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IN THE COURT OF APPEALS OF MARYLAND

No. 39
September Term, 2021

KARUNAKER ALETI ET UX.,
Appellants,

v.

METROPOLITAN BALTIMORE, LLC, ET AL.,
Appellees.

BRIEF OF *AMICI CURIAE* THE PUBLIC JUSTICE CENTER, CIVIL JUSTICE, HOMELESS PERSONS REPRESENTATION PROJECT, AND MARYLAND LEGAL AID IN SUPPORT OF APPELLANTS, BY WRITTEN CONSENT

Michael R. Abrams (CPF# 2007220003)
Murnaghan Appellate Advocacy Fellow
Public Justice Center
201 N. Charles Street, Suite 1200
Baltimore, Maryland 21201
T: 410-625-9409
F: 410-625-9423
abramsm@publicjustice.org

Counsel for Amici Curiae

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STATEMENT OF INTEREST

The **Public Justice Center** ("PJC"), 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 renters. Providing legal services to over 700 Maryland renters annually, the PJC uses both individual and systemic advocacy to achieve access to habitable housing for low-income renters, participating in numerous cases before this Court to safeguard renters' rights. *See, e.g.*, *Pettiford v. Next Generation Trust Serv.*, 467 Md. 624 (2020); *Hunter v. Broadway Overlook*, 458 Md. 52 (2018); *Lockett v. Blue Ocean Bristol*, 446 Md. 397 (2016). The PJC has an interest in this case because of its commitment to enforcing laws that protect low-income and Black renters from substandard housing. The Statements of Interest of co-*Amici* are contained in the attached Appendix.

INTRODUCTION

Housing law in Baltimore is inextricably linked to the City's history. Baltimore was the first city in America to codify segregation in housing, and it perpetuated those racial boundaries over the next century. City officials believed the Black community "should be quarantined in isolated slums" to "reduce the incidence of civil disturbance, to prevent the spread of communicable disease into the nearby white neighborhoods, and to protect property values among the white majority." Christopher Silver, *The Racial Origins of Zoning in American Cities*, *in* Urban Planning and the African American Community 27 (June Manning Thomas & Marsha Ritzdorf eds., 1997).

A government policy of pushing Black Baltimoreans into "isolated slums" precipitated generations of disinvestment in Black neighborhoods, causing the present-day shortage of habitable, affordable housing. The Baltimore City Council addressed that critical issue when it expanded landlord licensure regulations. Its new command, Article 13, Subsection 5-4—that unlicensed landlords may not "charge, accept, retain, or seek to collect any rental payment" from tenants—necessarily implies a remedy, held by tenants, to facilitate enforcement. Yet the lower court found no private right of action because the legislature did not intend to "specifically benefit tenants." *See Aleti v. Metro. Balt., LLC*, 251 Md. App. 482, 254 A.3d 533, 546–50 (2021).

The lower court's broad language effectively renders the new law a dead letter. This Court should reverse, recognizing that tenants hold a private right of action to implement § 5-4. Even if it does not, it should clarify that tenants in substandard housing have such a right of action, ensuring that the legislature's amendments have their intended effect.

ARGUMENT

I. There is a historically rooted crisis of substandard housing for low-income renters in Baltimore.

A. The history of Baltimore's housing policy is defined by segregation and systemic racism.

Before Baltimore was formally segregated block-by-block, the City was distinguished by the strength of its Black community. *See* Barbara J. Fields, Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century 2, 62 (1985) (the free proportion of Baltimore's Black population was the largest in North America:

40 percent in 1800, and by 1860, free Black people outnumbered those enslaved by 8 to 1). Post-Reconstruction, there was a relatively robust Black middle class. *See* Antero Pietila, Not in My Neighborhood: How Bigotry Shaped a Great American City 6–8 (2010). Indeed, the event that incited formal housing segregation was a renowned Black lawyer—W. Ashbie Hawkins, a friend to W. E. B. DuBois and pioneer of civil rights litigation—moving into a predominantly white, upper-class neighborhood. *Id.* at 16–19.

In response, white residents organized community associations and lobbied to restrict Black homebuying to certain neighborhoods. Pietila, *supra*, at 19–24. Their efforts won the passage of a race-based zoning law in 1910. *Id.* De facto segregation existed in other major cities, but Baltimore was the first to codify explicit racial exclusion into law. *Id.* at 23. The City Solicitor declared its passage "a great public moment," because "wherever negroes exist in large numbers in a white community, [it] invariably leads to irritation, friction, disorder and strife." *Id.* at 22.

Before a decade had passed, the Supreme Court ruled such laws unconstitutional (because of their restriction on the freedom of *white* homeowners). *See Buchanan v. Warley*, 245 U.S. 60, 78–82 (1917). "However, in its seven years of existence," the law "led to race-based predatory lending policies and housing lines dictated by race that still exist today." David Armenti & Alex Lothstein, Md. Ctr. for Hist. & Culture, *Baltimore's Pursuit of Fair Housing: A Brief History*, https://www.mdhistory.org/baltimores-pursuit-of-fair-housing-a-brief-history. The race-based zoning law solidified the racial boundaries that suburbanization had been accelerating since the Great Baltimore Fire of

1904, such that even after its reversal, other tactics sustained the stark segregation for generations. *See id.*

For example, in the early 20th century, private white communities in Baltimore began instituting "community covenants"—binding provisions in home deeds—that "restricted Black Marylanders from moving into the neighborhood." *Id.* The use of these restrictive covenants "forced many Black families into neighborhoods that consistently suffered from unequal resources and lack of investment," which "led to lower home values and challenges in accumulating wealth." *Id.* City officials supported these efforts: "When the courts overturned the ordinance, the City adopted a strategy . . . under which building and health department inspectors lodged code violations against owners who ignored the apartheid rule." N.Y. Times Editorial Bd., *How Racism Doomed Baltimore* (May 9, 2015), https://www.nytimes.com/2015/05/10/opinion/sunday/how-racism-doomed-baltimore.html.

