



Joint Committee on Fair Practices and
State Personnel Oversight Final Report on
Maryland Environmental Service
Personnel and Board Practices

Annapolis, Maryland
2022 Session

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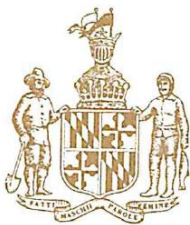
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JOINT COMMITTEE ON FAIR PRACTICES AND STATE PERSONNEL OVERSIGHT

May 16, 2022

The Honorable Bill Ferguson
President of the Senate

The Honorable Adrienne A. Jones
Speaker of the House of Delegates

Members of the Legislative Policy Committee

Re: Legislative Policy Committee Final Report
Maryland Environmental Service Personnel and Board Practices

Dear Mr. President, Madame Speaker, and Members of the Committee:

The Joint Committee on Fair Practices and State Personnel Oversight is pleased to submit to the Legislative Policy Committee (LPC) a report on its findings, conclusions, and recommendations regarding the Maryland Environmental Service (MES) personnel and board practices during the tenure of MES Director Roy C. McGrath.

In August 2020, immediately after receiving its charge from LPC, the committee requested documents from MES and the Office of the Governor. The committee scheduled hearings on August 25 and September 2, 2020, and heard testimony from 10 witnesses from MES and the Department of Legislative Services (DLS). Former MES employees Mr. Roy McGrath and Mr. Matthew Sherring declined to accept invitations to appear.

The committee subsequently hired outside counsel, Gallagher Evelius & Jones LLP, to assist it in continuing its investigation. LPC issued, on a unanimous and bipartisan basis, subpoenas for Mr. McGrath, Mr. Sherring, and former MES Treasurer Michael Harris, who testified at hearings on December 10, 2020; December 16, 2020; and June 10, 2021, respectively. Under the committee's direction, counsel also interviewed numerous additional witnesses, collected and analyzed voluminous additional documents, and drafted the enclosed report.

The committee's investigation revealed significant financial and management flaws at MES during Mr. McGrath's tenure. The General Assembly addressed some of the structural flaws

in the Maryland Environmental Service Reform Act of 2021 (Chapter 72) (the **Reform Act**). The Reform Act passed the Senate unanimously and passed the House with four dissenting votes. It was signed into law by the Governor and took effect on July 1, 2021. The Reform Act institutes sweeping reforms of the governance of MES and, we believe, will prevent the abuses described in this report from recurring in the future, if properly implemented.

Our investigation and report document the following:

- potential financial fraud by the former MES Director;
- substantial financial abuses in incurring expenses, which were of no benefit to MES and, in some cases, designed only to benefit the MES employees (Mr. McGrath and Mr. Sherring) incurring the expenses; and
- a rogue hiring system at MES where the former director's friends and associates were hired outside of the normal process into high-paying positions to serve the former director, not the organization.

We believe that the meticulous documentation of these abuses should serve as an example of the importance of appointing and approving leadership in State government that has the highest standards for integrity. When leadership itself lacks those standards and oversight is minimal, the abuses documented here can occur. Our report also illustrates the importance and effectiveness of the General Assembly's exercise of its investigative and oversight function, especially with respect to abuses regarding State expenditures. It is our hope that this report will prevent future fraud, waste, and abuse, thereby saving taxpayers' money, and potentially serve as a model for how to respond when problems do arise.

Federal and State prosecutors conducted investigations of McGrath's activities simultaneously with our investigations. As a result, the committee and its counsel did not have access to certain electronic devices that Mr. McGrath used that were in the custody of prosecutors. The committee's hearing transcripts and exhibits, however, were available to the prosecutors. On October 4, 2021, the U.S. Attorney's Office for the District of Maryland indicted Mr. McGrath, and the Maryland State Prosecutor's Office filed a criminal information against Mr. McGrath in the Circuit Court for Anne Arundel County. Those indictments closely track the factual investigation and findings of the committee.

We thank the Office of the Governor, MES, and DLS for their cooperation in the committee's gathering of facts that are the basis for this report. We thank our counsel, Gallagher Evelius & Jones, for their help in conducting the public hearings, interviewing witnesses, gathering documents, and producing this report, all in accordance with the highest professional standards. We also thank DLS for its diligent work in finalizing the report.

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Finally, we want to thank the many current and former State employees, and MES board members, who came forward voluntarily to testify and to be interviewed about the facts contained in this report. We appreciate their forthrightness and sense of duty. Without them, we would not have been able to get to the truth of this matter.

Respectfully submitted,



Senator Clarence K. Lam
Senate Co-Chair



Delegate Marc Korman
House Acting Co-Chair

Enclosure

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Executive Summary

Roy C. McGrath was appointed Director of the Maryland Environmental Service by Governor Larry Hogan on December 21, 2016. He served as Director until May 31, 2020, when he became Governor Hogan's Chief of Staff.

During his tenure, MES paid McGrath the following compensation:¹

2017	\$241,702.94
2018	\$262,549.68
2019	\$281,166.06
2020	\$342,392.35
TOTAL:	\$1,127,811.03

McGrath used his Director position to create State jobs for loyal colleagues, placing them in key positions within MES. At least four of McGrath's hires were former fellow employees at the National Association of Chain Drug Stores (NACDS), where McGrath worked for 14 years.

In violation of MES personnel policies, the jobs McGrath offered his former colleagues typically were not publicly posted, McGrath's colleagues were the only applicants, and McGrath was the only one who interviewed them, made the hiring decision, and determined the salary. McGrath created a job for Matthew Sherring, who became Director of Operations and McGrath's frequent traveling partner. McGrath also created a job for Michael Harris, who became the MES Managing Director of Finance, Treasurer, and the MES employee charged with reviewing McGrath's expenses. McGrath's personal hires were known as "untouchables" within the organization. They were Virginia or District of Columbia residents, but he persuaded them to make sizable contributions to Governor Hogan's campaign.

During his 3½ year tenure as Director, McGrath caused MES to incur at least \$169,306.96 in expenses for his activities. His predecessor Directors' total expenses, each for stints of approximately 11 years, were \$15,923.31 and \$17,963.47, respectively. McGrath had Sherring pay substantial expenses on his behalf (including McGrath's tuition for a Senior Executive Fellows course at Harvard) and directed other MES employees to charge yet additional expenses for him to their MES credit cards.

McGrath's expenses were often of no apparent benefit to MES and frequently violated MES policies. When he was questioned about these expenses under oath, before the Joint

¹ The total compensation MES paid McGrath for each year includes his base salary, executive incentive payment, leave buyback, sick leave incentive payment, and, in 2020, severance payment. The total for each year does not include the annual contribution MES made to McGrath's 401(k). For a breakdown of McGrath's total compensation for each year he served as MES Director, see **Appendix 1**.

