
IN THE COURT OF APPEALS OF MARYLAND

**Misc. No. 11
September Term, 2021**

ALISON ASSANAH-CARROLL,
Appellant,

v.

LAW OFFICES OF EDWARD J. MAHER, P.C. ET AL.,
Appellees.

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

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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 of racial and economic inequality. 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 attempted to reverse these longstanding ills when it expanded landlord licensure regulations in 2018. Its command in Article 13, Subsection 5-4—that unlicensed landlords may not “charge, accept, retain, or seek to collect any rental payment” from tenants—created a new, explicit rule that rent is not due on unlicensed rentals, and landlords cannot lawfully possess such payments.

The City Council’s express prohibition on unlicensed rent payments gives rise to claims under consumer protection statutes, including the Maryland Consumer Debt Collection Act (MCDCA) and the Maryland Consumer Protection Act (MCPA) (hereinafter, “the consumer protection statutes”). Construing those remedial statutes narrowly to conclude no remedy is available here could effectively render the City’s law a dead letter and violate this Court’s maxim that remedial statutes be interpreted liberally to effectuate their purposes. Instead, this Court should recognize that the clear mandate of § 5-4 implicates these statutory causes of action, ensuring that the consumer protection statutes are interpreted broadly and vindicating the City Council’s purpose of repairing substandard housing.

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_Homeownership%20Report_FINAL2_web%20\(dr\).pdf](https://abell.org/sites/default/files/files/2020_Abell_Homeownership%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,

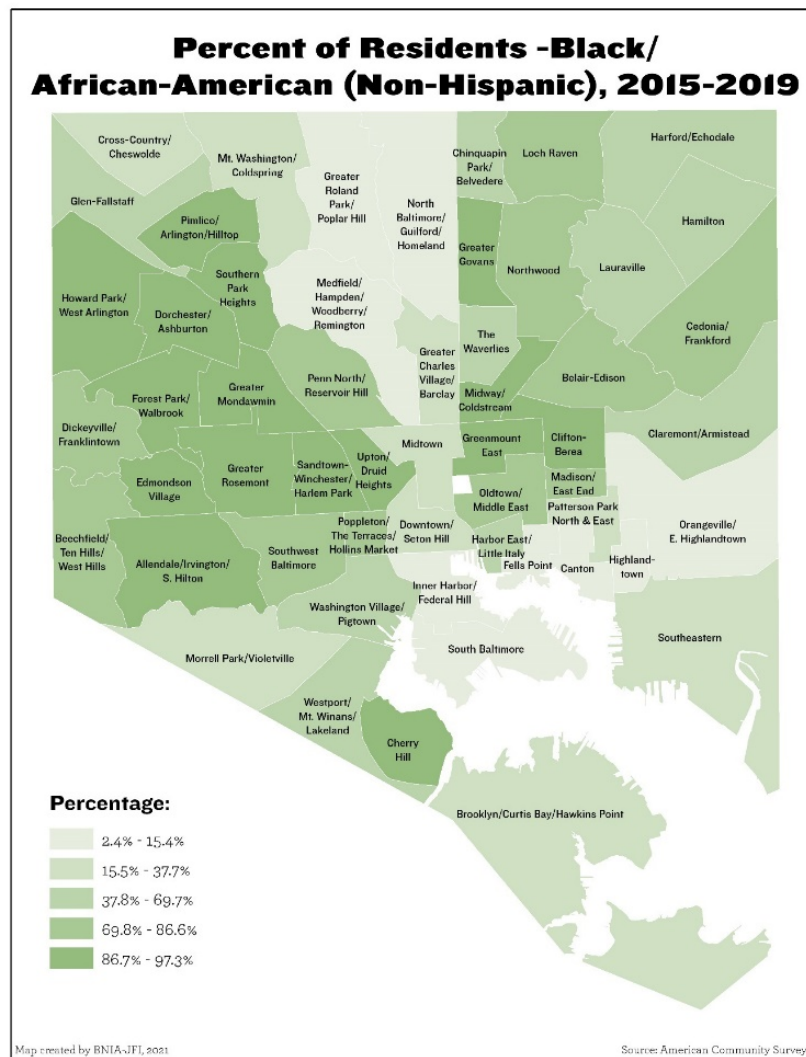
supra, at 5–6, 9–10. Finally, the decay and disinvestment that cause substandard conditions are concentrated in Baltimore’s segregated Black neighborhoods. *See Urb. Inst., Black Butterfly, supra*. This is the living legacy of historic and ongoing segregation in housing.

