

---

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**Nos. 23-1201/23-1277**

---

**MARSHALL TODMAN ET AL.,**  
*Appellees,*

v.

**THE MAYOR AND CITY COUNCIL OF BALTIMORE,**  
*Appellants.*

---

**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**

---

Melanie Babb  
*Murnaghan Appellate Advocacy Fellow*  
Public Justice Center  
201 N. Charles Street, Suite 1200  
Baltimore, Maryland 21201  
T: 410-625-9409  
F: 410-625-9423  
babbm@publicjustice.org

*Counsel for Amici Curiae*

October 17, 2023

---

---

## **DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST**

Under Federal Rule of Appellate Procedure 26.1 and Local Rules

26.1(a)(2)(A) and (a)(2)(C), the Public Justice Center (“PJC”) and the additional *amicus curiae* make the following disclosures:

1. The proposed *amicus curiae*, individually and collectively, have no parent corporation(s); and
2. There is no publicly held corporation that owns more than 10 percent of stock in any of the proposed *amicus curiae*, either individually or collectively.
3. The *amicus curiae* certify that they are unaware of any publicly held corporation or similarly situated legal entity that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, or other profit-sharing agreement, insurance, or indemnity agreement.

## TABLE OF CONTENTS

DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST .....	i
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iii
STATEMENTS OF INTEREST .....	1
ARGUMENT.....	3
I.    In the midst of an eviction crisis, Baltimore City’s confiscation ordinance negatively impacts renters’ livelihoods, as well as mental and emotional well-being. ...	5
A.    The debilitating consequences of eviction permeate all aspects of life. ....	5
B.    Baltimore City’s history with housing discrimination is inextricably linked to the City’s current eviction crisis. ....	9
C.    Renters' experiences highlight the inherent procedural injustice of the City’s confiscation ordinance. ....	15
D. <i>Amici</i> have opposed the denial of due process inherent in the confiscation ordinance.....	18
II.    Baltimore City’s approach is out of step with jurisdictions across the country. .	20
III.   Renters may not own their homes, but the belongings that fill their homes demand protection as the most personal form of property right entitled to protection against an unconstitutional taking. ....	23
CONCLUSION .....	26
CERTIFICATE OF RULES COMPLIANCE.....	28
CERTIFICATE OF SERVICE.....	29

## TABLE OF AUTHORITIES

### Cases

<i>Ben-Davies v. Blibaum &amp; Associates, P.A.</i> , 457 Md. 228 (2018).....	2
<i>Buchanan v. Warley</i> 245 U.S. 60 (1917).....	10
<i>Connor v. Alltin, LLC</i> , 571 F. Supp. 3d 544 (N.D. Miss. 2021).....	26
<i>Foghorn v. Hosford</i> , 455 Md. 462 (2017).....	2
<i>Goshen Run Homeowners Assoc., Inc. v. Cisneros</i> , 467 Md. 74, 110 (2020) .....	1
<i>Grady Mgmt. v. Epps</i> , 218 Md. App. 712 (2012).....	2
<i>Lockett v. Blue Ocean Bristol, LLC</i> , 446 Md. 397 (2016) .....	1
<i>Matthews v. Hous. Auth. of Balt. City</i> , 216 Md. App. 672 (2014).....	2
<i>McDonell v. Harford Cty. Hous. Agency</i> , 462 Md. 586 (2019).....	2
<i>Montgomery Cty. v. Glenmont Hills Assocs.</i> , 402 Md. 250 (2007).....	2
<i>Nickens v. Mount Vernon Realty Group, LLC</i> , 429 Md. 53 (2012) .....	1
<i>Pettiford v. Next Gen. Trust Serv.</i> , 467 Md. 624 (2020) .....	1
<i>Shelley v. Kraemer</i> , 334 U.S. 1 (1948).....	15
<i>Sweeney v. Savings First Mortg.</i> , 897 A.2d 1037 (Md. 2005) .....	1
<i>Tenae Smith et al. v. Westminster Management, LLC., et al.</i> 257 Md. App. 336 (2023) ...	2
<i>Thompson v. U.S. Dept. of Hous. and Urb. Dev.</i> , 348 F. Supp. 2d 398 (D.Md. 2005).....	11
<i>Todman v. Mayor and City Council of Baltimore</i> , 631 F.Supp. 3d 314 (2022).....	4
<i>Wells Fargo Home Mortg., Inc. v. Neal</i> , 922 A.2d 538 (Md. 2007).....	1
<i>Wheeling v. Selene Finance LP</i> , 473 Md. 356 (2021).....	1, 2