Race-based restrictive covenants were struck down in *Shelley v. Kraemer*, 334 U.S. 1 (1948), but by that time, "redlining" had come to Baltimore. *See* Armenti & Lothstein, *supra*. To facilitate New Deal mortgage lending, the Federal Housing Authority created color-coded maps of major American cities that purportedly graded lending risks. *Id.* Baltimore's map showed most white neighborhoods as green, the most desirable, while Black neighborhoods "were almost exclusively 'redlined,'" demarcating purportedly excessive risk for investment. *Id.* The Federal Housing Authority "typically denied mortgages to black residents wherever they lived," effectively excluding Black

Americans of all classes from the mid-twentieth century's homeownership boom. N.Y. Times Editorial Bd., *supra*.

Cut off from legitimate bank mortgages, Black Baltimoreans had to rely on "the subprime sharks of their time" for financing, who "rigged up ruinously priced installment plans and financial booby traps." *Id.* To cope with these high costs, borrowers often subdivided apartments between multiple families, leading "properties to fall into decay" and "accelerat[ing] urban decline and ghettoization." *Id.* After Baltimore had achieved some social mobility for a Black middle class in the century prior, these policies "prevented a generation of [Black] citizens from gaining the wealth that typically flows from homeownership." *Id.*

The same geographic pattern of disinvestment played out over the following decades. During wartime growth in the 1940s, "[h]ousing for Black Marylanders was often overcrowded, and many of the buildings had deteriorated to the point of being unsafe for occupancy." *Id.* "Despite the population boom, the City continued to hem the [Black] population into segregated areas, often forced to live in older structures." *Id.*

To alleviate overcrowding, the City built its first high-rise public housing developments, but many Black people were dislocated for their construction. Derek Hyra, Urb. Hist. Ass'n, *Exploring the Old and New Urban Renewal Periods in Baltimore* 7 (2018), https://www.american.edu/spa/metro-policy/upload/hyra-2018-uha-paper-2.pdf ("[B]etween 1950 and 1964 an estimated 25,000 people, 85 percent black, were displaced due to urban renewal projects."). Though the high-rises were initially symbols of progress, they suffered from neglect and a lack of investment, leading to their demolition

in the '90s and more Black displacement. *Id.* "HUD had segregated its public housing in Baltimore and then, after it had concentrated the poorest [Black] families in projects in the poorest neighborhoods, HUD and the city of Baltimore demolished the projects, and purposely relocated the former residents into other segregated [Black] neighborhoods." Richard Rothstein, *From Ferguson to Baltimore*, Econ. Pol'y Inst.: Working Econs. Blog (Apr. 29, 2015), https://www.epi.org/blog/from-ferguson-to-baltimore-the-fruits-of-government-sponsored-segregation.

The City also looked to highway systems to spark development in Black neighborhoods, but "highway planning devastated [Black] communities by facilitating disinvestment and [Black] middle class flight." *Id.* Infamously, the City cleared an area in the Sandtown-Winchester neighborhood that remained vacant for years, only for the planned highway to be abandoned after being partially built—the "highway to nowhere." *Id.* ("[A]rea homeowners moved or gave up on maintaining and investing in their homes, expecting that they would eventually be displaced when the plan was fully executed.").

In sum, Baltimore "experienced a century of public policy designed, consciously so, to segregate and impoverish its [Black] population." *Id.* The same patterns of discrimination play out in this century, too. Before the Great Recession, financial institutions specifically targeted Black families with subprime mortgages. Rothstein, *supra* (for example, Wells Fargo "established a special unit staffed exclusively by [Black] bank employees who were instructed to visit [Black] churches to market subprime loans").

B. This history underlies the current affordable housing crisis, which pushes Black, low-income families into substandard homes.

The prosperity of Baltimore neighborhoods still neatly tracks the patterns of segregation instilled in the prior century. *See* Lawrence Brown, *Two Baltimores: The White L vs. the Black Butterfly*, Balt. City Paper (June 28, 2016), www.citypaper.com/ bcpnews-two-baltimores-the-white-l-vs-the-black-butterfly-20160628-htmlstory.html. Black neighborhoods are disinvested relative to their white counterparts across metrics: poverty, capital flows, development investment, home values, mortgage lending, commercial real estate lending, small business lending, and more. Urb. Inst., *The Black Butterfly: Racial Segregation and Investment Patterns in Baltimore* (Feb. 5, 2019), https://apps.urban.org/features/baltimore-investment-flows. Ultimately, "the distressed condition of [Black] working- and lower-middle-class families" in Baltimore "is almost entirely attributable to federal policy that prohibited [Black] families from accumulating housing equity." Rothstein, *supra*.

