IN THE COURT OF APPEALS OF MARYLAND

Misc. No. 6
September Term, 2021

NAGLE & ZALLER, P.C., et al.,

Appellants,

v.

JAHMAL E. DELEGALL, et al.,

Appellees.

On Certification of Legal Question from the United States District Court of Maryland
(Hon. Paul W. Grimm, Judge)

BRIEF OF *AMICI CURIAE* PUBLIC JUSTICE CENTER, CASH CAMPAIGN OF MARYLAND, MARYLAND CONSUMER RIGHTS COALITION, INC., AND PUBLIC JUSTICE IN SUPPORT OF APPELLEES, BY WRITTEN CONSENT

Michael R. Abrams (CPF# 2007220003)
Murnaghan Appellate Advocacy Fellow
Public Justice Center
201 N. Charles Street, Suite 1200
Baltimore, Maryland 21201
(410) 625-9409
abramsm@publicjustice.org

Counsel for Amici Curiae

October 26, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENTS OF INTEREST

The **Public Justice Center** (PJC),[1] a non-profit civil rights and anti-poverty legal services organization founded in 1985, has a longstanding commitment to protecting and advancing the rights of low-income consumers. The PJC has participated in a number of Maryland cases guarding consumer rights in the context of payday loans, foreclosures, forced arbitration, public utilities, and title insurance consumers' access to justice. *See, e.g.*, *Wheeling v. Selene Finance LP*, 473 Md. 356 (2021); *Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 467 Md. 74, 110 (2020); *Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126 (2020). The PJC has an interest in this case because of its commitment to ensuring that laws protecting low-income and minority consumers (uniquely harmed by predatory conduct) are upheld and enforced.

The **CASH Campaign of Maryland** (Creating Assets, Savings and Hope) is a nonprofit organization that promotes economic advancement for low-to-moderate-income individuals and families in Baltimore and across Maryland. It accomplishes its mission through direct service programs, building capacity, and leading policy and advocacy initiatives to strengthen family economic stability. CASH has an interest in this case because the abuse of confessed judgments by some homeowners associations threatens the economic stability of its clients, some of whom are homeowners.

The **Maryland Consumer Rights Coalition, Inc.** (MCRC) is a non-profit organization founded in 2000 by a group of consumer advocates to advance and protect

[1] The Public Justice Center and Public Justice are unaffiliated.

the interests of Maryland consumers through research, education, and advocacy. MCRC has a strong interest in financial services regulation and has advocated for laws that ensure the fair collection of consumer debt. MCRC members advise individual consumers on debt collection practices. MCRC has an interest in this case because of its commitment to advocating for and protecting consumers across the state of Maryland.

Public Justice is a national public interest law firm dedicated to pursuing high impact lawsuits to advance consumer rights, civil rights and civil liberties, workers' rights, environmental sustainability, and the preservation and improvement of the civil justice system. A key element of Public Justice's mission is to ensure consumers and others harmed by corporate wrongdoing have access to the civil justice system. This case is of particular interest to Public Justice because the use of confessed judgments denies consumers access to the courts, stripping them of their most basic procedural rights, and enables creditors to act with impunity.

ARGUMENT

Some homeowners associations in Maryland are utilizing the swift, potent power of confessed judgments to collect alleged debts from Maryland homeowners. Because of the typical size of a homeowner's alleged debt, homeowners associations almost always file confessed judgment actions in the District Court. There, Maryland Rule § 3-611(b) only requires the court to conclude there is "a factual and legal basis" for the complaint before directing the clerk to enter judgment in favor of the homeowners association. Only *after* the clerk enters judgment in favor of the homeowners association does the clerk mail a notice to the homeowner. *Id.* § 3-611(c). And that notice simply informs the homeowner that judgment has *already* been entered and provides the homeowner a deadline for challenging it. *Id.* The deadline is only thirty days. *Id.* § 3-611(d). Once that deadline passes, however, the homeowners association may move forward with a sheriff's sale of the homeowner's property, garnish the person's wages or bank accounts, or all of the above. *Id.* § 3-611(f).

Such an expedited process can leave a homeowner's property encumbered and finances frozen beyond their reach in little over a month and then create a cascade of negative consequences. The General Assembly, therefore, outlawed the use of confessed judgments in relation to consumer debts and transactions, like those in this case. *See* Md. Code Ann., Com. Law § 13-301(12). Yet some homeowners associations continue to test the boundaries of Maryland's consumer protection laws. This case presents one such test: whether the remedies available under Maryland's Consumer Loan Law apply to transactions involving outlawed confessed judgment promissory notes. *Amici* urge the Court to be mindful of the impacts of these transactions as it considers the legislative intent and proper interpretation of that law.

The effects of confessed judgment actions for homeowners are devastating, particularly for low-income homeowners and homeowners of color. Many of these vulnerable residents live paycheck to paycheck. Use of confessed judgments imperils their ability to sustain homeownership, which could have profound consequences for closing wealth gaps and gaps in homeownership rates. Indeed, debt collectors like homeowners associations already target low-income Marylanders and Marylanders of color. Finally, it is already difficult for Marylanders to vindicate their rights when faced with a small dollar debt collection lawsuit, and confessed judgments make it nearly impossible.

