0107: Evidence – Interception of Oral Communications – Fair Housing Testing**

Position: Favorable – January 15, 2025

The Honorable Senator William C. Smith, Jr.
Chair, Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building Annapolis,
Maryland 21401

cc: Judicial Proceedings Committee Members and Staff

Chairperson Smith and Judiciary Proceedings Committee Members:

I write as a fair housing practitioner with 49 years of experience conducting undercover fair housing testing investigations to voice my support for SB0107 which is intended to carve out an exemption to the all-party consent requirement for recording conversations under Maryland law. This legislation would permit fair housing testers working with Qualified Fair Housing Organizations (QFHOs), recognized civil rights organizations, or public fair housing enforcement agencies to gather recorded evidence of their interactions with housing providers to aid with the enforcement of fair housing laws.

Testing, as courts have uniformly recognized, is an investigative tool used to gather evidence in fair housing cases. A test involves one or more persons who inquire about housing opportunities. The investigations are covert in nature and designed to compare the conduct of providers of housing or housing-related services to the requirements of fair housing laws. Often two or more testers are matched on a test, making it possible to observe how home seekers of different races, national origins, etc. are being treated in the housing market. The value of testing is that it is uniquely capable of identifying whether all types of housing consumers are receiving the same information, service, treatment, and access to housing opportunities or housing services without regard to any of the protected characteristics under local, state, and federal fair housing laws.

Since 1976, I have supervised well over 12,000 testing investigations in more than twenty states. I have personally been involved in more than 1,500 undercover testing investigations. I have been named as a witness in nearly five hundred fair housing cases, and I have provided sworn deposition and trial testimony on roughly seventy occasions. I am considered one of the leading experts in the nation on the use of testing to uncover and document discrimination in fair housing and civil rights cases.

I was a founder and the first Executive Director of the Metropolitan Milwaukee Fair Housing Council (MMFHC) which opened its doors in 1978. By 1979, we began equipping our testers with concealed microcassette recorders. The decision to do this was prompted by the fact that, too often, testers testified that they spoke with a housing provider and described what was said, and the housing provider would testify that the testers were lying and, in some cases, denied that the interaction even took place. The subsequent use of recorders removed any doubt about what housing providers told testers of different races because now there was an *exact oral account* on a recording that captured the interaction. The MMFHC went on to file hundreds of fair housing cases supported with recorded testing evidence and established a significant track record of successful outcomes.

In late 1990, I moved to Baltimore, Maryland and briefly served as Associate Director of Baltimore Neighborhoods, Inc. (BNI). I was responsible for the oversight of BNI's fair housing testing program. I left the organization after five months to pursue a better career opportunity. One factor that motivated me to leave was the fact that I could not equip testers with concealed recorders to document their experiences. I recognized that building a vigorous and effective fair housing testing and enforcement program was going to be difficult, if not impossible, given that Maryland law required all-party consent to record conversations.

In 1991, I was hired to establish and direct the first fair housing testing program in the Civil Rights Division of the U.S. Department of Justice (DOJ). The decision to equip testers with recorders was made at the inception of the testing program. In the first seven years of DOJ's testing program, dozens of pattern and practice cases were brought by the Department using recorded testing evidence. While at DOJ, recording technology changed and microcassette recorders were replaced with far superior digital recorders. I received training on how to effectively use digital recorders in testing and how to preserve and control digitally recorded evidence so that it would be admissible in a court of law.

In 2004, I co-founded the Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City. I helped to construct and direct a robust testing program at the FHJC which employed and trained over two hundred testers, mostly professional actors. As New York State is one of the thirty-nine states that allow one-party consensual recording, FHJC testers use concealed digital recorders to record their telephonic and in-person communications with housing providers. FHJC investigations have aided in the filing of more than 160 fair housing lawsuits and most have included testing evidence. These cases have opened more than 81,000 housing units to previously excluded populations along with a total payment of \$55 million in damages and penalties. In August 2021, I stepped down as FHJC's Executive Director and now work part-time as FHJC's National Field Consultant. Now semi-retired, my wife and I made the decision in 2024 to move back to Baltimore where we currently reside.

