

# **APABA-MD SB50 Statement - SUPPORT.pdf**

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Position: FAV



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**Written Testimony on Behalf of  
The Asian Pacific American Bar Association of Maryland  
in Support of SB 50 / HB 394  
Human Relations - Commission on Civil Rights - Appeal of Final Orders  
Senate Judicial Proceedings Committee  
February 8, 2024**

The Asian Pacific American Bar Association of Maryland (APABA-MD) is writing in support of [SB50](#) and [HB394](#) in hopes of further advocating for equity and impartiality within the judicial and administrative process. Since our establishment as a non-profit organization in 2002, APABA-MD's goals have included promoting the quality of legal service to the Asian Pacific American community, monitoring legislative, judicial, and administrative actions that may significantly impact the Asian Pacific American community, and strengthening equal opportunities to ensure equal participation and treatment to eliminate prejudice against Asian Pacific Americans.

We recognize that there has been a rise of hate crimes against the Asian Pacific American community as well as a long history of racism and public accommodations discrimination against Asian Americans. APABA-MD writes in support of these two bills because we are particularly interested in advocating for full access to the courts, which are both critical to protecting individuals and Asian Pacific Americans from further discrimination and enforcing equitable legal procedures, all in support of APABA-MD's mission.

**SB50\_Written\_LAM.pdf**

Uploaded by: Clarence Lam

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Finance Committee

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Asian-American & Pacific-Islander Caucus

## THE SENATE OF MARYLAND ANNAPOLIS, MARYLAND 21401

### SUPPORT -- SB50 Human Relations - Commission on Civil Rights - Appeal of Final Orders

#### Background

- The Maryland Commission on Civil Rights (MCCR) investigates complaints of discrimination in a variety of areas, including employment, housing, and public accommodations.
- After reviewing a complainant's evidence, if MCCR finds in a preliminary investigation that the evidence does not support a finding of discrimination, MCCR issues a finding of "No Probable Cause"
- Last year, in *Rowe v. MCCR*, the Supreme Court of Maryland ruled 4-3 that plaintiffs seeking review of MCCR determinations of no probable cause could not have their cases appealed beyond the circuit court.

#### What This Bill Does

- This bill clarifies that findings of no probable cause may be appealed beyond the circuit court.

#### Why This Bill is Needed

- The majority of complaints that MCCR handles result in a finding of no probable cause, and circuit courts typically uphold these findings: it is critical that Marylanders are able to access a higher level of judicial scrutiny in cases of discrimination to correct any mistakes.
- It was already a widely held belief, including by MCCR, that the statute permitted review beyond the circuit court. The issue was raised *sua sponte* in *Rowe*.
  - In *Vasvori v. Commission on Human Relations*, 65 Md. App. 237 (1985): MCCR failed to argue that the Appellate court had no jurisdiction
  - In *Rowe v. MCCR*, MCCR's counsel stated that the Appellate Court had jurisdiction
- This precedent applies to all cases of discrimination in public accommodation, including race, sex, disability, and other classes; these Marylanders should be able to access the full extent of the judiciary just like any other administrative proceeding.

**DRM\_SB 50\_Support\_Final.pdf**

Uploaded by: Courtney Bergan

Position: FAV

**SENATE JUDICIAL PROCEEDINGS COMMITTEE****Senate Bill 50: Human Relations - Commission on Civil Rights - Appeal of Final Orders****Date: February 8, 2024****Position: Support**

Disability Rights Maryland (DRM) is the protection and advocacy organization for the state of Maryland; the mission of the organization, part of a national network of similar agencies, is to advocate for the legal rights of people with disabilities throughout the state. Given the Maryland Commission on Civil Rights (MCCR) is tasked with investigating and adjudicating civil rights complaints, including complaints of disability discrimination under Maryland law, DRM is invested in promoting the success of MCCR's mission to guarantee the civil rights of all Marylanders and we appreciate the opportunity to provide testimony on this bill. Senate Bill 50 provides a necessary fix to restore effective administrative enforcement of Maryland's civil rights laws, by providing civil rights complaints dismissed upon a finding of "no probable cause" and then denied reconsideration by MCCR, are final orders entitled to the full rights of judicial review as provided for in the Administrative Procedure Act (APA).

