

**FINAL Tesimony SB839.pdf**

Uploaded by: Charles E. Sydnor III

Position: FAV

CHARLES E. SYDNOR III, ESQ.  
*Legislative District 44*  
Baltimore County

DEPUTY MAJORITY WHIP

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Administrative, Executive, and  
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*Chair*

Baltimore County Senate Delegation



James Senate Office Building  
11 Bladen Street, Room 216  
Annapolis, Maryland 21401  
410-841-3612 · 301-858-3612  
800-492-7122 Ext. 3612  
Charles.Sydnor@senate.state.md.us

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 Appeals<sup>1</sup> 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.

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<sup>1</sup> 86 F.4th 1204 (2023).

The Supreme Court's decision in *Transunion LLC v. Ramirez*<sup>2</sup> 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.

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<sup>2</sup> 141 S. Ct. 2190 (2021).

# **Testimony on SB839 2-24.pdf**

Uploaded by: Jeff Sovern

Position: FAV

## TESTIMONY BEFORE THE MARYLAND GENERAL ASSEMBLY ON SB839

My name is Jeff Sovern and I am the Michael Millemann Professor of Consumer Protection Law at the University of Maryland Francis King Carey School of Law. Thank you for allowing me to testify in this matter. I make my statements in my individual capacity and do not represent any organization.

SB839 would simply codify the longstanding common law rule, as recognized by Justice Thomas writing for the United States Supreme Court in *Uzuegbunam v. Preczewski*, 141 U.S. 792 (2021), that damage claims lie when plaintiffs have incurred only nominal damages. In so doing, SB839 would prevent courts from abandoning our country's tradition simply by changing the common law.

**History and Tradition.** *Uzuegbunam* was a former college student who sued for nominal damages when he was blocked from speaking about his religion in his school's free speech zone despite having a permit to do so. The lower courts had dismissed the case as moot because *Uzuegbunam* sought only nominal damages. In holding that *Uzuegbunam* was entitled to have the courts hear his claim, the Supreme Court looked to history in both the United States and the British courts from which our precedents were originally drawn. For example, Justice Thomas quoted his predecessor, Justice Story as "stating that nominal damages are available 'wherever there is a wrong . . .'" *Uzuegbunam* at 799 (quoting *Webb v. Portland*, 29 F.Cas.506, 507 (1838)). This rule can in fact be traced back to the time of Blackstone. See 3 William Blackstone Commentaries on the Laws of England 23 (1768).

**Maryland Already Permits Nominal Damages.** The Maryland courts have also approved awards of nominal damages. Thus, in *Shell Oil Co. v. Parker*, 26 Md. 631, 636, 291 A.2d. 64, 67 (1972), a case founded on the common law, the Court of Appeals of Maryland affirmed an award of nominal damages on the ground that the defendant had violated the plaintiffs "technical rights." See also *Kleban v. Eghrari-Sabet*, 174 Md.App. 60, 95, 920 A.2d 606, 627 (2007) (citing *Wlodarek v. Thrift*, 178 Md. 453, 461, 13 A.2d 774 (1940) for the proposition that "there is a right to at least nominal damages where damages cannot be proven").

**Other States Have Adopted Similar Statutes.** Maryland would not be unique in adopting such a statute. See e.g., 23 Okl.St. Ann. § 98; S.D. Codified Laws § 21-1-2 ; Ga. Code Ann. § 13-6-6.

**The Legislation Affirms Current Law.** This legislation preserves the rights of protected persons under remedial laws the General Assembly has already passed. Enactment of the statutory definitions will ensure that courts hearing claims from protected Maryland residents will be from prevented from abandoning their traditional role in awarding nominal damages in the few cases, like *Uzuegbunam*, in which plaintiffs seek such a remedy to vindicate their rights but the damages may be small. Indeed, even in the *Shell Oil* case, in which the now-Supreme Court of Maryland affirmed an award of nominal damages, the plaintiffs had sought larger damages.

The impact of this legislation would be to provide certainty that protected Maryland residents would have a statutory right to seek reasonable nominal damages in litigation and would not

have to fear that the courts will change the common law. In addition, the legislation would prevent courts from turning their backs on the ancient rule that blocks those suffering only modest injuries from obtaining a judicial remedy when appropriate. In codifying existing common law, the legislation would join many other statutes that codify other common laws, including, for example, much of the Uniform Commercial Code.

For these reasons, I respectfully urge the Maryland General Assembly to VOTE FAVORABLE on SB839.