In the face of homeowners associations testing the boundaries of the consumer protection laws and the devastating consequences that has on vulnerable Maryland populations, *Amici* urge the Court to provide clear guidance in this case: use of confessed judgments in relation to consumer debt, including the artifice Nagle & Zaller used in this case, remains prohibited. Maryland Courts are the gatekeepers to ensure that the provisions of the Consumer Loan Law do not ring hollow. Its remedies are clearly necessary to stem the tide of this predatory practice.

I. CONFESSED JUDGMENTS HAVE PARTICULARLY HARMFUL CONSEQUENCES FOR LOW-INCOME HOMEOWNERS AND HOMEOWNERS OF COLOR.

A. There is a Substantial Gap in Wealth Between Whites and People of Color.

In 2019, the median wealth of white households was $189,100, nearly eight times the median wealth of Black households, which was $24,100. Joint Ctr. for Hous. Studies of Harvard Univ., *The State of the Nation's Housing 2021* 17 (2021) [hereinafter *Harvard Report*], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf. Similarly, the median wealth of white households is five times that of Latine households, which was $36,050. *Id.* Liquid savings—"money held in checking and savings accounts, unused balances on prepaid cards, and cash saved at home"—also differ dramatically by race. Pew Charitable Trs., What Resources Do Families Have for Financial Emergencies? 9 (2015), https://www.pewtrusts.org/-/media

/assets/2015/11/emergencysavingsreportnov2015.pdf. In 2014, the typical white household had thirty-one days of income in liquid savings. *Id.* By contrast, the typical Black household had five days of liquid savings, and the typical Latine household had twelve days. *Id.*

Unfortunately, Maryland has "some of the largest racial disparities in the country." Solana Rice, et al., Prosperity Now, *Accounting for Race: A New Way to Compare the Financial Health of Households in the United States* 7 (2019) (alterations omitted), https://prosperitynow.org/sites/default/files/resources/2019_Scorecard_State_Report.pdf. In 2019, Maryland was ranked as having the nineteenth-worst racial disparities in economic outcomes for its residents. *See id.* at 7–8. The ranking was based on several measures related to wealth, including liquid asset poverty rate and the percentage of residents who fell behind on paying their bills in the past year. *Id.* For example, the liquid asset poverty rate for Maryland residents of color—the rate at which residents would not have adequate cash savings to support themselves at the poverty level for three months—is an astounding forty-five percent. *Id.* at 8. For white Maryland residents, that rate is only eighteen percent. *Id.*

The consequences of these racial wealth gaps became even more dire during the COVID-19 pandemic. "With lower levels of wealth prior to the pandemic, compounded by continued labor market disparities during the pandemic, access to emergency savings and other assets [were] crucial for Black households." *See* Emily Moss et al., Brookings Inst., *The Black-White Wealth Gap Left Black Households More Vulnerable* (Dec. 8, 2020), https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable. But Black families had more fragile safety nets. *Id.* ("72 percent of white households say they could get $3,000 from family or friends compared to 41 percent of Black households."). Thus, Black households were more likely to draw on retirement funds during the pandemic, even though they generally had less in savings. *Id.* In Maryland, existing inequities intensified: food insecurity increased, with 40 percent of Black and Latine families "struggling to provide their kids with regular meals," and education gaps increased, as Black and Latine households were less likely to have adequate access to technology and childcare. Md. Advisory Comm. to the U.S. Comm'n on C.R., *COVID-19 and Health Disparities in Maryland* 11–30 (Feb. 2021), https://www.usccr.gov/files/2021/04-20-MD-SAC-COVID-19-and-Health-Disparities-Advisory-Memo.pdf. Ultimately, Black and Latine families were more likely to suffer from the coronavirus recession, and the resulting consequences further entrenched systemic disparities.

B. Homeownership is Vital for Accumulating Wealth, Particularly for Low-Income People and People of Color.

Homeownership remains a common and important way for American families to accumulate wealth. So, the increases in net worth for new homeowners, and the speed with which they amass that wealth, are particularly important for low-income homeowners and homeowners of color in closing the wealth gaps described above. The use of confessed judgment actions by some homeowners associations—and the way such actions can quickly encumber a homeowner's property—threaten to prevent low-income Marylanders and Marylanders of color from closing those gaps.

The returns to buying a home in a typical housing market are "strong," even outperforming the stock market on an after-tax basis. Laurie S. Goodman & Christopher Mayer, *Homeownership and the American Dream*, 32 J. Econ. Persp. 31, 43 (2018). Indeed, there is "little evidence" of an alternative savings vehicle that would successfully allow low-to-moderate income households to amass savings other than owning a home. *Id.* "Numerous studies" have shown that homeowners not only have more wealth but obtain wealth faster than non-homeowners. *Id.* at 52–53. Granted, some of that increased wealth can be attributed to other factors, such as inherited wealth, rather than to homeownership causing the increase in wealth. *Id.* at 53. Still, on average, home equity is the "largest component of net worth," excluding pensions and Social Security. *Id.* For example, in 2017 the median wealth of all homeowners was $269,100, and $160,100 of that wealth was home equity. Donald Hays & Briana Sullivan, U.S. Census Bureau, *Gaps in Wealth of Americans by Household Type in 2017* (Nov. 16, 2020), https://www.census.gov/library/stories/2020/11/gaps-in-wealth-of-americans-by-household-type-in-2017.html.

