

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1857
September Term, 2019

MARIO ERNEST AMAYA, et al.,

Appellants,

v.

DGS CONSTRUCTION, LLC, et al.,

Appellees.

On Appeal from the Circuit Court for Prince George's County
(The Honorable McCarthy, J., Presiding)

**BRIEF OF *AMICI CURIAE* PUBLIC JUSTICE CENTER AND THE
METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION
IN SUPPORT OF APPELLANTS**

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STATEMENT OF INTEREST

The **Public Justice Center (PJC)**, is a non-profit civil rights and anti-poverty legal organization established in 1985. PJC uses impact litigation, public education, and legislative advocacy, and a race equity lens to accomplish law reform for its clients. Its Appellate Advocacy Project expands and improves representation of indigent and disadvantaged persons and civil rights issues before the Maryland and federal trial and appellate courts. The PJC has a longstanding commitment to ending wage theft. *See, e.g., Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436 (2018); *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Salinas v. Commer. Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017); *Perez v. Mountaire Farms Inc.*, 650 F.3d 350 (4th Cir. 2011) (amicus); *Heath v. Perdue Farms*, 87 F. Supp. 2d 452 (D. Md. 2000).

The **Metropolitan Washington Employment Lawyers Association (MWELA)** is a local affiliate of the National Employment Lawyers Association, a national organization of attorneys, primarily employees' counsel, who specialize in employment law. MWELA has over 300 members who represent and protect the interests of employees under state and federal law. The purpose of MWELA is to bring into close association employee advocates and attorneys to promote the efficiency of the legal system and fair and equal treatment under the law. MWELA has frequently participated as *amicus curiae* in cases of interest to their members, including the following cases involving Maryland wage and hour issues: *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Marshall v. Safeway, Inc.*, 437 Md. 542 (2014); and *Ocean City, Maryland, Chamber of Commerce v. Barufaldi*, 434 Md. 381 (2013).

PJC and MWELA have an interest in ensuring that Maryland's wage laws are liberally interpreted consistent with the General Assembly's humanitarian objectives.

INTRODUCTION

Wage theft is a pervasive problem and is rampant in low-wage, labor-intensive industries. Businesses steal an estimated \$15 billion dollars in unpaid minimum wages from their employees each year, through paying employees' wages at below-minimum wage rates, and through not paying wages at all for certain time and work. David Cooper & Teresa Kroeger, EPI, *Employers Steal Billions from Workers' Paychecks Each Year 4* (May 10, 2017), <https://files.epi.org/pdf/125116.pdf>.

The scope of wage theft is hard to accurately define because of vast underreporting caused by fears of retaliation and systemic failures. Women, people of color, and immigrants are at the highest risk and may not know they are experiencing wage theft. While certain industries have historically capitalized on a lack of enforcement to commit wage theft as part of their business model, such a race to the bottom is increasingly likely as more businesses in other industries face shuttering because of the COVID-19 pandemic.

The current historical context renders it imperative that this Court uphold the promise of Maryland's wage laws, which were enacted to ensure that Maryland's workers are paid all wages due for their work, to promote the general health and wellbeing, to protect against unfair competition, and to decrease reliance on public benefits. *See* Md. Code Ann., Lab. & Empl. § 3-402. Engrafting the federal Portal-to-Portal Act (PPA) onto Maryland law would turn back the clock on Maryland's workers,

undermine Maryland’s wage laws, and further exacerbate wage theft by sanctioning the widespread use of unlawful off-the-clock work. This Court should reject the call to judicial activism to adopt the PPA when the General Assembly has declined to do so.

ARGUMENT

I. THE WAGE THEFT EPIDEMIC ROBS LOW-WAGE WORKERS OF BILLIONS OF DOLLARS EACH YEAR AND HARMS MARGINALIZED COMMUNITIES

A. Wage Theft is a Pervasive Practice That is Economically Costly And Racially Predatory

Clocking out of a shift and being required to wipe tables and mop floors for thirty more minutes. Being instructed to report to a warehouse at 6:00 a.m. but not being paid until construction begins at 7:00 a.m. Being misclassified as an independent contractor and thus denied minimum and overtime wages. These are common examples of wage theft or the “nonpayment of wages for work that has already been performed.” Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. Irvine L. Rev. 655, 661 (2014).