I began working in the fair housing field in 1976 and can attest to the fact that the nature of housing discrimination has dramatically changed. Since fair housing laws were enacted, most housing providers have learned about their legal responsibilities and the possible enforcement consequences for non-compliance. Rather than follow the law, violators try, in a variety of ways, to conceal their discriminatory conduct. The overt discrimination that I routinely saw on tests in the 1970's eventually became more subtle as housing providers cleverly devised techniques to elude detection. As time passed, the characterization of housing discrimination as a "slammed door" had to be replaced with the image of a "revolving door" where unsuspecting home seekers are politely escorted in, out of, and away from the desired housing without even knowing that discrimination occurred. To respond to these changes, testing organizations have had to become more sophisticated in how to conduct these undercover investigations. Those of us who have worked in any of the thirty-nine one-party consent states have learned that the more extensive use of recorders to gather evidence in testing investigations often makes it possible to unravel discriminatory schemes and more easily document illegal conduct.

Today, racial discrimination in housing, in most instances, is so subtle that ordinary consumers have no way of knowing they have been discriminated against. If consumers are unaware that they have been victimized by an act of housing discrimination, they do not file complaints. If no complaints are filed, no enforcement action is taken by government enforcement agencies, and the discrimination simply continues. The "invisibility" of housing discrimination ensures its sustainability. The only way to document and compare how home seekers of different races or national origins are being treated is to conduct proactive systemic testing investigations.

Given the more nuanced and stealth-like nature of contemporary housing discrimination, it is imperative, in my view, that testers record their in-person and telephonic conversations with housing providers so that those initially reviewing the test results and the triers of fact who decide the outcome of the case can hear the *exact words* used by the tester and housing provider during a test. I have attended many fair housing trials where judges or juries heavily relied on the recorded evidence to help them determine whether the discriminatory conduct occurred as alleged in violation of fair housing laws. Recorded evidence enhances our ability to hold housing providers accountable for their discriminatory conduct and makes it possible for plaintiffs to prevail in cases, even where subtle discrimination is occurring. I note that a version of this bill appears to exclude electronic communications from the definition of conversations that may be recorded by testers. To be meaningful, this new law needs to permit testers to record conversations when, as part of an investigation, they are a party to a conversation, regardless of whether it is in-person or over the telephone. I strongly urge that the bill be amended to allow testers to record communications that are in-person and over the telephone.

In September 2022, I penned an article in *Shelterforce* about this critical issue¹.

¹ <https://shelterforce.org/2022/09/06/press-record-to-catch-fair-housing-violators-if-you-can/>

Recording laws in eleven states, including the State of Maryland, are currently hobbling efforts to enforce fair housing laws effectively and vigorously by making it unlawful for testers to record conversations with housing providers. These restrictive all-party consent requirements prevent fair housing law enforcement organizations from gathering the strongest possible evidence in housing discrimination cases and chills the ability of testers to assist others to exercise their rights under fair housing laws.

I urge Maryland to show leadership on this issue. There is an opportunity to demonstrate to the states requiring all-party consent to record that carving out an exception for fair housing testers is not going to violate any privacy rights. Testers typically speak with rental agents, landlords, real estate agents, loan officers and others who engage in commercial speech when discussing the products and services that they are offering in the open marketplace. Housing providers who persist in lying to and deceiving people based on race, national origin, or other protected characteristics about the availability of housing, the terms and conditions, whether housing is available to show, etc. are not deserving of any protection by the State.

In addition to providing this written testimony, I plan to testify in person at a hearing held by your Committee on Wednesday, January 15, 2025, and will make myself available to answer any questions that your committee or staff may have regarding my written testimony. I appreciate the fact that you are seriously considering this important modification to Maryland law to facilitate the use of concealed recorders by fair housing testers. If this bill passes the Maryland legislature and is enacted into law, it will most certainly strengthen the enforcement of fair housing laws throughout the State of Maryland.