Homeownership, therefore, is more important to wealth accumulation for low-income Americans. For instance, two studies of a program for low- and moderate-income borrowers found that after adjusting for outliers, the net worth of the new homeowners had increased more from 2005 to 2008 than for a matched group of renters. Goodman & Mayer, *supra*, at 53. And new-homeowner net worth even fell less through 2010, during the Great Recession. *Id.* Likewise, a third study comparing owners and renters from 1999 to 2013 found that homeownership "was associated with significant gains in household wealth." *Id.* (citing Donald R. Haurin, et al., *Homeownership Gaps among Low-Income and Minority Households*, 9 Cityscape 5 (2007)); *see also* Hays & Sullivan, *supra* ("Even when home equity was excluded from total wealth, the median wealth of homeowners was . . . a staggering 35.9 times more than the median wealth of renters."). The increase in home equity and other savings consequently leads to an increase in upward mobility. Pew Charitable Trs., *Moving on Up: Why Do Some Americans Leave the Bottom of the Economic Ladder, But Not Others?* 5 (2013), https://www.pewtrusts.org/~/media/assets/2013/11/01/movingonuppdf.pdf.

For people of color, home equity is "particularly important." Goodman & Mayer, *supra*, at 53 (citing James M. Poterba, et al., *The Composition and Draw-Down of Wealth in Retirement*, 25 J. Econ. Persp. 219 (2013)). Among white households, their median home equity constituted forty-percent of their median wealth. *Id.* But for Black households, whose median wealth is much lower, home equity was even more significant, making up nearly sixty percent of their median wealth. *Id.* And for Latine households, home equity made up fifty-three percent. *Id.*

Black and Latine households own homes at significantly lower rates than white households. *See* Section II, *infra*. Accordingly, if Black and Latine families owned homes at rates similar to white families, "the racial wealth gap would be reduced by almost a third." Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. Times (May 9, 2017), https://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html; *see also* Laura Sullivan, et al., Demos, *The Racial Wealth Gap* 9–15 (2015), http://www.demos.

org/sites/default/files/publications/RacialWealthGap1.pdf ("[T]racing the same households over 25 years revealed that the number of years a household owned their home explained 27 percent of the growing racial wealth gap," while "[e]qualizing Black and Latino homeownership rates with those of whites . . . substantially reduces the racial wealth gap"). Even without achieving such equal homeownership rates and recognizing that minority families tend to purchase less expensive first homes, if they were to get the same investment returns from their homes that white families do, the wealth gap between white and Black households would still decrease by half that, or sixteen percent. Sullivan, et al., *supra*, at 13. The gap between white and Latine households would decrease by an astonishing forty-one percent. *Id.*

Of course, for Black and Latine households to purchase homes—and consequently, accumulate more wealth more quickly—they need enough wealth to begin with. But because of the wealth gaps described above, Black and Latine households "have minimal initial wealth to invest in homes." William Darity, Jr., et al., Samuel DuBois Cook Ctr. on Social Equity, *What We Get Wrong About Closing the Racial Wealth Gap* 14 (2018), https://socialequity.duke.edu/wp-content/uploads/2020/01/what-we-get-wrong.pdf. For instance, research shows that when Black households do obtain some wealth, houses are "one of the first assets they purchase, similar to other Americans." *Id.* In simpler terms, "[w]ealth, after all, begets more wealth." *Id.*

Whether the wealth gap causes a gap in homeownership, the gap in homeownership contributes to the wealth gap, or both, one thing remains true: if homeowners associations can continue to use confessed judgments to collect alleged debt from homeowners, *all* of these gaps will worsen.

C. The Wealth Gap Means That Low-Income Households and Households of Color Are Less Likely to Be Able to Sustain Homeownership.

Because of the wealth gap between low-income and high-income households, and between households of color and white households, it is more difficult for those groups to meet the costs of owning a home and sustain homeownership. Low-income homeowners and homeowners of color are more likely to become delinquent on their mortgages. Goodman & Mayer, *supra*, at 53. Their likelihood is higher even controlling for factors predictive of default, such as "credit scores, loan purpose, loan-to-value ratio, debt-to-income ratio, and property characteristics." *Id.* (citing Andrew Haughwout, et al., *Juvenile Delinquent Mortgages: Bad Credit or Bad Economy?*, 64 J. Urb. Econ. 246 (2008); Christopher Mayer, et al., *The Rise in Mortgage Defaults*, 23 J. Econ. Persp. 27 (2009)).

Confessed judgment actions provide homeowners associations the ability to encumber a homeowner's property in a little over thirty days after the association files the action. *See* Md. Rule § 2-611(d), (f); § 3-611(d), (f). Thus, if homeowners associations are permitted to continue bringing confessed judgment actions, low-income households and households of color will be even less likely to sustain homeownership.