Although the exact scope of wage theft is hard to define with precision, it is known to be pervasive. *See Cooper & Kroeger, supra*, at 2 (noting “suitable public data sources are limited”). The Economic Policy Institute (EPI) estimated that seventeen percent of low-wage workers, those most likely to experience wage theft, suffered minimum wage violations. *Id.* at 4. Those who did lost an average of twenty-five percent of their weekly (already low) earnings. *Id.* A National Employment Law Project (NELP) comprehensive study surveyed New York City, Chicago, and Los Angeles, and

found that wage theft cost low-wage workers in those cities \$3 billion annually. Annette Bernhardt, et. al., NELP, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> [hereinafter Bernhardt, et al., *Broken Laws*].

Wage theft is prevalent in Maryland, too. Approximately 580,000 Marylanders are cheated out of an estimated \$875 million in wages each year. Rebecca Lineberry, *Combatting Wage Theft: Establishing Employees as Secured Creditors Under the Maryland Unpaid Wage Lien Law*, 77 Md. L. Rev. 1229, 1235 (2018).

B. These Estimates Are Just the Tip of the Iceberg Because of Underreporting by Employees and Institutional Underenforcement of Wage Theft Laws

Employees cannot complain about wage theft if they do not know it is occurring. Further, employers may not keep adequate records of their own or understand their obligation to do so, which impedes pay transparency. Kim Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid--And What We Can Do About It* 23 (2011). Some employers intentionally keep inadequate records to commit wage theft. NELP, *Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft* 99-100 (2001). Some employers even deny that they employed a worker. See generally Richard F. Bruen, Jr., *Minimum Wage Law Claims When Employers Haven't Kept Accurate Records*, 85 Ill. B.J. 281 (1997). This makes off-the-clock wage claims notoriously difficult to prove because, inherently, the employer is not tracking the time. See Rachel Deutsch, Center for Popular Democracy, *Combatting Wage Theft with the Maryland Paystub Transparency Act of 2016* 8 (Feb. 2016),

<https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf> (“[W]hen employers fail to maintain the records that show the computation of wages, it is often impossible to reconstruct the full amount owed, and employees may never fully recover their wages.”). This is a common barrier for employees who have fallen victim to wage theft.

Employees may also not know the applicable law, including whether wait and travel time are compensable. Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 Wash. L. Rev. 759, 771 (2019). They may not know where to file a complaint. Annette Bernhardt et al., *Confronting the Gloves-Off Economy: America’s Broken Labor Standards and How to Fix Them* 26-27 (Jul. 2009), https://cepr.net/documents/publications/gloves_off_final.pdf. They may also have difficulty navigating the complaint process. Jonathan Harris & Molly Theobald, Pub. Justice Ctr., *Collecting Unpaid Wages and Enforcing Judgments in Maryland* 6 (2012), http://www.publicjustice.org/uploads/file/pdf/MD_Wage_Collection_Judgment_Enforcement_Guide_PJC_FINAL.pdf.

When employees can successfully navigate the complaint process and know that their wages are being stolen, they risk their employer retaliating against them. One survey of over 4,000 workers found that 43 percent of workers experienced retaliation after complaining about wage theft. Laura Huizar, NELP, *Exposing Wage Theft Without Fear* 4 (June 2019), <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>.

Employers may decrease employees' hours and pay, increase their workloads, or terminate them. Bernhardt et al., *Broken Laws, supra*, at 24-25. Undocumented workers may fear that their employer will report them to immigration officials. Shannon Gleeson, *Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making*, 35 *Law & Soc. Inquiry* 561, 580 (2010).