### Constitutional Provisions

U.S. Const. amend. V.....	23
---------------------------	----

**Statutes**

68 Pa. Stat. Ann. § 250.505a(d)-(e) (2012) .....21

Ala. Code Ann. §35-9A-423(d) (2006) .....22

Alaska Stat. § 34.03.260 (1994).....21

Ariz. Rev. Stat. § 33-1370(f) (2021).....21

Balt. City PLL § 9-19.....22

Balt. City, Md., Code art. 13, § 8A-4 ..... *passim*

Balt. City, Md., Code art. 13, § 8A-5 .....24

Baltimore City Public Local Law §§ 9-19.....5

Cal. Civ. Code § 1983-88 (2013).....21

Chicago Municipal Code 5-12-130(f).....22

D.C. Code Ann. § 42-3505.01a (2018).....20

Del. Code Ann. Tit. 25, §5715(e) (1996).....21

Fla. Stat. Ann. §§ 715.104, 715.107 (1997).....21

Haw. Rev. Stat. Ann. § 521-56 (1981) .....21

Idaho Code § 6-316(2) (1974) .....22

Ind. Code Ann. §§ 32-31-4-1, 32-31-4-2, 32-31-4-3 (2007).....22

Iowa Code § 555B.2 (1988).....21

Kansas Stat. Ann. § 58-2565(d) (1975) .....21

Md. Code Real Prop. § 8-402 .....5, 22

Me. Rev. Stat. tit. 14 §§ 6005, 6013 (2011) .....21

Minn. Stat. Ann. § 504B.271 (2010) .....21

Mo. Rev. Stat. § 441.065 (1997).....22

Mont. Code Ann. § 70-24-430 (2021).....	21
N.C. Gen. Stat. § 42-25.9 (2013).....	21
N.D. Cent. Code § 47-16-30.1 (1983) .....	22
N.H. Rev. Stat. Ann. § 540-A:3 (VII) (1979).....	22
N.J. Stat. § 2A:18-72-76 (2001).....	20
N.M. Stat. Ann. § 47-8-34.1 (c) (1995).....	22
Neb. Rev. Stat. Ann. §§ 69-2303-04, 06 (1991).....	21
Nev. Rev. Stat. Ann. § 118A.460 (1977).....	21
Okla. Stat. tit. 41, §130 (2019).....	21
Or. Rev. Stat. Ann. §90.425 (3) (1993) .....	22
S.D. Codified Laws §§ 43-32-25, 43-32-26 (1976).....	22
Tenn. Code Ann. § 66-28-405 (1983).....	22
Utah Code Ann. § 78B-6-816(2) (2008).....	22
Va. Code Ann. § 55.1-1254 (2019).....	21
Vt. Stat. Ann. tit. 9 §4462 (2000) .....	22
W. Va. Code § 37-6-6 (1999) .....	21
Wash. Rev. Code Ann. § 59.18.310-12 (2) (1992).....	22
Wyo. Stat. Ann. § 1-21-1210 (1999) .....	22

**Rules**

Rule 3-632.....	15
-----------------	----

**Other Authorities**

Abell Foundation, *Abell Salutes: The Public Justice Center (PJC) and Citizens Planning and Housing Association (CPHA) Eviction Reform Initiative*, <https://abell.org/publication/abell-salutes-the-pjc-and-cpha-eviction-reform->

initiative .....	18
Allison K. Grovers et al., <i>Eviction, intimate partner violence and HIV: Expanding concepts and assessing pathways through which sexual partnership dynamics impact health</i> , 305 Soc. Science & Med. 1 (2022), <a href="https://www.sciencedirect.com/science/article/pii/S0277953622003367?ref=pdf_download&amp;fr=RR-2&amp;rr=8148fb29cb8b387a">https://www.sciencedirect.com/science/article/pii/S0277953622003367?ref=pdf_download&amp;fr=RR-2&amp;rr=8148fb29cb8b387a</a> .....	8
<i>Anne Arundel County – Landlord and Tenant – Procedures for Repossession for Failure to Pay Rent on S.B. 328 Before the Jud. Proc. Comm.</i> , Reg. Sess. (Jan. 28, 2020) (statement of C. Matthew Hill, Att’y, Public Justice Center) .....	19
Ashley C. Bradford & David Bradford, <i>The effect of evictions on accidental drug and alcohol mortality</i> , 55 Health & Social Care in the Community 9 (2022), <a href="https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.13256">https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.13256</a> .....	7, 8
Baltimore City Council, <i>Legislation Details</i> <a href="https://baltimore.legistar.com/LegislationDetail.aspx?ID=2175575&amp;GUID=1153923C-CDAA-4367-944B-E5817B6E956E&amp;Options=ID">https://baltimore.legistar.com/LegislationDetail.aspx?ID=2175575&amp;GUID=1153923C-CDAA-4367-944B-E5817B6E956E&amp;Options=ID</a> .....	19
<i>Baltimore County – Repossession – Disposition of Property on H.B 626 Before the Baltimore County Delegation</i> , Reg. Sess. (Feb. 21, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center).....	20
Barbara L. Bezdek, <i>Policing that Perpetuates Baltimore’s Islands of Poverty and Despair</i> , 16 U. Md. L.J. Race, Religion, Gender & Class 153 (2016).....	12
David A. Super, <i>A New New Property</i> , 113 Colum. L. Rev. 1773 (2013).....	25
David Armenti & Alex Lothstein, Md. Ctr. for Hist. & Culture, <i>Baltimore’s Pursuit of Fair Housing: A Brief History</i> , <a href="https://www.mdhistory.org/baltimores-pursuit-of-fair-housing-a-brief-history">https://www.mdhistory.org/baltimores-pursuit-of-fair-housing-a-brief-history</a> .....	11
Emily W. Harville et al., <i>Eviction as a social determinant of pregnancy health</i> , 30 Health and Social Care e5579 (2022), <a href="https://onlinelibrary.wiley.com/doi/abs/10.1111/hsc.13983">https://onlinelibrary.wiley.com/doi/abs/10.1111/hsc.13983</a> .....	7
Isaac Saidel-Goley & Joseph William Singer, <i>Things Invisible to See: State Action &amp; Private Property</i> , 5 Tex. A&M L. Rev. 439 (2018).....	26
James Bell, <i>Beyond displacement: how the ripple effects of an eviction can last for years</i> , PublicSource (November 11, 2020), <a href="https://www.publicsource.org/eviction-collateral-impact-displacement-">https://www.publicsource.org/eviction-collateral-impact-displacement-</a>	

employment-transit-school-mental-health .....	23
John Locke, Second Treatise of Government § 199 (1690), available at <a href="https://www.gutenberg.org/files/7370/7370-h/7370-h.htm">https://www.gutenberg.org/files/7370/7370-h/7370-h.htm</a> .....	24
Keeanaga-Yamahtta Taylor, <i>Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership</i> , The U. of N.C. Press (2019) .....	9
Keeanga-Yamahtta Taylor, <i>Against Black Homeownership</i> , Bos. Rev., <a href="https://www.bostonreview.net/articles/keeanga-yamahtta-taylor-keeanga-excerpt">https://www.bostonreview.net/articles/keeanga-yamahtta-taylor-keeanga-excerpt</a> .....	9
Kim Dacey, <i>Activists call for eviction prevention, more funding to protect renters</i> , WBAL TV 11 (May 25, 2023, 10:14 p.m.), <a href="https://www.wbal.com/article/baltimore-city-evictions-renters-protection-funding-budget/44009270">https://www.wbal.com/article/baltimore-city-evictions-renters-protection-funding-budget/44009270</a> .....	14
Lawrence Brown, <i>Two Baltimores: The White L vs. the Black Butterfly</i> , Balt. City Paper (June 28, 2016), <a href="http://www.citypaper.com/bcpnews-two-baltimores-the-white-l-vs-the-black-butterfly-20160628-htmlstory.html">www.citypaper.com/bcpnews-two-baltimores-the-white-l- vs-the-black-butterfly-20160628-htmlstory.html</a> .....	12
Matthew Desmond, <i>Evicted: Poverty and Profit in the American City</i> (2016).....	5, 6
Monica C. Bell, <i>Anti-Segregation Policing</i> , 95 N.Y.U. L. Rev. 650 (2020) .....	10
Morgan K. Hoke & Courtney E. Boen, <i>The Health Impacts of Eviction: Evidence from the National Longitudinal Study of Adolescent to Adult Health</i> , 273 Soc, Sci, & Med. 1 (2021), <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8045672/pdf/nihms-1670062.pdf">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8045672/pdf/nihms- 1670062.pdf</a> .....	7, 8
National Equity Atlas, <i>Rent Debt in America: Stabilizing Renters is Key to Equitable Recovery</i> , <a href="https://nationalequityatlas.org/rent-debt">https://nationalequityatlas.org/rent-debt</a> .....	8, 13
Online Library of Liberty, <i>Sir Edward Coke declares that your house is your “Castle and Fortress,”</i> <a href="https://oll.libertyfund.org/quote/sir-edward-coke-declares-that-your-house-is-your-castle-and-fortress-1604">https://oll.libertyfund.org/quote/sir-edward-coke- declares-that-your-house-is-your-castle-and-fortress-1604</a> (last accessed October 8, 2023) .....	26
Richard Rothstein, <i>From Ferguson to Baltimore</i> , Econ. Pol’y Inst.: Working Econs. Blog (Apr. 29, 2015) .....	10, 11
Robert Collinson et al., <i>Eviction and Poverty in American Cities</i> , Nat’l Bureau of	