D. Confessed Judgment Actions Are Particularly Harmful for Low-Income Marylanders Because They Expedite Garnishment.

The effects of unfair, abusive, or deceptive garnishments against low-income consumers are devastating. They are living paycheck to paycheck, and so "the garnishment of wages and bank account funds leaves them unable to pay rent, cover utilities, or put food on the table." Stacy Santin, *The Profound Impact of Debt Collection Lawsuits on Low-Income Americans*, Legal Aid Soc'y D.C.: Making Justice Real (May 11, 2016), https://www.makingjusticereal.org/the-profound-impact-of-debt-collection-lawsuits-on-low-income-americans. The effects of garnishments are magnified for confessed judgments. Confessed judgments are entered without a trial and before the homeowner is served. *See* Md. Rule § 2-611(b), (c); § 3-611(b), (c). In the District Court, a homeowner only has thirty days to challenge the judgment. *Id.* § 3-611(d). After that deadline passes, the homeowners association may move forward with garnishment. *Id.* § 2-611(f); § 3-611(f). Service of the garnishment on the garnishee renders the property or income immediately unavailable to the consumer. *Id.* § 2-645(e); § 3-645(e).

And that is only if the creditors follow the rules. In this case, Nagle & Zaller allegedly deployed the predatory practices set forth in the Complaint, which kept Mr. Delegall and Ms. Saunders in the dark about their judgments. Even when consumers do bring post-judgment challenges to a confessed judgment, they cannot bring any procedural defenses, like challenges to improper venue or the lack of service of process. *See Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 467 Md. 74, 110 (2020) ("After the entry of a confessed judgment, [the consumer's] . . . . post-judgment defenses are limited to challenges on the execution of the note or on the amount due."). Confessed judgments enable creditors to get away with this kind of predatory, abusive, and unlawful conduct.

II. USE OF CONFESSED JUDGMENTS THREATENS TO WIDEN THE GAP IN HOMEOWNERSHIP BETWEEN LOW-INCOME MARYLANDERS, MARYLANDERS OF COLOR, AND THEIR MORE PRIVILEGED COUNTERPARTS.

Not only does the use of confessed judgments by some homeowners associations particularly harm low-income Marylanders and Marylanders of color, but it threatens to widen the gap in homeownership between those groups and their more privileged counterparts. As a result, use of confessed judgments has the potential to continue the cycle of wealth inequality described above for generations.

A. A Significant and Stubborn Gap in Homeownership Persists Between Whites and People of Color Nationwide.

At least part of the wealth gap between white households and households of color described above is explained by the persistent gap in homeownership between those two groups. According to the latest data from the United States Census Bureau, in the first quarter of 2019, the homeownership rate for white households was seventy-three percent. U.S. Census Bureau, *Quarterly Residential Vacancies and Homeownership, First Quarter 2019* 9 (2019), https://www.census.gov/housing/hvs/files/currenthvspress.pdf. Black households reported the lowest homeownership rate at forty-one percent, and Latine households had the second-lowest rate at forty-seven percent. *Id.* There is also a gap in homeownership between white households and Asian, Native-American, and Pacific Islander households, with their combined homeownership rate at only fifty-seven percent. *Id.*

The current gap in homeownership between white households and households of color reflects a stubborn trend that is only narrowing at a glacial pace for Latine and Asian households. And for Black households, it has instead substantially worsened. To begin, since 2001, the Black ownership rate experienced the "most dramatic drop of any racial or ethnic group," declining five-percentage points compared with a one-percentage point decline for white families and increases for Latine and "other" families, which primarily included Asian Americans and Pacific Islanders. Laurie Goodman & Alanna McCargo, *A Closer Look at the Fifteen-Year Drop in Black Homeownership*, Urban Inst.: Urban Wire (Feb. 13, 2018), https://www.urban.org/urban-wire/closer-look-fifteen-year-drop-black-homeownership. In 2001, Black and Latine families had similar homeownership rates, each approximately forty-six percent. *Id.* By 2016, however, Black families fell behind, to forty-one percent compared to forty-six percent for Latine families. *Id.*

The minor narrowing of the homeownership gap between white, Latine, and Asian families since 2001, and the staggering widening of that gap between white and Black families during the same period, is only the latest iteration of a trend dating back to at least the late eighties. From 1987 to 2017, the homeownership rate among Asians increased seven percentage points, and among Latine households it increased six points, while it only increased four points for white households. Harvard Report, *supra*, at 19. Black households, however, lost ground during this period. Their homeownership rate decreased by three percentage points. *Id.* at 19–20. As a matter of fact, in 2015, whites with less than a high school education had a higher homeownership rate, sixty-three percent, than Blacks with a college education, fifty-seven percent. Goodman & Mayer, *supra*, at 37. Thus, while Asian and Latine homeownership gaps have "narrowed somewhat," the gap for Black households has "widened substantially." Harvard Report, *supra*, at 20. The Black homeownership rate has fallen so low that it is similar to that before the passage of the Fair Housing Act in 1968, despite rates increasing since then for every other group. Goodman & McCargo, *supra*.