Committee on Fair Practices and State Personnel Oversight, he chose to invoke his rights and privileges under the Fifth Amendment to the United States Constitution and Article 22 of the Maryland Declaration of Rights (collectively referred to as the “Fifth Amendment”).

McGrath and Sherring, for instance, regularly attended leadership conferences together across the country. Often, the conferences were sponsored by the U.S. Chamber of Commerce’s Institution for Organizational Management, whose courses led to the IOM certification, which McGrath obtained.

In 2018 alone, McGrath spent 28 days out of the office attending leadership conferences in places as far away as Tucson, Chicago, Orlando, and Madison, Wisconsin. In Orlando, he spent five days and \$9,217.39 of MES’s funds attending the Disney’s Approach to Leadership Excellence Course.

Sherring accompanied McGrath on half of McGrath’s 96 overnight trips during his term as Director. Sherring’s expense reports often included expenses for both of them. The MES-related purpose for Sherring’s participation on the trips was seldom apparent, and Sherring often invoked his Fifth Amendment rights when asked to explain them.

McGrath’s use of MES funds to further his career was not limited to having the organization pay for leadership conferences. In 2019, he sought to join the board of the Academy Art Museum of Easton for its networking opportunities. He directed an MES employee to use her MES credit card to purchase tickets (for \$500) to its Kentucky Derby Gala, for his use. After he joined the board, he responded to a solicitation from the Academy to sponsor its craft show by having MES send it a check for \$15,000.

McGrath’s hand-picked Managing Director of Finance and Treasurer, Harris, never questioned or rejected any of McGrath’s expense reimbursement requests. For a brief period, McGrath approved \$12,464.81 of his own expenses, including registration for the Disney leadership course and his and Sherring’s tab at the Big Fish raw bar in Rehoboth, Delaware. McGrath approved many of Sherring’s expense reports.

In May 2020, McGrath was offered the Chief of Staff position for the Governor. McGrath negotiated the same salary for the position that he received as Director of MES, but told at least two MES Board members that he would be taking a pay cut in his new job. Before leaving MES for the Governor’s office, McGrath requested that the MES Board award him a severance of a year’s salary, despite that he was leaving MES voluntarily and would have no period of unemployment. McGrath represented to MES Board members that the Governor knew of and approved of his request. Minutes of the closed session of the Board approving the requested severance demonstrate its reliance on McGrath’s representation, stating:

Mr. Snee [Board member] stated that he had told Mr. McGrath that he would not recommend that a severance payment be made unless the Governor was aware of the proposed severance and did not object. Mr. McGrath had assured Mr. Snee that the Governor was aware of the proposed severance payment and did not object.

The Board then approved a severance payment of \$233,647.23 and a tuition reimbursement of \$5,250, rounded the amount up to \$239,000, and approved McGrath's retaining his agency-issued laptop and cell phone upon his departure from MES.

After McGrath became Chief of Staff, he and Sherring attempted to alter the draft Board meeting minutes describing the Board's authorization of the severance. They eliminated any reference to the severance in the draft of the publicly available minutes and drafted a version of the closed minutes that made no reference to the Governor's approval of the severance. MES ultimately rejected these changes.

When the news of McGrath's severance broke in August 2020, Governor Hogan unequivocally denied that he had any involvement in approving or recommending the severance. McGrath made a number of public statements attempting to justify the severance, but did not dispute the Governor's denial. McGrath's public statements about his severance were materially misleading in several respects; among other things, McGrath's statements falsely inflated the severances paid to other former MES employees, inaccurately analogized his situation to that of a private sector CEO, and attempted to justify his severance as a performance bonus, which it was not.

On October 5, 2021, the Grand Jury for the United States District Court for the District of Maryland indicted McGrath on six counts of wire fraud, embezzlement, theft, and fraud in connection with his activities as MES Director. **Appendix 2** (Federal Indictment). On the same date, the Office of the State Prosecutor for Maryland filed a criminal information against McGrath charging him with 27 counts of unlawful intercept, misconduct in office, theft, and misappropriation in connection with those activities. **Appendix 3** (State Charges).²

Immediately after the charges became public, McGrath issued a Facebook post claiming that "politically motivated bullies originated this twisted mess" and that his loyalties had prevented him from speaking out. He provided an interview and documents to the *Washington Post* and claimed that one document, a May 18, 2020 memo, showed the Governor's approval of his severance. The Governor's spokesman stated that the memo was a "complete fabrication."

The second document McGrath provided is an August 2020 text from the Governor to McGrath in which the Governor states, "I know you did nothing wrong. I think it is unfair. I will stand with you." The Governor's spokesman acknowledged that the text was genuine but stated that it was sent before the Governor learned the details of the severance package.

² During counsel's investigation, Federal and State authorities were simultaneously conducting criminal investigations of McGrath. Counsel did not have access to documents and communications on devices that were seized in connection with those investigations. For instance, Counsel did not have access to the device containing text messages with Governor Hogan in August 2020 (*see* pp. 54–55), the device McGrath used to communicate changes to MES board minutes after he left MES (*see* pp. 45–46), or McGrath's Apple iPhone on which he recorded conversations referenced in the State Criminal Information.

McGrath claimed that he resigned as Chief of Staff because of the Governor’s promise to stand with him but, to his shock, “he hung me out to dry.” At a press conference on November 5, 2021, Governor Hogan stated that he “was not at all aware of these things—and when we found out [McGrath] was terminated in a matter of days.”

McGrath had not produced either document in response to the Legislative Policy Committee’s subpoena to him, raising his Fifth Amendment privilege through counsel. After the *Post* article was published, counsel for the Joint Committee requested that he produce the documents and consent to an interview on the matters he discussed with the *Post* reporters. McGrath did not respond.

McGrath’s actions may provide a basis for MES to assert legal claims against him to recover a substantial amount of money, and we recommend that the MES Board and its counsel seriously consider doing so. Some of Sherring’s expenses, for himself and McGrath, also show no apparent connection to MES business. We recommend that the Board and its counsel consider recovering them also.

I. Introduction

On August 14, 2020, a *Baltimore Sun* article by Pamela Wood reported that former MES Director McGrath received a six-figure payout as he left the agency to become Governor Hogan's Chief of Staff. Subsequent articles confirmed that the MES Board approved the payout based on representations by McGrath that the Governor approved it, and raised issues about McGrath's travels and expenses during his tenure at MES. Maryland Senate President William C. Ferguson and Speaker of the House of Delegates Adrienne A. Jones directed the Joint Committee on Fair Practices and State Personnel Oversight (Joint Committee) to investigate MES personnel and Board practices.

The Joint Committee immediately sought to obtain relevant documents and other information. On August 18, 2020, it requested documents from MES and the Governor's office related to, among other things, "MES spending practices [under McGrath], financial controls, and treatment of personnel by certain members of the [MES] Board of Directors." **Appendix 4** (Joint Committee letter); **Appendix 5** (Joint Committee letter); **Appendix 6** (Smulski emails).³ MES and the Governor's office promptly produced responsive documents.