Econ. Rsch. 1 (Revised July 2023), <a href="https://www.nber.org/system/files/working_papers/w30382/w30382.pdf">https://www.nber.org/system/files/working_papers/w30382/w30382.pdf</a> .....	6
Ryan Little & Sophie Kasakove, <i>Eviction numbers are climbing back toward pre-pandemic highs in parts of Maryland</i> , The Baltimore Banner (Jan. 17, 2023, 9:48 a.m.), <a href="https://www.thebaltimorebanner.com/community/housing/evictions-rising-maryland-pandemic-moratorium-CAQYBQYERVDM3PHLUI4KGE6Q5A">https://www.thebaltimorebanner.com/community/housing/evictions-rising-maryland-pandemic-moratorium-CAQYBQYERVDM3PHLUI4KGE6Q5A</a> ....	14
Sally J. Scott & Seema Iyer, Abell Found., <i>Overcoming Barriers to Homeownership in Baltimore City 10–11</i> (July 2020), <a href="https://abell.org/sites/default/files/files/2020_Abell_Howeownership%20Report_FINAL2_web%20(dr).pdf">https://abell.org/sites/default/files/files/2020_Abell_Howeownership%20Report_FINAL2_web%20(dr).pdf</a> .....	13
Sophie Kasakove, <i>Baltimore City to stop accepting new applications for rental assistance, as eviction crisis looms</i> , The Balt. Banner (January 30, 2023, 6:04 p.m.), <a href="https://www.thebaltimorebanner.com/community/housing/baltimore-city-to-stop-accepting-new-applications-for-rental-assistance-as-eviction-crisis-looms-4I7EFWOR4RAUFDD7BSTMCGD4DI">https://www.thebaltimorebanner.com/community/housing/baltimore-city-to-stop-accepting-new-applications-for-rental-assistance-as-eviction-crisis-looms-4I7EFWOR4RAUFDD7BSTMCGD4DI</a> .....	13, 14, 18
The Federalist No. 10 (James Madison) .....	24
Tim Thomas et al., <i>Baltimore Eviction Map: The Eviction Study</i> (May 8, 2020), <a href="https://evictionresearch.net/maryland/report/baltimore.html">https://evictionresearch.net/maryland/report/baltimore.html</a> .....	13
Urb. Inst., <i>The Black Butterfly: Racial Segregation and Investment Patterns in Baltimore</i> (Feb. 5, 2019), <a href="https://apps.urban.org/features/baltimore-investment-flows">https://apps.urban.org/features/baltimore-investment-flows</a> .....	12
<i>Wicomico County – Landlord and Tenant – Repossession for Failure to Pay Rent Procedures on H.B. 227 Before the House Env’t and Transp. Comm.</i> , Reg. Sess. (Feb. 18, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center).....	19
<i>Wicomico County – Landlord and Tenant – Repossession for Failure to Pay Rent Procedures on S.B. 176 Before the Judicial Proceedings Committee</i> , Reg. Sess. (Jan. 28, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center).....	20
William Damon et al., <i>Residential eviction predicts initiation of or relapse into crystal methamphetamine use among people who inject drugs: a prospective cohort study</i> , 41 J Public Health (Oxf) 36 (2019), <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6490768/pdf/fdx187.pdf">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6490768/pdf/fdx187.pdf</a> .....	7

## STATEMENTS OF INTEREST

The **Public Justice Center** (PJC) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a racial equity lens, the PJC uses impact litigation, public education, and legislative advocacy to accomplish law reform for its clients. The PJC's Appellate Advocacy Project expands and improves representation of indigent and disadvantaged persons and civil rights issues before the Maryland and federal trial and appellate courts. The organization has a longstanding commitment to protecting the rights of low-income renters and homeowners. *See, e.g., Wheeling v. Selene Finance LP*, 473 Md. 356 (2021); *Pettiford v. Next Gen. Trust Serv.*, 467 Md. 624 (2020); *Goshen Run Homeowners Assoc., Inc. v. Cisneros*, 467 Md. 74, 110 (2020); *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397 (2016); *Nickens v. Mount Vernon Realty Group, LLC*, 429 Md. 53 (2012); *Wells Fargo Home Mortg., Inc. v. Neal*, 922 A.2d 538 (Md. 2007) (*amicus*); *Sweeney v. Savings First Mortg.*, 897 A.2d 1037 (Md. 2005) (*amicus*). In this case, the PJC has an interest in protecting its client community from the deprivation of due process and infliction of unlawful takings through the eviction process.

**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, Inc.** (“HPRP”), founded in 1990, is a non-profit organization whose mission is to end homelessness in Maryland by providing free legal services 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 actions and 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 *Tenae Smith et al. v. Westminster Management, LLC., et al.* 257 Md. App. 336 (2023). HPRP has a strong interest in ensuring low-income tenants are not subjected to an unlawful deprivation of their

property during the eviction process which exacerbates the harmful effects of eviction and increases homelessness.

**Maryland Legal Aid** (MLA) is a non-profit, 501(c)(3) law firm that provides free legal services to low-income Maryland residents from 13 locations across the state. MLA and its subsidiary the Maryland Center for Legal Assistance serve over 100,000 Maryland citizens annually. MLA handles civil cases involving housing, public benefits, child custody, consumer law, children’s rights, and other issues of fundamental importance to low-income Maryland residents. Representing tenants is one of MLA’s highest priorities. MLA has an interest in this case because it represents thousands of clients every year who face threats to their housing security, including tenants in Baltimore City who are subject to the ordinance at issue.

