

IN THE COURT OF APPEALS OF MARYLAND

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COA-PET-0133-2022  
September Term, 20\_\_

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JENNIFER ROWE,  
*Petitioner,*

v.

MARYLAND COMMISSION ON CIVIL RIGHTS,  
*Respondent.*

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**BRIEF OF *AMICI CURIAE***

**THE AMERICAN CIVIL LIBERTIES UNION OF MARYLAND, ASIAN  
PACIFIC AMERICAN BAR ASSOCIATION OF MARYLAND, CASA,  
COUNCIL ON AMERICAN-ISLAMIC RELATIONS, DISABILITY  
RIGHTS MARYLAND, EQUAL RIGHTS CENTER, FREESTATE  
JUSTICE, HOMELESS PERSONS REPRESENTATION PROJECT,  
NATIONAL ALLIANCE ON MENTAL ILLNESS MARYLAND,  
NATIONAL FEDERATION OF THE BLIND, AND WASHINGTON  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS  
IN SUPPORT OF PETITIONER**

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## Table of Contents

Table of Authorities .....	ii
Statement of Interest .....	1
Introduction .....	2
Argument.....	3
I.    Public accommodation discrimination is on the rise. ....	3
II.   Meaningful judicial review is critical to protecting Marylanders from discrimination in public accommodations.....	7
Conclusion .....	10
Certification of Word Count and Compliance with Rule 8-112.....	11
Certificate of Service .....	12
Appendix .....	App. 1

## Table of Authorities

### Statutes

Md. Code, State Gov't § 20-1005 .....2

### Other Authorities

Alicia Lee, *A restaurant denied service to a Black boy for his clothes, but video shows a White boy, dressed similarly, was allowed*, CNN.com (June 24, 2020), <https://www.cnn.com/2020/06/23/us/ouzo-bay-baltimore-restaurant-denies-service-to-black-boy-trnd/index.html>.....7

CAIR, *Still Suspect: The Impact of Structural Islamophobia* (2022), <https://www.cair.com/wp-content/uploads/2022/04/Still-Suspect-Report-2022.pdf> .....5

Christina Carrega and Priya Krishnakumar, *Hate crime reports in US surge to the highest level in 12 years, FBI says* (Oct. 26, 2021), <https://www.cnn.com/2021/08/30/us/fbi-report-hate-crimes-rose-2020/index.html> .....3

Emily Harris, *Modern Denials of Public Accommodation, the Creation of Invisible Castes, and the Need for a Fundamental Right to Public Accommodation* (Dec. 19, 2018), <https://medium.com/criticalnarratives-publicaccommodation/modern-denials-of-public-accommodation-the-creation-of-invisible-castes-and-the-need-for-a-9203e30127b9> .....6, 7

FBI, *2020 Hate Crimes Statistics* (May 5, 2022), <https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics> .....3

Human Rights Watch, *“I Just Try to Make It Home Safe”; Violence and the Human Rights of Transgender People in the United States* (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united> .....8

Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights* (2007).....6

Matthew Platkin, *2021 Was a Record-High Year for Reported Bias Incidents in New Jersey* (April 1, 2022), <https://www.njoag.gov/2021-was-a-record-high-year-for-reported-bias-incidents-in-new-jersey/> .....4

MCCR, <i>Annual Report (2020)</i> , <a href="https://mccr.maryland.gov/Documents/MCCR_AnnualReport2020_Digital_FINAL.pdf">https://mccr.maryland.gov/Documents/MCCR_AnnualReport2020_Digital_FINAL.pdf</a> .....	4, 8
Md. Comm’n on C.R., <i>About MCCR</i> , <a href="https://mccr.maryland.gov/Pages/About-MCCR.aspx">https://mccr.maryland.gov/Pages/About-MCCR.aspx</a> (last visited June 21, 2022).....	2
Movement Advancement Project, <i>et al.</i> , <i>LGBT Policy Spotlight: Public Accommodations Nondiscrimination Laws (2018)</i> , <a href="https://www.lgbtmap.org/file/Spotlight-Public-Accommodations-FINAL.pdf">https://www.lgbtmap.org/file/Spotlight-Public-Accommodations-FINAL.pdf</a> .....	5, 6
Paul Vincent Courtney, <i>Prohibiting Sexual Orientation Discrimination in Public Accommodations: A Common Law Approach</i> , 163 U Penn L. Rev. 1497 (2015).....	6
Suja Thomas, <i>The Customer Caste: Lawful Discrimination by Public Businesses</i> , 109 Calif. L. Rev. 141 (2021).....	7
U.S. Comm’n on C.R., <i>U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia</i> (May 8, 2020), <a href="https://www.usccr.gov/files/press/2020/05-08-Anti-Asian-Discrimination.pdf">https://www.usccr.gov/files/press/2020/05-08-Anti-Asian-Discrimination.pdf</a> .....	4
Washington Lawyers’ Committee for Civil Rights and Urban Affairs, <i>Protecting Civil Rights in the DC Region</i> (Oct. 2014), <a href="https://www.washlaw.org/pdf/human_rights_report.PDF">https://www.washlaw.org/pdf/human_rights_report.PDF</a> .....	8
Z. Payvand Ahdout, <i>Enforcement Lawmaking and Judicial Review</i> , 135 Harv. L. Rev. 937 (2022).....	9