Under the APA, agency decisions that deprive an individual of a substantive right are entitled to judicial review and subsequent appellate review. Currently, an MCCR decision dismissing a complaint on a finding of no probable cause may be reviewed by a Circuit Court, but is not afforded further appeal to the appellate courts, denying the complainant meaningful access to the full protections of state civil rights laws and depriving many individuals of legal protections that are essential to maintaining a functioning society.<sup>1</sup> It is imperative that MCCR decisions be treated like other state agencies responsible for adjudicating individual rights and that individuals who are deprived of rights by MCCR's no probable cause determinations be granted full rights to judicial review when the agency denies reconsideration.

In a recent Maryland Supreme Court case, *Rowe v. MCCR*, the Court determined that the legislature failed to provide language expressing that "no probable cause" findings are final orders entitled to the full rights of judicial review.<sup>2</sup> Therefore, the court denied petitioner's

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<sup>1</sup> See, e.g., *State ex rel. Washington Univ. v. Richardson*, 396 S.W.3d 387, 392–93 (Mo. Ct. App. 2013) ("The MHRA's prohibition against discrimination serves a remedial purpose: it is designed to be conducive to public welfare and the public good. As such, it must be interpreted "liberally to include those cases which are within the spirit of the law and all reasonable doubts should be construed in favor of applicability to the case." (internal citations omitted)); *Ray v. State Human Rels. Comm'n*, No. : N20A-09-001-VLM, 2021 Del. Super. LEXIS 668, at \*6 (Super. Ct. Nov. 22, 2021) ("narrowing [Delaware Civil Rights] protection[s] ignores both the express mandates and comprehensive guidance under DEAL. It takes away the right of a protected class member to be heard.").

<sup>2</sup> The Md. Supreme Court suggests that the General Assembly could have guaranteed a right to judicial review and subsequent appellate review in State-Government § 20-1005(d)(2), by using language such as "a denial of a request for reconsideration of a finding of no probable cause by the Commission is a final order subject to judicial review equivalent to the review of a final order issued under § 20-1009 of this subtitle." *Rowe v. Maryland Comm'n on Civil Rights*, 483 Md. 329, 354, 292 A.3d 294, 309 (2023).

rights to seek appellate review of a circuit court’s adverse determination. The Court’s decision effectively makes the Circuit Court a dead-end to civil rights enforcement for the majority of complainants.<sup>3</sup> Because Circuit Courts commonly defer to MCCR decisions without careful review of the merits and 59 percent of all complaints filed with the MCCR are dismissed upon a finding of “no probable cause,” it is essential that appellate review be available for such complaints.<sup>4</sup> In fact, in 2023 MCCR found only 1 of 798 closed complaints warranted a “probable cause” finding.<sup>5</sup> Because of this tendency to dismiss civil rights complaints on no probable cause determinations, the vast majority of states with administrative schemes to enforce state civil rights laws provide rights to seek judicial and appellate review of a Commission’s no probable cause determinations.<sup>6</sup> Thus, the *Rowe* decision denying the full rights to judicial review of no probable cause determinations that are otherwise afforded to final agency orders deprives Marylanders of meaningful enforcement of civil rights and puts Maryland behind most other states on civil rights enforcement. The legislative fix provided in SB 50 is imperative to remedy this injustice.

Importantly, the *Rowe* decision also contradicts the purpose for creating state civil rights commissions, which were intended to enhance enforcement of civil rights laws beyond the capacity of individual “private Attorneys General” and ease access to justice.<sup>7</sup> However, in the decades since creating administrative enforcement schemes for civil rights, a lack of funding and agencies’ reluctance to enforce civil rights laws has led to civil rights commissions too often becoming a dead-end for justice, rather than means for obtaining justice. Thus, judicial review of MCCR’s no probable cause determinations is essential to ensure MCCR’s complaint procedures and decisions align with the legislature’s intent for robust civil rights enforcement. Guaranteeing effective administrative enforcement of civil rights is uniquely important because those most likely to be impacted by civil rights violations disproportionately lack the social and financial resources to access the legal counsel necessary to proceed with a civil complaint.<sup>8</sup> Because of this, most discrimination complaints submitted to MCCR are filed pro se and MCCR enjoys significant deference on appeal in the circuit courts. Thus, it is highly unlikely that MCCR’s “no probable cause” findings will be overturned by the various circuit courts across Maryland if the current bar on appellate review remains. Therefore, the legislature must