Fear of retaliation stops workers from even lodging initial complaints. One report found that out of 302 poultry workers, 40 percent were unwilling to report on-the-job injuries because they feared being disciplined or terminated. Southern Poverty Law Center & Alabama Appleseed, *Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers* 16 (Mar. 1, 2013), <https://www.splcenter.org/20130228/unsafe-these-speeds>. Another study found that only one in 130 victims of wage theft will ever make a complaint. David Weil & Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, 27 *Comp. Labor Law & Pol'y J.* 59, 82 (2006). This study also found that workers were less likely to complain if they worked in industries with the highest levels of violations. *Id.* The mere threat of retaliation “creates a culture of hopelessness and helplessness” that pervades low-wage workplaces. Brittany Scott, Raise the Floor Alliance & Nat'l Econ. & Soc. Rts. Initiative, *Challenging the Business of Fear* 17 (2016), https://issuu.com/raisethefloor/docs/challenging_the_business_of_fear_re.

Our public wage theft enforcement system “depends almost entirely on worker complaints, and the complaint rate remains abysmally low[.]” Nicole Hallett, *The Problem of Wage Theft*, 37 *Yale Law & Policy Review* 93, 108 (2018). Even when wage

theft is reported, the laws are underenforced. Agencies lack the resources to enforce wage laws. A recent study determined that there was one state investigator for every 146,000 workers in the United States. *Id.* at 122. An EPI report found that in 2017, the U.S. Department of Labor employed roughly the same number of investigators as it had nearly 70 years before. Cooper & Kroeger, *supra*, at 5.

Public enforcement of wage theft is also low in Maryland. The Maryland Employment Standards Service (ESS) enforces the Maryland Wage Payment and Collection Law (MWPCCL). Its resources are constantly in flux and depend upon shifting political and budgetary realities. *Baltimore Harbor Charters, Ltd. v. Ayd*, 365 Md. 366, 382 (2001). For instance, In the 1990s, the ESS eliminated and thus was unable to enforce the MWPCCL because of a budget crisis. *Friolo v. Frankel*, 373 Md. 501, 516 (2003). In response, the legislature created a private right of action in the MWPCCL in 1993 to avoid relying on public enforcement alone. *Id.* Thus, the lack of employee knowledge, negligent or unscrupulous employer practices, and institutional barriers together create a “self-perpetuating enforcement gap in low-wage workplaces” that impacts the most vulnerable people in our population who are most at risk for exploitation in the workplace. Charlotte S. Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 Ind. L.J. 1089, 1107 (2014).

C. Wage Theft Drives Families into Poverty and Harms Communities

The reach of wage theft extends to families and communities. A U.S. Department of Labor study found that, in New York and California, approximately 67,000 families live below the poverty line *because* of wage theft. Eastern Research Group Inc., U.S.

Dep't of Labor, *The Social and Economic Effects of Wage Violations Estimates for California and New York: Final Report*, ES-3 (2014), <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>. Wage theft forces families to rely on strained public benefits programs such as free or reduced lunch, disrupting the intent of wage laws. *See* Cooper & Kroeger, *supra*, at 14.

The result is that wage theft also impacts local economies. Low-wage workers circulate their wages in the local economy to cover necessities such as food, clothing, and shelter. When an employer commits wage theft, however, it indirectly impacts those businesses an employee would have patronized but for wage theft. Jose Eduardo Sanchez, Houston Interfaith Worker Justice Ctr., *Houston, We Have a Wage Theft Problem: The Impact of Wage Theft on Our City and the Local Solutions Necessary to Stop It* 4 (May 2012), <https://stopwagetheft.files.wordpress.com/2012/05/2012-houston-wage-theft-report.pdf>. Wage theft harms other workers because it puts “downward pressure on hourly wages in affected industries and occupations.” Cooper & Kroeger, *supra*, at 2. This makes it difficult for law-abiding employers to remain competitive. *See* Wage Theft Prevention and Wage Recovery Act, H.R. 3467, 115th Cong. § 2 (2017) (“[w]age theft . . . places law-abiding employers at a competitive disadvantage with noncompliant employers”). And the downward spiral continues.