### **ARGUMENT**

Eviction is already a traumatic, life-altering event, and depriving evicted renters of their property without notice greatly and needlessly compounds the trauma eviction inflicts. In Baltimore City, Maryland, that is exactly what is happening. A Baltimore City ordinance specifies that “[a]ll property in or about the leased premises at the time that the warrant of restitution is executed is abandoned.” Balt. City, Md., Code art. 13, § 8A-4(a) (hereinafter “§ 8A-4” or “confiscation ordinance”). The confiscation ordinance further provides that “[n]either the landlord nor someone acting on the landlord’s behalf is liable for any

loss or damage to abandoned property.” *Id.* § 8A-4(b). Finally, the confiscation ordinance deprives renters of any opportunity to reclaim their property after the sheriff arrives with the warrant of restitution. Once the sheriff touches the door, all of the renters’ personal possessions on the property become property of the landlord by operation of law. As a result, renters have had and continue to have their property permanently taken from them and/or destroyed, violating their rights to due process. The confiscation ordinance thus compounds the consequences of eviction by depriving the renter of not only a home but also all of their possessions in or near that home. No possessions, not medicine, not personal identification, not children’s clothes or personal items, are excepted.

The principal purpose of this amicus brief is to demonstrate the devastating consequences of the confiscation ordinance on Marylanders living in poverty. The lower court recognized that “[p]rocedural due process requires a careful balancing of competing private and public interests.” *Todman v. Mayor and City Council of Baltimore*, 631 F.Supp. 3d 314, 229 (2022). Here, the private interests involved are life-altering and fundamental. The experiences of Baltimore City renters and social science literature call attention to the devastating consequences of eviction and the disproportionate burden of those consequences on racial minorities and women. The disparate impact of the confiscation ordinance highlights the importance of a fair process that protects the private property rights affected by this appeal.

Furthermore, lack of notice in tenant holding over (hereinafter “THO”)<sup>1</sup> evictions, results in an unlawful taking. § 8A-4(a). Property rights become dearer, not less important, for people who possess comparatively little. It is a bedrock principle of our democracy—and a core value embodied in the Fifth Amendment—that the government cannot deprive a person of their property absent just compensation. Deprivation of personal property, no less than real property, offends this principle. That is exactly what this city confiscation ordinance permits, an unlawful taking.

**I. In the midst of an eviction crisis, Baltimore City’s confiscation ordinance negatively impacts renters’ livelihoods, as well as mental and emotional well-being.**

**A. The debilitating consequences of eviction permeate all aspects of life.**

Constitutional violations are particularly egregious when tied to eviction. “Eviction’s fallout is severe. Losing a home sends families to shelters, abandoned houses, and the street. It invites depression and illness, compels families to move into degrading housing in dangerous neighborhoods, uproots communities, and harms children.” Matthew Desmond, *Evicted: Poverty and Profit in the American City*, 4 (2016). “Eviction does not simply drop poor families into a dark valley, a trying yet relatively brief detour on life’s journey. It fundamentally redirects their way, casting them onto a different, and much more difficult, path. Eviction is a

---

<sup>1</sup> See Md. Code Real Prop. § 8-402; Baltimore City Public Local Law §§ 9-19 *et seq.*

*cause*, not just a condition, of poverty.” *Id.* at 299-300. The new path on which eviction forces a renter is particularly difficult to travel when the renter must set out with nothing, having lost all personal possessions by operation of the confiscation ordinance.

Eviction imposes significant costs on individuals, families, and communities, and leads to an increased rate of homelessness. Robert Collinson et al., *Eviction and Poverty in American Cities*, Nat’l Bureau of Econ. Rsch. 1 (Revised July 2023), [https://www.nber.org/system/files/working\\_papers/w30382/w30382.pdf](https://www.nber.org/system/files/working_papers/w30382/w30382.pdf) (highlighting “the effect of eviction on earnings, employment, residential mobility, interactions with homelessness services, financial distress, and health.”). When a landlord files an eviction case, it increases the probability by 8 percentage points of a tenant being forced to move and increases the probability by 3.4 percentage points of a tenant being forced to stay in emergency shelters. *Id.* at 2. Other consequences include adverse birth outcomes, health complications, addiction, and so much more. A person who is pregnant and is facing eviction is 12-13% more likely to give birth to a preterm baby or a baby with a low birthweight. Emily W. Harville et al., *Eviction as a social determinant of pregnancy health*, 30 *Health and Social Care* e5579 (2022), <https://onlinelibrary.wiley.com/doi/abs/10.1111/hsc.13983>. It is not uncommon for

individuals facing eviction to also be dealing with health complications such as “elevated blood pressure and weight gain, reduced diabetes self-efficacy, greater presence of chronic medical conditions, and higher cardiovascular-related mortality rates.” Morgan K. Hoke & Courtney E. Boen, *The Health Impacts of Eviction: Evidence from the National Longitudinal Study of Adolescent to Adult Health*, 273 Soc, Sci, & Med. 1, 4 (2021),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8045672/pdf/nihms-1670062.pdf>.

The stressor of eviction has been linked to higher substance use and related death. Ashley C. Bradford & David Bradford, *The effect of evictions on accidental drug and alcohol mortality*, 55 Health & Social Care in the Community 9,9 (2022), <https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.13256>. A study conducted in Vancouver, Canada, examined the link between eviction and relapsing of drug use and found that “evictions maintained an independent positive association with an increased hazard of crystal methamphetamine initiation or relapse.” William Damon et al., *Residential eviction predicts initiation of or relapse into crystal methamphetamine use among people who inject drugs: a prospective cohort study*, 41 J Public Health (Oxf) 36, 40 (2019),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6490768/pdf/fdx187.pdf>.

Evictions are also linked to other dangerous drug use practices, like sharing needles. Bradford & Bradford, *supra*, at 10.