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<sup>3</sup> The inability to obtain appellate review may impact both the circuit court and MCCR’s decisions and thus, affect complainants’ substantive rights in the administrative process. In the case of MCCR, its notable that the number of complaints dismissed on a finding of “no probable cause” has been on the rise in recent years. *Compare* MCCR, *Annual Report*, 18 (2023) *with* MCCR, *Annual Report*, 14 (2020).

<sup>4</sup> MCCR, *Annual Report*, 18 (2023),

[https://mccr.maryland.gov/Documents/publications/MCCR\\_Annual%20report%202023.pdf](https://mccr.maryland.gov/Documents/publications/MCCR_Annual%20report%202023.pdf)

<sup>5</sup> *Id.* The discrepancy between the two statistics exists because many MCCR complaints are also administratively closed and some settled prior to a arriving at probable cause determination.

<sup>6</sup> Brief for Am. C.L. Union Md. et al. as Amici Curiae Supporting Appellant, *Rowe v. Maryland Comm’n on Civil Rights*, 483 Md. 329 (2023) (No. 17).

<sup>7</sup> *Estabrook v. Iowa Civ. Rts. Comm’n*, 283 N.W.2d 306, 312–13 (1979) (Uhlenhopp, J., concurring) (“For a number of reasons a civil action for damages is not an effective substitute for the variety of remedies provided by [State antidiscrimination statutes enforced by public agencies].”).

<sup>8</sup> Center for American Progress, *Making Justice Equal* (2016), <https://www.americanprogress.org/article/making-justice-equal/>

restore the protections that the right to judicial review of a final order provides under the APA, which includes the right to subsequent appellate review of a no probable cause determination.

Notably, state civil rights commissions may be especially likely to improperly dismiss complaints made by people with disabilities on no probable cause findings due to structural stigma about disability, such as beliefs that people with disabilities lack credibility.<sup>9</sup> The right to judicial review and subsequent appellate review of no probable cause determinations in other states has demonstrated the importance of proper judicial oversight, as appellate courts frequently reverse erroneous no probable cause findings in disability discrimination complaints.<sup>10</sup> Thus, affording “no probable cause” findings which are denied reconsideration the full rights to judicial review under the APA is essential to fulfill the legislature’s purpose in creating effective and accessible administrative enforcement of civil rights violations to remedy the ongoing disability discrimination that pervades our society.

DRM recommends a favorable report on SB 50, to enhance civil rights protections and help make Maryland more inclusive, just, and equitable for all. Please contact Courtney Bergan, Equal Justice Works Fellow for more information at [CourtneyB@DisabilityRightsMd.org](mailto:CourtneyB@DisabilityRightsMd.org) or 443-692-2477.

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<sup>9</sup> See Katie Eyer, *Claiming Disability*, 101 B.U.L. REV. 547, 563 (March 2021).

<sup>10</sup> *E.g. Abadi v. Walt Disney World Parks & Resorts*, 338 So. 3d 1101, 1105 (Fla. Dist. Ct. App. 2022) (holding complaint improperly dismissed when complainant alleged that Disney World refused to make reasonable accommodations, which deterred the complainant from visiting the park).



**SB 50 - PJC testimony - favorable.pdf**

Uploaded by: Debra Gardner

Position: FAV



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**SB 50 Human Relations – Commission on Civil Rights – Appeal of Final Orders  
Hearing before the Senate Judicial Proceedings Committee, February 8, 2024  
Position: Favorable**

**SB 50 is a simple bill to restore a right to appeal** a no-probable-cause finding by the Maryland Commission on Civil Rights (MCCR) on a discrimination complaint in a public accommodation. The bill is necessary to address the ruling of the Maryland Supreme Court in *Rowe v. Md. Comm'n on Civil Rts.*, 483 Md. 329 (2023).