D. Wage Theft is Rampant in Low-Wage Industries And Disproportionately Impacts Women, People of Color, and Immigrants

Wage theft is prevalent in food service, the hotel and motel industry, residential construction, janitorial services, moving companies, agriculture, landscaping, healthcare

services, home healthcare services, grocery stores, and retail trade. Matt Finkin, *From Weight Checking to Wage Checking: Arming Workers to Combat Wage Theft*, 90 Ind. L. J. 851, 852 (2015). These are the same workplaces where other employment law violations run rampant, including employment discrimination, harassment, health and safety violations, and inadequate or no sick leave. Huizar, *supra*, at 3. These sectors tend to be some of the most under-regulated in the country. Andrew Elmore, *The State Qui Tam to Enforce Employment Law*, 69 DePaul L. Rev. 357, 366 (2020).

Wage theft is also rampant in the construction industry, which overwhelmingly employs people of color and immigrants. For example, in the South, approximately one-third of construction workers are misclassified as independent contractors. David Weil, *Lots of Employees Get Misclassified as Contractors. Here's Why It Matters*, Harvard Business Review (July 5, 2017), <https://hbr.org/2017/07/lots-of-employees-get-misclassified-as-contractors-heres-why-it-matters>. Basic labor standards such as minimum wage, overtime, or compensation for hours worked do not apply to independent contractors. *Id.* Thus, an employer may choose misclassification to avoid paying workers what they are due.

The U.S. Department of Labor's Wage & Hour Division identified construction as a top priority industry because of its high levels of labor standard violations and use of contracting structures, such as outsourcing or subcontracting work. Catherine Ruckelshaus, et al., NELP, *Who's The Boss: Restoring Accountability for Labor Standards in Outsourced Work* 28 (May 2014), <https://www.nelp.org/wp-content/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards->

Outsourced-Work-Report.pdf. This makes sense because construction is “a fiercely competitive contract industry, characterized by slim profit margins, high injury and [workers’] comp rates, comprised largely of numerous small to medium-sized companies whose numbers and size may make them more likely to operate beyond the view of state regulators.” *Id.* at 27.

The people who bear the brunt of wage theft violations are those who already face rampant discrimination and workplace violations in the low-wage workforce: women, people of color, and immigrants. Rey Fuentes, *Making Workers Whole: A Retrospective Analysis of SB 588 and Enhanced Post-Judgment Collection in California*, 40 Berkeley J. Emp. & Lab. L. 369, 372 (2019).

Women are more likely to experience wage theft than men. Huizar, *supra*, at 4. Women already experience a gendered wage gap in the workforce. Wage theft leaves them worse off because “the earned wages they are denied [through wage theft] constitute a greater share of their earnings” compared to men. Cooper & Kroeger, *supra*, at 16. Undocumented women are even more likely to experience wage theft. Llezlie Green Coleman, *Exploited at the Intersection: A Critical Race Feminist Analysis of Undocumented Latina Workers and the Role of the Private Attorney General*, 22 Va. J. Soc. Pol’y & L. 397, 403 (2015). In its study of Chicago, Los Angeles, and New York, the NELP found that nearly half of female undocumented workers surveyed had experienced minimum wage violations in the week before the survey, compared to thirty percent of surveyed undocumented men. Bernhardt et. al, *Broken Laws, supra*, at 5.