## Statement of Interest

*Amici Curiae* are a broad coalition of organizations who share a common interest in eradicating discrimination based on race, color, religion or creed, sex, ancestry or national origin, marital status, physical or mental disability, sexual orientation, and gender identity. For example, **Disability Rights Maryland (DRM)** is a nonprofit Protection & Advocacy Organization, federally mandated to advance the civil rights of people with disabilities and has represented clients and interests of *Amici* in a variety of cases before the Court and others. *See, e.g., Gambrill v. Bd. of Educ. of Dorchester Cnty.*, No. 0886 (Md. Ct. App. Sept. Term 2019); *In re S.F.*, No. 10 (Md. Ct. App. Sept. Term 2021); *G.T. v. Bd. of Educ. of the Cnty. of Kanawha*, No. 20-1834 (4th Cir. July 31, 2020). The other *Amici* share DRM's core mission of combatting unlawful discrimination against protected classes, including in places of public accommodation, fair housing, and other issue areas within the jurisdiction of the Maryland Commission on Civil Rights, and their individual Statements of Interest identifying this broad coalition of community advocates are contained in the attached Appendix. If the Court grants Petitioner's request, *Amici Curiae* intend to seek consent of the parties or, if consent is not given, move for permission to file a brief addressing the issues before the Court.

## **Introduction**

It is no secret that we live in one of the most divisive times in American history. Mass shootings, increased hate speech, and targeted acts of violence against specific members of our communities are on the rise. All Marylanders are entitled to equal protection under the law—regardless of their race, color, religion or creed, sex, age, ancestry or national origin, marital status, physical or mental disability, sexual orientation, and gender identity. Yet members of these classes routinely face discriminatory animus in their daily lives.

The Maryland Commission on Civil Rights (MCCR) is charged with enforcing “Maryland’s laws against discrimination in . . . public accommodations” and promoting and improving “civil rights in Maryland.” Md. Comm’n on C.R., *About MCCR*, <https://mccr.maryland.gov/Pages/About-MCCR.aspx> (last visited June 21, 2022); *accord* Md. Code, State Gov’t § 20-1005. Despite MCCR’s “vision . . . to have a State that is free from any trace of unlawful discrimination,” *id.*, *Amici*’s collective experience is that MCCR has fallen well-short of achieving this goal. Among other things, significant delays, failure to conduct impartial investigations, and the overwhelming majority of public accommodation complaints resulting in findings of No Probable Cause (“NPC”) or being dismissed outright mean that Marylander’s rights to be free from public accommodation discrimination is often illusory. Therefore, meaningful judicial review by the

State's appellate courts is critical to ensure that the full scope of MCCR's actions are accurate, reasonable, and follow the appropriate procedural safeguards.

MCCR's flawed process for evaluating probable cause together with increased incidents of public accommodation discrimination highlight the importance of increased judicial oversight. Because a wide array of Marylanders' civil rights will continue to be significantly curtailed if members of these protected classes are not afforded robust judicial scrutiny, review of the lower court's decision is desirable and in the public interest, and this Court should grant the Petition.