In a 4-3 decision, the Court held, based on interpretation of a provision of the MCCR statute, that judicial review of these no-probable-cause rulings stops at the circuit court. Jennifer Rowe, a client of the Public Justice Center, lost all chance of having an appellate court review the dismissal of her complaint as a result. Chief Justice Fader, writing for the 3-judge dissent, analyzed the statute and concluded that it provided for that right.

**For over 40 years, everyone, including the MCCR itself, had believed that such a right of appeal existed in Maryland law.** (But a judge of the Appellate Court of Maryland raised the appellate jurisdiction sua sponte in the *Rowe* case, leading to the new interpretation extinguishing the right.)

Most MCCR complaints are dismissed on grounds of no probable cause to find that discrimination occurred. These findings often result from flawed preliminary investigations. The agency is underfunded and understaffed. No probable cause determinations are made by a single investigator with an unmanageable caseload before any effort to conciliate the dispute or hold any evidentiary hearing. Circuit courts routinely affirm the agency's determination. Such mistakes were made in Ms. Rowe's case, who was representing herself at the time, but her search for justice was cut short.

**If the agency's investigation is flawed or based on a legal error, there is now no way to have our appellate courts correct the mistake.** This also prevents our courts from developing precedent under our important and historic public accommodations civil rights law. Important civil rights are at stake—equal treatment and service in Maryland's restaurants, department stores, fitness centers—in all public accommodations—regardless of race, sex, gender, gender identity, disability, and all other legally protected classes. **So when an appeal is warranted, it must be available.**

What about the floodgates? No cause for concern here. As noted, even the MCCR believed this appeal existed until the Court ruled otherwise. But during that 40-year history, very few such appeals were filed.

SB 50 is simple and similar to 2023 Md. Laws, ch. 156, clarifying the right to appeal from decisions of another administrative agency (the Public Information Act Compliance Board.)

For the foregoing reasons, **the Public Justice Center urges a favorable report on SB 50.** Should you have any questions, please contact Debra Gardner, Legal Director, at 410-625-9409 x228 or [gardnerd@publicjustice.org](mailto:gardnerd@publicjustice.org).

*The Public Justice Center is a 501(c)(3) charitable organization and as such does not endorse or oppose any political party or candidate for elected office.*

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Uploaded by: Jennifer Rowe

Position: FAV

Jennifer Rowe

Testimony in Favor of Senate Bill 50

Dear Senator Smith and members of the Judicial Proceedings Committee:

My name is Jennifer Rowe. As a resident of Maryland and a person with a disability, I am writing to support Senate Bill 50.

From 2016 to 2019, I was a member of Krav Maga Maryland, a self-defense school in Columbia. In 2019, my membership was cancelled in retaliation for complaining about discrimination I had experienced there. I immediately reported the incident to the Maryland Commission on Civil Rights in the hope of holding the school accountable.

Unfortunately, my experience with the Commission was deeply disappointing. First, the intake supervisor incorrectly stated that the Commission did not handle retaliation claims and required me to remove that part of my complaint. Second, although the regulations require a conference that includes both sides, the investigator met with the school and its legal counsel before meeting with me. By the time I met with him, he seemed to have already accepted the school's version of events. I expressed concern about bias, and he responded by becoming defensive, accusing me of mistreating him, and abruptly ending the meeting.

Approximately eight months later, I learned that the Commission had found no probable cause to believe that discrimination had occurred. I submitted a Request for Reconsideration, which was denied without explanation. Then I filed a petition for judicial review. Unfortunately, the circuit court did not seriously consider my position; it upheld the finding with very little analysis. I appealed, but both the appellate court and the state supreme court ruled that jurisdiction ends at the circuit court. Out of options, I was left with a sense of injustice and second-class citizenship, as well as deep concern for other marginalized and vulnerable residents.

Therefore, I urge the committee to support Senate Bill 50. Thank you for hearing my concerns.

**MRA BGL Testimony FAV SB50.pdf**

Uploaded by: Michael Abrams

Position: FAV

## **Members of the Judicial Proceedings Committee:**

My name is Michael Abrams; I am a civil rights attorney based in Baltimore with Brown, Goldstein & Levy LLP.<sup>1</sup> For the following reasons, I urge you to vote in favor of SB50 to expand appeal rights in cases arising from the Maryland Commission on Civil Rights.