Thank you for the opportunity to provide this testimony.

Fred Freiberg

Fred Freiberg
100 Harborview Drive, Apt. 2304
Baltimore, Maryland 21230

SB107 - Fair Housing Tests Bill.pdf

Uploaded by: Marceline White

Position: FWA

Improving the Accuracy of Maryland's Fair Housing Tests

Background

Fair housing tests are controlled assessments to identify and document discrimination in the housing market. Fair housing testing employs individuals to pose as prospective tenants or homeowners to gather information to determine whether or not a provider is complying with state and federal laws related to fair housing.

Fair housing tests are crucial for

1. **Detection of Discrimination:** Fair housing tests help detect instances of housing discrimination based on factors such as race, ethnicity, gender, disability, familial status, and other protected characteristics.
2. **Enforcement of Fair Housing Laws:** These tests play a critical role in enforcing fair housing laws and regulations. By documenting instances of discrimination, authorities can take legal action against individuals or entities that violate fair housing laws.
3. **Policy Evaluation:** The data collected through fair housing tests can be used to evaluate the effectiveness of existing fair housing policies. If discrimination is consistently identified, it may indicate a need for stronger enforcement or the development of new policies to address specific issues.



Problem

The Department of Housing and Urban Development (HUD) recommends equipping testers with recording devices to faithfully and incontrovertibly capture their interactions with housing agents.

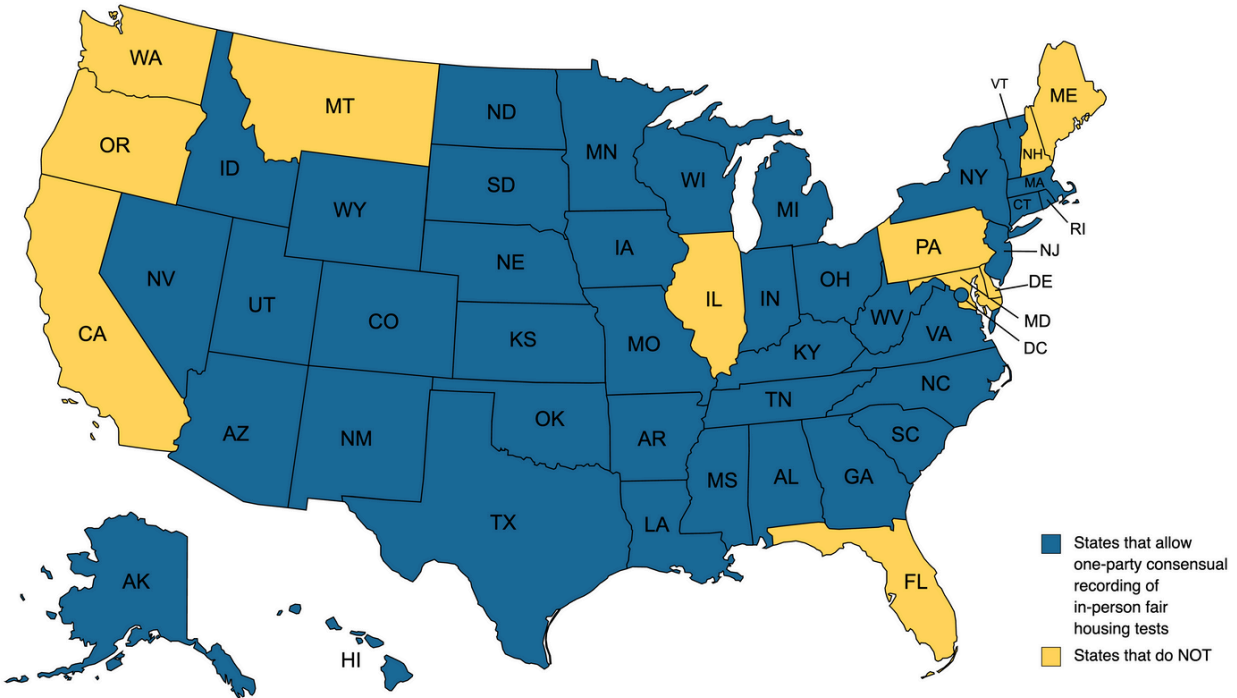
Maryland's all party consent requirement means that fair housing organizations in the state cannot use recommended best practices. This creates a number of challenges for Maryland fair housing organizations and for fair housing enforcement in the state:

- **It doubles the cost of testing.** Instead, fair housing organizations in Maryland must hire two testers for each test, compared to one for each test in other states-doubling the cost of testing because one tester must lead the interaction with the provider while the other listens closely to write down a detailed record of the conversation afterwards.
- **Testing results are less effective.** Our testers must rely on their memory of the event to write a detailed report soon after the interaction.
- **Maryland is one of 11 states that don't allow one party recordings for fair housing tests.**

Solution - SB107

This bill would create a narrowly-tailored exemption to the all-party consent law. It would enable qualified organizations to conduct fair housing without all party consent.

Maryland is behind **39** states when it comes to the efficacy of fair housing tests using HUD's recommended best practices



Benefits of Passing SB107

- The ability to document test experiences through audio recordings provides incontrovertible evidence of illegal housing discrimination, as witnessed in over 12,000 tests conducted across 20 states. Recorded evidence has played a pivotal role in successful fair housing cases, influencing judges and juries to hold defendants accountable for discriminatory conduct.
- **It Protects Testers and Housing Providers.** Having an exact account of a conversation protects testers from any credibility or bias as well as protects housing providers from false allegations, misunderstandings, or faulty memories of testers.
- **Efficient Allocation of Resources.** Saves fair housing organizations money because they can reduce the number of testers used, thereby saving using city, county, state, and federal funds more efficiently and effectively. The use of recorders also allows organizations to maintain the highest investigative standards.
- **There is no right to privacy that would preclude this.** The Department of Justice's Civil Rights Division uses one-party recorders in Maryland and across the country. The commercial discussions that take place are taking place in commercial spaces so should not be considered private.

Support SB107

SB107 EconAction FAV.docx (1).pdf

Uploaded by: Marceline White

Position: FWA



Testimony to the Senate Judiciary Committee
SB107: Evidence – Interception of Oral Communications– Fair Housing Testing
Position: Favorable

January 15, 2025

The Honorable Senator William Smith, Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401
cc: Members, Judicial Proceedings Committee

Honorable Chair Smith and Members of the Committee:

Economic Action Maryland Fund (Economic Action) is a statewide coalition of individuals and organizations that advances economic rights, equity, and housing justice for Maryland families through research, education, direct service, and advocacy. Our 12,500 supporters include consumer advocates, practitioners, and low-income and working families throughout Maryland.

I am here in strong support of SB107 and thank Sen. Sydnor for introducing the legislation. SB107 enables fair housing organizations to more effectively test and enforce Maryland's anti-discrimination laws.

Fair housing testing employs individuals to pose as prospective tenants or homeowners to gather information to determine whether or not a provider is complying with state and federal laws related to fair housing. Fair housing testing is crucial for: detecting discrimination, enforcing fair housing laws, and evaluating the effectiveness of existing policies.

The Department of Housing and Urban Development (HUD) recommends equipping testers with recording devices for fair housing testing. SB107 permits the interception of oral communications under narrowly designed circumstances in order to conduct fair housing testing.

Thirty-nine other states allow certified fair housing organizations to record conversations to test for housing discrimination. Maryland lags behind these states in passing this exemption and notably in its fair housing enforcement.