Eviction not only impacts individuals but families. A recent longitudinal study found “that landlord-related forced moves lead to increased [intimate partner violence].” Allison K. Grovers et al., *Eviction, intimate partner violence and HIV: Expanding concepts and assessing pathways through which sexual partnership dynamics impact health*, 305 Soc. Science & Med. 1,6 (2022), [https://www.sciencedirect.com/science/article/pii/S0277953622003367?ref=pdf\\_download&fr=RR-2&rr=8148fb29cb8b387a](https://www.sciencedirect.com/science/article/pii/S0277953622003367?ref=pdf_download&fr=RR-2&rr=8148fb29cb8b387a). Being evicted or being threatened with eviction is extremely traumatic, and children of adults facing eviction are not immune to the consequences. Of the 94,000 households behind on rent in Maryland in June 2022, 51% included households with children. See National Equity Atlas, *Rent Debt in America: Stabilizing Renters is Key to Equitable Recovery*, <https://nationalequityatlas.org/rent-debt> (last accessed September 25, 2023) (maneuver to “Select Geography,” click the drop-down menu and click on “Maryland.”). This represented 122,000 children. *Id.* Studies have shown that there is a link between eviction or the threat of eviction and “negative outcomes among children, including increased risk of physical abuse and subsequent hospitalization[,], poorer diet[,], and elevated cortisol levels.” See, e.g., Hoke & Boen, *supra*, at 4.

Laying on top of these consequences of eviction the loss of all of a family’s personal property inevitably compounds the damage caused by the eviction. In

addition to the inability of a person living in poverty to replace the typical items necessary to daily living—pots and pans and beds—the renter’s confiscated possessions can include items critical to survival such as medical prescriptions and equipment. The confiscation ordinance leaves the family with nothing.

**B. Baltimore City’s history with housing discrimination is inextricably linked to the City’s current eviction crisis.**

In 1968, the Fair Housing Act (“FHA”) made it illegal to discriminate in the sale or rental of housing on the grounds of race, color, religion, or national origin. H.R. 2516, 90th Cong. (1968); U.S.C.A. § 3604. Despite the adoption of this landmark law, “there has not been an instance in the last 100 years when the housing market has operated fairly, without discrimination.” Keeanga-Yamahtta Taylor, *Against Black Homeownership*, Bos. Rev., <https://www.bostonreview.net/articles/keeanga-yamahtta-taylor-keeanga-excerpt> (last accessed October 8, 2023). Housing programs meant to encourage low-income homeownership ended with tens of thousands of foreclosures in Black communities across the United States during the late 1970s. Keeanaga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*, The U. of N.C. Press (2019).

Baltimore City is no exception and has long struggled to adopt equitable housing policies. See Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. Rev. 650, 653 (2020) (collecting authorities demonstrating that Baltimore is among

those municipalities in the United States “known to have aggressively used residential segregation as a tool to create and reinforce racial caste”). In *Buchanan v. Warley*, the Supreme Court found that segregation by zoning ordinance violated the Fourteenth Amendment because it restricted the property rights of (white) homeowners to sell to whomever they wished. 245 U.S. 60, 82 (1917). In response, Baltimore’s mayor instructed city building inspectors and health department investigators to issue code violations to anyone who rented or sold to Black people in predominantly white neighborhoods. Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, 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>. Five years after *Buchanan*, a different Baltimore mayor formed an official Committee on Segregation, comprised of city officials, to persuade white owners to not sell or rent to African-Americans in predominantly white neighborhoods. *Id.* In 1925, The Committee on Segregation organized “eighteen Baltimore neighborhood associations to form the ‘Allied Civic and Protective Association’ for the purpose of urging both new and existing property owners to sign restrictive covenants, which committed owners never to sell to an African American.” *Id.*

In 1937, the Federal Home Owners’ Loan Corporation (“HOLC”) published its infamous Residential Security Map which led to the practice of “redlining” in

residential mortgage lending. David Armenti & Alex Lothstein, *Baltimore's Pursuit of Fair Housing: A Brief History*, Md. Ctr. for Hist. & Culture, <https://www.mdhistory.org/baltimores-pursuit-of-fair-housing-a-brief-history> (last accessed Oct. 11, 2023).. Most of Baltimore's Black neighborhoods, including some immigrant neighborhoods, were targeted by the practice. *Id.* These neighborhoods suffered from "high rents and poor-quality housing and limited social and city services." *Id.* In *Thompson v. U.S. Dept. of Hous. and Urb. Dev.*, African-American residents of public housing units in Baltimore City filed a class action against the local and federal government claiming discrimination based on their race. 348 F. Supp. 2d 398, 404 (D.Md. 2005). After extensive evidentiary findings, the court found that the U.S. Department of Housing and Urban Development ("HUD") violated the FHA by failing to "adequately consider regional approaches to ameliorate racial segregation in public housing in the Baltimore Region." *Id.* at 524.

In sum, Baltimore "experienced a century of public policy designed consciously to segregate and impoverish its [Black] population." Rothstein, *supra*, at <https://www.epi.org/blog/from-ferguson-to-baltimore-the-fruits-of-government-sponsored-segregation>. The same patterns of discrimination play out in this century, too. The prosperity of Baltimore neighborhoods today neatly tracks the patterns of segregation and housing discrimination 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](http://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>.

The eviction crisis that plagues Baltimore today is interwoven with the City's "past and private discrimination, patrolled physically by police as detailed by the [U.S. Department of Justice] ("DOJ"), and perpetuated by racialized economic segregation." Barbara L. Bezdek, *Policing that Perpetuates Baltimore's Islands of Poverty and Despair*, 16 U. Md. L.J. Race, Religion, Gender & Class 153, 158 (2016). In general, Black families are overrepresented among renters because they have not recovered from the 2007 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); National Equity Atlas, *supra*, at <https://nationalequityatlas.org/rent-debt>. Furthermore, Baltimore renters in rent

court disproportionately reside in predominately Black, low-income, and under-resourced neighborhoods instilled by generations of segregation and disinvestment. See Tim Thomas et al., *Baltimore Eviction Map: The Eviction Study* (May 8, 2020), <https://evictionresearch.net/maryland/report/baltimore.html>. (finding that 46% more female headed households were removed from their homes as compared to male headed households; the number of Black eviction removals was 195% more than white evictions; and the number of Black female headed household removals was 296% higher than the number of white male headed evictions).

As of February 3, 2023, the City stopped accepting applications for rental assistance from people facing eviction because the city had exhausted its share of “\$46 billion in emergency rental assistance funds” provided by the federal government during the pandemic. Sophie Kasakove, *Baltimore City to stop accepting new applications for rental assistance, as eviction crisis looms*, The Balt. Banner (January 30, 2023, 6:04 p.m.), <https://www.thebaltimorebanner.com/community/housing/baltimore-city-to-stop-accepting-new-applications-for-rental-assistance-as-eviction-crisis-looms-4I7EFWOR4RAUFDD7BSTMCGD4DI>. Despite this, evictions in Baltimore continue to rise to pre-pandemic levels: “In the city of Baltimore, evictions in September and November [2022]...exceeded the number of evictions for those months in 2019, the last year before the COVID-19 pandemic was declared.” Ryan

Little & Sophie Kasakove, *Eviction numbers are climbing back toward pre-pandemic highs in parts of Maryland*, The Baltimore Banner (Jan. 17, 2023, 9:48 a.m.), <https://www.thebaltimorebanner.com/community/housing/evictions-rising-maryland-pandemic-moratorium-CAQYBQYERVDM3PHLUI4KGE6Q5A>.