Why has the homeownership rate for Black families fallen so much more than other households? The reasons, experts say, are "varied and complex." Troy McMullen, *The 'Heartbreaking' Decrease in Black Homeownership*, Wash. Post (Feb. 28, 2019), https://www.washingtonpost.com/news/business/wp/2019/02/28/feature/the-heartbreaking-decrease-in-black-homeownership. In some areas there is not enough affordable housing, while in others, there is a shortage of housing inventory of any price. *Id.* Rising student debt is another reason, which prevents would-be homeowners from saving enough money for a down payment. *Id.* Though these reasons apply to all prospective homebuyers, "they disproportionately affect African Americans" because a higher proportion of Black homebuyers—half—are first-time homebuyers. *Id.*

Discrimination, moreover, plays a relentless role. One study by the National Fair Housing Alliance found that real estate discrimination remains pervasive in at least a dozen metropolitan areas, including the Washington D.C. metropolitan area, which includes parts of Maryland. *Id.* For example, Black testers posing as home buyers were not given information about special incentives that would make purchasing a home easier, and unlike white testers, were required to provide loan preapproval letters and other documents. *Id.* Even when Blacks had higher credit scores, they were offered worse financing terms than less-qualified white borrowers. *Id.*

B. The Picture in Maryland Is Only Slightly Better.

The homeownership rate among white households in Maryland is seventy-seven percent, five percentage points higher than the national average. *Prosperity Now Scorecard*, Prosperity Now (Sept. 12, 2021) [hereinafter *2021 Scorecard*], https://scorecard.prosperitynow.org (select "Explore Data by Issue Area," next select "Homeownership & Housing," next select "Homeownership Rate," then select "Data by Race"). By contrast, the rate among households of color in Maryland is merely fifty-three percent, or a gap of twenty-four percentage points. *Id.* For Black households specifically, the rate is fifty-one percent, ten points higher than the national average. *Id.* For Latine households in Maryland, the rate is four-percentage points higher than the national average at fifty-one percent, and for Asian households in Maryland, the rate is seventy-one percent, fourteen-percentage points higher than the national average. So, although homeownership for all groups is higher in Maryland than the national average, the gaps remain as wide: twenty-six percentage points lower than whites for both Black households and Latine households and six percentage points lower between whites and Asian households. *See id.*

The reasons for the racial homeownership gap in Maryland mirror the reasons for the gap nationwide. For instance, in Baltimore, there is "dwindling" housing inventory, so low that brokers describe it as an "all-time low." Brakkton Booker, *In Baltimore, The Gap Between White and Black Homeownership Persists*, Nat'l Pub. Radio (Aug. 7, 2018), https://www.npr.org/2018/08/07/632497683/in-baltimore-the-gap-between-white-and-black-homeownership-persists. Further, Black and Latine homebuyers in Baltimore are steered into high-cost loans, leading the United States Department of Justice to reach a landmark $175 million lawsuit with lender Wells Fargo in 2012. Press Release, U.S. Dep't of Justice, *Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims* (July 12, 2012), https://www.justice.gov/opa/pr/justice-department-reaches-settlement-wells-fargo-resulting-more-175-million-relief.

C. There Is Also a Gap in Homeownership Between Low-Income and Higher-Income Households Nationwide, Which Is Wider Yet in Maryland.

Between low-income and higher-income households, there is a wider gap nationally in the homeownership rate. The rate among the top quintile of household earners is ninety-one percent. 2021 Scorecard, *supra* (select "Data by Income"). Unfortunately, the rate among the bottom quintile of households is only forty-one percent, or less than half that of the highest income group. *Id.* In Maryland, the gap is still wider. Over ninety-percent of the top quintile of household earners own a home, but only forty-two percent of the bottom quintile of Maryland households do. *Id.*

As a result, in a ranking of the largest gaps in homeownership between low-income and higher-income residents, Maryland's gap ranks twentieth in the nation. *Id.* This despite Maryland being named the wealthiest state in the country based on median income. Casey Leins, *The 10 Wealthiest States*, U.S. News & World Report (May 16, 2019), https://www.usnews.com/news/best-states/slideshows/10-wealthiest-states-in-america?onepage.

Housing prices are increasing faster than incomes, preventing more low-income Americans from buying homes. Twenty-eight percent of homeowners nationwide are cost-burdened, in other words, spending more than thirty-percent of their household income on costs related to owning a home, such as mortgage payments, property taxes, utility costs, and other fees. 2021 Scorecard, *supra* (select "Housing Cost Burden – Homeowners"). The share of Maryland homeowners who are cost-burdened is almost identical at twenty-seven percent. *Id.*

D. Gaps in Homeownership Have Long-Lasting, Intergenerational Effects.

If low-income Maryland households and Maryland households of color are unable to take advantage of the wealth-building opportunity that homeownership affords, because of insufficient wealth to purchase a home or to sustain homeownership, then the effects are so long lasting that it spans generations. Generally, young adults ages 18–34 whose parents were homeowners have a higher homeownership rate than those whose parents rented their homes. Jung Hyun Choi, et al., Urban Inst., *Intergenerational Homeownership* 1, 7 (2018), https://www.urban.org/sites/default/files/publication/99251/intergenerational_homeownership_0.pdf. They are seven percentage points more likely to own a home. *Id.* at 8.