II. Baltimore expanded rental licensure to redress the ongoing harms caused by housing segregation.

A. The consequences of housing segregation play out in Baltimore’s rent court.

The segregation in Baltimore housing has ongoing, systemic consequences for Black low-income renters, which is evident in Baltimore’s rent court. The rent court docket reflects the impact of the affordable housing shortage and the prevalence of substandard living conditions, which are both concentrated in Baltimore’s Black neighborhoods.

To demonstrate, the following map shows the distribution of Black families across the City:



Balt. Neighborhood Indicators Alliance, Jacob France Inst., *Gallery: Vital Signs 19 Census Demographics Maps*, <https://bniajfi.org/mapgallery/gallery-vs19-census> (analyzing census data). The map reflects the historic pattern of segregation described above: predominantly Black neighborhoods spread out across East and West Baltimore—the “Black Butterfly”—while predominantly white areas run down the center of the City and to the Southeast—the “white L.”

Next, to map the distribution of rent court cases, *Amicus* Civil Justice analyzed the Baltimore City District Court’s civil case dockets. Their analysis, on file with *Amici*, used data from the Maryland Volunteer Lawyers Service’s Client Legal Utility Engine (CLUE) database. The following figures show, respectively, the distribution of: 1) addresses sued in rental debt collection lawsuits between 2016 and 2020; 2) those addresses, along with the addresses filing rent escrow lawsuits during the same period; 3) addresses filing *multiple* rent escrow lawsuits during the same period:

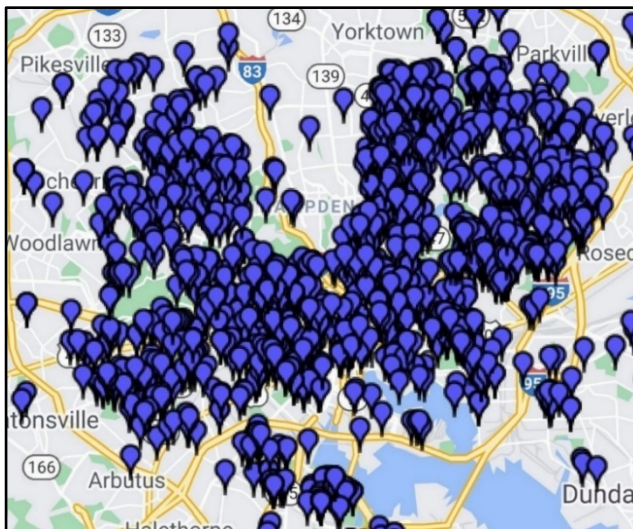


Figure 1, rental debt collection suits

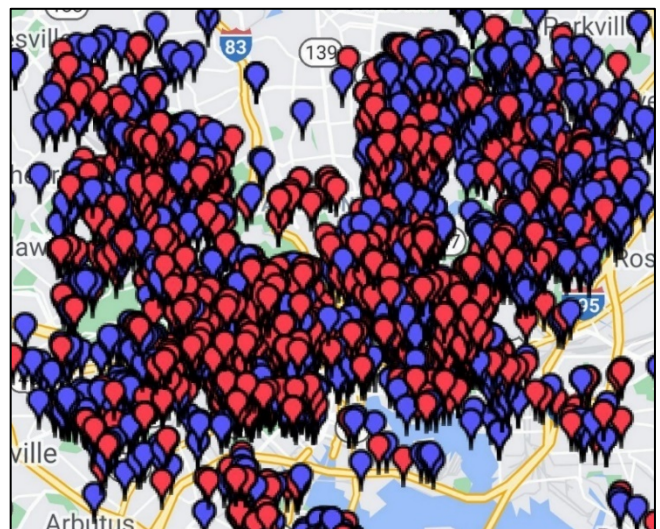


Figure 2, debt collection and escrow suits

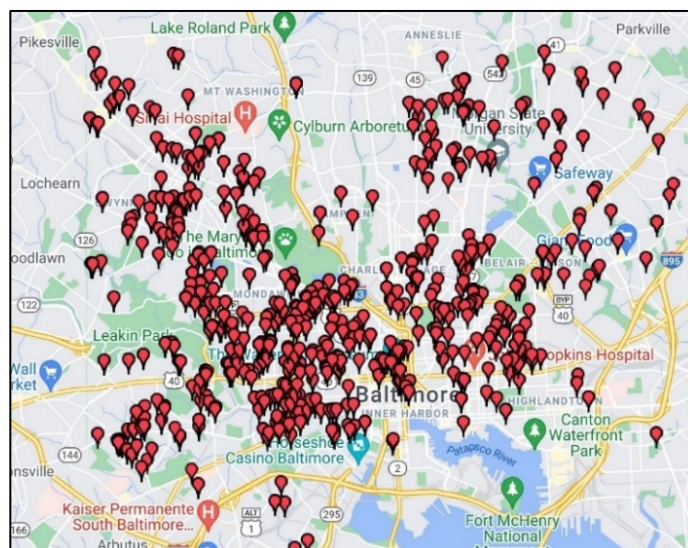


Figure 3, multiple escrow suits

Md. Volunteer Lawyers Serv., Client Legal Utility Engine, *Maryland Judiciary Case Search Data*, <https://mvlslaw.org/maryland-judiciary-case-search-data> (maps on file with *Amici*, created using Google Maps tools). Each figure reflects the “Black Butterfly” pattern, meaning tenants in rent court disproportionately reside in the predominantly Black, low-income, and under-resourced neighborhoods instilled by generations of segregation and disinvestment.

This is just one demonstration of how Black families are still bearing the burden of Baltimore’s housing segregation: They are more likely to be overburdened by housing costs, more likely to face substandard living conditions, and as a result, more likely to end up dealing with legal issues in rent court.

B. The City Council replaced the old, insufficient licensure rules with the new, expanded framework to redress the crisis of affordable, habitable housing.

Landlord compliance with the licensure framework is a mandatory element in these rent court cases. *See McDaniel v. Baranowski*, 419 Md. 560, 563 (2011); *Pettiford v. Next Generation Tr. Serv.*, 467 Md. 624, 642–43, 663–68 (2020). However, until the City Council passed the expansive 2018 amendments, Baltimore’s landlord licensure regulations were insufficient to effectively address the systemic legacy of segregation. *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.* “[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 universal licensure, most of the City’s inspections were prompted by complaints, and 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 (even though “inspections are vital to [eviction] cases,” the City “staffs just three positions to service all court-ordered inspections”).

Even for the multi-family rentals that required 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 Minneapolis, which “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, the “only recourse” for many tenants was rent escrow, described above. 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 District 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. In response, 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*. In January 2018, Councilmember Bill Henry introduced Council Bill 18-0185 to expand the licensure framework. *See* Baltimore 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.* The law required that 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 City Council not only provided that licensure is mandatory, but also made it expressly unlawful for a landlord to obtain or possess any payment for an unlicensed unit.

The City Council's purpose in enacting these provisions was to respond to the crisis of affordable, habitable housing. 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.”).

Likewise, government and community stakeholders supported the Bill because its purpose was to improve conditions. *See, e.g.*, Memorandum from Michael Braverman, Housing Commissioner, to Members of the Balt. City Council (Feb. 13, 2018) (“The new requirements will largely eliminate substandard conditions,” which would “improve the living standards of the many thousands of households that depend on the private market for affordable housing”); Memorandum from William H. Cole, Balt. Dev. Corp., President & CEO, to Members of the Balt. City Council (Jan. 31, 2018) (“[A]ll property owners should bear the cost of bringing a property into habitable, code-compliant condition.”); Balt. Renters United, *No License, No Rent*, <https://bmorerentersunited.org/rental-licensing> (quoting the testimony of renter Felina Johnson on behalf of Baltimore Healthy Start: “Families should not have to live in unsafe conditions This bill can help families, like my own, live with the dignity and respect we deserve. . . . I urge you to support bill 18-0185 to protect renting families.”).