### Argument

#### **I. Public accommodation discrimination is on the rise.**

In 2021, the Federal Bureau of Investigation reported an increase in hate crimes, with 62% of victims reporting that they were targeted because of the offenders' bias toward race, ethnicity, or ancestry. FBI, *2020 Hate Crimes Statistics* (May 5, 2022), <https://www.justice.gov/crs/highlights/2020-hate-crimes-statistics>; *see also* Christina Carrega and Priya Krishnakumar, *Hate crime reports in US surge to the highest level in 12 years, FBI says* (Oct. 26, 2021), <https://www.cnn.com/2021/08/30/us/fbi-report-hate-crimes-rose-2020/index.html> (“Hate crime and bias incident data released by police departments and federal agencies is just a fraction of actual incidents . . . .”); Matthew Platkin, *2021*

*Was a Record-High Year for Reported Bias Incidents in New Jersey* (April 1, 2022), <https://www.njoag.gov/2021-was-a-record-high-year-for-reported-bias-incidents-in-new-jersey/> (noting the “rise in reports of bias incidents nationwide”).

MCCR itself recognizes the nexus between this nationwide surge and its impact on public accommodation discrimination. For example, in 2020, MCCR reported that while “disability remained the #1 reported protected class for public accommodation complaints . . . [n]ational origin complaints, specifically against Hispanic complainants, skyrocketed . . . .” MCCR, *Annual Report, 20* (2020), [https://mccr.maryland.gov/Documents/MCCR\\_AnnualReport2020\\_Digital\\_FINAL.pdf](https://mccr.maryland.gov/Documents/MCCR_AnnualReport2020_Digital_FINAL.pdf). MCCR attributed this “increasingly hostile climate towards Hispanic populations” as being “fueled by anti-immigration rhetoric nationally.” *Id.* The United States Commission on Civil Rights has similarly recognized “increase[s] in xenophobic animosity toward Asian Americans (and perceived Asian Americans) as a result of the COVID 19 pandemic.” U.S. Comm’n on C.R., *U.S. Commission on Civil Rights Unanimously Issues Recommendations to Secure Nondiscrimination in the COVID-19 Pandemic Context, and Specifically to Address Anti-Asian Racism and Xenophobia*, 1 (May 8, 2020), <https://www.usccr.gov/files/press/2020/05-08-Anti-Asian-Discrimination.pdf>.



Escalating inequities are consistent across other protected classes. In 2021, co-*Amici* Council on American-Islamic Relations (“CAIR”) received 6,720 complaints of anti-Muslim acts nationwide, with a 13% increase in workplace and public accommodation discrimination complaints. CAIR, *Still Suspect: The Impact of Structural Islamophobia*, 5 (2022), <https://www.cair.com/wp-content/uploads/2022/04/Still-Suspect-Report-2022.pdf>; *see also id.* at 7–8 (identifying 553 denial of public accommodations complaints, including bank account closures and denial of services). “This is the highest number of civil rights complaints [CAIR] received in 27 years.” *Id.* CAIR detailed numerous specific instances of overt anti-Islamic acts, including many in Maryland. *See, e.g., id.* at 13, 17, 19, 21.

A 2016 study by the Center for American Progress showed that over the course of one year, “fully one-quarter of LGBT respondents experienced discrimination because of their sexual orientation or gender identity in employment, housing, and/or public accommodations—and that transgender people and LGBT people with disabilities are particularly affected.” Movement Advancement Project, *et al.*, *LGBT Policy Spotlight: Public Accommodations Nondiscrimination Laws*, 2 (2018), <https://www.lgbtmap.org/file/Spotlight-Public-Accommodations-FINAL.pdf>. The impact of this discrimination is staggering. “For example, 34% of LGBT people who experienced discrimination in the past year

avoided public places like stores and restaurants, 47% made specific decisions about where to shop, 10% avoided public transit, and 18% avoided doctors' offices." *Id.*

“When groups are excluded from public spaces their narratives, voices, and political power are diluted and potentially destroyed.” Emily Harris, *Modern Denials of Public Accommodation, the Creation of Invisible Castes, and the Need for a Fundamental Right to Public Accommodation* (Dec. 19, 2018), <https://medium.com/criticalnarratives-publicaccommodation/modern-denials-of-public-accommodation-the-creation-of-invisible-castes-and-the-need-for-a-9203e30127b9> [hereinafter *Modern Denials*]. As one scholar posits: “In the old generation, discrimination targeted entire groups—no racial minorities, no women, no gays, no religious minorities, no people with disabilities allowed. In the new generation, discrimination directs itself not against the entire group, but against the subset of the group that fails to assimilate to mainstream norms.” Paul Vincent Courtney, *Prohibiting Sexual Orientation Discrimination in Public Accommodations: A Common Law Approach*, 163 U Penn L. Rev. 1497, 1515 (2015) (quoting Kenji Yoshino, *Covering: The Hidden Assault on Our Civil Rights*, 21–22 (2007)).