The homeownership gap is even wider for young adults whose parents have less than $100,000 in wealth; the gap is widest for young adults with parents whose wealth is between $50,000 and $100,000. *Id.* at 7. That is, parents with less than $50,000 may not have enough wealth to help with their child's mortgage, even if they own a home, while young adults who have parents with more than $100,000 in wealth are more likely to have the means to purchase a home without their parents' financial support. *Id.* Owning a home and sustaining homeownership, therefore, can put future generations on a different wealth-accumulating trajectory. And not owning a home is an obstacle for growing wealth that can pass down from one generation to the next.

III. DEBT COLLECTORS DISPROPORTIONATELY TARGET LOW-INCOME CONSUMERS AND CONSUMERS OF COLOR.

As described in Section I, homeownership has powerful potential to help close the wealth gap between low-income and high-income Marylanders and between white Marylanders and Marylanders of color. But the potential is too often unrealized. Debt collectors do not target all debtors equally. Research shows that they disproportionately target low-income consumers and consumers of color. As described above, these two groups already are less likely to be able to purchase homes and more likely to lose those homes if they do.

A. Debt Collectors Disproportionately Target Low-Income Consumers.

Low-income consumers are commonly involved in debt collection. They face several "pressing financial needs for immediate expenses." Nat'l Consumer Law Ctr., *Fair Debt Collection* § 1.3.1.4 (9th ed. 2018) [hereinafter *NCLC*], available at library.nclc.org/fdc. Therefore, they may rely on a "variety of debt coping strategies for bills that they cannot pay in full," including "borrowing from others, using nonprofit assistance, paying with an earned income tax credit (EITC) refund, skipping or rotating payments, paying less than the minimum, paying off a bill with a credit card or loan, ignoring or rejecting certain debts, taking on extra work, or going without." *Id.*

Accordingly, debt collectors were three times more likely to contact consumers in the lowest income group than consumers in the highest group. *Id.* (citing Consumer Fin. Prot. Bureau (CFPB), *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt* 15 (Jan. 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_Debt-Collection-Survey-Report.pdf) (fifty-two percent of consumers with annual household incomes of less than $20,000, compared to sixteen percent of respondents with household incomes over $70,000). Similarly, "low-income consumers are more likely to have one or more debts in collection." *Id.* (citing Breno Braga et al., Urban Inst., *Local Conditions and Debt in Collections* 14, 23 (2016), https://www.urban.org/sites/default/files/publication/81886/2000841-Local-Conditions-and-Debt-in-Collections.pdf). Whether a consumer has health insurance, has a home with a lower value, is unemployed, or has a lower educational attainment all change the statistical likelihood of having a debt in collection. Braga et al., *supra*, at 2.

These trends extend to debt collection suits. Among all consumers debt collectors contacted about a debt, debt collectors were more likely to sue those with lower household incomes. NCLC, *supra*, § 1.3.1.4 (citing CFPB Survey, *supra*, at 28) (finding that debt collectors sued twenty percent of consumers with annual household incomes of less than $20,000 and sixteen percent of consumers with household incomes between $20,000 to $39,999, compared to twelve percent of respondents with household incomes over $70,000).

Maryland is no different. Debt collectors disproportionately filed suits in jurisdictions with larger concentrations of low-income individuals, including disproportionately against Baltimore City residents, who have only about half the median income of Maryland. Peter A. Holland, *Junk Justice: A Statistical Analysis of 4,400 Lawsuits Filed by Debt Buyers*, 26 Consumer L. Rev. 179, 218 (2014). By contrast, debt buyers filed suit less often, per capita, against Anne Arundel County residents, who have "significantly higher income" than the rest of the state. *Id.* at 218–19. Hence, "wealth make[s] a difference" because "the counties with the fewest proportionate share of lawsuits are richer . . . than Maryland as a whole." *Id.* at 220–21.

After debt collectors obtain judgment, garnishments hit low-income consumers harder than the rest. Looking at national payroll data, "the average number of garnishments and the garnishment rate for all types of garnishment is highest for those earning between [$20,000 and $60,000]." NCLC, *supra*, § 1.3.1.4 (alteration omitted) (quoting ADP Research Inst., *The U.S. Wage Garnishment Landscape: Through the Lens of the Employer* (2017)). More than sixty percent of employees who had a garnishment earned income within this range. *Id.*

B. Debt Collectors Also Disproportionately Target Consumers of Color.

The wealth gaps described above lead to increased financial insecurity for Black and Latine families. *See, e.g.*, Pew Charitable Trs., *Financial Emergencies*, *supra*. In turn, they are more frequently targeted for risky financial products, such as payday loans. *See* Fed. Deposit Ins. Corp., *FDIC National Survey of Unbanked and Underbanked*

Households: Appendices 83–84 (2014), https://www.fdic.gov/householdsurvey/2013 appendix.pdf.