In sum, the City Council imposed an incentive-based framework specifically designed to repair the substandard housing conditions that are part of the legacy of housing segregation in Baltimore, and § 5-4 is an essential pillar of that framework.

III. Applying remedial statutes liberally, and considering the City Council’s protective purpose, § 5-4 provides a basis for a claim under the consumer protection statutes.

Because § 5-4 now expressly prohibits landlords from possessing any rental payment for an unlicensed unit, it implicates the consumer protection statutes. The amended § 5-4 expressly provides that no rent is owed for an unlicensed unit, and no landlord may charge, accept, or retain such a payment. The consumer protection statutes

prohibit a collector from claiming a right that does not exist. Md. Code, Comm. L. § 14-202(9). Therefore, given their remedial nature, those statutes must be construed liberally to prohibit an unlicensed landlord from claiming or retaining rent in violation of § 5-4. *See* Appellants’ Br. at 12–28. The opposing conclusion would contradict the statutes’ purpose of “protecting consumers” from unfair and abusive trade and debt collection practices. *See Andrews & Lawrence Pro. Servs., LLC v. Mills*, 467 Md. 126, 161 (2020) (the primary goal in interpreting these statutes is “advancing [their] purpose, not [frustrating] it”).

It would also frustrate the purpose of § 5-4. *See Pak v. Hoang*, 378 Md. 315, 325–26 (2003) (“[C]ourt[s] should not permit a narrow or grudging process of construction to exemplify and perpetuate the very evils to be remedied.”) (quoting *Neal v. Fisher*, 312 Md. 685, 693–94 (1988)). The City Council amended § 5-4 to expressly prohibit any profit from unlicensed rental properties. 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. But this incentive-based mechanism for implementing the legislature’s clear purpose relies on tenants’ ability to enforce the protections granted to them by § 5-4.

The City previously lacked sufficient resources to perform inspections, and the expansion of licensure to all rentals massively increased that obligation. However, to facilitate this expansion of regulatory coverage, the City only authorized landlords to contract with private, third-party inspectors for home inspections. *See* Balt. City Code,

Art. 13 § 5-7(b)(iii) (2021). While that might enable the City to carry out all necessary inspections, it does nothing to prevent violations of § 5-4.

The same is true of the pre-existing enforcement mechanisms, like license revocations, environmental citations, misdemeanor prosecutions, and financial penalties. These tools could help enforce the licensure requirements and cure housing code violations, but none of them implement § 5-4 by remedying a landlord's violation of the express prohibition on charging tenants rent without a license. And, as a practical matter, few resources are dedicated to these enforcement mechanisms, such that landlords routinely chose to violate the prior statute. Rather than read a central change in the law as ineffectual, the Court should recognize that § 5-4 is enforceable by tenants under the consumer protection statutes.

Absent tenant enforcement, landlords would be incentivized to deceive tenants about their unlicensed status instead of incentivized to repair substandard conditions and obtain a license. So long as tenants unknowingly pay rent that is not really due under § 5-4, or unknowingly pay a collector for debts that do not really exist, landlords and debt collectors can retain the payments knowing the tenants have no legal mechanism for unwinding the deception. Similarly, even for tenants who rightly withhold rent payments while a unit is unlicensed, nothing would stop a landlord from getting licensed and then allocating future rent payments towards the unlicensed months as if the tenant was behind on rent. These kinds of deceptive and unfair practices undermine the rule of law and are exactly what the consumer protection statutes are supposed to guard against. *See Mills*, 467 Md. at 161; *Pak*, 378 Md. at 325–26.

