

IN THE SUPREME COURT OF MARYLAND

SUGARLOAF ALLIANCE, INC., *

Petitioner, *

SCM-PET-0162-2025

v. *

FREDERICK COUNTY,
MARYLAND *

Respondent. *

* * * * *

**BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION OF
MARYLAND, COMMON CAUSE OF MARYLAND, DISABILITY RIGHTS
MARYLAND, BALTIMORE ACTION LEGAL TEAM, AND MARYLAND
DELAWARE D.C. PRESS ASSOCIATION IN SUPPORT OF PETITION FOR
CERTIORARI**

“The Maryland Public Information Act is based on the enduring principle that public knowledge of government activities is critical to the functioning of a democratic society; that a Government of the people, by the people, and for the people must be *open* to the people.” Office of the Attorney General, *Maryland Public Information Act Manual*, Preface (19th Ed., 2024). But, if Marylanders cannot afford to hire lawyers to hold officials to that principle, it becomes meaningless.

Usually, parties in civil litigation adhere to the “American Rule,” which means they each pay their own attorneys’ fees. However, legislatures have authorized exceptions in hundreds of statutes like the MPIA to ensure that plaintiffs have access to quality counsel when litigating in the public interest. These exceptions help plaintiffs pursue police accountability, uphold protections for Marylanders with disabilities, safeguard free and fair elections, and inform the public about critical issues. When defending these fundamental

rights, groups like *Amici*¹ rely on the MPIA’s assurance that, if they win cases flowing from records requests, they will be compensated for their work. The unrestricted discretion endorsed by the decision below undermines that assurance. If left untouched, it threatens *Amici*’s ability to litigate claims against government entities while making it financially impossible for private attorneys to fill the gap.

Governmental transparency is a cornerstone of our democracy, and the right to challenge official secrecy and misconduct is sacrosanct. The MPIA is an essential mechanism for ensuring that all Marylanders benefit from this transparency, and *Amici* write to emphasize the importance of providing reimbursement for necessarily incurred attorneys’ fees to ensure the MPIA’s continued success in bolstering public trust through open government.

I. Importance of the MPIA

The MPIA represents a sweeping, statewide commitment to transparent government, stating “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.” Md. Code, Gen. Prov. § 4–103(a). Agencies are instructed to construe the MPIA “in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.” Md. Code, Gen. Prov. § 4-103(b); *see also Sheriff Ricky Cox v. Am. C.L. Union of Maryland*, 263 Md. App. 110, 126 (2024) (“[A]t its core, the MPIA is a disclosure statute that is meant to ensure that the government is

¹ *Amici*’s statements of interest are in the Appendix.

accountable to its citizens”) (cleaned up). By adhering to this principle, governments build connection with their communities and uphold their duty to serve the public interest. As trust in government nears historic lows, these disclosures are more important than ever before. *See Public Trust in Government: 1958-2024*, PEW RESEARCH CENTER (Jun. 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/public-trust-in-government-1958-2024/> (documenting eroding trust and noting that only 22 percent of Americans trust Washington to do what is right “just about always” (2%) or “most of the time” (21%)).

The importance of the MPIA is underscored by rapid responses to proposals to limit its reach. In the 2025 Legislative Session, the Attorney General’s office proposed a bill that would have allowed custodians to deny requests created for the purposes of “pending or reasonably anticipated” litigation. S.B. 555, 2025 Leg., 447th Sess. (Md. 2025), <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/sb0555>. Negative responses were swift and bipartisan. Delegate Terri Hill, D-Howard County, expressed concerns S.B. 555 could hinder public access to records that ensure government transparency. Gary Collins, “Anthony Brown’s bill may have ‘chilling effect’ on government transparency, critics say,” SPOTLIGHT ON MARYLAND (Feb. 25, 2025), <https://foxbaltimore.com/news/local/anthony-browns-bill-may-have-chilling-effect-on-government-transparency-critics-say>. Senator William Folden, R-Frederick County, shared those concerns and argued for the need for public access to information regarding public spending and budget proposals as the state manages its deficit. *Id.* Lauren Harper, the Freedom of the Press Foundation’ Daniel Ellsberg Chair on Government Secrecy, said the proposal “would have a chilling effect for anyone who wants to file a request in the State

of Maryland” and, if enacted, would “run[] afoul of the First Amendment.” *Id.* Legislators received unfavorable testimony on S.B. 555 from individual Marylanders and public interest organizations, including *Amici*. See “Committee Testimony and Witness Signup,” S.B. 555, 2025 Leg., 447th Sess. (Md. 2025), <https://mgaleg.maryland.gov/mgaweb/Legislation/WitnessSignup/SB0555?ys=2025R>

S. Fortunately, while the Bill passed through the Maryland Senate, it failed to move out of the House.

Our society is best served when our government upholds its commitment to transparency. Unjust limits to attorneys’ fees constrain the ability of individuals and organizations to seek and secure access to public information vital to ensuring governmental accountability.