At least in part[2] because of the effects of these disparities, there are stark racial disparities in debt collection. Debt collectors are more likely to contact non-white consumers about a debt in collection than white ones. NCLC, *supra*, § 1.3.1.5 (citing CFPB Survey, *supra*, at 17 n.17, 18) (finding that forty-four percent of non-white respondents were contacted, compared to only twenty-nine percent of white respondents). A 2016 study found that debt in collection was more prevalent in areas with more Blacks and Latine and less prevalent in areas with more non-Latine whites and Asians. Breno Braga et al., *supra*, at 2, 14 (finding that forty-five percent of individuals in predominantly non-white areas have a debt in collection, compared to twenty-seven percent of individuals in predominantly white areas). These racial disparities also exist in Maryland. As of March 2021, thirty-six percent of nonwhite Marylanders had debt in collection, compared to only twenty-one percent of white Marylanders. *Debt in America: An Interactive Map*, Urban Inst. (updated March 31, 2021), https://apps.urban.org/ features/debt-interactive-map.

And once again, the same holds true for debt collection lawsuits. A 2015 study by ProPublica concluded that court judgments in mostly Black communities included twice the proportion of debt collection lawsuits of the judgments in mostly white communities. Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black*

[2] *See* NCLC, *supra*, § 1.3.1.5 ("Wealth and asset gaps might explain at least some of the observed disparities in debt collection.").

Neighborhoods, ProPublica (2015), https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods. Discriminatory high-cost loans and high-interest credit cards targeted at these consumers contributed to these disparities. *Id.* A recent empirical study—linking debt collection judgments across Missouri to data from consumer credit reports and surveys—found that “majority black neighborhoods have approximately 40% more judgments than non-black neighborhoods,” even when controlling for factors like income, credit score, and housing value. Jessica LaVoice & Domonkos F. Vamossy, *Racial Disparities in Debt Collection*, *in* Essays about Race, Discrimination, and Inequality 88, 89–90 (Apr. 6, 2020) (Ph.D. dissertation, University of Pittsburgh), *available at* https://d-scholarship.pitt.edu/38702/7/LaVoice%20Final%20ETD.pdf.

Debt collectors even bring claims against consumers of color that are less meritorious than the ones they bring against white consumers. For instance, in a sample of 451 legal hotline calls, sixty-six percent of debt collection cases against Black and Latine clients were “clearly meritless,” as compared to thirty-five percent of all cases. Legal Aid Soc’y et al., *Debt Deception: How Debt Buyers Abuse the Legal System to Prey on Lower-Income New Yorkers* 10 (2010), http://mobilizationforjustice.org/wp-content/uploads/reports/DEBT-DECEPTION.pdf. What is more, this disparity persists even when controlling for income. Kiel & Waldman, *supra*. For example, ProPublica’s analysis found that debt buyer court judgments hit majority Black neighborhoods in St. Louis, Chicago and Newark twice as hard as majority white neighborhoods, even when adjusting for differences in income. *Id.*

Maryland, unfortunately, is no different. In one study, debt collectors sued disproportionately in Maryland jurisdictions with larger concentrations of non-whites. Holland, *supra*, at 218. For example, Baltimore City is a "majority-minority" jurisdiction, and Prince George's County has a minority population five percent greater than Baltimore City. *Id.* at 219. Though Prince George's County is home to only fifteen percent of the state's population, debt buyers filed twenty-three percent of their complaints in Maryland against residents there. *Id.* at 218. A similar disparity also exists in Baltimore City. *Id.* Meanwhile, as mentioned above, debt buyers filed fewer complaints in Anne Arundel County, which has a lower minority population than the rest of the state. *Id.* at 219. Thus, in addition to wealth, "race . . . make[s] a difference" too, because "the counties with the fewest proportionate share of lawsuits are . . . less diverse than Maryland as a whole." *Id.* at 220–21. In fact, a separate study found that in Maryland, "[d]ebt collection is *more* closely aligned with racial demographics than economic indicators," such as the "poverty rate and median income." Robyn Dorsey & Marceline White, Md. Consumer Rights Coal., *No Exit: How Maryland's Debt Collection Practices Deepen Poverty & Widen the Racial Wealth Gap* 29 (2018) (emphasis added), https://static1.squarespace.com/static/5978cbcbebbd1a6f5e775e35/t/5baa47d3e2c483e9c56a8a80/1537886167567/Formatted+Ford+Report%2C+2018.pdf.

Further, detentions on body attachments related to debt collection suits often occur when consumers are "pulled over or stopped by police for traffic offenses," minor traffic infractions, or "during searches of public housing residents to identify people with open warrants." Am. Civil Liberties Union, *A Pound of Flesh: The Criminalization of Private*

Debt 11 (2018), https://www.aclu.org/report/pound-flesh-criminalization-private-debt. Because these policing practices disproportionately profile Black Americans, such detentions "may . . . amplif[y]" the "racial disparities in debt collection judgment rates" that already exist. *Id.*

It is also more challenging for nonwhites to successfully discharge debt in bankruptcy. A study of national bankruptcy data discovered that for consumers living in predominately Black areas, the likelihood that the consumer fails to achieve a bankruptcy discharge was twice as high as those living in white areas. Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, ProPublica (Sept. 27, 2017), https://projects.propublica.org/graphics/bankruptcy-data-analysis. The disparity withstands even controlling for the court in which the case was filed, income, and other financial characteristics of the consumer. *Id.* Racial and ethnic minorities nationwide, and in Maryland, are therefore particularly vulnerable to all the perils that flow from debt collection suits.