In particular, after decades of disinvestment, Black neighborhoods have insufficient affordable and habitable housing. *See* Philip M.E. Garboden, Abell Found., The Double Crisis 2, 6–9 (May 2016), https://abell.org/sites/default/files/files/cd-doublecrisis516.pdf ("Baltimore's typical 'butterfly' pattern emerges" when mapping the degree to which families are burdened by housing costs). Public housing has decreased drastically while demand for affordable housing has remained constant. Sarah S. Rhine, *Criminalization of Housing*, 9 U. Md. L.J. Race Relig. Gender & Class 333, 336 (2009). Median- and low-income families "are essentially being squeezed between areas of high-

rent increases and areas of concentrated poverty, with Baltimore's hard lines of racial and economic segregation defining boundaries on either side." Garboden, *supra*, at 2, 6–9.

Faced with limited housing choices, low-income renters can either "sign leases for units they cannot afford," or "move into substandard housing due to the lack of options." Pub. Just. Ctr., Justice Diverted: How Renters Are Processed in the Baltimore City Rent Court 4 (Dec. 2015), http://www.publicjustice.org/wp-content/uploads/2019/09/JUSTICE_DIVERTED_PJC_DEC15.pdf. Those who make the former decision often face eviction later, which itself frequently forces renters into substandard homes. *See* Matthew Desmond et al., *Forced Relocation and Residential Instability among Urban Renters*, 89 Soc. Serv. Rev. 227, 249–51, 254–58 (2015). The federal government defines "substandard" as housing that "does not provide safe and adequate shelter," that "endangers the health, safety, or well-being of a family," that has "one or more critical defects" that "require considerable repair or rebuilding," or that lacks indoor plumbing, a flushing toilet, a bathtub or shower, electricity, heat, or a kitchen. 24 C.F.R. § 5.425(a)–(b)(1); *see also* Code of Pub. Local Laws of Balt. City, Landlord & Tenant § 9-14.1(b)(3) (2021) (using the term "fit for human habitation"). Public health issues that generate unsafe conditions plague Baltimore, like lead paint exposure, rodent or insect infestation, and mold. *See* David E. Jacobs, *Environmental Health Disparities in Housing*, 101 Am. J. Pub. Health S115, S115–119 (2011).

Remarkably, the City estimates that *half* of renter-occupied units in Baltimore are substandard. Balt. City Dep't of Hous. & Cmty. Dev., Draft Consolidated Plan FY 2021-2025 55–56 (2021), https://dhcd.baltimorecity.gov/sites/default/files/Public%20Comment

%202020-2025%20Consolidated%20Plan%20-%20Annual%20Action%20Plan.pdf; *see also* Pub. Just. Ctr., *supra*, at 14 (finding, in survey analyzing Baltimore rent court, that 78 percent of respondents had "at least one threat to health or safety existing in their home" when they appeared in court).

Black families are disproportionately affected by substandard conditions. *See* Garboden, *supra*, at 5–6. In general, Black families are overrepresented among renters because they have not recovered from the Great Recession to the same degree as other groups. Sally J. Scott & Seema Iyer, Abell Found., Overcoming Barriers to Homeownership in Baltimore City 10–11 (July 2020), https://abell.org/sites/default/files/files/2020_Abell_Howeownership%20Report_FINAL2_web%20(dr).pdf. Black families also have a lower median income, and given the lack of affordable housing, Black low-income renters are severely constrained in their housing choices. Garboden, *supra*, at 5–6, 9–10. Finally, the decay and disinvestment that cause substandard conditions are concentrated in Baltimore's segregated Black neighborhoods. *See* Urb. Inst., *Black Butterfly*, *supra*.

This legacy of historic segregation is what spurred the City Council to revisit Baltimore's landlord licensure requirements.

II. Baltimore expanded rental licensure to protect renters from poor housing conditions.

A. The old licensure rules were insufficient and underenforced, leaving tenants in substandard homes with no recourse.

Prior to their expansion, Baltimore's landlord licensure regulations were ineffective. *See* Doug Donovan, *'Significant Update' to Half-Century-Old Baltimore*

Rental Rules Calls for Licensing, Inspecting All Housing Units, Balt. Sun (Jan. 21, 2018), https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-inspections-council-20180119-story.html. Although landlords had to register all rental properties with the City, they had to obtain a rental license only if operating a building with three or more rentals units. Licensed units had to pass an annual inspection to ensure housing code compliance, while inspections of single-family were authorized only "when tenants complain." *Id.* Thus, even though 53 percent of homes in Baltimore are rentals, "far above the national average of nearly 37 percent," only properties of three or more units—around 6,000 properties out of over 100,000—had to be inspected. *Id.*

Those half-century old rules were insufficient to address current widespread substandard conditions. *See id.* Most obviously, that was because "a vast percentage of Baltimore rental units are in small properties" and thus were not subject to the regulations. Garboden, *supra*, at 6 ("55 percent [of rentals] have only one [unit]."); *see also* Ctr. for Cmty. Progress, Tackling the Challenge of Blight in Baltimore 109 (Mar. 2017), https://community-wealth.org/content/tackling-challenge-blight-baltimore-evaluation-baltimore-s-vacants-value-program ("In many areas, particularly in East Baltimore, 80% to over 90% of the rental stock is 1 and 2 family properties.").