Respectfully submitted,

Jeff Sovern

# **Testimony on SB 839.pdf**

Uploaded by: William Steinwedel

Position: FAV



**MARYLAND  
LEGAL AID**

*Advancing*  
**Human Rights and  
Justice for All**

**Senate Bill 839  
In the Judicial Proceedings Committee – General Provisions  
Damages or Losses- Definition  
Hearing on February 29, 2024  
Position: FAVORABLE**

*Maryland Legal Aid (MLA) submits its written and oral testimony on HB 832 in response to a request from Senator Charles Sydnor.*

Maryland Legal Aid (MLA) is the largest non-profit law firm in the State of Maryland and represents low-income individuals in consumer cases, individual rights cases, and expungement cases. Senate Bill 839 amends the definition of damages in civil rights and consumer cases to allow for reasonable nominal damages in cases where a violation of the law was established. Because MLA believes that this bill would provide for just compensation for the violation of consumer and civil rights statutes and would serve as a deterrent to those who violate consumer protection and civil rights statutes, MLA testifies in strong support of SB 839.

MLA represents a great deal of consumers in foreclosure, collection, and other cases where banks, mortgage servicers, and collection agencies violate the law or are negligent in their collection practices, but where the lack of damages can prevent these companies from facing any financial punishment.

For example, when MLA was helping homeowners in obtaining assistance in curing mortgage arrears from the Maryland Homeowners Assistance Fund (HAF), one servicer was particularly slow in processing claims, which sometimes resulted in state assistance checks being sent back by the creditor and rejection of state assistance because the amount of mortgage default had changed in the time period between the award and the servicer applying the award to the mortgage default. MLA filed numerous administrative complaints with both the Consumer Financial Protection Bureau (CFPB) and the Maryland Office of Financial Regulation (OFR), against the servicer and finally the servicer began to process the claims correctly. MLA could not bring an affirmative claim in the District or Circuit Court against this creditor for violating any Maryland consumer protection laws because HAF was a temporary source of funds designed to protect homeownership. Through its efforts in assisting and supporting our clients through the HAF program, MLA prevented many of these homes from going to a foreclosure sale, yet the lack of a statutory violation prevented a suit for damage. If the change proposed by SB 839 had existed at the time, MLA would have been able to sue and obtain nominal damages for the clients affected by the servicer's negligent behavior.

In addition, MLA was involved in a lawsuit in which the mortgage servicer admitted that they had made a clear error, but because the homeowner was offered and accepted a permanent loan modification curing the arrears, the servicer took the position that that the homeowner was no longer entitled to any damages as the home was saved and the mistake corrected. MLA was able



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to negotiate a financial settlement, but because the servicer had offered the loan modification, MLA's ability to litigate in this matter and negotiate a better settlement when there was a clear mistake was limited. Had the change proposed in SB 839 existed at the time, because the law would have created some responsibility even when actual damages had been mitigated, MLA would have had more ability to litigate and a stronger position to negotiate a better settlement when the mortgage servicer admitted that they made an error.

Because this provides an additional remedy for MLA to hold bad actors responsible in the state courts for both consumer and civil rights violations, MLA testifies in strong support of SB 839. If you need additional information in regards to this bill, please contact William Steinwedel, Supervising Attorney, Foreclosure Legal Assistance Project, Maryland Legal Aid Bureau, at [wsteinwedel@mdlaborg](mailto:wsteinwedel@mdlaborg) and (410) 951-7643.

**SB0839 - MSBA Informational Letter (2024.02.28).pd**

Uploaded by: Shaoli Katana

Position: INFO



**MSBA Main Office**  
520 West Fayette Street  
Baltimore, MD 21201  
410-685-7878 | msba.org

**Annapolis Office**  
200 Duke of Gloucester Street  
Annapolis, MD 21401  
410-269-6464 | msba.org

To: Members of the Senate Judicial Proceedings Committee  
From: Maryland State Bar Association (MSBA)  
Subject: SB 839 – General Provisions – Damages or Losses - Definition  
Date: February 28, 2024  
Position: **Informational Letter**

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The Maryland State Bar Association (MSBA) files this informational letter regarding **SB 839 – General Provisions – Damages or Losses – Definition**. SB 839 defines "damages" or "losses" in statutory causes of action to protect civil rights or consumer rights and provides that "damages" or "losses" includes reasonable nominal damages.

MSBA represents more attorneys than any other organization across the state in all practice areas. Through its advocacy committees and various practice-specific sections, MSBA monitors and takes positions on legislation that protects the legal profession, preserves the integrity of the judicial system, and ensures access to justice for Marylanders.

As drafted, SB 839 may cause confusion about what types of claims would be entitled to nominal damages. MSBA suggests deleting Paragraph (1) of §1-107.1 (Page 2, Lines 23-25), given the bill's goal in codifying nominal damages from existing case law. This would result in the clear inclusion of "reasonable nominal damages" in "damages" or "losses."

Contact: Shaoli Katana, Advocacy Director ([shaoli@msba.org](mailto:shaoli@msba.org), 410-387-5606)