

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia**

**D.C. Council Committee on Public Works and Operations
Public Hearing on B25-0319, “Fairness in Human Rights Administration Amendment Act
of 2023,” et al.**

by
**Scott Michelman, Legal Director
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Good morning. My name is Scott Michelman, and I am the Legal Director of the American Civil Liberties Union of the District of Columbia (ACLU-D.C.). I present the following testimony on behalf of our more than 14,000 members and supporters across the District. The ACLU-D.C. is a nonpartisan nonprofit that protects and advances civil liberties and civil rights for people who live in, work in, and visit D.C. We share the goal of the D.C. Human Rights Act (DCHRA) to secure an end to unlawful discrimination in the District of Columbia.

The DCHRA is one of the most potent tools available in D.C. law to challenge private and governmental discrimination, but it is not working as well as it should. Though impressive in its breadth, the DCHRA suffers from a key flaw: Except as to discrimination in real estate transactions, **individuals who have suffered discrimination can enforce their rights only within 1 year of the discrimination. We urge the D.C. Council to extend the DCHRA’s limitations period¹ from 1 to 3 years for all claims of discrimination.**

There are two problems with the 1-year period: first, it is too short on a practical level; and second, it is stingier than two-thirds of states nationwide. I’ll expand on each issue in turn.

One year is too short for victims of discrimination to bring an action.

When someone has suffered discrimination, the path to filing a complaint with either OHR or in court can be long. Victims of discrimination may not begin the search for counsel right away, because they may not immediately know their rights or understand that what happened to them violated the law. Once they recognize that they may have legal options, finding a lawyer is often difficult and time-consuming. Many lawyers will not take discrimination cases because damages may be low and the claims hard to prove. Where lawyers are open to such cases, they need time—which can be weeks or months—to investigate. Investigations may require speaking to numerous witnesses (who may not be easily found). All of this must happen before a complaint can be filed.

In the ACLU-D.C.’s experience, the sharply limited time afforded by the 1-year statute of limitations presents significant challenges, given the time required to investigate and prepare a complaint. When evaluating requests for legal help on discrimination matters, the 1-year deadline is a significant factor in how we proceed or even whether we can proceed. For instance, the 1-year period has influenced how much we are able to investigate before filing a complaint and whether we are able to pursue informal negotiations before filing. These are two key steps that can benefit

¹ D.C. Code § 2-1403.16(a).

someone who has suffered discrimination: more investigation can strengthen the complaint by fleshing out the facts, and negotiations can secure a faster remedy for the problem with an employer or institution that may become intransigent once a formal complaint is filed. In at least two recent instances, the 1-year period was the decisive factor in the ACLU-D.C.'s to decline to provide representation to a potential client at all. We simply didn't have enough time.

In contrast, we regularly sue under statutes with longer limitations periods—such as the main federal statute for the civil enforcement of constitutional rights, 42 U.S.C. § 1983—and do not encounter the time pressure nearly as often or to the same degree. Consequently, we can obtain better results for our clients in these cases.

The DCHRA's limitations period is out of step with most jurisdictions' civil rights laws.

Last year, the ACLU student chapter at Harvard Law School conducted a comprehensive review of state statutes of limitations for discrimination claims. The survey found that the 1-year statute of limitations made D.C. civil rights law stricter than over two-thirds of all states. Specifically, 36 states were found to have periods longer than 1 year for discrimination cases, including many that were 2 or 3 years and even a handful that were 5 or 6 years.

D.C. law was stingier in this regard not just compared to states that have often led the way on civil rights—states like California, Illinois, Massachusetts, New Jersey, New York, and Washington State. It was also stingier than many other states, including Arkansas, Kentucky, Florida, Georgia, Oklahoma, Texas, Utah, and West Virginia, each of which had at least one antidiscrimination statute allowing at least 2 years to bring a claim.

D.C. law was stinger than both of its neighboring jurisdictions, Maryland and Virginia, each of which allows 2 or 3 years to bring discrimination claims.

The Council should adopt a 3-year statute of limitations for all discrimination claims.

The Council has made the judgment that 3 years is the default statute of limitations for civil cases in the District of Columbia—that is, where “a limitation is not otherwise specially prescribed.”² Three years is also the period used in D.C. for constitutional claims and claims of discrimination under federal laws where a period is not otherwise specified (such as Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972).³ Using a three-year period would thus align DCHRA actions with most other types of civil rights actions brought in D.C.

Conclusion

We urge the Council to extend the DCHRA's limitations period from 1 to 3 years for all claims of discrimination. Statutes that protect our fundamental civil rights and liberties are only as powerful

² D.C. Code § 12-301(8).

³ See *Earle v. District of Columbia*, 707 F.3d 299, 305 (D.C. Cir. 2012) (constitutional claims); *Stafford v. George Wash. Univ.*, 56 F.4th 50, 53 (D.C. Cir. 2022) (certain federal discrimination claims).

as they are enforceable. If people who have suffered discrimination are shut out of court because the doors close on them too fast, then wrongs are not righted, discriminatory practices are left to persist, and our District is the less fair for it.

The road to justice after discrimination is often a long one. District residents' right to seek justice should not expire after just 1 year. The District should catch up to 36 other states and extend the time people have to file a discrimination case.