Without licensure of single-family rentals, solely discretionary inspections were inherently inadequate. Most of the City's inspections were prompted by complaints, but the City could not keep up. Donovan, *'Significant Update'*, *supra* (city carried out 219,000 inspections in 2016, when goal was 280,000, and lowered benchmark to 240,000 in 2018). It is no surprise that enforcement fell behind, given the insufficient resources

dedicated: "The city employ[ed] 93 housing inspectors at a budgeted salary cost of $4.7 million," or a ratio of around 2,500 to 3,000 inspections per public inspector, depending on the year. *See id.*; *see also* Pub. Just. Ctr., *supra*, at 52 (in rent court, where "inspections are vital to [eviction] cases," the City "staffs just three positions to service all court-ordered inspections").

Even for the multi-family rentals requiring licensure, the law was ineffective in compelling compliance. It provided three apparent enforcement mechanisms: license revocation; citation by the Environmental Control Board; and criminal misdemeanor prosecution. The inadequacy of these mechanisms was evident in their paltry results. Despite tens of thousands of complaints and inspections, Baltimore had revoked only *two* landlord licenses in a *dozen* years. Doug Donovan, *Strict Landlord Oversight in Minnesota Offers Baltimore a Model*, Balt. Sun (Dec. 29, 2017), https://www.baltimoresun.com/news/investigations/bs-md-solutions-minneapolis-20171213-story.html (comparing to Minneapolis, where the City "revoked an average of 27 licenses per year"). And over the same period—per a public information request on file with *Amici*—the number of criminal prosecutions was "extremely small, if any at all." *See also* Donovan, *'Significant Update'*, *supra* ("The city rarely collects or enforces financial and legal penalties levied against landlord for violations.").

Absent executive enforcement, a tenant's "only recourse" was "the city's 'rent escrow court,' where tenants ask judges to set aside rent payments until landlords fix serious hazards." Doug Donovan, *Baltimore Enacts New Rules to Root Out Squalid Rental Properties. But Some Tenants Could Lose Their Homes*, Balt. Sun (Feb. 07, 2019),

https://www.baltimoresun.com/news/investigations/bs-md-ci-landlords-inspections-20190103-story.html. But there too, tenants received inadequate relief. The Baltimore Sun found that rent escrow outcomes were highly skewed in landlords' favor. *See* Doug Donovan & Jean Marbella, *Dismissed*, Balt. Sun (Apr. 26, 2017), http://data.baltimoresun.com/news/dismissed (landlords generally prevailed even despite "significant code violations: leaking roofs, no heat, infestations of insects or rodents, [and] even suspected lead paint hazards"). Even in cases where escrow accounts were opened *and* inspectors found homes uninhabitable, the court "ultimately awarded 89 percent of the escrow money to the landlords." *Id.* (the court reduced or waived rent for tenants in only "6 percent of all complaints"); *see also* Pub. Just. Ctr., *supra*, at v ("[J]udges failed to recognize or permit the renters' habitability-based defenses" in half of cases.).

Altogether, the prior regulatory regime left low-income renters subject to substandard conditions with little governmental protection.

B. The City Council intended to protect tenants from substandard housing.

By 2017, Baltimore's housing task force and community consultant had both recommended that licensure be expanded to cover all properties. Donovan, *Minnesota Offers Baltimore a Model*, *supra*. The consultant—hired to study blight—"went out of its way to advise more aggressive action on occupied buildings." *Id.*; *see* Ctr. for Cmty. Progress, *supra*, at 109 ("[T]he problem of substandard rental properties and exploitative landlords is as or more serious than the vacant property problem."). News reports highlighted the recommendations, noting that Councilmember Bill Henry "said he

intends to introduce a . . . bill in January that will accomplish that goal." *See* Donovan, *'Significant Update'*, *supra*; Donovan, *Minnesota Offers Baltimore a Model*, *supra*.

In January 2018, Councilmember Henry introduced bill number 18-0185 to expand the licensure framework. *See* City Council 18-0185, 2018 Sess. (Balt. 2018) ("the Bill"). The Bill could have merely expanded the existing rules to cover all properties, but it went much farther, introducing a three-tier system. *See id.* at 14–15. Compliant landlords earn a license that requires inspection only every three years. *See id.* But landlords with unresolved code violations face both penalty fees and short-term licenses requiring biannual or annual inspections. *See id.* Penalty revenue "shall be deposited in the . . . Affordable Housing Trust Fund," *id.* at 5–6, which was expressly created to "increase affordable housing opportunities" for "persons of low income." Charter of Balt. City Art. 1 § 14(a) (2021). Thus, the new law targeted substandard housing with carrot and stick: compliance earns fewer inspections and lower fees, while violations incur more inspections and greater fees.

The other major change in the text further incentivizes compliance by eliminating any economic benefit from unlicensed rentals. The Bill replaced § 5-4's general language—that a landlord may not "operate" a rental without a license—with the more specific and consequential command that no landlord may "charge, accept, retain, or seek to collect any rental payment" without a license. *Id.* By adding this language, the legislature shifted the text of the provision to a clear, specific protection for tenants.