In *Aleti v. Metropolitan Baltimore, LLC*, 251 Md. App. 482 (2021), the Court of Special Appeals held that § 5-4 does not grant an implied private right of action to tenants. In the appeal now pending before this Court, *Amici* raised similar arguments as those raised here to explain why the Court should reverse. Ultimately, though, the outcome in that case does not inform the outcome of this one. The questions are distinct: Whether or not § 5-4 extends an implied private right of action, violations of § 5-4 can give rise to tenants’ express private rights of action under the consumer protection statutes.

Baltimore’s landlord licensure regulations and the consumer protection statutes expressly recognize that their remedies do not preclude the existence of other remedies. *See* Balt. City Code, Art. 13 § 5-25(a)–(b); *see also* Md. Code, Comm. L. §§ 13-103(b), 13-401(e), 13-408(a) (MCPA); Md. Code, Comm. L. § 14-1806 (MCDCA). And, unless a legislature has indicated a clear intent to provide an exclusive remedy to preclude a private right of action, the recognition of an implied private right action does not require that no other possible cause of action could exist for the same injury. *Cort v. Ash*, 422 U.S. 66, 82 n.14 (1975) (rejecting argument that the existence of an independent statutory remedy necessarily means no private right of action is implied, absent some supportive indication of legislative intent for exclusivity); *see also Transam. Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 29 n.6 (1979) (White, J., dissenting) (referring to *Cort*’s “rejection” of “the oft-criticized maxim *expressio unius est exclusio alterius*”).

Conversely, “[t]he fact that a statute conferring substantive rights does not itself give its beneficiaries a private right of action to enforce it does not mean that the

beneficiaries are without a private remedy.” *Chan v. City of New York*, 1 F.3d 96, 102–04 (2d Cir. 1993) (holding that federal statute did not contain implied private right of action, but same provision was enforceable via § 1983 action). This Court recognized that principle when it held that Maryland’s HMO law did not contain an implied private right of action, but violations of the law could serve as the basis for MCPA claims. *Scully v. Groover, Christie & Merritt, P.C.*, 435 Md. 112, 119–33 (2013).

Thus, the questions raised in *Aleti* and the questions raised here, while related, are distinct. The causes of action at issue would not be identical, and their respective availability or their corresponding remedies could diverge depending on the circumstances of any given case. *See, e.g.*, Md. Code, Comm. L. § 14-1805 (making attorney’s fees available under the MCDCA); Md. Code, Comm. L. § 13-104 (imposing exemptions from liability for certain persons, businesses, and practices).

Furthermore, so far as the consumer protection statutes are concerned, there is precedent for Maryland courts treating violations of these very same regulations as the predicate for private claims under the MCPA. *See, e.g., Golt v. Phillips*, 308 Md. 1, 8–10 (1986). In *Golt*, a tenant leased an advertised apartment in Baltimore City, but when his landlord failed to make requested repairs, the tenant discovered the landlord was operating the multi-family building without the requisite license. *Id.* The Court of Appeals held that the tenant had an MCPA claim because “[i]mplicit in any advertisement and rental of an apartment is the representation that the leasing of the apartment *is lawful*.” *Id.* at 9 (emphasis added). Because the landlord was unlicensed, “it violated the City Code”; “Consequently, [the landlord’s] advertisement and rental of the

apartment was a ‘misleading...statement...or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers.’” *Id.* (quoting Md. Code, Comm. L. § 13-301(1)). The landlord’s violation was also a “failure to disclose a material fact, which deceives or tends to deceive,” violating § 13-301(3) of the MCPA. *Id.* at 10 (“In our view, the lack of proper licensing for an apartment under most circumstances is a material fact that any tenant would find important in his determination of whether to sign a lease agreement and move into the premises.”).

“It makes no difference that [the landlord] did not expressly state that the premises were properly licensed; *such a basic prerequisite to any lease agreement is implied.*” *Id.* at 9 (emphasis added) (“For consumer protection purposes, the meaning of any statement or representation is determined not only by what is explicitly stated, but also by what is reasonably implied.”). The *Golt* court could not have been clearer: the landlord’s violation of the licensure regulations in the City Code gave rise to a private right of action under the MCPA. *See id.* The same reasoning applies squarely to a violation of the new “basic prerequisite” of § 5-4.