Black people and other people of color, including immigrants of color, are also significantly more likely to experience wage theft. Black workers experience wage theft at three times the rate of white workers. Noreen Ahmed, NELP, *Exposing Wage Theft Without Fear Is Possible and Necessary* (Sept. 16, 2019), <https://www.nelp.org/blog/exposing-wage-theft-without-fear-possible-necessary/>. Non-Black workers of color are disproportionately represented in construction and thus face that industry's highest rates of wage theft. Center for Popular Democracy, *Fatal Inequality: Workplace Safety Eludes Construction Workers of Color in New York* 3 (Oct. 2013), https://populardemocracy.org/sites/default/files/fatalinequality_report_0.pdf; see Liza Zamd, *All in a Day's Work: Advocating the Employment Rights of Day Laborers*, 3 *Modern America* 56 (2007) ("in immigrant communities in Maryland, and across the nation, wage theft occurs with alarming frequency."). Immigrants often enter low-wage work because they are desperate to support themselves, their families, and their communities, and have no strong pathway to citizenship in the United States. Bobo, *supra*, at 59-60. Our society's constant scapegoating of immigrants for this country's economic woes and threats of deportation makes this group particularly vulnerable to workplace exploitation. Guadalupe T. Luna, *United States v. Duro: Farmworker Housing and Agricultural Law Constructions*, 9 *Hastings Race & Poverty L.J.* 397, 414-15 (2012) ("The fear of retaliation ... often prevents [undocumented] workers from reporting violations of minimum wage rates, occupational standards, or adverse housing conditions."). Employers prey on immigrant's vulnerabilities. A study found that immigrants who

speaking English “very well” had lower minimum wage violation rates than those who did not speak English well or at all. Bernhardt et al., *Broken Laws*, *supra*, at 43.

II. EMPLOYERS KNOWINGLY USE WAGE THEFT AS A PROFIT-MAXIMIZING BUSINESS MODEL

A. Wage Theft Saves Employers Money

Many employers choose wage theft instead of compliance with the law to gain competitive advantage—unfairly. Elmore, *supra*, at 366. A company can save up to 30 percent on payroll costs when it misclassifies its workers as independent contractors, because it will not have to pay minimum wage, overtime, worker’s compensation, unemployment insurance, or other benefits. Yvonne Wenger, ‘*Wage Theft*’ on the Rise as Economy Flounders, *The Baltimore Sun*, at A-1 (Feb. 3, 2013). This is a typical practice in construction where employers hire workers for relatively long periods without providing benefits or job security. *Id.* According to the EPI, “[e]mployers that commit wage theft have artificially lower labor costs and thus may be able to undercut competitors who follow the law.” Cooper & Kroeger, *supra*, at 29. It follows then that the greater the difference between the market wage and the minimum wage, the more likely an employer will be to commit wage theft, particularly in low-wage and low-skilled industries, such as construction. Hallett, *supra*, at 104. If employers can skirt wage theft laws to save money, they will, absorbing the risks as a business cost. See Dana Gentry, *Wage Theft “Epidemic” in Construction; Taxpayers Paying the Tab*, *Nevada Current* (July 27, 2018), <https://www.nevadacurrent.com/2018/07/27/wage-theft-epidemic-in-construction-taxpayers-paying-the-tab/>.

B. Some Employers Intentionally Structure Their Companies To Reap the Benefits of Wage Theft And Avoid Legal Liability If Caught

These employers know exactly what they are doing. Wage theft is such a strong business model that some employers will underpay workers *and* undercapitalize their businesses to save money. Bobo, *supra*, at 23-39. Increasingly, employers are structuring their businesses as fissured workplaces, that is, outsourcing work to smaller companies, contractors, or temporary staffing agencies, to avoid complying with the law. David Weil, *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* 9-10 (2010), <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>. This causes a cascading effect of wage theft as larger employers pressure subcontractors to reduce their labor costs. David Weil, *Enforcing Labour Standards in Fissured Workplaces: The US Experience*, 22 *Econ. & Lab. Rel. Rev.* 33, 37 (2011). That pressure, combined with the cost-savings, may lead otherwise law-abiding subcontractors to choose wage theft.

Employers often create such fissured workplaces to make their companies judgment proof. NELP, *Winning Wage Justice*, *supra*, at 111. They go to great lengths to avoid liability when faced with wage theft claims. A study in California found that when some employers refused to settle wage theft claims and later became subject to court judgments, those businesses were “more likely than not to have suspended, forfeited, cancelled, or dissolved business status within a year of the wage claim.” Eunice Hyunhye Cho et al., NELP, *Hollow Victories: The Crisis in Collecting Unpaid Wages for California’s Workers* 13 (2013). This harms both present and future victims

of wage theft. Lineberry, *supra*, at 1235. Simply put, wage theft can be an intentional profit-maximizing business decision.