IV. MARYLAND CONSUMERS STRUGGLE TO VINDICATE THEIR RIGHTS IN COURT, AND CONFESSED JUDGMENTS MAKE IT NEARLY IMPOSSIBLE.

Low-income Marylanders and Marylanders of color are disproportionately less likely to own homes and sustain homeownership and disproportionately more likely to get sued by debt collectors. Worse, once they are sued, it's exceptionally difficult for them to challenge debt collection actions in court, even when they have meritorious defenses. Confessed judgments make it even harder.

To begin, some judges "encourage" pro se consumers to enter settlement talks with attorneys representing debt collectors. Lisa Stifler, *Debt in the Courts: The Scourge of Abusive Debt Collection Litigation and Possible Policy Solutions*, 11 Harv. L. & Pol. Rev. 91, 114 (2017). For instance, in Montgomery County and Prince George's County, there is a "rocket docket" that features such required settlement conferences as part of the court's official structure, known as "resolution conferences." *Id.*

Pro se consumers may have "significant defenses" that could lead to winning judgment "if they had understood how to assert them." *Id.* (quoting Legal Aid Soc'y et al., *supra*, at 13). Instead, they are left to fight—without legal assistance—corporate creditors armed with attorneys. So, more than seventy percent of consent judgments involving pro se consumers end up being "for the amount claimed in the lawsuit's complaint." *Id.* (citing Holland, *supra*, at 213–14).

Only two percent of consumers sued by debt collectors have lawyers. Holland, *supra*, at 210. But when consumers *do* have lawyers and access to the courts, debt collectors only win fifteen percent of the time, and, on average, for only twenty-one percent of the amount sought. *Id.* at 211. Put differently, more than seventy percent of the time consumers with attorney representation either prevailed against the debt collector or got their cases dismissed. *Id.* at 212–13. But at bottom, in more than ninety-five percent of debt collection lawsuits, the debt collectors won judgment. *Id.* at 206–10.

Even though legal representation greatly improves the likelihood that consumers will win, such representation is hard to obtain for low-income consumers. *See, e.g.*, Annalies Winny, *Only Line of Defense: In Confusing World of Civil Debt Proceedings,* *Volunteer Attorneys Pick Up the Slack*, City Paper (Aug. 12, 2017), https://www.baltimoresun.com/citypaper/bcp-080217-feature-debt-20170802-story.html (describing how consumer debt defense cases far surpass the resources of Maryland volunteer lawyers). Thus, debt collectors almost always prevail in debt collection suits, but only due in large part to consumers failing to vindicate their rights.

Confessed judgments make it even more difficult for low-income communities and communities of color to defend themselves against meritless, discriminatory, and predatory debt collection efforts. Confessed judgment clauses, like the one at issue in this case, permit creditors to summarily obtain a legal judgment and enforce that judgment against a consumer's assets when the consumer breaches the contract. *See* Md. Rule § 2-611, 3-611. The consumer waives her most basic procedural rights, like the right to notice, the right to a hearing, and the opportunity to assert legal defenses against the creditor's claim. *See NILS, LLC v. Antezana*, 171 Md. App. 717, 728 (2006). It is an abusive, unfair practice that denies consumers, particularly consumers in low-income communities and communities of colors, access to justice.

That is why Maryland's Consumer Protection Act prohibits the use of contracts with confessed judgment provisions. *Goshen Run*, 467 Md. at 110–11; Com. Law § 13-301(12). Still, creditors like Nagle & Zaller are trying to avoid the consequences of using these unlawful instruments by denying they are subject to the Consumer Loan Law. These confessed judgment provisions deny Maryland consumers access to justice and have particularly devastating consequences for low-income communities and communities of color.

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to ensure that the protections of the Consumer Loan Law apply.

Respectfully submitted,

/s/ Michael R. Abrams

Michael R. Abrams (CPF# 2007220003)
Murnaghan Appellate Advocacy Fellow
Public Justice Center
201 N. Charles Street, Suite 1200
Baltimore, Maryland 21201
(410) 625-9409
abramsm@publicjustice.org

Counsel for Amici Curiae

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,457 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.

/s/ Michael R. Abrams
Michael R. Abrams

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on October 26, 2021, the foregoing Brief of *Amici Curiae* was served via the MDEC File and Serve Module, and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

Richard A. Simpson
Wiley Rein LLP
1776 K Street NW
Washington, D.C. 20006

Counsel for Appellants

Shirlie N. Lake
Alexander V. Cranford
Eccleston & Wolf, P.C.
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076

Counsel for Appellants

Richard S. Gordon
Benjamin H. Carney
Sara E. Assaid
Gordon, Wolf & Carney, CHTD.
100 W. Pennsylvania Avenue, Suite 100
Baltimore, Maryland 21204

Counsel for Appellees

Alexa E. Bertinelli,
Civil Justice, Inc.
520 W. Fayette Street, Suite 410
Baltimore, Maryland 21201

Counsel for Appellees

/s/ Michael R. Abrams
Michael R. Abrams