



TONI HOLNESS
PUBLIC POLICY
ASSOCIATE

**Testimony for the Senate Judicial Proceedings Committee
April 2, 2015**

**HB 113 Local Government Tort Claims Act - Limits on Liability
and
HB 114 Maryland Tort Claims Act - Limit on Liability**

SUPPORT

The ACLU of Maryland supports HB 113 and HB 114. HB 113 would raise the local tort claim cap from \$200,000 to \$300,00 for individual claims and from \$500,000 to \$600,000 for aggregated claims. HB 114 would raise the state tort claim cap from \$200,000 to \$300,000.

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

FIELD OFFICE
6930 CARROLL AVENUE
SUITE 410
TAKOMA PARK, MD 20912
T/240-274-5295

WWW.ACLU-MD.ORG

COLEMAN BAZELON
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

For centuries, the right to obtain redress when wronged has been recognized as a core protection against abuses of power. Over time, this principle—drafted at the time of the Magna Carta, explained by Sir Edward Coke, and then adopted by the framers of Maryland’s Declaration of Rights—has been adapted to the challenges and struggles of each era. With each era has come a more robust, expansive, and nuanced understanding of what this promise means.

The tort claims cap, however, has provided a shield under which jurisdictions have broken this promise, escaped liability, and avoided responsibility for wrongdoing. A low level of financial liability simply makes it too easy for jurisdictions to ignore repeated violations. Without a significant impact on the bottom line, there is little deterrence for state and local wrongdoing. HB 113 and HB 114 seek to remedy this.

The Espina family’s case presents the struggle to protect against abuses of power: the excesses of police, and the vulnerability of those who seek to hold police accountable when the government not only fails to do so itself but instead defends the abuses in court. The events of the last year in Maryland and across the country have helped raise awareness about the extent to which police abuses persist, the extent to which they are borne disproportionately by marginalized communities of color, and the extent to which the government has fallen short in bringing justice for these wrongs.¹

¹ See, e.g., Mark Puente, *Undue Force*, Balt. Sun, Sept. 28, 2014 (documenting scope of police brutality incidents by Baltimore City Police Department), <http://data.baltimoresun.com/news/police-settlements/>; Frank Serpico, *The Police are Still Out of Control*, Politico, Oct. 23, 2014 (arguing that police excessive force has worsened in recent years and describing racial disparities in experiences of excessive force), <http://www.politico.com/magazine/story/2014/10/the-police-are-still-out-of-control-112160.html>; Ryan Gabrielson, Ryann Grochowski Jones and Eric Sagara, *Deadly Force, in Black and White*, ProPublica, Oct. 10, 2014 (analyzing police-involved killings and finding extreme racial disparities), <http://www.propublica.org/article/deadlyforce-in-black-and-white>; Scott Turow,

Mr. Espina was having a beer outside his home while his wife and child finished preparing for his birthday. Officer Jackson, off-duty and moonlighting as a security guard, confronted Mr. Espina for drinking in public and shot him. A civil jury found that the officer acted with malice and was responsible for Mr. Espina's wrongful death. As a sign of their outrage, the jury awarded the family \$11.5 million dollars. That amount, however, due to the cap, will be reduced to a mere fraction—\$200,000 to Mrs. Espina and \$200,000 to her son who intervened between the officer and his father.

While no amount of money could ever replace a husband and a father, a higher cap would serve two purposes: one, to help the Espina family in light of their loss; and two, to send a powerful message to county officials that they have to take allegations of misconduct seriously. Without such a magnitude of a verdict, state and local officials have no incentive to take action.

For the foregoing reasons, the ACLU of Maryland supports HB 113 and HB 114.

Presumed Guilty: You Think You Know Why the Diallo Cops Were Acquitted. Think Again, Wash. Post, Mar. 5, 2000, at B1 (describing racial inequality in patterns of police abuse); Peter Davis, *Rodney King and the Decriminalization of Police Brutality in America: Direct and Judicial Access to the Grand Jury as Remedies for Victims of Police Brutality When the Prosecutor Declines to Prosecute*, 53 Md. L. Rev. 271 (1994) (chronicling systemic scope of failure of accountability mechanisms responding to police brutality nationally).