These modern forms of discrimination in public accommodations—*e.g.*, enforcing “euphemistic ‘dress codes’ that allow bar and club owners to exclude

certain races and ethnicities” or “denials to gay couples seeking cakes, flowers, and photography from wedding vendors for their same-sex marriage ceremonies”—creates invisible castes and marginalizes whole sectors of the public. *See Modern Denials*; see also, e.g., Alicia Lee, *A restaurant denied service to a Black boy for his clothes, but video shows a White boy, dressed similarly, was allowed*, CNN.com (June 24, 2020), <https://www.cnn.com/2020/06/23/us/ouzo-bay-baltimore-restaurant-denies-service-to-black-boy-trnd/index.html> (describing incident of alleged discriminatory dress code at a Baltimore City restaurant); Suja Thomas, *The Customer Caste: Lawful Discrimination by Public Businesses*, 109 Calif. L. Rev. 141, 166–72 (2021) (describing “discriminatory surveillance practices,” slow and delayed service, and racially charged commentary from businesses and services). As a result, Marylanders must retain the appropriate substantive and procedural rights—rights they have enjoyed for the last 40 years—to ensure that their claims of public accommodation discrimination are thoroughly investigated and reviewed.

## **II. Meaningful judicial review is critical to protecting Marylanders from discrimination in public accommodations.**

Where federal law does not prohibit discrimination in public accommodations for protected classes, state antidiscrimination statutes—like those before the Court in this case—are crucial for protecting the rights of those in our state. *See, e.g.,* Human Rights Watch, *“I Just Try to Make It Home Safe”*; *Violence*

*and the Human Rights of Transgender People in the United States* (Nov. 18, 2021), <https://www.hrw.org/report/2021/11/18/i-just-try-make-it-home-safe/violence-and-human-rights-transgender-people-united> (“[B]ecause federal law does not expressly prohibit sex discrimination in public accommodations and services, . . . inclusive state antidiscrimination laws [are] particularly important.”).

Nevertheless, despite the prevalence of prejudice in public places, the vast majority (at least 80%) of MCCR public accommodation discrimination claims are dismissed during investigation. *Annual Report* 14. MCCR dismisses almost half its caseload for lack of probable cause, while many others are administratively dismissed, and a smaller portion settle. *Id.* The remaining cases proceed to the hearing phase, though typically *none* actually receive a formal hearing. *Id.*

Given the vast majority of public accommodation discrimination claims are filed pro se and MCCR enjoys significant deference on appeal, it is highly unlikely that MCCR’s NPC findings will be overturned by the various circuit courts across Maryland if the Opinion of the Court of Special Appeals stands. Thus, there is an increased need for this Court to “ensure that complainants have a right to appeal any finding (whether a reasonable cause determination or a final decision) through the administrative process as well as in court.” Washington Lawyers’ Committee for Civil Rights and Urban Affairs, *Protecting Civil Rights in the DC Region*, 7 (Oct. 2014), [https://www.washlaw.org/pdf/human\\_rights\\_report.PDF](https://www.washlaw.org/pdf/human_rights_report.PDF); *see also* Z.

Payvand Ahdout, *Enforcement Lawmaking and Judicial Review*, 135 Harv. L. Rev. 937, 941 (2022) (explaining the importance of judges using “their position to force transparency and public accountability onto the executive branch”).

Such oversight is desperately needed. In *Amici*’s collective experience, MCCR rarely follows the appropriate measures for investigating public accommodation claims. For example, one *pro se* claimant (guided through the complaint process by one *Amici*) waited seven years before MCCR determined that no probable cause existed. Another claimant reported that MCCR failed to promptly and objectively investigate a claim, instead providing the claimant with an ultimatum: accept a proposed settlement or have your claim dismissed. In other instances, MCCR refused to investigate claims outright. When MCCR did consider claims, it did not follow any formal procedures, failed to interview and gather documents from claimants, refused to communicate with claimants and update them on the status of their complaints, and otherwise caused undue delays.