The Bill's legislative history corroborates that the Council acted specifically to protect tenants. On the record, Councilmember Henry introduced his bill by saying,

"One of the reasons that we need to do this is we have people . . . living in awful conditions, . . . because they don't have a lot of money, and they don't feel they have a lot of choices. . . . And we should not as a city put up with that." CharmTV, *City Council Meeting; January 22, 2018*, YouTube (Jan. 23, 2018), https://www.youtube.com/watch?v=Lz5mfxqnaCg&t=1083s (link to opening of remarks at 18:03; quoted language beginning at 18:43). He then cited the ineffectiveness of existing enforcement mechanisms, noting that some landlords choose to pay fines rather than repair violations. *Id.* at 20:10 ("[T]he ability to hold the license over the head of the landlord; this will be a way to get the landlords on track."); *see also* Donovan, *'Significant Update'*, *supra* (quoting Councilmember Henry) ("We have a disturbing number of people for whom affordable housing is synonymous with squalor.").

Government stakeholders based their analyses of the Bill on its purpose of improving conditions. The Department of Housing & Community Development (HCD) concluded that "[t]he new requirements will largely eliminate substandard conditions in the one segment of the affordable housing market where such conditions are prevalent." Memorandum from Michael Braverman, Housing Commissioner, to Members of the Balt. City Council (Feb. 13, 2018) (single-family rentals account for "a significant portion of the 43% of all rental units . . . that rent for less than $750 a month"). Because "[t]his will improve the living standards of the many thousands of households that depend on the private market for affordable housing," HCD "strongly encourage[d]" its passage. *Id.*

Similarly, the Baltimore Development Corporation (BDC) endorsed the legislation because "provision of safe, affordable housing for residents across all income levels is a necessary component of an economically successful City." Memorandum from William H. Cole, BDC President & CEO, to Members of the Balt. City Council (Jan. 31, 2018). Despite concerns about increased costs for landlords, BDC endorsed the Bill because "all property owners should bear the cost of bringing a property into habitable, code-compliant condition." *Id.* The Baltimore Police Department (BPD) supported the Bill too, because "[u]nsafe, unhealthy, and unchecked housing—whether vacant or occupied—are examples" of "underlying factors that give rise to criminal conduct." Memorandum from James A. Gillis, BPD Chief of Staff, to Members of the Balt. City Council (Feb. 16, 2018). These agencies endorsed the Bill specifically because its purpose was protecting tenants by repairing substandard housing.

Community stakeholders shared the same understanding. The groups Green and Healthy Initiatives and Physicians for Social Responsibility endorsed the Bill because, by remedying substandard conditions, it would improve the health of renting families. Hearing Notes – Major Issues Discussed, Completed File 18-0185 148–49 (Feb. 20, 2018). The Public Justice Center endorsed the Bill because, "[f]rom first-hand experience . . ., the [PJC] knows that our local and state laws, alone, do not adequately protect City renters in the low-rent housing market." Baltimore Renters United, *No License, No Rent*, https://bmorerentersunited.org/rental-licensing (quoting the hearing testimony). For the organization Baltimore Healthy Start, renter Felina Johnson said, "Families should not have to live in unsafe conditions, . . . not knowing what could break

next. This bill can help families, like my own, live with the dignity and respect we deserve." *Id.* ("I urge you to support bill 18-0185 to protect renting families.").

From the text, legislative history, and contributions of stakeholders, the inescapable conclusion is that bill 18-0185 specially protects tenants by repairing substandard housing conditions.

III. § 5-4 implies a private remedy for tenants, and this Court should avoid undermining the new law's purpose across the contexts where it is relevant.

A. The amended licensure law creates a private remedy held by tenants.

The factors relevant to finding an implied cause of action—whether a distinct group was specially protected, the legislature's intent, and consistency with the legislative scheme—all strongly favor a remedy here. *See Baker v. Montgomery County*, 427 Md. 691, 709 (2012). The purpose of eliminating profit from unlicensed rentals is to require landlords to get licensed, which in turn requires bringing their properties up to code. The group principally protected by code-compliant housing is the tenants residing in it. *See, e.g.*, *Ray Charles Found. v. Robinson*, 795 F.3d 1109, 1123 (9th Cir. 2015) (finding implied right of action because the asserted injury is precisely what the statute was intended to protect against). And given the legislature's huge expansion of regulatory coverage without commensurate expansion of executive enforcement, the legislature must have intended a private remedy. The best way to effectuate that intent in

§ 5-4—expressly prohibiting landlords from retaining rent for any unlicensed period—is for tenants to hold a private right of action, maximizing landlord motivation to comply.[1]

Yet the lower court concluded that nothing "suggests an intent to specially benefit tenants" and found no "indications of legislative intent" to extend a private right. *Aleti*, 251 Md. App. at 546–47. The court acknowledged that "the City Council intended to create a strong financial disincentive for landlords to ignore the licensing requirement," with § 5-4's "broad and sweeping prohibition" being "a coercive mechanism to effectuate that intent." *Id.* But, it reasoned, "the apparent purpose" of doing so was merely "for there to be no unlicensed housing," which "benefit[s] the City and the public generally, including tenants, by forcing landlords to comply." *Id.*

This reasoning is circular, circumventing the true intent of the amendments. All of the Baltimore City Council's legislative actions can be said to "benefit the City and the public generally." Here, though, those benefits are only conferred generally by means of protecting tenants specifically. And the coercive incentives of § 5-4 cannot, in fact, meaningfully coerce compliance unless tenants can enforce them. *See, e.g.*, *Landegger v. Cohen*, 5 F. Supp. 3d 1278, 1290 (D. Colo. 2013) (finding private remedy based on "rights-creating-language" where provision expressly "proscribes certain conduct as 'unlawful'").