II. Importance of Fees to Our Organizations

Amici rely on fee-shifting laws to recoup costs expended during complex litigation defending the rights of Marylanders and other non-profits. If left untouched, the decision below threatens *Amici’s* ability to afford to enforce public information laws by engaging in litigation that is sometimes necessary to secure compliance.

At core, the MPIA provides an avenue for individuals to learn how their government operates, for the media to educate the public, and for organizations to engage in public advocacy and information campaigns. Further, some organizations are required to collect information to comply with statute. For example, as the state’s designated Protection and Advocacy System, Disability Rights Maryland (“DRM”) is statutorily mandated to monitor facilities providing care and treatment to persons with disabilities and investigate

allegations of abuse and neglect. *See* 42 U.S.C. § 10805, *et seq.*, 42 U.S.C. § 15043, *et seq.* DRM relies on the MPIA to gather information about policies and practices impacting individuals with disabilities, including use of emergency petitions to remove children from school, treatment concerns in state psychiatric and juvenile facilities, and use of restraints and seclusion on students. Limitations to DRM’s ability to collect this information would restrain their ability to perform mandated activities and keep individuals with disabilities safe.

Since these claims typically don’t result in damages, without fair enforcement of the MPIA’s fee-shifting provisions, requesters would have to be prepared to spend thousands of dollars to challenge wrongful denial. From 2008 to 2015, the ACLU of Maryland was forced to spend hundreds of thousands of dollars litigating the denial of a request concerning racial profiling during traffic stops. *Maryland Dept. of State Police v. Maryland State Conf. of NAACP Branches*, 430 Md. 179 (2013). Ultimately, a Baltimore County circuit court judge awarded \$590,000 in fees—nearly everything the ACLU requested and significantly more than the state’s suggestion of \$74,000. In that decision, the court emphasized the importance of reasonable fees to “attract competent counsel to prosecute these kinds of cases, to be a disincentive to the custodians of these records from denying their access and to encourage settlement of these types of matters.” *Maryland State Conf. of NAACP Branches v. Maryland State Police*, No. 03-C-07-011022, at 4 (Cir. Ct. Dec. 23, 2014), https://live-awp-maryland.pantheonsite.io/app/uploads/2017/10/opinion_and_order_naacp_v_msp_fees_0.pdf; *see also* Andrew Metcalf, “Court Orders Town of Chevy Chase to Pay Nearly 100k

in Public Records Case,” BETHESDA BEAT (Sep. 12, 2017), <https://bethesdamagazine.com/2017/09/12/court-orders-town-of-chevy-chase-to-pay-92000-in-public-records-case/> (awarding \$92,000 in attorneys’ fees after appeals court determined town had wrongfully withheld fee waiver). Without the possibility of gaining attorneys’ fees, the ACLU would never have been able to sustain a decade of litigation. Such a result would mean that only the wealthiest Marylanders could seek information from the government.

Organizations like *Amici* also use MPIA requests to determine whether governments are complying with their obligations following a lawsuit. See *Baltimore Police Dept. v. Open Justice Baltimore*, 485 Md. 605, 664 (2023) (“It was therefore plainly apparent that disclosure of the records was intended to assist the public in examining BPD’s compliance with its own internal investigatory policies” in the context of an ongoing consent decree); *Maryland Dept. of State Police*, 430 Md. at 181 (finding that investigative files concerning racial profiling must be produced following MPIA request to determine state compliance with consent decree). These requests are critical to ensure the public knows if court orders are being followed. Without the potential threat of fees, governments and agencies will be less likely to cooperate with individuals and organizations making these requests, limiting public oversight over long-running cases.

The arbitrary slashing of fees in cases like this will limit the ability of *Amici* to enforce their requests and is directly contrary to the purposes of fee-shifting statutes. If the decision below is permitted to stand, those committed to defending the civil rights of

Marylanders will be forced to abandon claims against improper denials simply because of costs.

III. Importance of Fees to Society

The Appellate Court's *Sugarloaf* decision also removes incentives for private attorneys to take cases helping individuals and groups effectuate their rights. As a result, those without political or financial resources will have great difficulty retaining counsel. Contingency fee agreements help some low-income individuals find representation, but those agreements push lawyers towards high damages claims and away from claims like those brought under the MPIA. "[T]he goal of fee-shifting statutes in general is to insure that individuals, when injured by violations, or threatened violations, of certain laws, have access to legal counsel by a statutory assurance that his or her counsel will be paid a reasonable fee." *Friolo v. Frankel*, 403 Md. 443, 457 (2008) (cleaned up). By encouraging fee shifting, legislatures have shifted some of the burdens away from litigants seeking to support the public interest by making it possible to seek "prayers for injunctive or declaratory relief [that] could never survive a simple cost-benefit analysis." *Fee-Shifting to Promote the Public Interest in Maryland*, 42 UNIV. BALTIMORE L. FORUM 38, 40 (2011). This is critical in cases challenging denial of information related to police brutality, unfair redistricting, and disability discrimination, which provide limited pecuniary benefits to individual plaintiffs but extensive benefits to society.