On August 25 and September 2, 2020, the Joint Committee convened hearings in connection with its investigation. The Joint Committee requested that McGrath and Sherring appear before it to provide information relevant to its investigation. McGrath, through counsel, declined to appear. **Appendix 7** (Marcus representation letter). Sherring did not respond to the Joint Committee's invitation. The following individuals voluntarily appeared and testified at the Joint Committee's August 25 and September 2, 2020 hearings:⁴

- Andrew Gray, Department of Legislative Services Budget Analyst
- Dr. Charles Glass, MES Director
- Beth Wojton, former MES Deputy Director
- Michael Harris, former MES Managing Director of Finance and Treasurer of the Board
- Joseph F. Snee, Jr., former MES Board of Directors Member and Chair of Human Resources Committee
- Richard P. Streett, Jr., former MES Board of Directors Member
- William Addison, former MES Board of Directors Member

³ In this report, the documents referred to as Exhibits are documents that were used in questioning subpoenaed witnesses at three Joint Committee hearings. The term "Appendix" refers to all other documents and files that support this report. Copies of the exhibits and appendices, as well as relevant MES expense reports and credit card statements, are appended to this report.

⁴ A recording of the Joint Committee's August 25, 2020 hearing is available at: https://www.youtube.com/watch?v=5Yvg_R5kw_8&feature=youtu.be and attached as **Appendix 8**. A recording of the Joint Committee's September 2, 2020 hearing is available at: <https://www.youtube.com/watch?v=tHS5SaSeZME&feature=youtu.be> and attached as **Appendix 9**.

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- Leslie Jackson-Jenkins, former MES Board of Directors Member and Chair of the Audit Committee
- J.P. Smith, Jr., former MES Board of Directors Member
- Morgan Hall, former MES Board of Directors Member

On September 23, 2020, the Joint Committee provided an update to the Legislative Policy Committee concerning the Joint Committee’s investigative findings to date.⁵ At the conclusion of that hearing, Delegate Eric G. Luedtke moved to “issue a subpoena to require Roy McGrath and Matthew Sherring to appear to testify before the Joint Committee on Fair Practices and State Personnel Oversight within the next 30 days or on a mutually agreed date, including any documents related to this testimony.” **Appendix 11** (Legislative Policy Voting Record). The Legislative Policy Committee approved the motion by a vote of 24–0. *Id.* The Joint Committee subsequently issued subpoenas requiring McGrath and Sherring to appear before the Joint Committee. **Appendix 12** (McGrath subpoena); **Appendix 13** (Sherring second subpoena); **Appendix 14** (Sherring first subpoena).

On September 24, 2020, the General Assembly engaged Gallagher Evelius & Jones LLP (GEJ) to serve as counsel to the Legislative Policy Committee and Joint Committee “to assist the Committees in discharging [their] powers and duties related to the investigation into personnel and board practices at the Maryland Environmental Service.” **Appendix 15** (GEJ engagement letter). Ward B. Coe, III of GEJ served as lead counsel to the Committees. *Id.* He was assisted by three GEJ attorneys (Hillary Arnaoutakis, Sam Cowin, and Collin Wojciechowski) and a GEJ paralegal (Julie Pfanstiel Smith). Since September 2020, the Joint Committee and counsel have engaged in an extensive investigation of MES personnel and spending practices during McGrath’s tenure as Director.

Pursuant to the Legislative Policy Committee subpoenas, Sherring appeared before the Joint Committee on December 10, 2020 and McGrath appeared on December 16, 2020.⁶ During their appearances, McGrath and Sherring routinely declined to answer questions by invoking the Fifth Amendment.⁷

On January 18, 2021, Delegate Erik L. Barron moved the Legislative Policy Committee to “issue subpoenas to require Mr. Michael Harris and Mr. Daniel Faoro to appear to testify before the Joint Committee on Fair Practices and State Personnel Oversight[.]” **Appendix 19**

⁵ A recording of the Legislative Policy Committee’s September 23, 2020 hearing is available at: <https://www.youtube.com/watch?v=2PydOHxTeXo> and attached as **Appendix 10**.

⁶ The subpoenas to McGrath and Sherring also required them to produce relevant documents. McGrath did not produce documents in response to the Legislative Policy Committee’s subpoena, asserting the Fifth Amendment. **Appendix 16** (Marcus letter). Prior to obtaining counsel, Sherring produced limited documents to the Joint Committee, explaining that “I’m not anticipating substantial document production as most of what you’ve requested is in the possession of my former employer.” **Appendix 17** (Sherring letter); **Appendix 18** (Sherring email).

⁷ Sherring invoked the Fifth Amendment 251 times; McGrath invoked it 177 times.

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(Legislative Policy Committee Voting Record). The Committee approved Delegate Barron’s motion by a vote of 27–0. *Id.* On February 12, 2020, the Legislative Policy Committee issued a subpoena to Harris compelling his testimony before the Joint Committee. **Appendix 20** (Harris subpoena). Pursuant to that subpoena, Harris appeared before the Joint Committee on June 10, 2021. After discussions with counsel, the Legislative Policy Committee did not issue a subpoena to Faoro.

Throughout their investigation, counsel sent numerous requests for documents and information to MES and to the Governor’s office. In response to all such requests, MES and the Governor’s office promptly produced responsive documents. From November 2020 through September 2021, counsel interviewed the following current and former MES employees, members of the Governor’s staff, and Office of Legislative Audits staff, all of whom appeared for interviews voluntarily:⁸

MES

- Sean Coleman, Assistant Attorney General and Principal Counsel to MES (multiple interviews)
- Sally Long, former MES Chief of Procurement (multiple interviews)
- Stephanie Acosta, MES Financial Account Manager (Nov. 10, 2020)
- Leslie Jackson-Jenkins, former MES Board of Directors Member and Chair of Audit Committee (Nov. 10, 2020)
- Joseph F. Snee, Jr., former MES Board of Directors Member and Chair of Human Resources Committee (multiple interviews)
- Daniel Faoro, former MES Managing Director of Communications (Nov. 12, 2020)
- Richard Streett, Jr., former MES Board of Directors Member (Nov. 12, 2020)
- William Addison, Jr., former MES Board of Directors Member (Nov. 13, 2020)
- Beth Wojton, former MES Deputy Director (multiple interviews)
- Michael Harris, former MES Managing Director of Finance and Treasurer of the Board (multiple interviews)
- Dr. Charles Glass, current MES Director (multiple interviews)
- John O’Neill, former MES Deputy Director and Acting Director (Nov. 20, 2020)
- J.P. Smith, Jr., former MES Board of Directors Member (Nov. 24, 2020)
- James Harkins, former MES Director (Nov. 25, 2020)
- Shannon Bettleyon, MES Strategic Partnerships Associate (multiple interviews)
- Ellen Frketic, MES Division Chief of Water and Wastewater Engineering (Feb. 18, 2021)
- Jason Gillespie, MES Managing Director of Water, Wastewater, GIS, and Environmental Monitoring (Feb. 19, 2021)

⁸ Counsel’s written notes from these interviews are attached as **Appendix 21**. Notes from Counsel’s interview with staff from the Office of Legislative Audits have not been produced pursuant to Md. Code, State Gov’t § 2-1226(a).