When it comes to off-the-clock wage theft, employers want more productivity for lower pay. See Lisa Nagele, *State High Court Affirms \$187 Million Award on Wal-Mart Employees' Wage & Hour Claims*, 241 Daily Lab. Rep. (BNA) A-2 (Dec. 16, 2014) (reporting workers' court victory on being denied rest breaks and required to work off-the-clock). In cases the PJC has litigated, we have seen how inefficient processes contribute to wage theft. For instance, in *Trotter v. Perdue Farms, Inc.*, No. CIV.A.99-893-MPT, 2002 WL 34226966 (D. Del. Aug. 5, 2002), poultry plant employees spent approximately 8 unpaid minutes a day obtaining, donning and doffing personal protective equipment off the clock, which added up to approximately \$500 unpaid per worker per year. Steven Greenhouse, *Poultry Plants to Pay Workers \$10 Million in Compensation*, NY Times, at A-10 (May 10, 2002). This company, one of the largest employers on Maryland's Eastern Shore, tried to save millions of dollars by nickel and diming its workers this way. Once required to pay, the company changed its process to reduce the time involved.

Similarly, in the case on appeal here, DGS Construction and its general contractor, knowing they were intentionally not paying employees for travel and wait time, had no incentive to reduce that off-the-clock time. As a result, employees were forced to sit and wait up to two hours at the start and end of each workday for a 2.3-mile ride, because the employers required the employees to arrive at Rosecroft and, furthermore, provided an inadequate number of buses for the workforce. App. Br. at 7, 26. This Court's holding

that the employees' wait and travel time are compensable will incentivize Maryland employers to rethink these business practices.

III. IF THIS COURT ADOPTS THE PPA, EMPLOYERS WILL HAVE VIRTUALLY NO INCENTIVE TO COMPLY WITH THE LAW

Engrafting the limitations of the federal PPA onto Maryland law would turn back the clock on Maryland's workers, undermine the protections of our wage laws, and legalize unpaid off-the-clock work, greatly exacerbating the already massive problem of wage theft. As Appellants' brief explains, Maryland's legislature recognized the FLSA is a floor, not a ceiling. App. Br. at 16. Its intent in enacting Maryland's wage laws is clear:

The Legislature declared its intent in § 3-402 - to set minimum standards (1) to provide a maintenance level consistent with the general health and well-being of the population, (2) to safeguard employers and employees against unfair competition, (3) to increase the stability of industry, (4) to increase the buying power of employees, and (5) to decrease the need to spend public money for the relief of employees. The standards, are, indeed, minimal ones, and it is critical, if the legislative purposes are to be attained and preserved, that those standards be vigorously enforced.

Friolo, supra, at 515.

Maryland can, and should, interpret its wage laws more broadly in favor of Maryland employees. *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 660 (2014) (WPCL is a "remedial statute to be construed liberally in favor of the employee."); *see also Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482 n.10 (2007) ("Maryland appellate courts have interpreted state statutes, rules, and constitutional provisions differently than analogous federal provisions on numerous occasions, even where the state provision is modeled after its federal counterpart.").

A lack of wage theft enforcement incentivizes employers to choose noncompliance to gain unfair competitive advantage. Wage theft takes money out of communities. It forces individuals and families to rely on strained public benefits. Reading the PPA into Maryland wage laws would undermine every one of their humanitarian and foundational purposes.

CONCLUSION

This Court should broadly construe Maryland's wage laws to protect Maryland's employees who need that protection the most. *Amici* request that this Court reverse the judgment of the Circuit Court for Prince George's County.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3898 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2020, I served both through the Court's MDEC system and two copies by first-class mail, postage prepaid, of the foregoing *Amicus* Brief on:

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