Activist groups have called on Baltimore City for financial assistance to help renters avoid eviction. Kim Dacey, *Activists call for eviction prevention, more funding to protect renters*, WBAL TV 11 (May 25, 2023, 10:14 p.m.), <https://www.wbal.com/article/baltimore-city-evictions-renters-protection-funding-budget/44009270>. (“[Baltimore Renters United] asked the Baltimore City Council to...publicly affirm[] \$1.6 million for the legal right to counsel for tenants, allowing \$2 million for housing safety inspectors and \$25 million for emergency rental assistance.”).

Within this longstanding, hyper-segregated environment fostered by city, state, and federal policy, the confiscation law adds nothing but insult to injury – exacerbating the already devastating, disparate impact of eviction on Black renters with the total loss of belongings. Section 8A-4 fails to afford renters the full range of procedural protections that due process requires. In fact, it disproportionately harms the most vulnerable renters in Baltimore city: those who belong to minority groups and low-income people of all races. As the United States Supreme Court emphasized in *Shelley v. Kraemer*, “[e]qual protection of the laws is not achieved

through indiscriminate imposition of inequalities.” 334 U.S. 1, 22 (1948). Yet continued operation of § 8A-4 does just that.

**C. Renters' experiences highlight the inherent procedural injustice of the City's confiscation ordinance.**

Consideration of how § 8A-4(a) plays out in practice reinforces the lower court's holding that the City's ordinance is unconstitutional. First, the City misrepresents the ability of renters to petition the state district court to stay execution of the warrant of restitution to provide them with additional time to collect their belongings prior to the eviction. Defs.-Appellant Br. 47 n.1, ECF No. 24. There are no legal grounds in any applicable law or rule for a renter to move the court to re-open an eviction judgment in a THO action solely for purposes of delaying the eviction so that a renter can secure their belongings better. Md. R. Civ. P. Dist. Ct. 3-632 regarding a stay of execution only applies when a motion challenging the underlying judgment for possession of real property is pending – not simply because someone needs more time to move their belongings. Md. R. Civ. P. Dist. Ct. 3-632.

Nothing in the Maryland Rules or any applicable statutory language deals with safeguarding the renter's property through proper notice or otherwise in THO cases. Nor does any provision explicitly guard against the unlawful taking of property in the event of eviction. The opposite is clear: the confiscation ordinance expressly effectuates complete and irrevocable abandonment of the renter's



worldly goods. In short, there is nothing in the law on which a renter could base such a motion, and in *amici*'s collective experience representing thousands of renters in eviction proceedings every year in Baltimore City, the eviction court would not entertain such a motion.

Since the enactment of the law, renters who suffered loss of their property due to eviction have sought legal support to try to obtain relief, and their advocates have complained about the law. The clients of *amici* described below illustrate how the lack of due process inherent in the confiscation ordinance intersects with the uncertainty of the eviction process in Baltimore City, thereby exacerbating the injustices of government-facilitated segregation.

For example, a recent client, a 43-year-old man and his wife were evicted from a multi-unit apartment building, and they lost all of their belongings. He was disabled, dealing with chronic illness and the ramifications of long Covid. This resulted in multiple emergency room visits and long periods in the hospital. While dealing with his health crisis, the couple believed that Baltimore City had paid their landlord the rent they owed through the City's rental assistance program. The couple received an email stating they had been approved for the program, and the landlord verbally confirmed that they had received the grant agreement. Thus, even though a judgment for eviction had been entered against the couple, these assurances from the landlord and City led the couple to believe they were safe

from eviction. Unfortunately, one day the Sheriff came to their home and evicted them. When the couple questioned the landlord about the agreement, the landlord told the renters they had changed their mind and had not signed the grant agreement, with no notice to the couple. As a result, the couple was evicted, after which they were homeless for a time. The couple had only been able to grab their medications when evicted by surprise; all the rest of their belongings were permanently lost.

In a different case, a series of events resulted in a 50-year-old man losing all of his belongings to eviction. He had been financially struggling for a long time, had recently lost several relatives to Covid, and had no one else to rely on. He had been notified that the sheriff would show up between 9:00 and 11:00 a.m. on a particular day to execute an eviction, but when the sheriff did not show during the two-hour window, he assumed the eviction was off and left to appear in court for a separate case the landlord had already filed against him. While he was gone, the sheriff came and changed the locks. This renter lost everything, including his dog and pictures of his deceased father.

*Amici* have also encountered two families who forever lost the remains of cremated loved ones as a result of the city's confiscation law and had absolutely no recourse. These atrocities are just a small sample of the consequences of this law that is plaguing Baltimore City's predominately segregated, low-income

communities.

**D. *Amici* have opposed the denial of due process inherent in the confiscation ordinance.**

Prior to enactment of the confiscation ordinance, because renters at that time received no notice whatsoever of the scheduled eviction date in any type of eviction, PJC and other community-based organizations and advocates came together to address “the shortcomings of the eviction process and the impact of eviction chattel on neighborhoods.” See Abell Foundation, *Abell Salutes: The Public Justice Center (PJC) and Citizens Planning and Housing Association (CPHA) Eviction Reform Initiative*, <https://abell.org/publication/abell-salutes-the-pjc-and-pha-eviction-reform-initiative> (last accessed September 29, 2023). The goal was to require landlords to give renters post-judgment notice of the eviction date and the opportunity to reclaim any property left in the leased dwelling before the property was deemed abandoned. See Baltimore City Council, *Legislation Details* <https://baltimore.legistar.com/LegislationDetail.aspx?ID=2175575&GUID=1153923C-CDAA-4367-944B-E5817B6E956E&Options=ID> (maneuver to “Attachments” click on “07-0665 – 1st Reader.pdf”) (last accessed September 29, 2023). During what was a complex and challenging legislative environment, the reclamation period for abandoned property was removed from the bill at the eleventh hour. *Id.* (maneuver to “Attachments” click on “07-0665 – 3<sup>rd</sup> Reader.pdf”). While PJC staff celebrated provisions for a new notice requirement

