

**STATEMENT IN SUPPORT
SENATE BILL 250**

SUBMITTED BY:

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The undersigned are disability advocates and lawyers who currently represent Sarah Gentner (“Ms. Gentner”), a resident of Maryland and individual suffering from several very serious disabilities. Ms. Gentner was employed as a transportation engineer by the Maryland Department of Transportation, State Highway Administration (“SHA”), during which time she was subjected to disability discrimination and harassment in the terms and conditions of her employment and eventually was compelled to leave SHA due to the mistreatment.

Our law firms filed suit on behalf of Ms. Gentner on August 29, 2017, asserting federal and state claims for disability discrimination in employment arising under § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (“Rehab Act”) as well as Maryland’s anti-discrimination law, set forth at MD. CODE ANN., STATE GOV’T, § 20-606 *et seq.* (“Title 20”). Ms. Gentner’s lawsuit was filed in the U.S. District Court of Maryland, Baltimore.

By the time Ms. Gentner filed her lawsuit, it was firmly established by the judiciary that the State of Maryland had waived sovereign immunity with respect to claims brought pursuant to Title 20. *See* MD. CODE ANN., STATE GOV’T, § 20-903 and, therefore, the U.S. District Court of Maryland had been adjudicating both federal and Title 20 claims for many years.

In or around June 11, 2019, a three-member panel of the Fourth Circuit Court of Appeals upended this long held legal position and in *Pense v. Md. Dep’t of Pub. Safety & Corr. Svcs.*, 926 F.3d 97 (4th Cir. 2019) held that the State of Maryland only waived Eleventh Amendment immunity for Title 20 claims brought in state court – but not as to Title 20 claims *brought in federal court*. The practical effect of this decision is that state employees in Maryland suffering from discrimination can no longer seek relief under Title 20 in federal court –even though the

federal court system has adjudicated numerous lawsuits for state employees arising under Title 20.

Unfortunately, SHA has recently seized upon the *Pense* decision and has requested that Ms. Gentner's Title 20 claims be dismissed for lack of subject matter jurisdiction. The Rehabilitation Act as it applies to Ms. Genter, does not provide full relief. Title 20 does provide greater relief. This means that in order for Ms. Genter to obtain full relief due the alleged wrongful acts of SHA, she will be forced to file yet another lawsuit in State court and duplicate effort and cost. Not only is this a burden on judicial resources and Ms. Gentner, but it can lead to competing decisions by courts and result in inconsistent findings and determinations.

Senate Bill 250 would rectify the harm caused by the *Pense* decision. Judicial economy and consistent decisions are important. A state employee in Maryland who is the victim of discrimination should be able to pursue both her federal claims and state claims in federal court, just as any private sector employee.

We support the passage of Senate Bill 250.