WRITTEN TESTIMONY IN SUPPORT OF SB 0190

John H. Morris, Jr.
1210 East 33rd Street
Baltimore, Maryland 21218
(443) 838-7193
jmorris706@aol.com

I am John H. Morris, Jr. This testimony is submitted in support of the legislation identified as SB 0190. I have been a civil litigator. From 1985 through 1993, I have been a partner at Venable, Baetjer and Howard. Over the years, I have served as a visiting professor of law at the University of Baltimore, an instructor in Urban Planning and Community Economic Development at Sojourner Douglass College, and an instructor in Constitutional Law at Stevenson University. I have been a federal public defender in the District of Maryland, special assistant to the general counsel of the federal Department of Education, a law clerk to federal judge, Hon. Joseph H. Young, in the district of Maryland. In addition to the above, in my civic life, I have served as a member of the board of directors for such local not-for-profit organizations as the Baltimore Children and Youth Fund, Associated Black Charities, Interfaith Action for Racial Justice, the American Civil Liberties Union – Maryland, and the Public Justice Center. I secured my education in law through a law degree from Yale Law School.

Through the above professional and civic associations, I have encountered direct experience with the contradictions and paradoxes of prescribed equality, as

well as both taught and written on the subject. It is in this capacity that I hereby testify as to the urgency of the pending legislation.

SB 0190 is crafted simply to facilitate a bequest to address health disparities so as to give a voice to the intention of a decedent through the admission of extrinsic evidence regarding the life's work of the decedent to clarify that intention. Such legislation is needed to respond to the readiness of institutions to continue and persist in practices that promote racial disparity in their common resistance to engage in effective self-critique. Such change too often requires an investment in insight into the problem that the institution may need to acquire or change that necessitates expense. A simple bequest to a health provider, absent more specific direction regarding its application, too often underwrites an organization's existing practices that have historically yielded the disparities whose elimination past adoptions of Maryland law have identified as the focus of public policy.

The problem presented here is that it is often difficult to align the intention underlying a will provision with the intentions of the person making a bequest without a deep understanding of who the person is making the will. Ordinarily, courts may not consider extrinsic evidence of a person's intentions in making a will when courts construe the will. Nevertheless, the court may consider what it calls extrinsic evidence – proof outside the wording of the will itself -- only to resolve an established ambiguity reflected in the wording of the document. The problem

this principle does not anticipate is what happens then the plain unambiguous wording of a will=s bequest, if executed without due clarification by extrinsic evidence, plainly makes a mockery of the decedent=s life in that, knowing the decedent, it would be simply unthinkable that the decedent intended the argued result brought about by the wording in the will without the added clarification.

Consider this hypothetical illustration of the problem.

> In 1955, Rosa Parks accumulated a sizeable fortune. After refusing to give up her seat on the bus, sparking the Montgomery Bus Boycott, she has considered ways in which her fortune might be used to facilitate the desegregation of Montgomery=s buses, and has met with her lawyer to revise her will to make a large bequest to the transit company to soften the transition to a new equitable arrangement for the buses. Understanding that negotiations between the City of Montgomery, the Montgomery Improvement Association to be ongoing, and expecting Dr. King to use this financial gift as an inducement to secure equity, Rosa=s will be drafted with no express proviso restricting use of the funds to desegregation efforts. Before the boycott is resolved, Rosa dies unexpectedly, and her will is probated. So, Relying upon the principle that the unambiguous wording of a will should control its interpretation, the transit company insists that the probate court direct Rosa=s gift be given it to support its ordinary segregated operation while it opposes the boycott. Faced with a rule like the one now in place in Maryland, Rosa=s personal representative is powerless to effectuate Rosa=s intentions while allowing her otherwise unambiguous will to be interpreted to assist the continued operation she went to jail to oppose.

In the above hypothetical, SB 0190 would allow Rosa Parks to speak beyond the grave, through her personal representative's recitation of her life, to clarify that the bequest to an organization otherwise advancing racial disparity was not intended to support the organization's racially disparate operation but only to

facilitate a change in that organization's operation to promote a racially equitable impact. In the case of health results, the legislation would also support an outcome that Maryland law determines to be favorable to public policy.

Moreover, SB 0190 anticipates circumstances where its prescription would have wide application. There is an emerging pool of generational wealth arising from the Civil Rights Revolution of the 1960s about to be dispersed as aging Black entrepreneurs and professionals live out their retirement years and look to dispose of the remainder of the savings that had sustained their retirement. That new wealth to directed by them with due legal protection of its intended application, may reflect the most effective support of the State's articulation of public policy than any formal appropriation of public funds.

Why might anyone oppose this outcome? This testimony is not intended to offer the answer to that question, only to acknowledge that there are indeed entities opposed to that outcome. These entities may profess the best of intentions or contend that, somehow, they know better; yet, nonetheless, they somehow manage outcomes that promote the disparity they degree. These entities require the incentive structure that SB 0190 promotes to achieve success in eliminating disparity.

Those opposing this legislation say that, while they sympathize with its objective of addressing health disparities, they contend that the legislation is

contrary to established caselaw, and that they do not understand how it addresses the professed objective. Those opposed to this legislation are wrong on both points, leaving in place of their opposition, only the favorable objective they commend.

Specifically, they maintain that law only permits extrinsic evidence of the decedent's intent where the will is patently ambiguous, such as where the will would appear to make a confusing reference to two or more legatees. This legislation's opponents accordingly accept an understanding of ambiguity limited to the above circumstance. The Legislation embraces an understanding of ambiguity beyond that arising from imprecise drafting causing the confusion of potential legatees, to include an ambiguity arising from an imprecise indication of intent arising from the decedent's assumption that an intention to advance an outcome that the law already accepts as public policy requires a more direct announcement. To the extent that such confusion between the language set forth in the will and the different outcome intended by a decedent's relying upon the law's declaration of public policy to inform the reading of the will to reflect that intent, the law should also provide the remedy to rectify the confusion it might otherwise promote. SB 0190 provides such a remedy that the law otherwise does not offer.

The opponents would not allow such extrinsic proof to clarify the intention of the decedent when the Court's proposed interpretation of a will bequest simply

contradicts how the decedent has lived his or her life. Is procedural conformance more important than honoring the life's work of the decedent as it may inform intention? The opponents to this legislation simply overlook that power of this body to clarify what the law should be – particularly when it has previously articulated public policy, and the outcome that this legislation supports is entirely compatible with that policy.

Last, the opponents observe that the objective of this legislation can easily be achieved with the intervention of good lawyering in crafting a suitable will. How far should the assumption of good lawyering go? In criminal law, for example, the Constitution and the Maryland Declaration of Rights assure good lawyering to every criminal defendant. Yet, that guarantee is not, as a matter of law, sufficient to require the upholding of every guilty verdict secured with a defendant's provision of counsel. The law nonetheless provides a process for the court to determine whether the criminal proceedings were tainted by counsel's ineffectiveness. This legislation offers similar procedural protection to promote the intention of the decedent notwithstanding the availability of counsel. Is that process unreasonable where the Court may be proceeding demonstrably contrary to the decedent's intention? Isn't such provision a reasonable application of the law not otherwise afforded? This legislature has the power to make things right, and it

should here exercise that authority contrary to the recommendation of the opponents to this legislation.

Ironically, it is the existence of that inexplicable opposition that speaks to the necessity for this legislation. Without the protection this legislation would afford to the clarified intention of the decedent, it is hard to imagine a future where such disparities no longer persist. The General Assembly should therefore adopt SB 0190 as law in Maryland.