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FHCCI Statement on HB 1193 (Civil Rights Commission)

INDIANAPOLIS, IN – The Fair Housing Center of Central Indiana (FHCCI) provides this background and comments regarding changes proposed in [HB 1193 \(Civil Rights Commission\)](#). HB 1193 has been supported for passage in Indiana House and Senate Committee hearings by the Indiana Civil Rights Commission (ICRC) but could result in a loss of over \$555,000 in federal funding support they receive each year from the U.S. Department of Housing & Urban Development (HUD). It is unclear to the FHCCI *why* the ICRC continues to advocate for passage of HB 1193 unless they *want* to relinquish their role in Indiana as one of HUD's [Fair Housing Assistance Program \(FHAP\)](#) agencies for fair housing compliance.

The ICRC has had a FHAP contract with HUD for many years. ICRC, as a designated FHAP agency, contracts with HUD to enact and enforce [Indiana's Fair Housing Law \(Chapter 22-9.5\)](#). This law has been previously deemed by HUD to be substantially equivalent to the [federal Fair Housing Act](#). In exchange, HUD provides FHAP funding annually, *on a noncompetitive basis*, to the ICRC to administer Indiana's Fair Housing Law and provide rights and remedies that are substantially equivalent to those provided by the federal Fair Housing Act. The ICRC is paid per fair housing complaint processed (regardless of outcome) and receives additional funds for post-reasonable cause litigation and education and outreach activities. According to the ICRC's last posted [Annual Report for FY2023](#), the ICRC processed 148 fair housing complaints and was paid \$487,800 from HUD for those activities, plus an additional \$32,000 in HUD partnership funds and \$36,000 in HUD special enforcement effort funds, a total of \$555,800 during that year.

HB 1193 proposes several provisions which would likely result in a decision that Indiana's Fair Housing Law is *no longer substantially equivalent* to the federal Fair Housing Act because the rights and remedies in Indiana's law *would no longer* be substantially equivalent to the rights and remedies provided under the federal Fair Housing Act. Specifically under HB 1193, (1) the major limitations in state court election when the ICRC has investigated a complaint and made a determination of reasonable cause are not equivalent to federal law, (2) the changes relating to relief are not equivalent to federal law, and (3) the changes relating to the availability of attorney's fees would no longer be equivalent to federal law.

Standards for whether the rights and remedies in a state or local law are substantially equivalent are established by regulation and long-standing practice by HUD's Office of Fair Housing and Equal Opportunity. The FHAP regulations are found at [24 CFR 115](#). Ultimately, HUD will need to decide if the changes under HB 1193 would cause a loss of substantial equivalency. Outlined below, to the best of the FHCCI's ability, are the proposed state law changes in the [most recently posted bill language](#) most likely to impact substantial equivalency.

Direct Representation Confusion: Currently, the ICRC *does not* directly represent any complainant in a housing discrimination complaint when the ICRC has found a determination of reasonable cause. Instead, the

ICRC moves forward *on behalf of the ICRC* itself, seeking appropriate relief for the aggrieved complainant. In fact, under current law, the ICRC does not need the complainant's approval for any action or resolution. However, most FHAP agencies will work with the complainant to ensure they are involved in any decision making and terms for any resolution. For a complainant to be *directly represented* when the ICRC has found reasonable cause, the complainant *needs to intervene* with their own legal counsel into any litigation after the ICRC has filed the complaint on the ICRC's behalf. The repetitive language in HB 1193 about the lack of direct representation is unnecessary and causes extensive confusion as shown in questioning by committee members.

Post Reasonable Cause Action: Under current law, if a fair housing complaint is found to have reasonable cause, it automatically moves forward in the administrative process unless a party (the complainant or respondent) elects for state court. If either party elects for state court, the complaint then moves forward in the state court process, and the administrative process is closed. In either process, the ICRC is responsible for filing the complaint on behalf of the ICRC to remedy the reasonable cause violations uncovered.

HB 1193 proposes changes which would *prohibit* the ICRC from even working on behalf of a complainant or other individual in a claim brought in state court after issuance of a determination of reasonable cause by the ICRC and an election made by either a complainant or a respondent in that action (Section 6). For example, if the ICRC finds that reasonable cause exists in a fair housing complaint, the victim of discrimination will now be burdened with locating private counsel and filing a lawsuit for the complaint to proceed, *even when* the complainant wanted to pursue the administrative process but the housing provider elected for the state court process. Based on the FHCCI's experience, it is common practice for housing providers to elect for state court. The changes in HB 1193 will likely result in complaints with reasonable cause never moving forward because a complainant cannot locate an attorney to represent them, especially involving smaller housing providers where an attorney may not be able to recover their costs.

HB 1193's provisions are inconsistent with the federal Fair Housing Act and FHAP regulatory requirements for a substantially equivalent agency because it:

- Delegates to a non-governmental authority (i.e. a complainant or their counsel) decision-making whether or not an election action will be pursued or temporary relief will be sought (24 CFR 115.204(f)(4) and (5)), which makes Indiana's law not substantially equivalent on its face.
- Does not provide an election option that is substantially equivalent to that available under Section 812 of the federal Fair Housing Act.
- Places an additional burden on complainants who chose an administrative remedy by requiring them (rather than allowing them) to bring a case on their own behalf in state court in order to protect their rights.
- No longer requires that the ICRC provide an action in court at ICRC's expense when reasonable cause is uncovered as required by 24 CFR 115.204(b)(1)(i), (iii), and (iv), a requirement for substantial equivalency.

