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**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the House Economic Matters Committee
In Support of House Bill 573
February 19, 2026**

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

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

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

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

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

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

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

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

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

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

The justification for inclusion of disparate impact as a theory of liability was well described by the Eight Circuit:

Effect, and not motivation, is the touchstone [of segregative effects liability], in part because clever men may easily conceal their motivations, but more importantly, because whatever our law was once, we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.⁶

The Supreme Court of Maryland also found that a neutral policy that has the effect of discrimination may constitute a violation of Maryland’s Housing Opportunity Made Equal Act, Md. Code Ann., State Gov’t § 20-705(1)-(2).⁷ The Court defined disparate impact as when “when parties are facially treated the same, but the outcome is discriminatory, often because the

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

⁶ *Unites States v. City of Jack Black*, 508 F2d 1179, 1185 (8th Cir. 1974).

⁷ *Hare v. David S. Brown Enterprises, Ltd.*, 491 Md. 653 (2025).

two groups are differently situated in a meaningful way.”⁸ In interpreting the Maryland Code, the Supreme Court relied heavily on the interpretation by the federal courts of the federal Fair Housing Act and the decision in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*

Disparate impact theory is under attack, and the threat has increased under the Trump Administration. Long in the cross hairs of conservative groups, the elimination of disparate impact was a core principle of Project 2025, which is serving at the roadmap for the Trump Administration.⁹ President Trump’s Executive Order 14281 asserts that “It is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.” The federal Department of Housing and Urban Development issued a proposed rules change on January 14, 2026 to eliminate disparate impact from its fair housing regulations.¹⁰

Disparate impact remains the law, however, its future is unknown. As the federal government grows hostile to civil rights enforcement and a conservative Supreme Court stands ready to overturn long standing precedent, the importance of Maryland’s anti-discrimination laws increase. While we believe that disparate impact is available under current law, HB 573 ensures that there is no ambiguity. For these reasons, we urge a favorable report.

⁸ Id. at 672.

⁹ Heritage Foundation, Mandate for Leadership, Project 2025, https://static.project2025.org/2025_MandateForLeadership_FULL.pdf

¹⁰ HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” Docket No. FR–6540–P–01, RIN 2529–AB09, Document No. 2026-00590, 91 FR 1475 (January 14, 2026)