



**Testimony for the House Judiciary Committee
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**HB 393 Award of Attorney's Fees and Expenses - Violation of Maryland
Constitutional Right**

SUPPORT

The ACLU of Maryland supports HB 393, which would authorize a court to award prevailing plaintiffs attorneys' fees in cases that result in the enforcement of the Maryland Constitution or the Maryland Declaration of Rights.

Under our current system, low-income plaintiffs have a hard time finding an attorney to represent them in their claims. Legal Aid attorneys are stretched thin and private attorneys do not often take cases in which they do not get paid (though some do *pro bono* work). We turn away thousands of potential plaintiffs, for myriad reasons. There are many instances where we would like to give referrals but know that private lawyers won't take the cases because many civil rights cases just aren't lucrative. They are complicated, hard to prove, and the damages often are very low. As a result, private lawyers will not take them on a contingent basis. Allowing fees to be recovered in these cases in state court could make lawyers much more available.

Cases under the Maryland Constitution and the Declaration of Rights are generally cases for injunctive relief, and/or carry with them minimal financial damages. Moreover, these cases can take a long time to litigate, resulting in even more work for the attorneys who take them on. As a result, plaintiffs have little incentive to bring these cases, and violations of our Constitution and Declaration of Rights go unchallenged. A statute that allows for fees would enable private attorneys to take such claims—and the provision that allows defendants to obtain fees for frivolous actions will weed out non-meritorious claims—thereby benefitting all.

Furthermore, without such a law in Maryland, plaintiffs may be forced to litigate their cases in federal court, where several statutes provide for the awarding of fees to prevailing plaintiffs. (*See, e.g.* 42 U.S.C. § 1988). Plaintiffs may prefer to litigate their cases under state law claims, in state courts. This may apply especially to those who are far from urban centers, such as the lower Eastern Shore or far Western Maryland.

Finally, enforcing the promise of our Constitution and of the Maryland Declaration of Rights is of value not only to the one who was injured, but to all, as it has the high potential to deter similar behavior in the future. A further benefit is the deterrence of undesirable litigation behavior. Larger and more financially secure entities can make litigation impossible for others through dilatory tactics and constant delays and skirmishes over minor issues. The prospect of attorney's fees could help deter some of that behavior.

For the foregoing reasons, the ACLU of Maryland supports HB 393.

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