The Commission has a remarkable history. Its first incarnation was as the “Interracial Commission,” formed by this Legislature in 1927, composed of 9 Black members and 9 white members, dedicated to studying the “welfare of colored people residing in the State,” and to “recommend legislation and sponsor movements looking to the welfare of said people.” Over subsequent decades, the Commission would be renamed to the “Commission to Study Problems Affecting the Colored Population,” then the “Commission on Interracial Problems and Relations.”<sup>2</sup>

Meanwhile, in 1960, Robert Bell—a Black high school student and the future Chief Justice of Maryland—sat down in the segregated Hooper’s Restaurant in Baltimore and waited to be served. He was convicted on trespassing charges and his appeal went to the U.S. Supreme Court. He eventually prevailed on appeal because, in 1964, Maryland passed a law forbidding businesses from refusing to serve a member of the public based on their race. Maryland’s law made it a leader nationwide, predating the federal Civil Rights Act. At the time, the New York Times called the law’s passage a “stunning victory,” writing that the General Assembly “overrode strong rural segregationist sentiment” to “pass the first statewide public accommodations law in a Southern state.”<sup>3</sup>

A few years later, in 1969, this Legislature reformed the Commission into the “Commission on Human Relations,” a true administrative agency for the first time, with a budget for paid staff and authority to enforce this public accommodations law by investigating complaints of discrimination. Over time, Maryland continued to be a leader on civil rights protections, with the Commission’s purview growing to include fair housing laws, disability protections, and employment rules. Maryland persisted in leading the way when, in 1999, Governor Glendening advocated for protection based on sexual orientation, which was codified in 2001. Ten years later, the Commission was renamed to its modern form, as the Maryland Commission on Civil Rights.

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<sup>1</sup> This testimony reflects my personal opinion based on my professional experience, not the opinion of my employer.

<sup>2</sup> See generally Md. Comm’n Civ. Rts., *About MCCR*, <https://mccr.maryland.gov/Pages/About-MCCR.aspx>.

<sup>3</sup> Ben A. Franklin, *Bias in Public Accommodations Banned Statewide in Maryland* (N.Y. Times Mar. 15, 1964), <https://www.nytimes.com/1964/03/15/archives/bias-in-public-accommodations-banned-statewide-by-maryland-local.html>.

As this history reflects, the Commission is a vital state agency. If a Marylander suffers discrimination in a public accommodation and bravely decides to pursue justice, the law requires them to first seek relief through the Commission. The Commission is responsible for investigating and resolving such civil rights complaints in the first instance. The claimants often proceed *pro se*, meaning they represent themselves, without legal counsel, so the Commission's discretion over these cases is especially consequential.

Inevitably, the Commission will sometimes reach erroneous conclusions. The agency is understaffed and underfunded. The single investigator assigned to a complaint, who is likely to be spread far too thin, has complete discretion to issue a "no probable cause" determination, terminating a complaint. Appeal rights are the essential check against mistaken outcomes.

Appeals help to ensure that the complainant receives justice on both the substance of their complaint *and* the process provided by the Commission. For example, in Jennifer Rowe's testimony, she describes issues with the process she received in the Commission, which were not addressed by the short Circuit Court decision affirming the substance of the Commission's decision. Full appeal rights would make it much more likely that such issues are considered, resulting in clearer standards to guide the Commission's investigations and providing more effective oversight of the Commission's conduct.

While judicial review in the Circuit Court provides *some* oversight already, civil rights are too important for review to end there. Just like every state agency covered by Maryland's Administrative Procedure Act, the Commission's decisions should be subject to full appellate review in the Appellate Court and Supreme Court. The decisions of those courts are often published to serve as precedent in future cases. Full appeal rights from the Commission would not only help ensure fairer outcomes for victims of discrimination, but also would contribute to the development of civil rights law across Maryland.

As one small step to continue Maryland's legacy as a leader on these critical civil rights protections, the Committee should vote in favor of SB50.