[1] If there is any doubt about the City's power to do so: the General Assembly expressly anticipated "supplementary rights afforded by local ordinance" to enforce local "comprehensive habitability codes" that go beyond the regulatory floor of state law, *see McDaniel v. Baranowski*, 419 Md. 560, 581–82 (2011) (quoting Md. Code, Real Prop. § 8-208(f), as it relates to rental licenses), assenting to the City Council's authority to create the right in § 5-4.

The City Council did not legislate in a vacuum. The prior law was going unenforced. The City virtually never revoked licenses and could not keep up with inspections, allowing landlords to operate unlicensed multifamily properties and ignore code violations. Tenants paid the price, forcing many to live in substandard conditions. The Bill followed the recommendations of the City Council's housing task force and community consultant, both of which criticized these burdens on tenants. The City Council responded, imposing universal licensure and a new scheme designed specifically to eradicate poor conditions. The City even assigned penalty revenue to the Affordable Housing Trust for the construction of affordable housing. Balt. City Charter, *supra*, Art. 1 § 14-(e). The law was enacted to specially supplement the rights of tenants. *See* Md. Code, Real Prop. § 8-208(f).

Achieving that clear legislative purpose, however, would be impossible absent an enforceable right held by tenants. The City previously lacked sufficient resources to perform inspections, and the expansion of licensure to all rentals massively increased that obligation. Yet, for additional enforcement, the amendments only authorized private contractors hired and paid by the landlords to perform home inspections. *See* Balt. City Code, Art. 13 § 5-7(b)(iii) (2021). The massive increase in regulatory burden without a corresponding increase in executive enforcement resources indicates the Council's intent to rely on tenant enforcement of § 5-4. *Cf. Noffsinger v. SSC Niantic Operating Co.*, 273 F.Supp.3d 326, 340 (D. Conn. 2017) ("Most importantly, without a private cause of action [the provision] would have no practical effect, because the law does not provide for any other enforcement mechanism.").

Even if the City is now able to carry out all necessary inspections, that does nothing to prevent unlicensed landlords collecting or retaining rent from tenants. *See, e.g.*, *id.* The same is true of the pre-existing enforcement mechanisms: license revocations; vacating homes; environmental citations; misdemeanor prosecutions; and financial penalties. These tools could help enforce the licensure requirements and cure housing code violations, but none of them remedy a landlord's violation of the specific prohibition on charging tenants rent without a license. *See, e.g.*, *Hudnell v. Thomas Jefferson Univ. Hosps., Inc.*, --- F.Supp.3d ---, 2020 WL 5749924, at *5 (E.D. Pa. 2020) (finding implied private remedy where legislature provided administrative remedies for a different, new provision, but provided no administrative remedy for the provision at issue).

And, as a practical matter, few resources are dedicated to these enforcement mechanisms, such that landlords routinely chose to violate the prior statute. *See, e.g.*, *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 76 (1992) (finding implied private remedy where claimant was "remediless" despite existing enforcement pathways because those tools did not redress the claimant's injury). If tenants cannot claim rent collected unlawfully by an unlicensed landlord, the extraordinarily explicit amendment to § 5-4 has, in reality, no effect. *See, e.g.*, *Callaghan v. Darlington Fabrics Corp.*, No. PC-2014-5680, 2017 WL 2321181, at *8 (R.I. Super. May 23, 2017) (finding that the statute "must have an implied private right of action" because, "[w]ithout one, [the relevant provision] would be meaningless"). Rather than read a central change in the law as meaningless, the correct reading is that the legislature intended tenants to enforce the provision. *See, e.g.*,

First Pac. Bancorp, Inc. v. Helfer, 224 F.3d 1117, 1126 (9th Cir. 2000) (finding private remedy because "it is appropriate to infer that Congress did not intend to enact unenforceable requirements").

The lower court's contrary rationale is unpersuasive. It reasoned that the introductory subsection of the housing article refers to repairing widespread "blight," so the Bill serves that "overarching goal[]" to "prevent numerous social and economic ills," as opposed to "specially benefit[ting] tenants . . . with free, unlicensed housing." *Aleti*, 251 Md. App. at 538–39, 546–47. But nearly every amendment in the Bill serves to protect tenants from substandard conditions, and all benefits to the City flow from the benefits first received by tenants, not the other way around. And, of course, § 5-4's purpose is not to benefit tenants with "free" housing. If § 5-4 is properly enforced, tenants would benefit from incentivized landlords repairing housing code violations—as the *Aleti* court acknowledged elsewhere. *See id.* at 547 (finding it "plain" that the council intended § 5-4 as "a strong financial disincentive"). Indeed, the lower court's anxiety about the well-to-do Plaintiffs winning "rent-free housing" may be altogether irrelevant. Implied causes of action can be equitable in nature. *See, e.g.*, *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001). That is true here, because § 5-4 claimants are not seeking "damages," compensating for theoretical losses; rather, they seek "restitution," disgorging benefits it would be unjust for the defendant to keep. *Consumer Protection Div. v. Morgan*, 387 Md. 125, 168–69 (2005). Because equitable claims have equitable defenses, the Court could recognize the cause of action here while still affording an opportunity to rebut the allegation of unjust enrichment.