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- Steve Pennington, former Managing Director of Strategic Partnerships and Industry Relations (Feb. 19, 2021)
- Steve Tomczewski, Managing Director of Environmental Operations Group (Feb. 23, 2021)
- Noha Ahmed, former MES Strategic Partnerships Manager (Feb. 23, 2021)
- Adrian Noel, MES Environmental Section Chief (Mar. 2, 2021)
- Cece Donovan, former MES Managing Director of Technical and Environmental Services (Mar. 8, 2021)
- Chuck Fawley, MES Facilities Staff (multiple interviews)
- Pamela Fuller, MES Senior Paralegal (multiple interviews)
- Ryan Nawrocki, Communications Contractor, Red White and Blue LLC (April 12, 2021)
- Vishal Bhatia, former MES Managing Director of IT (June 23, 2021)
- Jennifer Brown, MES Senior Fiscal Associate (June 29, 2021)
- Diana Olson, former MES Internal Auditor (July 22, 2021)

Governor's Office

- Michael Pedone, Chief Legal Counsel to Governor Hogan (multiple interviews)
- Matthew Clark, former Chief of Staff to Governor Hogan (Dec. 8, 2020)
- Stephen Schatz, Deputy Chief of Staff to Governor Hogan (Mar. 30, 2021)

Office of Legislative Audits Staff

- Joseph McWilliams (Mar. 9, 2021)
- Julia King (Mar. 9, 2021)
- Bekana Edossa (Mar. 9, 2021)

Counsel are grateful for the extensive cooperation they received from MES, the Governor's office, and the Office of Legislative Audits. In particular, counsel recognize the tireless efforts of Sean Coleman and Pamela Fuller in accommodating counsel's requests for documents and information, and scheduling the dozens of interviews counsel conducted.

II. Brief History of Maryland Environmental Service and Statutory Summary

A. MES's Creation and Mission

The General Assembly created MES in 1970 (Chapter 240, Acts of 1970) as “an instrumentality of the State and a public corporation.” Md. Code, Nat. Res. (“NR”) § 3–103(a). MES was originally a unit of the Department of Natural Resources, but the agency became an independent public instrumentality in 1993. Chapter 196, Acts of 1993.

MES is designed to provide the political subdivisions of Maryland with “water and wastewater treatment, solid waste management, composting, recycling, dredged material management, hazardous materials clean up, and renewable energy.” **Appendix 22** (Maryland Manual – MES). By Executive Order, MES has run and maintained “all State-owned water, wastewater and solid waste management facilities” since 1971. *Id.* It operates on a fee-for-service model, with approximately 95% of the agency’s revenue coming from state agencies or local governments. **Appendix 23** (MES FY 2021 Budget Analysis).

MES is exempt from several finance and procurement regulations common to state agencies. *See* NR § 3–103(g)(1). The agency is also prohibited from unilaterally participating in competitive bidding with the private sector. NR § 3–102(a). MES is empowered to establish its own personnel system and is exempt from several provisions of the State Personnel and Pensions article of the Maryland Code. *See* NR §§ 3–103.1–3–103.2.

B. MES Governance Structure

MES currently employs over 800 individuals and is engaged in more than 1,000 projects across the State and Mid-Atlantic region. **Appendix 24** (MES website). Until 2021, MES operations were overseen by a nine-member Board of Directors, consisting of the MES Director, Deputy Director, Secretary, Treasurer, three public sector members, and two private sector members. The MES Director and the public sector and private sector Board members are appointed by the Governor and confirmed by the Senate. NR §§ 3–103(b)(1)(i), 3–103(b)(3).

The MES Director is the administrative head of the agency. NR § 3–103(c)(1). “[T]he Director is directly responsible to the Board and shall advise the Board on all matters assigned to the Service. The Director shall carry out the Board’s policies related to the Service. He is responsible for the exercise of all powers and duties conferred upon the Service by [the Natural Resources] subtitle except for those powers and duties specifically conferred by this subtitle on the Secretary, Treasurer, or Board.” *Id.*

C. 2021 Reform Legislation

The Maryland Environmental Service Reform Act of 2021 (HB2/SB2) (the “Reform Act”)—introduced by Delegate Marc Korman and Senators Cory V. McCray, Joanne C. Benson, Jill P. Carter, and Clarence K. Lam—amended MES’s governance structure. The Department of Legislative Services characterized the changes to MES’s structure as “overarching.” **Appendix 25** (Reform Act Fiscal and Policy Note). The Reform Act imposed the following changes:

- Re-categorization of the Director from the presiding officer of the Board of Directors to a non-voting member of the Board;
- Removal of the Deputy Director from the Board and requirement that the Secretary and Treasurer be selected by the Board from among the Board’s members;
- Requirement that the Director submit a monthly itemized explanation to the Board of all expenses incurred on behalf of the Director;
- Prohibition of the award of a severance package to a Director who accepts another position in the state government;
- Requirement that MES annually submit a full and detailed budget to the Department of Budget and Management;
- Requirement that the Board adopt policies on severance, bonuses, tuition and expense reimbursements (including a requirement that there be a nexus between the expense and MES’s purpose), travel, and use of MES vehicles;
- Requirement that MES conduct an adequate search for any open position not specifically assigned to a project;
- Requirement that the Board adopt a conflict of interest policy related to, among other things, disclosure of financial interests and standards for Board member participation in contracts with MES; and
- Formal requirement that Board members observe the same standard of care required of corporate directors under § 2–405.1 of the Corporations and Associations article of the Maryland Code.

SB 2 passed the Senate unanimously and passed with four dissenting votes in the House of Delegates. **Appendix 26** (SB 2 Vote Tallies). Governor Hogan signed the Reform Act on April 13, 2021, and the legislation was enrolled as Chapter 72 of the Acts of 2021 (**Appendix 27**). The Reform Act took effect on July 1, 2021.