Additionally, the prospect of fees encourages government agencies to pursue cooperative resolution with requestors. Fee awards serve as a potential threat of punishment for refusal to comport with statutory requirements under the MPIA. Attorneys' fees are

available under the MPIA when a litigant appeals a denial and proves that a government official has wrongfully withheld information. *Kline v. Fuller*, 64 Md. App. 375, 385 (1985). Accordingly, attorneys' fees operate to check undesirable behavior, since officials must consider fees when weighing the costs of non-compliance with a request. *Fee-Shifting to Promote the Public Interest in Maryland*, 42 UNIV. BALTIMORE L. FORUM 38, 46 (2011).

Finally, fee-shifting ensures that prevailing litigants are made whole, as their recovery is not reduced "by the amount of [their] lawyer's fee." Nicholas N. Nierengarten, *Fee-Shifting: The Recovery of In-house Legal Fees*, 39 WILLIAM MITCHELL L. REV. 227, 228 (2012). Accordingly, "the prevailing party, having been adjudged to be in the right, [does] not suffer financially for having to prove the justice of his position." Thomas D. Rowe, Jr., *The Legal Theory of Attorney Fee Shifting: A Critical Overview*, 1982 DUKE L. J. 651, 654 (1982).

CONCLUSION

Justice Louis Brandeis's famous aphorism "sunlight is said to be the best of disinfectants" means that openness is critical to bolster faith in public institutions. The MPIA demands that Maryland meet this threshold, and taxing of fees against those governmental entities that resist transparency makes it possible for media and public interest organizations to ensure compliance. Arbitrary reductions like those endorsed by the courts below means that lawyers are not compensated for their work: this will imperil existing cases and disincentivize attorneys and organizations from taking these cases in the future. For these reasons, it is imperative that the Appellate Court's decision be overturned.

Respectfully submitted,

/s/ Zoe M. Ginsberg

Zoe M. Ginsberg (CPF# 2411071003)

Deborah A. Jeon (CPF# 9006280125)

**AMERICAN CIVIL LIBERTIES UNION OF
MARYLAND FOUNDATION**

3600 Clipper Mill Road, Suite 200

Baltimore, MD 21211

Telephone: (410) 889-8555

Facsimile: (410) 366-7838

zginsberg@aclu-md.org

jeon@aclu-md.org

Counsel for Amici Curiae

**STATEMENT OF INTENT TO FILE SUPPLEMENTAL BRIEF PURSUANT TO
RULE 8-511(E)(2)**

Should this Court grant the petition for a writ of certiorari, the amici intend to seek consent of the parties or move for leave to file an amicus curiae brief on the issues before the Court.

CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 1899 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Zoe M. Ginsberg
Zoe M. Ginsberg

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on June 30, 2025, the foregoing brief of amici curiae in support of petitioner 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:

Sahar Atassi
Public Justice Center
201 N. Charles Street, Suite 1200
Baltimore, MD 21201

Counsel for Petitioner

Kevin Karpinski
Karpinski, Colaresi & Karp, P.A.
120 E. Baltimore Street, Suite 1850
Baltimore, MD 21202

Counsel for Respondent

/s/ Zoe M. Ginsberg
Zoe M. Ginsberg

APPENDIX
STATEMENTS OF INTEREST

Amici are five organizations with significant interests implicated by this petition. The **American Civil Liberties Union of Maryland** (“ACLU of Maryland”) is a nonprofit, nonpartisan organization and state affiliate of the national ACLU, dedicated to protecting the civil rights and civil liberties of residents of the State of Maryland and committed to advancing racial justice and equity. The ACLU of Maryland has filed dozens of MPIA requests in recent years to gather information to educate the public, inform policy advocacy, and support litigation. Several of these requests have resulted in successful litigation challenging unjust withholding of records or refusal to grant fee waivers as required by statute. These lawsuits have required significant attorney time and came at immense cost to the ACLU. The ACLU of Maryland does not charge clients for legal services and thus relies on donors and attorneys’ fees to conduct this work under the MPIA.

Common Cause Maryland (“Common Cause”) is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. Common Cause works to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity and representation for all; and empower all people to make their voices heard in the political process. Common Cause relies on MPIA requests to achieve the goals. Since Common Cause is a nonprofit organization, Common Cause relies on donors and attorneys’ fees to conduct this work under the MPIA.

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 seeking public information from state and local agencies. 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 public information to support the exercise of their rights and ensure that agencies are not engaging in disability discrimination.

Baltimore Action Legal Team (“BALT”) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and legal representation. BALT operates under 501(c)3 status. BALT has an interest in this case because of its commitment to transparency and accountability of government agencies.

The **Maryland Delaware D.C. Press Association** (“MDDC”) is a non-profit organization that supports newspapers in professional training and development, legislative representation, and First Amendment issues. MDDC represents all of the daily and most of the non-daily newspapers in Maryland. MDDC has an interest in this case because of the MPIA’s critical role in helping journalists gather information of note and keep Marylanders informed about the actions of their state and local governments.