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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for Senate Bill 839
General Provisions—Damages or Losses--Definition
February 29, 2024

Good afternoon, Chair Smith, and members of the Judicial Proceedings Committee,

Senate Bill 839's ("SB 839") remedial purpose is to strengthen Maryland law by ensuring individuals have a fair opportunity to vindicate their rights in our courts. There is a troubling trend developing around the country and SB 839 is expressly intended to protect the rights we have enacted to protect Marylanders.

Background

Unfortunately, some conservative interest groups, aligned with the Supreme Court of the United States' current majority, are striving to break long-standing precedents. These groups hope to close court-house doors to individuals seeking to protect public rights or uphold the policy choices made by the people through their elected legislators. This unfortunate movement is intended to serve the interests of a few and unless we act, other branches of government will fester and expand without limits.

For example, in *NAACP v. Arkansas*, the Eighth Circuit Court of Appeals¹ recently held that organizations who had a longstanding and recognized history of enforcing Section 2 of the Voting Rights Act could no longer pursue actions which challenged reapportionment plans which unlawfully diluted Black voting strength. Instead, the Eighth Circuit substituted its policy choice and held the NAACP had no such rights, even though the Supreme Court previously recognized such efforts were permitted, considering the entire structure of the Voting Rights Act and that Congress had acquiesced to that reasoning for decades.

¹ 86 F.4th 1204 (2023).

The Supreme Court's decision in *Transunion LLC v. Ramirez*² exemplifies the effort to ignore precedents and the policies established by the legislative branch. The Court found that Federal courthouse doors are not open to parties seeking to pursue public rights established by the legislative branch unless they suffered "physical, monetary, or cognizable intangible harm traditionally recognized as providing a basis for a lawsuit in American courts" at the time the Constitution was created. Put another way, some interest groups and the current majority of the Supreme Court oppose the legislature's policy choice and believe only the laws of the 1780s control. The problem with this is that, at the time the Constitution was written and agreed upon, many citizens, people of color and women especially, had no rights conferred upon them. It is hypocritical to argue that unless 1780s common law recognized "harms" vindicated by new statutory rights, individuals that legislatures enacted statues to protect cannot pursue their causes in court proceedings.

In the Federalist Papers, James Madison explained "the great difficulty" of our democracy is that it must be administered by citizens over other citizens and its structure therefore requires the government to control the government while also obliging itself to control itself. In this way, when the small, but powerful few refuse to honor public policies legislatures enact, it is up to the legislature to reign in the judiciary to check and balance the judiciary overstepping its authority or preventing the judiciary the opportunity to do so in the first instance.

What Will SB 839 Accomplish?

SB 839 provides an opportunity to protect Marylanders' right to pursue causes of action by defining in the Code the terms "damage" and "loss."

- The addition of the statutory definition will avoid judicial efforts to rewrite Maryland laws to suggest only harms recognized in the 1780s may be enforced under Maryland statutes.
- Any court interpreting Maryland laws established by the General Assembly to protect and vindicate civil and consumer rights will not be able to close the courthouse doors by breaking from precedents including Maryland's express incorporation of the common law of England which expressly recognized such purposes.

As such, I respectfully request a favorable report for SB 839.

² 141 S. Ct. 2190 (2021).