Types of Relief: HB 1193 also changes the monetary relief available to a victim of housing discrimination to solely "reasonable attorney's fees and court costs." Section 9 strikes the language "or other appropriate relief" which would eliminate the authorization of actual damages in a judicial case involving housing discrimination. This provision is not substantially equivalent because it violates the requirement that a substantially equivalent law "[g]rant actual damages in an administrative proceeding or provide adjudication in court at agency expense to allow the award of actual damages to an aggrieved person." 24 CFR 115.204(b)(1)(iii).

For example, current Indiana Fair Housing Law defines the different types of monetary relief available to victims, which includes actual and punitive damages, in addition to reasonable attorney's fees and court costs (IC 22-9.5-7-2). Awards in fair housing cases frequently include damages for humiliation or embarrassment due to the discrimination experienced or for the deprivation of a victim's fair housing rights. Punitive damages may also be awarded. Punitive damages are specifically available as a means to *deter* future action and to punish for the harm that was caused by the discrimination. HB 1193 would no longer allow such damages.

Attorney Fees Only in Judicial Review Cases: The provision in Section 10, prohibiting the award of attorney's fees in actions other than judicial review cases, inappropriately burdens a complainant who brings such an action

and is not equivalent to the remedies available under the federal Fair Housing Act. 24 CFR 115.204(g)(3). Specifically, the federal Fair Housing Act requires that an award of reasonable attorney's fees be available in private causes of action brought by individuals under a state or local fair housing law. In addition, the elimination of the possible collection of attorney's fees places significant burdens on a complainant who must seek counsel for representation in an election case or a case for temporary relief, when they must seek independent counsel to represent them as required under HB 1193's changes. Such excessive and unnecessary burdens on complainants means that they must pay fees or costs to protect their rights. Such a provision is not substantially equivalent and violates 24 CFR 204(a)(3)(iii).

ICRC Support: The FHCCI testified in the House Judiciary Committee hearing pointing out problems and raising substantial equivalency concerns. The ICRC testified in both Indiana House and Senate Committees that it supports the language of HB 1193. Consequently, the FHCCI can only assume it supports HB 1193's harmful changes, the potential loss of over half a million dollars a year in federal funding, and its likely loss of status as a HUD FHAP agency.

HUD Review: If HB 1193 is passed and HUD applies similar review as it has in reviewing other state equivalency challenges,¹ the passage of these provisions would likely deem our state law to not be substantially equivalent to the provisions of the federal Fair Housing Act and will likely result in the loss of substantial equivalency status for the State of Indiana. This does not mean that Hoosiers will lose their ability to file their housing discrimination complaints. Instead of filing with ICRC or having their HUD-filed complaints transferred to the ICRC for investigation due to the FHAP contract, complaints would be investigated by HUD directly like they are in several other states who do not have substantially equivalent state fair housing laws.

Disappointedly, the ICRC has a long history in not meeting the needs of Hoosiers in effective enforcement of Indiana's Fair Housing Law. Although it has staff wanting to do their jobs well, those staff have not had the support of leadership to do such for well over a decade. The FHCCI and its clients have experienced inconsistent and inaccurate rulings of law by the ICRC and witnessed first-hand state court dismissals due to its lack of attention to administrative issues. Also concerning was a [2022 and 2023 Indiana Inspector General report](#) with findings demanding corrective action.

Enforcement of fair housing laws is already extremely challenging. It is a burdensome and often stressful process for those who have experienced housing discrimination. Our experience has been that the ICRC has consistently made the process more challenging for victims of housing discrimination. The Fair Housing Center of Central Indiana has raised concerns repeatedly in the past with ICRC leadership and HUD. Hoosier victims of housing discrimination deserve an effective process for their complaints as provided under the federal Fair Housing Act. The ICRC is not meeting those needs. It is for these reasons that the FHCCI will not continue to expend its scarce resources advocating for ICRC's continued funding support and Indiana Fair Housing Law substantial equivalency when the ICRC does not appear to have those same goals.

The Fair Housing Center of Central Indiana (FHCCI) is a private, nonprofit fair housing organization based in Indianapolis, Indiana. Its mission is to facilitate open housing for all people by ensuring the availability of affordable and accessible housing; promoting housing choice and homeownership; advocating for an inclusive housing market; working toward stable and equitable communities; and eradicating discrimination within Central Indiana, the State of Indiana, and nationally. For more information, visit: www.fhcci.org.

¹ HUD Letter to State of Missouri. <https://media.kansascity.com/livegraphics/2017/pdf/HUD-Letters-SB43.pdf#:~:text=In%20or%20around%20November%201992%2C%20the%20Department,render%20it%20fundamentally%20inconsistent%20with%20the%20Act.>