for renters in failure-to-pay-rent eviction cases, they knew the lack of a notice requirement for THO and breach of lease cases as well as the stripping of any reclamation period from the bill was harmful and did not support it. Hence, they continued their efforts to help Maryland families by advocating for renters' interests in preventing its spread to other jurisdictions. *See Anne Arundel County – Landlord and Tenant – Procedures for Repossession for Failure to Pay Rent on S.B. 328 Before the Jud. Proc. Comm.*, Reg. Sess. (Jan. 28, 2020) (statement of C. Matthew Hill, Att’y, Public Justice Center) (opposing a proposed bill in Anne Arundel County, Maryland, that would deem as abandoned all personal property remaining in the leased premises after an eviction); *Wicomico County – Landlord and Tenant – Repossession for Failure to Pay Rent Procedures on H.B. 227 Before the House Env’t and Transp. Comm.*, Reg. Sess. (Feb. 18, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center) (opposing a proposed bill in Wicomico County, Maryland, which would “mean that, at eviction, a renter has no right to their belongings as they are being removed from the property.”); *Baltimore County – Repossession – Disposition of Property on H.B. 626 Before the Baltimore County Delegation*, Reg. Sess. (Feb. 21, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center) (opposing a bill that “would cause thousands of renting households in Baltimore County to not only lose the roof over their heads, but also their vital records, medication and medical equipment, clothes, and food.”);

*Wicomico County – Landlord and Tenant – Repossession for Failure to Pay Rent Procedures on S.B. 176 Before the Judicial Proceedings Committee, Reg. Sess.* (Jan. 28, 2020) (statement of Zafar S. Shah, Att’y, Public Justice Center) (opposing a proposed bill in Wicomico County, Maryland, which would “fail to provide renters a reliable notice of eviction date” and the abandonment provision of which would “exacerbate the impact of eviction.”). Moreover, *amici* have long awaited the challenge to the abandonment provision that this case represents.

**II. Baltimore City’s approach is out of step with jurisdictions across the country.**

The City’s confiscation ordinance distinguishes Baltimore as an outlier among jurisdictions throughout the country. Neighboring jurisdictions, namely, Washington D.C., New Jersey, West Virginia, Pennsylvania, Delaware, Virginia, and North Carolina all require notice and reclamation periods. D.C. Code Ann. § 42-3505.01a (2018) (requiring notice, the renter’s right to reclaim the property within seven days after being evicted, and the landlord’s duty to store the renter’s property); N.J. Stat. § 2A:18-72-76 (2001) (allowing renters at least thirty days to reclaim their property following written notice); W. Va. Code § 37-6-6 (1999) (allowing renters thirty days to reclaim their property following written notice, and sixty days for renters who are on active duty in the Armed Forces); 68 Pa. Stat. Ann. § 250.505a(d)-(e) (2012) (requiring written notice sent via first class mail, renter then has ten days to collect belongings, unless the renter requests the

landlord to store their items, then they have thirty days to reclaim their property); Del. Code Ann. Tit. 25, §5715(e) (1996) (requiring notice for the eviction and a seven-day reclamation period); Va. Code Ann. § 55.1-1254 (2019) (mandated notice of eviction and the right to reclaim property in the twenty-four hours following the eviction, unless the landlord disposes of the property before that time); N.C. Gen. Stat. § 42-25.9 (2013) (requiring notice and either seven or five days to reclaim based on the value of the property). Sixteen more states require notice, the renter's right to reclaim, and require the landlord to store the renter's property. *See* Alaska Stat. § 34.03.260 (1994); Ariz. Rev. Stat. § 33-1370(f) (2021); Cal. Civ. Code § 1983-88 (2013); Fla. Stat. Ann. §§ 715.104, 107 (1997); Haw. Rev. Stat. Ann. § 521-56 (1981); Iowa Code § 555B.2 (1988) (applying to mobile homes only); Kansas Stat. Ann. § 58-2565(d) (1975); Me. Rev. Stat. tit. 14 §§ 6005, 6013 (2011); Minn. Stat. Ann. § 504B.271 (2010); Mont. Code Ann. § 70-24-430 (2021); Neb. Rev. Stat. Ann. §§ 69-2303-04, 06 (1991); Nev. Rev. Stat. Ann. § 118A.460 (1977); Okla. Stat. tit. 41, §130 (2019); Or. Rev. Stat. Ann. §90.425 (3) (1993); Vt. Stat. Ann. tit. 9 §4462 (2000); Wash. Rev. Code Ann. § 59.18.310-12 (2) (1992). An additional six states require at a minimum notice and a right to reclaim. *See*; Ind. Code Ann. §§ 32-31-4-1, 4-2, 4-3 (2007); Mo. Rev. Stat. § 441.065 (1997); N.D. Cent. Code § 47-16-30.1 (1983); Tenn. Code Ann. § 66-28-405 (1983); Utah Code Ann. § 78B-6-816(2) (2008); Wyo. Stat. Ann. § 1-

21-1210 (1999).

Even without a notice requirement, six more states and the city of Chicago have reclamation periods that are longer than 24 hours. Ala. Code Ann. §35-9A-423(d) (2006); Idaho Code § 6-316(2) (1974); N.H. Rev. Stat. Ann. § 540-A:3 (VII) (1979); N.M. Stat. Ann. § 47-8-34.1 (c) (1995); N.D. Cent. Code § 47-16-30.1 (1983); S.D. Codified Laws §§ 43-32-25, 26 (1976); Chicago Municipal Code 5-12-130(f).

By contrast, nothing in city or state law relevant to THO evictions informs the renter of a scheduled date of eviction or that their belongings will be deemed abandoned upon execution of a judgment for possession. RP § 8-402(b)(2)(i); Balt. City PLL § 9-19 *et seq.* Thus, Baltimore is an extreme outlier among other jurisdictions with respect to notice and renters' personal property rights in eviction.<sup>2</sup>

---

<sup>2</sup> After the trial court issued its ruling, the Maryland Judiciary added language to the warrant of restitution form purporting to notify Baltimore renters against whom a THO judgment has been entered that their property will be deemed abandoned in the event of an eviction. *See* <https://www.courts.state.md.us/sites/default/files/court-forms/dccv081.pdf>. But this acknowledgement—written *in 8-point font in the middle of the back* of a dense and lengthy form issued to the renter only once at the very end of the process and with no notice of the actual eviction date—does not begin to address the due process deprivations found by the lower court. It remains wholly inadequate. The City and Mayor of Baltimore City are responsible for their law that violates renters' constitutional rights.