III. McGrath's Tenure as Director of Maryland Environmental Service

A. Prior work experience

McGrath graduated from the University of Maryland, College Park in 1993. **Exhibit 52** (Maryland Manual – McGrath). During his time as a student, McGrath was the Chair of the Charles County Republican Central Committee and a member of the “Hogan for Congress Committee.” *Id.*

Shortly after college, McGrath joined the National Association of Chain Drug Stores (NACDS), a trade group, where he worked as the Director of Business Development and Conventions and eventually as Vice President of Business Development. *Id.* During his time with NACDS, McGrath volunteered for Governor Hogan's 2014 gubernatorial campaign as Director of “Lawyers for Hogan” and Early Voting and Election Day Operations. *Id.*; **Appendix 28** (McGrath Tr., 16:1-13).

After Governor Hogan's election, McGrath served on the Governor's transition team. **Exhibit 52.** From January 21 to July 1, 2015, he served as Senior Advisor and Liaison to the Board of Public Works. *Id.* On July 1, 2015, McGrath was named the Governor's Deputy Chief of Staff. *Id.* As Deputy Chief of Staff, he was responsible for overseeing the State Departments of Commerce, Housing and Community Development, State Police, Public Safety and Correctional Services, and Transportation; the Governor's offices of Business Ombudsman, and Federal Relations; and various State agencies, including the Maryland Emergency Management Agency, the Military Department, the Maryland Public Broadcasting Commission, the Maryland Stadium Authority, and the University System of Maryland. *Id.*

B. Appointment as Director of MES

On December 21, 2016, Governor Hogan appointed McGrath Director of MES. **Exhibit 2** (Governor's Press Release). McGrath assumed the role of MES Director shortly after his appointment. **Appendix 28** (McGrath Tr., 14:5-7). He was unanimously confirmed by the Senate on March 10, 2017. **Appendix 29** (General Assembly Nomination Report).

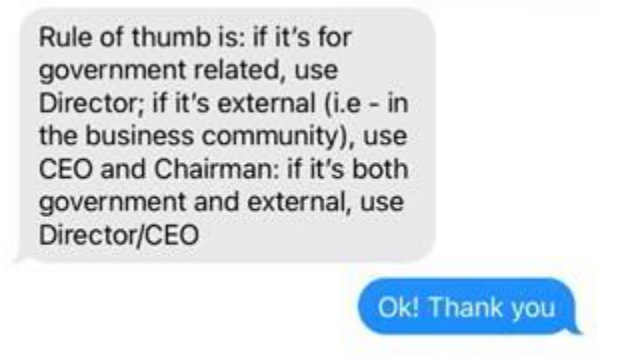
C. Changing Title to CEO/Chairman

Upon his arrival at MES, McGrath unilaterally decided to change his own title. Although Maryland law at the time provided that the head of MES is the “Director,” NR § 3–103(b)(1)(i), McGrath declared himself the “CEO/Chairman.”⁹ By McGrath's first meeting with the Board of Directors, the minute masthead referred to him as Director/CEO; in contrast, former Directors

⁹ The Reform Act changed the title from “Director” to “Executive Director.” NR § 3–103(b)(1)(i)

had been referred to as “Director.” Compare **Exhibit 70** (Feb. 29, 2016 MES Board Minutes) to **Appendix 30** (Jan. 23, 2017 MES Board Minutes). McGrath sent instructions to an aide regarding when and where to use different titles for his position:

Figure 1.
Bettleyon/McGrath July 26, 2019 Text Messages (Appendix 31)



During public appearances, McGrath referred to himself as the “CEO and Chairman” of MES. See, e.g., **Exhibit 18** (Young Jewish Professionals Symposium speaker list). McGrath’s LinkedIn page still identifies his role at MES as “CEO and Chairman.” **Appendix 32** (McGrath LinkedIn Resume).

D. McGrath’s Hiring of Former Colleagues

McGrath used his position as MES Director to hire former colleagues and social acquaintances. In several cases, McGrath violated MES hiring policies to accommodate their employment. See **Exhibit 6** (MES Hiring Policies); **Appendix 21**, p. 195 (Wojton). McGrath (1) unilaterally created new positions for individuals to fill, (2) failed to post public job notices, (3) did not require individuals to interview for open positions, and (4) did not require individuals to submit applications before beginning their employment at MES. Some individuals McGrath unilaterally hired lacked relevant experience or were underqualified to perform their job functions.

Once they arrived at MES, the individuals McGrath hired directly received preferential treatment from McGrath, including enjoying direct access to him, dining privately with him, and traveling with him to places like New York City and Las Vegas. Dr. Glass explained that McGrath referred to three individuals he had hired—Sherring, Michael Harris, and Vishal Bhatia—as “untouchable.” **Appendix 21**, p. 92 (Glass).¹⁰

¹⁰ McGrath did not recall referring to these individuals as “untouchable,” and testified that “that word certainly didn’t come out of my mouth.” **Appendix 28** (McGrath Tr., 198:6–200:3).

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The following are examples of individuals McGrath hired directly:

- **Sherring.** Sherring obtained a B.S. degree in management and marketing from Skidmore College. **Appendix 33** (Sherring Tr., 18:14-19). After college, Sherring held positions with various private sector entities, including the Food Marketing Institute (where he was a coordinator of exhibits) and an AFL-CIO entity called Union Privilege (where Sherring worked in communications). *Id.* 18:20–20:7. From 2007 to 2014, Sherring worked at NACDS, where he first met McGrath. *Id.* 20:9–21:14. For a period of his employment at NACDS, he reported directly to McGrath. *Id.* 22:9-18. Sherring and McGrath were also friends who socialized together. *Id.* 22:19–23:5.

In January 2017, shortly after McGrath was appointed MES Director, McGrath arranged for Sherring to meet with Beth Wojton (the then-Assistant Director). **Exhibit 3** (Wojton/McGrath/Sherring emails); **Appendix 21**, p. 202 (Wojton). Wojton did not understand that Sherring was interviewing for an open position. **Appendix 21**, p. 195 (Wojton). Nevertheless, before Wojton’s initial meeting with Sherring, McGrath “talked up Sherring.” *Id.* At the time he met with Wojton in early 2017, Sherring was serving as a special assistant to the Deputy Director of the Maryland Department of Housing and Community Development (DHCD); this was Sherring’s only government experience before working at MES. **Appendix 33** (Sherring Tr., 30:2-8).¹¹ When Sherring was asked about his initial meeting with Wojton in January 2017, he asserted his rights under the Fifth Amendment. *See Appendix 33* (Sherring Tr., 32:1–33:2).

After Wojton’s January 2017 meeting with Sherring, McGrath made clear that MES needed to hire Sherring; in Wojton’s words, it was “a given” that MES was going to hire him. **Appendix 21**, p. 195 (Wojton). On January 20, 2017, Wojton emailed Sherring to ask him if he was “interested in working for MES.” **Exhibit 3**. The same day, Sherring expressed interest in joining MES. *Id.* On February 4, 2017, MES offered Sherring the position of Strategic Partnership Executive, with a starting salary of \$95,000 (a salary McGrath set). **Exhibit 4** (Sherring offer letter); **Appendix 21**, p. 200 (Wojton). According to MES’s HR Department and Wojton, the Strategic Partnerships Executive position was created for Sherring. **Appendix 21**, p. 195 (Wojton). The position was not an open position that MES advertised, no other individuals interviewed for the position, and no written job description was created until over a year after Sherring was hired.¹² **Appendix 34** (Coleman email). When Sherring was asked whether the Strategic Partnership Executive position was created for him, he asserted the Fifth Amendment. *See Appendix 33* (Sherring Tr., 34:15–35:4).