Only by citing the most general section of Article 13, which was not at all implicated by the Bill, and by ignoring the statements of the Bill's sponsor, government agencies, and community stakeholders, could the court portray protections for tenants as incidental benefits here. *See id.*

B. The Court should recognize the private right of action held by renters of substandard homes, and the various other contexts where tenants are protected by § 5-4, because the District Court is already reading the lower court's opinion to undermine the statute.

This Court need not broadly conclude that there is no private remedy held by *any*one just because the law's purpose would ultimately inure to the benefit of *every*one. That conclusion is unnecessary to resolving this case, subverts the City Council's purpose, and undermines enforcement of § 5-4's new text. While the Bill functions by protecting tenants generally, and improving conditions in the City generally, all evidence of the legislature's purpose goes specifically to tenants in substandard housing. Those tenants have the strongest possible claim to a private remedy. Ignoring that remedy undermines the City Council's attempt to respond to generations of segregation in Baltimore by repairing the substandard conditions that primarily burden poor and Black families.

That the absence of a remedy effectively nullifies the amended § 5-4 is already evident in the implementation of the lower court's ruling. By so broadly discounting the legislature's intent to protect that population, the lower court invited confusion in Baltimore's rent court. Even in instances where tenants rely on the new, crystal-clear language in § 5-4 to resolve issues within landlord-tenant disputes—not as a standalone

cause of action—the rent court is reading the *Aleti* opinion as foreclosing any relief. Therefore, the Court should clarify that § 5-4 provides grounds for relief via other common landlord-tenant claims and defenses.

Amici have direct experience with litigating these issues on behalf of the communities we serve. State and local law authorize tenants to complain of substandard conditions, and the rent court is authorized to open escrow accounts to hold rent payments while complaints are resolved. *See generally* Code of Pub. Local Laws of Balt. City, Landlord & Tenant § 9-9 (2021); Md. Code, Real Prop. § 8-118 (2021). As just one illustrative example, in *Gray v. Woodland Street Apartments*, a tenant complained of substandard conditions and paid rent to the court's escrow account. At a recent hearing, the only outstanding issue was disbursement of the escrow funds. *See* Transcript of Hearing at 2–3, *Gray v. Woodland Street Apartments*, No. 607-2021 (D. Ct. Md. Balt. City argued Oct. 21, 2021) (on file with *Amici*).

When the court asked if the parties had agreed on how the money should be disbursed, counsel for the landlord said, "Counsel for the tenant is going to make a legal argument that, based on rental license . . . the money should go back to the tenant." *Id.* at 4. The court responded, "Well, there is a case that came out based on that. Did you read that case?" *Id.* Counsel confirmed the court was referring to "the *Aleti* case," but argued "that that does not apply." *Id.* The court disagreed, holding that *Aleti* foreclosed the tenant's argument that the unlicensed landlord was not entitled to disbursement of escrowed rent—"I do think that case applies. . . . Because I read that case. I know it well."—and ordered the parties to re-negotiate. *See id.* at 5–6.

Similarly, in *DTA Property Management v. Donaldson*, a tenant-defendant facing a landlord's failure-to-pay-rent claim argued for recoupment of several months' rent paid while the landlord was unlicensed. *See* Transcript of Hearing at 13, No. 607-2021 (D. Ct. Md. Balt. City argued Sept. 22, 2021) (on file with *Amici*). The court interjected to shut-down the reasoning: "No. No. Denied. . . . I mean, the Court of Special Appeals has literally just issued a decision on your whole offset recoupment argument just a couple of weeks ago." *Id.* at 15–15. Though counsel pointed out that *Aleti* "did not mention a recoupment argument," the Court responded, "No. [§ 5-4 is] not a cause of action." *Id.* Even when counsel distinguished—"And we are not suing the landlord, Your Honor"—the court shut down the availability of any relief under § 5-4: "No, but it's the same argument. You're looking for this Court to basically offset any amounts of money that she's paid previously during the periods . . . that the property wasn't licensed." *Id.*

Nothing at issue here should have foreclosed the tenants in these cases from recouping rental payments they were entitled to under the plain text of § 5-4. The tenants did not rely on § 5-4 to initiate the suit. Rather, the tenant in *Gray* relied on the rent escrow law to enforce her right to habitable housing as local and state law intended, and the tenant in *Donaldson* was raising a defense after being sued for unpaid rent. In both contexts, the court must determine the amount of rent due to the landlord. If a tenant's landlord was unlicensed for any period that they paid rent into the court's escrow account, or any period for which they are being sued for failure to pay rent, then the plain language of § 5-4 prohibited the court from awarding those rental payments to the landlord. However, the court apparently understood *Aleti*'s broad proclamations as

foreclosing any possible tenant claim to rent paid to an unlicensed landlord under any circumstances, in clear derogation of the law's explicit prohibition on unlicensed access to rent.