Courts applied *Golt* favorably in subsequent cases. *See, e.g., Legg v. Castruccio*, 100 Md. App. 748, 759–60 (1994). In *Legg*, the court pointed to the MCPA’s instruction that, “in construing the term ‘unfair or deceptive trade practices,’ due consideration and weight be given to the interpretation of . . . the Federal Trade Commission Act by the Federal Trade Commission [“FTC”] and the federal courts.” *Id.* (quoting Md. Code, Comm. L. § 13-105). *Legg* then discussed, in depth, an FTC policy statement defining “unfair practices” as covering “violation[s] of public policy.” *Id.* at 768–70. The public

policy consideration “permits the Commission to look to statutes or other sources of public policy to affirm that a practice is unfair,” and “public policy alone can support a Commission action when the policy is so clear that it will entirely determine the question of consumer injury.” *Id.* (internal quotations omitted). In other words, “Because the legislature or court has already determined that such an injury exists, an independent basis need not be proven.” *Id.*

Rather than “ignor[ing] the FTC’s refinement of that standard, its approval by Congress, and its adoption by the federal judiciary,” *Legg* concluded: “We are persuaded by the FTC’s Policy Statement” and the MCPA’s private right of action is available to claim violations of “clear and well-established” public policy. *Id.* at 768–72 (“In other words, the policy should be declared or embodied in formal sources such as statutes, . . .”) (internal quotations omitted). *Golt* and *Legg* make clear that violations of a statute or local ordinance can be the predicate for claims under the consumer protection statutes, including the very same landlord licensure rules at issue here. *See id.*; *Golt*, 308 Md. at 8–10.

Of course, the Court in *Citaramanis v. Hallowell*, 328 Md. 142 (1992) discussed *Golt* and, to some extent, tempered its reach. *Citaramanis* required an independent injury for an MCPA claim based on a licensure violation alone. 328 Md. at 149–50. It noted that *Golt* was compatible with this rule because there happened to be “obvious actual loss and damage suffered by the tenant” there, and *Golt*’s reasoning implying that the violation alone was enough was “much too broad[.]” *Id.*

Here, though, *Citaramanis*'s rule, and its limitation on *Golt*, are ultimately irrelevant. *Golt* still stands for the proposition that independent statutory violations, including of Baltimore's licensure rules, can give rise to claims under the private causes of action in the consumer protection statutes. And *Legg*, decided after *Citaramanis*, affirmed that proposition and expressly held that violations of clear and well-established public policy can serve as the requisite injury for an MCPA claim. *See* 100 Md. App. at 759–60, 768–72; *see also Citaramanis*, 328 Md. at 158–59. These cases all predated the City Council's comprehensive expansion of the licensure rules in 2018. When *Citaramanis* held that the licensure violation alone was an insufficient injury, there was no clear prohibition on a landlord's possession of unlicensed rent, as § 5-4 provides. Now, under the principles laid out in *Legg* and *Golt*, violations of § 5-4's clear public policy rule give rise to a private cause of action and injury under the MCPA. *See Legg*, 100 Md. App. at 759–60, 768–72; *Golt*, 308 Md. 1, 8–10.

Altogether, the Court's well-established interpretive principles for applying the consumer protection statutes demand that relief be available here. Segregation in Baltimore directly contributes to the crisis of affordable, habitable housing. The systemic effects are evident every day in Baltimore's rent court. The City Council attempted to take expansive action to repair the substandard housing conditions that primarily burden poor and Black families. To that end, § 5-4 is a crucial pillar of the new incentive-based framework. That protective purpose is exactly the kind of legislative action the remedial consumer protection statutes are intended to reach. If the Court construes the consumer protection statutes narrowly instead of broadly, providing no remedy when tenants are

injured by violations of § 5-4, it will subvert both the General Assembly's and the City Council's purposes. To advance the protective purpose of the consumer protection statutes, instead of frustrating it, the Court should conclude that violations of § 5-4 may give rise to causes of action under the consumer protection statutes.

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 and upon Maryland consumers as the General Assembly intended.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,009 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on January 19, 2022, 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:

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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.