¹¹ When Sherring was asked whether McGrath was involved in getting him the special assistant job at DHCD, he asserted the Fifth Amendment. **Appendix 33** (Sherring Tr., 30:9-13). McGrath, who was the Deputy Chief of Staff overseeing DHCD when Sherring got the DHCD job, asserted his Fifth Amendment rights in response to a question regarding whether he helped Sherring get the position. **Appendix 28** (McGrath Tr., 86:10-14).

¹² Under the Maryland Environmental Service Reform Act of 2021, “[f]or each open position in [MES] that is not assigned to a project, the Service [must now] reasonably advertise, conduct a search, and conduct a competitive interview process.” NR § 3-103.1(b)(4).

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MES's standard Salary Scale includes 12 pay grades for employees. **Appendix 35** (MES Salary Card – 2017). For context, when MES hired Sherring in 2017, the “mid” annual salary for a Grade 1 employee was \$33,275 and the “mid” annual salary for a Grade 12 employee was 101,382.27. *Id.* MES hired Sherring as a Grade 10 employee. **Appendix 36** (Fuller email). During Sherring's tenure at MES, his salary increased from \$95,000 to \$119,748.58. **Appendix 37** (Sherring salary information).

Sherring initially reported to Wojton for a short time but, eventually, he reported directly to McGrath. *See* **Appendix 21**, p. 191 (Wojton).¹³ McGrath promoted Sherring to Director of Operations. At all times, Sherring was “very loyal to Roy.” *Id.* Sherring required “a lot of handholding” and “did not interact well with [other MES] employees.” *Id.*

In August 2020, MES terminated Sherring's employment after Dr. Glass learned that Sherring had attempted to alter the May 2020 MES Board meeting minutes describing the Board's approval of McGrath's severance payment. *See infra* pp. 45–47; **Exhibit 8** (Sherring termination letter).

- **Harris.** Harris graduated from Virginia Commonwealth University in 2001 with a degree in accounting. **Exhibit MH-1** (Harris resume). After graduating, Harris worked as an accounts receivable accountant and staff accountant at several small, non-governmental entities. *Id.*; **Appendix 38** (Harris Tr., 14:18–15:11). Eventually, he worked as a staff accountant at NACDS, where he met McGrath. **Appendix 38** (Harris Tr., 15:12-20). During Harris' tenure at NACDS, he became social friends with McGrath. *Id.* After Harris left NACDS, he held senior accounting and director of finance positions with non-governmental entities, including the National Industries for the Severely Handicapped, Rushmark Properties (a real estate business), Fulcrum IT Services (an information technology company), and Community Care Network (a hospital/health care company with approximately \$5 million in annual revenue). *Id.* 16:16–19:11. Harris stayed in touch with McGrath, and met Sherring socially through McGrath. *Id.* 15:21–16:15.

In July 2017, McGrath informed Harris that there might be a finance-related opportunity for Harris at MES. *Id.* 21:4-16; **Exhibit MH-3** (Harris/McGrath Text Messages). On July 28, 2017, Harris met McGrath at the MGM National Harbor Casino to discuss potential employment at MES. **Appendix 38** (Harris Tr., 22:2–23:14). During their meeting, McGrath expressed his dissatisfaction with MES's then-Chief Financial Officer and Treasurer, Janet Irvin. *Id.* 24:2-4. Throughout August 2017, McGrath and Harris stayed in contact and exchanged information concerning Harris' possible employment at MES; among other things, McGrath sent Harris MES's financial documents. *Id.* 24:15–25:21. During these conversations, McGrath raised the possibility that Harris would eventually replace Irvin as MES's CFO and Treasurer. *Id.* 25:5-19.

In late September 2017, MES offered Harris a newly created position—Managing Director of Financial Performance—with a starting annual salary of \$154,265 (a salary McGrath

¹³ Even when Sherring reported to Wojton, he took direction from McGrath, not Wojton. **Appendix 21**, p. 191 (Wojton).

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set). **Exhibit MH-4** (Harris offer letter); **Appendix 21**, p. 200 (Wojton).¹⁴ At the time he received his employment offer, Harris (1) had no government experience or experience with environmental issues, (2) had not interviewed with any MES employees other than McGrath, (3) had not submitted an employment application or references, and (4) was unaware of a written job advertisement for the position he was hired to fill. **Appendix 38** (Harris Tr., 112:11–115:15); **Exhibit MH-1**.¹⁵ The functions Harris performed as Managing Director of Financial Performance were not functions that anyone at MES had previously performed. **Appendix 38** (Harris Tr., 113:4-15). When he was asked whether he was aware of any other MES employees “who had a similar entry into the agency,” Harris responded, “[m]aybe Mr. Sherring.” *Id.* 115:10-12.

Wojton explained that she did not know Harris existed until the day before McGrath introduced him as the new MES “process improvement specialist” at an MES all staff meeting. **Appendix 21**, p. 199 (Wojton). The Treasurer and CFO at the time, Irvin, had never heard of Harris before that all staff meeting, and was humiliated when McGrath spent a significant amount of time praising Harris at the meeting. *Id.* At the time, Irvin believed that McGrath intended to replace her with Harris. *Id.*

Despite having no government experience when McGrath hired him, Harris’ starting salary of \$154,265 was identical to Irvin’s salary. **Appendix 36**. During his tenure at MES, Harris’ annual salary increased to \$166,036. **Appendix 39** (Harris salary information). Upon assuming his new finance position at MES, Harris did not report to Irvin; instead, he reported directly to McGrath. **Appendix 38** (Harris Tr., 31:16–32:2). According to Wojton, it was clear that Harris was learning on the job. **Appendix 21**, p. 199 (Wojton).

In January 2018, Irvin resigned from MES. **Appendix 40** (MES Board Minutes). She left MES because she believed that McGrath was forcing her out. **Appendix 21**, p. 201 (Wojton). In March 2018, McGrath promoted Harris to MES Managing Director of Finance. **Appendix 38** (Harris Tr., 13:19–14:4). In April 2018, McGrath named Harris Treasurer of the MES Board. **Exhibit MH-7** (MES Board Minutes). In his role as Managing Director of Finance, Harris reviewed and approved McGrath’s expense reimbursement reports. *See infra* at pp. 17–19.