That outcome effectively nullifies the amendment to § 5-4. No disincentive or coercive mechanism is created by § 5-4's prohibition on unlicensed rent collection if landlords know that tenants cannot vindicate their right after rent has already been paid. And, under the lower court's rationale, coupled with *McDaniel*, 419 Md. at 587–88, landlords could sue for rent that came due during an unlicensed period—despite substandard living conditions—so long as the landlord is licensed when they file for summary ejectment. It is not enough to say § 5-4 grants the tenant the right to withhold paying the rent in the first place. This would lead to landlords making misrepresentations and coercing tenants to pay rent not due under § 5-4, and as *Gray* demonstrates, when tenants follow the procedure for complaining of substandard conditions—exactly what the legislature intended to facilitate—they must continue paying rent money into escrow while their case is resolved. Tenants often do not know their landlords were unlicensed when they paid rent, as in *Donaldson*. Finally, tenants may be entitled to relief under § 5-4 on claims arising at common law—like money had and received claims, to which the lower court wrongly extended its rationale, *see* Pets.' Br. at 27–32—or under relevant statutes, like consumer protection and debt collection laws, as is before this Court in *Assanah-Carroll v. Maher, P.C.*, COA-MISC-0011-2021. There, too, § 5-4 must have force regardless of the existence and scope of its private right of action. *Cf. Scull v. Groover, Christie & Merritt, P.C.*, 435 Md. 112, 133 (2013) (violations of the State

HMO law can serve as the basis for an action under the Consumer Protection Act even if the HMO law does not contain a private right of action). The amended language of § 5-4 cannot fulfill the legislature's purpose of improving rental conditions if no tenant can obtain any benefit from it.

These are examples of the confusion that will continue if this Court applies the same reasoning as the lower court. Questions of the legality and ownership of rental payments arise frequently in rent court. To avoid these misreadings, the Court should provide clear guidance. Under § 5-4, a landlord cannot lawfully receive rental money for any period in which the landlord was unlicensed, and therefore that money belongs to the tenant. A remedy must flow from that premise. If *no one* holds a remedy, as the lower court broadly proclaimed, then the courts will have effectively nullified the amendment to § 5-4, as these real-world examples forewarn. At a minimum, then, to vindicate the legislature's express intent in the amended § 5-4, the Court should recognize that tenants in substandard housing hold a private right of action. In *Assanah-Carroll*, where the issue is fully briefed, the Court should rule that relief may be available for tenants via existing claims and defenses in other contexts.

CONCLUSION

Amici curiae respectfully urge this Court to resolve this case in a manner that best vindicates the protections conferred upon Baltimore's renters as the City Council intended.

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
T: 410-625-9409
F: 410-625-9423
abramsm@publicjustice.org

Counsel for Amici Curiae

CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,492 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 December 22, 2021, the foregoing Brief of *Amici Curiae* in Support of Appellants 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:

E. David Hoskins
The Law Offices of E. David Hoskins, LLC
16 East Lombard Street, Suite 400
Baltimore, Maryland 21202
davidhoskins@hoskinslaw.com

Counsel for Appellants

Eric Pelletier
Offit Kurman, P.A.
4800 Montgomery Lane, 9th Floor
Bethesda, MD 20814
epelletier@offitkurman.com

Counsel for Appellees

/s/ Michael R. Abrams
Michael R. Abrams

APPENDIX

Civil Justice ("CJ") is a non-profit organization providing legal services to Marylanders through a combination of in-house litigation and a network of lawyers who share a common commitment to access to justice. Through its litigation efforts and other advocacy, CJ challenges predatory practices that threaten the stability of under-resourced neighborhoods. CJ has acted as *Amicus Curiae* numerous times in the Maryland Court of Appeals. *See, e.g.*, *Wheeling v. Selene Finance, LP*, 473 Md. 356 (2021); *Ben-Davies v. Blibaum & Associates, P.A*, 457 Md. 228 (2018). CJ has a strong interest in protecting modest-income tenants from abusive practices and ensuring that tenants and other consumers can enforce their rights.

The **Homeless Persons Representation Project**, founded in 1990, is a non-profit organization whose mission is to end homelessness in Maryland by providing free legal services, including advice, counsel, education, representation, and advocacy for low-income persons who are homeless or at risk of homelessness. HPRP's housing practice focuses exclusively on tenants and prospective tenants of affordable rental housing, both private rentals and those subsidized by federal, state, and local programs. HPRP has represented hundreds of Maryland tenants in eviction and subsidy termination actions and has acted as *Amicus Curiae* and counsel in the Maryland appellate courts. *See, e.g. Montgomery Cty. v. Glenmont Hills Assocs.,* 402 Md. 250 (2007); *Grady Mgmt. v. Epps,* 218 Md. App. 712 (2012); *Matthews v. Hous. Auth. Of Balt. City,* 216 Md. App. 672 (2014); *Foghorn v. Hosford,* 455 Md. 462 (2017); *McDonell v. Harford Cty. Hous. Agency,* 462 Md. 586 (2019); and *Velicky v. Copycat Bldg. LLC*, 2021 WL 5562319 (Md.

Nov. 29, 2021). HPRP has a strong interest in ensuring that protections for low-income and Black tenants are preserved and protected.

Established in 1911, the **Legal Aid Bureau, Inc.** (hereinafter "**Maryland Legal Aid**" or "MLA") is a non-profit, 501(c)(3) law firm that provides free legal services to low-income Maryland residents from 13 locations throughout the state. MLA provides assistance to over 50,000 individuals annually. Its advocates address the legal needs of low-income persons regarding their most fundamental necessities, including preventing unlawful evictions, obtaining healthcare and disability benefits, preventing foreclosures, recovering unpaid wages, restoring utilities, and preventing wage garnishments. Representing people facing substandard and dangerous housing conditions is one of MLA's highest priorities. MLA has an interest in this case because it assists thousands of clients each year who are facing uninhabitable housing.