There are a number of reasons to pass SB107. It will:

-

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Tax ID 52-2266235

Economic Action Maryland Fund is a 501(c)(3) nonprofit organization and your contributions are tax deductible to the extent allowed by law.



- **Strengthens fair housing enforcement & justice in Maryland.** The ability to document test experiences through audio recordings provides incontrovertible evidence of illegal housing discrimination
- **Protects Testers and Housing Providers.** Having an exact account of a conversation protects testers from any credibility or bias as well as protects housing providers from false allegations, misunderstandings, or faulty memories of testers.
- **Efficient Allocation of Resources.** Saves fair housing organizations money because they can reduce the number of testers used, thereby saving using city, county, state, and federal funds more efficiently and effectively. The use of recorders also allows organizations to maintain the highest investigative standards.
- **There is no right to privacy that would preclude this.** The Department of Justice's Civil Rights Division uses one party recorders in Maryland and across the country. The commercial discussions that take place are taking place in commercial spaces so should not be considered private.

SB107 strengthens Maryland's ability to enforce fair housing laws statewide, uphold the highest evidentiary standards in court, protect housing testers and providers, and make Maryland the fortieth state in the country to better equip fair housing organizations to root out discrimination and make Maryland a more just place for all to live.

For all these reasons, we support SB107 and urge a favorable report.

Best,

Marceline White
Executive Director

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MMHA - 2025 - SB 107 Fair Housing Wiretap.pdf

Uploaded by: Aaron Greenfield

Position: UNF



Bill Title: Senate Bill 107, Evidence – Wiretapping and Electronic Surveillance – Fair Housing Testing

Committee: Judicial Proceedings Committee

Date: January 15, 2025

Position: Unfavorable

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose members consist of owners and managers of more than 210,000 rental housing homes in over 958 apartment communities. Our members house over 538,000 residents of the State of Maryland. MMHA also represents over 250 associate member companies who supply goods and services to the multi-housing industry.

Senate Bill 107 allows a person to intercept a wire, oral or electronic communication if the person is working as a fair housing tester for such a program operated by the Federal Government, the State, local government or non-profit civil rights organization. The person must be a party to the communication and the interception is for the purpose of obtaining a fair housing violation under federal, state or local law.

While combating housing discrimination is a laudable and necessary goal, this bill raises serious concerns about privacy, accountability, and the potential for abuse. Below are reasons MMHA opposes this legislation:

- **Erosion of Privacy Protections:** Senate Bill 107 undermines the fundamental privacy rights guaranteed by two-party consent laws. These laws are in place to ensure that individuals can communicate freely without fear of being recorded without their knowledge. Allowing exceptions for specific individuals or programs erodes these protections and sets a troubling precedent for future exceptions. Two-party consent laws have long been recognized as an essential safeguard for personal and business communications. If fair housing testers are permitted to secretly record conversations, it weakens the very foundation of these privacy protections and diminishes public trust in legal safeguards. In 2023, California, a two-party consent state, considered similar legislation before the Sponsor withdrew the bill.
- **Risk of Abuse and Overreach:** Senate Bill 107 lacks sufficient oversight mechanisms to prevent abuse by individuals or organizations conducting fair housing tests. Without clear guidelines on how and when such recordings can be made, there is a significant risk that individuals might misuse this authority for purposes beyond legitimate fair housing enforcement. This could lead to unauthorized recordings that invade privacy and harm reputations. Moreover, Senate Bill 107 does not specify the qualifications or training required for fair housing testers, increasing the risk of overreach by unregulated actors.