After Dr. Glass assumed the MES Director position in 2020, he removed Harris as Treasurer of the MES Board. **Appendix 21**, p. 97 (Glass). Shortly after losing his Treasurer position, Harris resigned from MES. *Id.*

¹⁴ Harris was not hired on MES’s standard Salary Scale, but instead was hired on the Executive Pay Scale. **Appendix 36**.

¹⁵ At the request of MES’s human resources department, Harris submitted a formal employment application to MES on October 18, 2017—nearly a month after he received a formal job offer and after his first day of work. **Exhibit MH-5** (Harris Employment Application); **Appendix 38** (Harris Tr., 31:6-11).

- **Bhatia.** Bhatia graduated from George Mason University with a Bachelor of Science in Decision Sciences and Management Information Systems. **Appendix 41** (Bhatia LinkedIn Resume). Before joining MES, Bhatia worked at NACDS for 17 years, most recently as Vice President of Information Services. *Id.*; **Appendix 21**, p. 51 (Bhatia). Bhatia’s job responsibilities did not overlap with McGrath’s at NACDS, but the two would occasionally have lunch. **Appendix 21**, p. 51 (Bhatia).

Four months after McGrath became MES Director, he offered Bhatia the role of Managing Director of Information Technology and Innovation, with a starting annual salary of \$149,000. *Id.*; **Appendix 42** (Coleman email with memo).¹⁶ McGrath created the position for Bhatia and designated it an executive-level position. **Appendix 42.** There was no public advertisement for Bhatia’s newly created position. *Id.* At the time he received his employment offer, Bhatia had no government experience, and had not submitted an employment application or references. *Id.* Bhatia described his duties at MES as receiving requests and instructions from senior staff and handling issues like troubleshooting laptop problems, implementing the welcoming screen in the lobby of the MES building, and general information technology management. **Appendix 21**, pp. 51–52 (Bhatia).

When McGrath hired Bhatia, the MES Chief of IT, Nick Kuba, managed the MES IT Group. **Appendix 42.** Unlike Bhatia’s new position, the Chief of IT was not an executive position. *Id.* Shortly after Bhatia arrived at MES, he recommended that Kuba’s Chief of IT position be eliminated, ostensibly to achieve “organizational efficiency.” *Id.* Four days after Bhatia made this recommendation, MES terminated Kuba’s employment. *Id.*

Bhatia’s starting salary of \$149,000 was higher than Kuba’s salary at the time. **Appendix 36.** During his time at MES, Bhatia’s salary increased to \$198,206.71. **Appendix 43** (Bhatia salary information).

Bhatia explained that he was asked to leave MES after Dr. Glass assumed the MES Director position, but declined to comment on the specifics of his departure. **Appendix 21**, p. 54 (Bhatia).

Sherring, Harris, and Bhatia remained close with McGrath after he announced that he was departing MES for the Governor’s office. For example, they shared text messages with a “meme” describing themselves as the “Best Team Ever!!!” accompanied by a photo of the cast of the film *Anchorman: The Legend of Ron Burgundy*. Sherring, Harris, and Bhatia also sent McGrath cupcakes the day before he started as the Governor’s Chief of Staff thanking him for

¹⁶ Like Harris, Bhatia’s salary was on MES’s Executive Pay Scale. **Appendix 36.**

“bringing us together” and promising to “keep the momentum going.” **Appendix 44** (Harris/Group Text Messages).¹⁷

E. MES Employee Political Contributions at McGrath’s Direction

McGrath asked several subordinates who did not live or vote in Maryland to donate to Governor Hogan’s political campaign accounts. Contributors included:

- **Sherring:** Sherring donated a total of \$3,500 to Governor Hogan’s gubernatorial campaign committee (\$1,000 on July 4, 2014; \$250 on June 9, 2017; \$1,000 on November 27, 2017; \$250 on June 19, 2018; \$1,000 on January 11, 2019). **Appendix 45** (Sherring Campaign Finance Records). Sherring also donated \$1,000 to Governor Hogan’s inaugural committee on January 11, 2019. *Id.* When he was asked whether he made contributions to Governor Hogan, Sherring asserted the Fifth Amendment. **Appendix 33** (Sherring Tr., 29:9-13). Sherring was a Washington, DC resident during the time he was employed at MES. *Id.* 14:12-17.
- **Harris:** Harris donated \$1,250 to Governor Hogan’s gubernatorial campaign committee (\$1,000 on December 14, 2017; \$250 on June 18, 2018). **Exhibit MH-6** (Harris Campaign Finance Records). Harris also donated \$2,000 to Governor Hogan’s inaugural committee on January 25, 2019. *Id.* Harris testified that McGrath asked him to make these donations; he explained that “I think it would have probably put me in an awkward position if I said no ... your superior’s asking you to go somewhere and I’m fairly new at that point in my job, especially in December. So, I didn’t know how that would be received.” **Appendix 38** (Harris Tr., 34:18–35:14). Harris was a Virginia resident and voter during his time with MES. *Id.* 33:5-9.
- **Bhatia:** Bhatia donated \$1,000 to Governor Hogan’s inaugural committee on January 14, 2019. **Appendix 46** (Bhatia Campaign Finance Records). Bhatia made this contribution because it was “a request by Roy while he was working on his campaign to see if I could support the Governor—it was important to him.” **Appendix 21**, p. 54 (Bhatia). Bhatia was a Virginia resident and voter during his time with MES. *Id.*

In addition to soliciting political donations from his subordinates, McGrath made four donations to Governor Hogan totaling \$5,250 (\$250 on June 13, 2017; \$1,000 on January 2, 2018; \$2,000 on January 11, 2019; and \$2,000 on January 11, 2019 to Governor Hogan’s inaugural committee). **Exhibit 75** (McGrath Campaign Finance Records). On September 17, 2014, 48 days before Governor Hogan’s first gubernatorial general election, McGrath also donated \$4,000 to the Republican State Central Committee of Maryland. *Id.*

¹⁷ As MES Director, McGrath hired other individuals he knew from outside government, including Faoro (a colleague from his time at NACDS) and Ahmed (who McGrath met at a U.S. Chamber of Commerce Institute for Organization Management class). **Appendix 21**, pp. 17, 64 (Ahmed, Faoro).

F. McGrath's Management Style

Employee interviews revealed a consistent picture of McGrath's tenure at MES: Former MES Directors (1) worked in the office daily, (2) encouraged regular interactions between the Director and MES staff, and (3) fostered a collaborative and social work environment. Conversely, McGrath's management style was toxic and hands-off. He (1) routinely was away from the office for extended periods (often without telling senior staff where he was or how long he would be gone), (2) required MES employees to communicate with him by text message only, (3) avoided in-person interactions with MES staff, and (4) regularly did not attend staff meetings or cancelled those meetings at the last minute without explanation.