Without appellate oversight, MCCR will continue to operate with almost unfettered discretion to investigate—and ultimately dismiss—the overwhelming majority of public accommodation claims before it. These findings will discourage already marginalized Marylanders from vindicating their rights. Ensuring additional oversight, including full judicial review, will guarantee that MCCR and

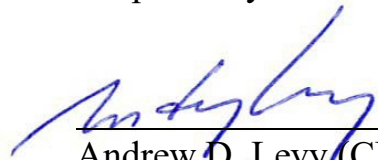
circuit courts do not rubberstamp NPC findings, thereby tacitly endorsing the daily discrimination Maryland's laws are designed to prevent.

**Conclusion**

For the foregoing reasons, certiorari is desirable, in the public interest, and *Amici* strongly urge this Court to grant the Petition.

Dated: June 22, 2022

Respectfully submitted,



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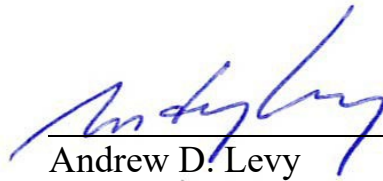
**Certification of Word Count  
and Compliance with Rule 8-112**

1. This Petition contains 1,828 words. *See* Md. Rule 8-303.
2. This Petition complies with the font, spacing, and type size requirements stated in Rule 8-112.

  
\_\_\_\_\_  
Andrew D. Levy

**Maryland Rule 20-201(h)(1) Certificate**

I hereby certify that this filing does not contain any restricted information.

  
\_\_\_\_\_  
Andrew D. Levy

**Certificate of Service**

I hereby certify, pursuant to Rule 20-201(g), that on this 22nd day of June 2022, a copy of the foregoing Brief of *Amici Curiae* in Support of Petitioner was filed electronically via MDEC with the Court and two copies each were mailed, postage prepaid, first-class, to:

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## Appendix

### **The American Civil Liberties Union of Maryland (ACLU of Maryland)**

is a non-profit, non-partisan membership organization founded in 1931 to protect and advance civil liberties in Maryland and is the state affiliate of the ACLU. It has approximately 40,000 members throughout the state. From its inception, The ACLU of Maryland has sought to protect Marylander's right to be free from invidious discrimination, including by places of public accommodation. The ACLU of Maryland has represented complainants bringing charges of discrimination by places of public accommodation and has participated in litigation concerning Maryland's statutory protections against discriminatory treatment. *E.g. Prince George's Cnty. v. Beretta U.S.A. Corp.*, 358 Md. 166 (2000).

**The Asian Pacific American Bar Association of Maryland (APABA-MD)** is a non-profit organization established in 2002. The mission and goals of APABA-MD are to promote and improve the quality of legal service to the Asian Pacific American community; to monitor legislative, judicial, and administrative actions that might have significant impact on the welfare of the Asian Pacific American community and inform the community of the existence thereof; to provide, promote, sponsor, or encourage educational workshops, programs, projects, and activities to the end that the needs of the Asian Pacific American community for legal services can be adequately served; to provide support on

issues that would strengthen equal opportunities and ensure equal participation and equal treatment of Asian Pacific Americans; to provide support on issues that could lead to, or aid in, the elimination of discrimination and prejudice against Asian Pacific Americans; and to provide career and academic counseling services to Asian American law students. APABA-MD recognizes that there is a long history of racism and public accommodations discrimination against Asian Americans and that hate crimes against Asian Americans are on the rise and therefore supports full access to the courts in support of its mission.

**CASA**, the region's largest membership-based immigrant rights organization, with more than 130,000 lifetime members with ties to more than 170 countries across the world, strongly supports access to justice for all community members, including those with disabilities. CASA's members are primarily low-income immigrants who face myriad barriers to accessing governmental resources and lawful accommodations in public spaces due to issues such as lack of language access or discrimination based on their perceived immigration status. CASA's members who have physical or mental disabilities face even greater challenges accessing services or exercising their rights to things like reasonable accommodations in the workplace or other activities. Ensuring that everyone has access to the courts, and appropriate appellate review of decisions by bodies like MCCR, is a vital interest of CASA and its members.