- **Chilling Effect on Legitimate Communications:** If housing providers and real estate agents fear they may be secretly recorded during routine conversations, it could create a chilling effect on open and transparent communication. This may discourage cooperative engagement and hinder legitimate efforts to resolve tenant or housing issues through dialogue. Open communication is essential in housing transactions, and this legislation risks undermining the trust necessary for productive relationships between landlords and tenants.
- **Potential for Entrapment and Unfair Practices:** The lack of clear guidelines and safeguards could encourage unethical tactics or entrapment by testers seeking to provoke potentially discriminatory responses. Secret recordings, especially when taken out of context, could be used unfairly against housing providers who may not have intended to discriminate. Entrapment tactics undermine the integrity of fair housing enforcement and may lead to costly and time-consuming legal disputes.
- **Increased Litigation and Legal Challenges:** Senate Bill 107 is likely to result in increased litigation, as individuals and organizations challenge the legality of recordings made without their consent. Additionally, it may conflict with existing state and federal laws that protect privacy, leading to further legal complications and potential court challenges. The increased burden on the judicial system and the potential costs of defending against such challenges should be carefully considered before moving forward with this bill.
- **Alternative Methods for Enforcement Exist:** Fair housing violations can often be documented through non-intrusive methods, such as written communications, publicly accessible information, or direct observation. These methods respect the privacy of all parties while still providing the necessary evidence to support fair housing enforcement. Rather than creating exceptions to two-party consent laws, efforts should focus on strengthening existing methods of enforcement that do not compromise privacy rights.
- **Negative Public Perception:** Permitting secret recordings by individuals acting on behalf of government or non-profit programs risks generating negative public perception. This may undermine support for fair housing initiatives by fostering distrust in the methods used to enforce them. Public confidence in both privacy laws and anti-discrimination efforts is essential for their effectiveness.

While the goal of eliminating housing discrimination is essential, Senate Bill 107 takes an approach that compromises privacy rights, lacks sufficient safeguards, and risks public trust. There are more balanced and effective ways to strengthen fair housing enforcement without eroding fundamental privacy protections.

For these reasons, the Maryland Multi-Housing Association respectfully requests an unfavorable report on Senate Bill 107.



Please contact Aaron J. Greenfield at 410.446.1992 if you have any questions.

AOBA MD SB107 UNF.pdf

Uploaded by: Hugo Cantu

Position: UNF



FEDERATED WITH:
BOMA **NAA**

Bill No: SB107 - Evidence - Interception of Oral Communications - Fair Housing Testing

Committee: Judiciary

Date: 1/15/2025

Position: Unfavorable

The Apartment and Office Building Association (AOBA) of Metropolitan Washington is the leading non-profit trade association representing the owners and managers of more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's counties. On behalf of its member companies, AOBA submits the comments on the proposed Senate Bill 107.

Senate Bill 107 allows for the interception of a wire, oral or electronic communication by an individual so long as the person is working as a fair housing tester for such a program operated by the Federal Government, the State, local government or non-profit civil rights organization. Additionally, that person must be a party to the communication and the interception is for the purpose of obtaining a fair housing violation under federal, state or local law.

While AOBA members agree that it's important to combat and preventing housing discrimination, members have serious concerns with allowing their staff to be secretly recorded by any government official or a non-profit employee as set forth in Senate Bill 107.

Privacy of Individuals: The most immediate danger is the undermining and invasion of individuals' fundamental right to privacy. Two-party consent laws are key to safeguarding individual's ability to maintain control over their personal or business information. In addition, entry level, frontline employees would be most at risk of having their careers or reputations ruined by secret recordings that may have been taken out of context.

Confusion in Legality: There is no question that the lack of clear guidelines and conflicting state and federal laws will increase litigation as individuals and organizations challenge recordings made without the consent of all parties. This will over burden the courts and increase legal costs for housing providers at a time when they are struggling to keep up with rising operating expenses.





FEDERATED WITH:
BOMA **NAA**

Slippery Slope: Weakening the state’s two-party consent laws creates a slippery slope. Should housing providers be able to record nuisance tenants to aid in eviction cases? Should patients be able to record health care professionals to prove medical malpractice claims?

Fortunately, there are already ways to prevent or document housing discrimination, including written communication and firsthand testimony. For these reasons, the Apartment and Office Building Association respectfully requests an **unfavorable report** on Senate Bill 107.