**III. Renters may not own their homes, but the belongings that fill their homes demand protection as the most personal form of property right entitled to protection against an unconstitutional taking.**

As described above, eviction effectuates a taking of both one’s property and one’s dignity. Eviction “is not just a fleeting moment of housing insecurity. It presents ongoing hardships that some tenants struggle to escape.” James Bell, *Beyond displacement: how the ripple effects of an eviction can last for years*, PublicSource (November 11, 2020), <https://www.publicsource.org/eviction-collateral-impact-displacement-employment-transit-school-mental-health>. As § 8A-4 reads now, the City authorizes landlords to become the new owners of renter’s personal property after an eviction without adequate warning or an opportunity for renters to reclaim their belongings. The ordinance conflicts with the Takings Clause, which forbids that “private property be taken for public use, without just compensation.” U.S. Const. amend. V. The City permits landlords to dispose of the abandoned property by “transporting [it] to a licensed landfill or solid waste facility; donating [it] to charity; or some other legal means,” including keeping it for the landlord’s own ends. Balt. City, Md., Code art. 13, § 8A-5(a). The lack of a reclamation period allows landlords to profit from renters’ personal belongings by selling them to third parties or forcing renters to buy back their property that was never up for sale—practices that are common in Baltimore City in the experience of *Amici*. As written, the law provides perverse incentives to



unscrupulous landlords to ensure that renters are caught unawares by the eviction. The Constitution affords protections to personal property, and those protections should be honored by Baltimore City, not violated.

John Locke would surely have recognized the confiscation ordinance as allowing a form of city-sanctioned landlord “tyranny” through actions by the government that “are not directed to the preservation of the properties of his people, but the satisfaction of his own ambition, revenge, covetousness, or any other irregular passion.” John Locke, *Second Treatise of Government* § 199 (1690), available at <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>. For this reason, Locke contended that “[t]he reason why men enter into society, is the preservation of their property” and “whenever the legislators endeavor to take away, and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people.” *Id.* § 122. Under Locke’s formulation, protection of private property from government expropriation strikes at the heart of democracy. James Madison similarly viewed protection of property interests as central to the formation and preservation of democracy. *See* *The Federalist* No. 10 (James Madison), (“Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found *incompatible* with personal security or the *rights of property*; and have in general been as short in their lives as they have been violent in their deaths.”)

(emphasis added). These authorities reflect the view of the Framers of the Constitution that property rights are essential to “shielding individuality and autonomy from hostile or insensitive outsiders.” David A. Super, *A New New Property*, 113 Colum. L. Rev. 1773, 1779 (2013).

Drawing from these authorities, modern scholar David A. Super concludes that “[i]n a sense, property rights are a form of public insurance against certain kinds of threats to what individuals value.” *Id.* at 1793. Especially for members of traditionally disenfranchised groups, such as racial minorities and poor people, property ownership confers a sense of sovereignty, of independence and authority, albeit over a limited domain. This precept holds for personal property no less than for real property. Though a “man’s house” might qualify as “his castle”, it is their personal effects—family photos and children’s keepsakes; books and letters; clothes and the tools or instruments by which they pursue their trade and hobbies—which provide the content of their kingdom, that which makes their reign, however constrained, meaningful, as they reflect, and provide the means of continually pursuing, a life of purpose. *See* Online Library of Liberty, *Sir Edward Coke declares that your house is your “Castle and Fortress,”* <https://oll.libertyfund.org/quote/sir-edward-coke-declares-that-your-house-is-your-castle-and-fortress-1604> (last accessed October 8, 2023). The Takings Clause is about more than just safeguarding “stuff.” The things it protects are the things that

enable individuals to flourish. As such, its faithful application is critical for ensuring a robust society and a healthy democracy.

An individual need not be privileged to retain their property from undue interference by the state. See Isaac Saidel-Goley & Joseph William Singer, *Things Invisible to See: State Action & Private Property*, 5 Tex. A&M L. Rev. 439, 501 (2018) (“[o]ne does not have to belong to a privileged class or caste to enter the market or obtain private property”). Hence, the application of constitutional protections to personal property is essential to safeguard the property rights of all people. Property rights are all the dearer for those with relatively few material possessions. It is a bedrock principle of our democracy—and a core value embodied in the Fifth Amendment—that the government cannot deprive a person of their property absent just compensation. Deprivation of personal property, no less than real property, offends this principle. That is exactly what took place here.

## CONCLUSION

The City’s confiscation ordinance operates as a “statutory shell game,” one which constructs “a legal trap which almost seems designed to allow landlords to seize, without consequences, the property of the defaulting tenants.” *Connor v. Alltin, LLC*, 571 F. Supp. 3d 544, 557 (N.D. Miss. 2021). For the foregoing reasons, *amici curiae* respectfully ask that this Court affirm the judgment as to the Due Process claim and jury verdict, and reverse and remand as to the Takings

Clause claim.

Respectfully submitted,

/s/ Melanie Babb

Melanie Babb

*Murnaghan Appellate Advocacy Fellow*

Public Justice Center

201 N. Charles Street, Suite 1200

Baltimore, Maryland 21201

T: 410-625-9409

F: 410-625-9423

babbm@publicjustice.org

*Counsel for Amici Curiae*

## CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 5,828 words, in compliance with Rule 29(a)(5), excluding the parts of the brief exempted from the word count by Rule 32(f).
2. This brief complies with the font, spacing, and type size requirements stated in Rule 32(a).
3. This brief was not funded or authored, in whole or in part, by a party's counsel or any other person aside from *Amici*, their members, and their counsel.

/s/ Melanie Babb  
Melanie Babb

## CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2023, the foregoing Brief of *Amici Curiae* in Support of Appellees was served via CM/ECF system to:

Michael Redmond  
Director, Appellate Practice Group  
Baltimore City Law Department  
100 N. Holliday Street  
City Hall Baltimore, MD 21202  
T: 410-396-7536  
Michael.Redmond@baltimorecity.gov

### *Counsel for Appellants*

Joseph S. Mack, Esq.  
The Law Offices of Joseph S. Mack  
PO Box 65066  
Baltimore, MD 21209  
T: 443-423-0464  
joseph@macklawonline.com

Conor B. O’Croinin, Esq.  
Zukerman Spaeder LLP  
100 East Pratt Street, Suite 2440  
Baltimore, MD 21202  
T: 410-332-0444  
cocroinin@zuckerman.com

### *Counsel for Appellees*

/s/ Melanie Babb  
Melanie Babb