**Council on American-Islamic Relations (CAIR)** is America's largest Muslim civil liberties and advocacy organization. Its mission is to enhance the understanding of Islam, encourage dialogue, protect civil liberties, empower American-Muslims, and build coalitions that promote justice and mutual understanding. CAIR offices nationwide routinely receive complaints for, *inter alia*, workplace discrimination, denial of public accommodations, and incidents of housing discrimination. CAIR's civil rights department counsels, mediates, and advocates on behalf of Muslims and others who have experienced religious discrimination, defamation, or hate crimes. The department works to protect and defend the constitutional rights of American Muslims, thereby supporting the rights of all Americans. CAIR opposes domestic policies that limit civil rights, permit racial, ethnic or religious profiling, infringe on due process, or that prevent Muslims and others from participating fully in American civic life.

**Disability Rights Maryland (DRM)** is a non-profit agency established under federal law to protect, advocate for, and advance the rights of Marylanders with disabilities. DRM is the designated Protection and Advocacy System for Maryland and works in partnership with people with disabilities to create a society that values people with all disabilities and supports their rights to full inclusion in their communities. Since 1975, DRM has provided essential legal services to people with disabilities, including assisting individuals to file complaints with state

and federal agencies such as MCCR for matters related to disability discrimination. DRM has an interest in this case because its outcome will affect the ability of individuals with disabilities, including those proceeding pro se, to obtain redress for discrimination based on disability and effective review of decisions by the MCCR. It is in the interest of persons with disabilities and in the public interest to permit appellate review of MCCR decisions to ensure that potential errors or failures in the investigative process are identified and corrected. Full protection of rights requires full access to courts, including in the public accommodations context where disability discrimination continues to exist and poses significant barriers to the full inclusion of persons with disabilities in their communities.

**The Equal Rights Center (ERC)** is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of Greater Washington, D.C. and nationwide. The ERC takes a multifaceted approach to protecting and advocating for the civil rights of people with disabilities, with a goal of assuring that people with disabilities have the same choices and opportunities that people without disabilities enjoy every day. Many of the ERC's intakes are disability related, and the ERC often serves as an advocate for people with disabilities in the administrative complaint process.

**FreeState Justice, Inc. (FreeState)** is Maryland’s statewide legal advocacy organization that seeks to improve the lives of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) people. FreeState advocates for LGBTQ Marylanders by combining direct legal services with education and outreach to ensure that the LGBTQ community receives fair treatment in the law and in society. As such, FreeState is particularly interested in ensuring the equal treatment of LGBTQ individuals and marginalized people when seeking access to places of public accommodation.

**The Homeless Persons Representation Project (HPRP)**, 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 provides representation in housing, public benefits, expungement, and civil rights matters, 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); *Smith v. Westminster Management, LLC.*, No. 2508 (Md. Ct. App. Sept. Term 2019); *Aleti v. Metro. Balt., LLC.*, No. 39 (Md. Ct. App. Sept. Term

2021). HPRP's clients are predominately persons with disabilities and HPRP has a strong interest in ensuring that civil rights laws are enforced so its client community can access housing and public accommodations free from discrimination.

**National Alliance on Mental Illness (NAMI) Maryland** is Maryland's largest grassroots mental health organization dedicated to building better lives for individuals affected by mental illness. Promoting access to public service and supports, without regard to disability, race, ethnicity, sexual orientation or religion, is a critical aspect of NAMI Maryland's advocacy mission.

**The National Federation of the Blind (NFB)**, headquartered in Baltimore, is the oldest, largest and most influential membership organization of blind people in the United States. With tens of thousands of members, and affiliates in all fifty states, the District of Columbia, and Puerto Rico, the ultimate purpose of the NFB is the complete integration of the blind into society on an equal basis. Since its founding in 1940, the NFB has devoted significant resources toward advocacy, education, research, and development of programs to ensure that blind individuals enjoy the same opportunities enjoyed by others in all aspects of life, including public accommodations. An important component of advancing the civil rights of the blind and others with disabilities is being able to enforce fully the

substantive protections of the law. For this reason, the NFB rises in support of Petitioner Rowe and hopes that this Court grants the Petition.

**The Washington Lawyers' Committee for Civil Rights and Urban Affairs (The Committee)** works to create legal, economic, and social equity through litigation, client and public education, and public policy advocacy. The Committee recognizes the central role that current and historic race discrimination plays in sustaining inequity and the critical importance of identifying, exposing, combating, and dismantling the systems that sustain racial oppression. Many of the Committee's cases address discrimination at the intersection of race, disability, and poverty. In each of these cases, full access to the courts and appellate review is a critical part of ensuring that individuals can protect their right to be free from discrimination.