McGrath's absences from the office sometimes extended for several days. **Appendix 21**, p. 149 (Pennington). He attended less than half of executive staff meetings; the executive staff would wait for him to show up, not knowing whether he was coming or not. *Id.* At times, the executive staff proceeded with the meeting without him. When McGrath came to the office, he usually parked his vehicle, walked past the front entrance, and entered through a side door where he would encounter few employees. *Id.*, pp. 1, 22, 190 (Acosta, Bettleyon, Wojton).¹⁸

As Deputy Director, Wojton would call or text McGrath when she needed to get in contact with him. **Appendix 21**, pp. 182, 190 (Wojton). Harris would try to meet monthly with McGrath to review MES's financials, but some months they would not meet. *Id.*, p. 109 (Harris). Like Wojton, Harris communicated with McGrath mostly by text message. *Id.* McGrath expressed a preference that everyone contact him by text. *Id.*

Bettleyon was McGrath's administrative assistant until October 2019. *Id.*, p. 21 (Bettleyon). She stated that she and McGrath communicated using codes that McGrath would enter into his Microsoft Outlook calendar. *Id.*, pp. 21–22. When McGrath's calendar read "OOO" or "out of office," Bettleyon understood that meant not to contact him. *Id.* The calendar entry "remote" meant that McGrath was available but working outside the office. *Id.* The calendar entry "hold" meant that Bettleyon should not schedule meetings for McGrath during that time. *Id.*

MES provided McGrath's calendars from June 26, 2017 through June 7, 2020. In 2017, between June 26 and December 31, McGrath entered "OOO" on his calendar 17 times. **Appendix 47** (McGrath's 2017 Calendars). Of these, 13 "OOO" entries lasted the entire work day. *Id.* In the same timeframe, McGrath listed himself as "remote" four times. *Id.*

¹⁸ McGrath testified that Wojton used the same side entrance to MES, and claimed that he did not use that entrance to avoid MES employees. **Appendix 28** (McGrath Tr., 166:5–166:11). Wojton explained that, although she used the same side entrance as McGrath, her parking spot was 20 feet from that entrance, whereas McGrath's parking spot was on the opposite side of the MES building. **Appendix 21**, p. 203 (Wojton).

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In 2018, between January 1 and December 31, McGrath entered “OOO” on his calendar 36 times. **Appendix 48** (McGrath’s 2018 Calendars). Of these, 17 “OOO” entries lasted the full day. *Id.* In 2018, McGrath listed himself as “remote” 58 times.

In 2019, between January 1 and December 31, McGrath entered “OOO” on his calendar 27 times. **Appendix 49** (McGrath’s 2019 Calendars). Of these, McGrath was “OOO” the entire day on 18 days. *Id.* Over the year, McGrath entered “remote” or “telework” on his calendar at least 43 times. *Id.* Bettleyon stated that he was seldom in the office in 2019.

Another consistent theme from MES employees was that McGrath was overly focused on logo and branding. For example, under McGrath, MES retained public relations consultant Ryan Nawrocki of Red White and Blue LLC at a cost of \$10,000 a month to “increas[e MES’s] positive impression to the State.” **Appendix 21**, p. 131 (Nawrocki); **Appendix 50** (Red White and Blue LLC Invoices). As part of this work, Nawrocki billed MES for, among other things, developing MES “challenge coins”; writing remarks for senior MES employees, including McGrath, to deliver at the annual MES all staff meeting; ordering new note cards for McGrath; scheduling the installation of art in MES conference rooms; and providing McGrath a “proof of accomplishments document.” **Appendix 21**, pp. 132–133 (Nawrocki); **Appendix 50**. In addition, MES paid Nawrocki \$18,094 for “program services” related to the Environmental Business Leadership Conference (EBLC), an MES sponsored “premier environmental business event.” **Appendix 21**, p. 134 (Nawrocki); **Appendix 50**; **Appendix 51** (MES Press Release).

McGrath also had a member of the MES Facilities staff, Chuck Fawley, serve as his personal driver. **Appendix 21**, p. 72 (Fawley). When McGrath learned that Fawley had previously served as driver to then-Baltimore Mayor William Donald Schaefer, McGrath instructed Fawley that, in addition to his regular work duties, he would also be responsible for driving McGrath. *Id.* McGrath used two MES vehicles—a sedan and a large black SUV that he ordered with tinted windows “like the Governor’s.” *Id.*, p. 63 (Donovan).

Fawley described driving McGrath to overnight hotel stays in Baltimore City several times. *Id.*, pp. 74–75 (Fawley). During these trips, McGrath had Fawley: (1) drive McGrath to his hotel in an MES vehicle; (2) drive the MES vehicle back to MES headquarters; (3) drive home to Carroll County for the evening in his personal vehicle; (4) drive his personal vehicle back to MES headquarters in the morning to retrieve the MES vehicle; (5) drive back to the hotel to pick up McGrath; and (6) drive McGrath back to MES headquarters. *Id.* Fawley further explained that, for McGrath’s trips to Washington, DC: (1) McGrath would drive his vehicle to Sherring’s DC home; (2) Sherring would call Fawley and instruct him to come to Sherring’s home to pick up McGrath’s car; and (3) Fawley and another MES employee would drive an MES vehicle to Sherring’s home and one employee would drive McGrath’s car back to MES headquarters while the other drove the MES vehicle back to headquarters. *Id.*

Fawley noted that McGrath would never speak to him, or any other passengers in the vehicle. *Id.* p. 73. McGrath also instructed Fawley to wash the MES vehicle every day. Fawley stopped serving as McGrath’s personal driver after McGrath became frustrated that Fawley’s regular job duties interfered with his driving duties. *Id.* p. 72. Fawley reported that, from that point on, Sherring was McGrath’s personal driver. *Id.*

G. McGrath's and Sherring's Travel and Expenses

1. Summary of Expenses

McGrath and his regular travel partner, Sherring, sought and received reimbursement from MES for significant expenses—often in direct violation of MES policies and practices. All told, McGrath charged MES a total of \$169,306.96 for expenditures over approximately three and a half years as Director (\$125,715.07 in direct reimbursements; \$3,987.13 in charges on his MES credit card; \$25,000 in donations that he instructed MES to make to the Academy Art Museum; and at least \$14,604.76 on a different MES employee's credit card).¹⁹ **Exhibit 9** (MES Expenditures chart); **Appendix 52** (analysis of Bettleyon's credit card charges). Sherring's total MES expenditures, many of which were for McGrath (including \$14,475.00 for McGrath to attend the Harvard University Senior Executive Fellows program), were \$93,461.53 during his three-plus years with the agency (\$61,348.81 in direct reimbursements, \$30,261.86 in charges on his MES credit card, and at least \$1,850.86 on a different MES employee's credit card). **Exhibit 9; Appendix 52.** McGrath also directed other MES employees to charge expenses for him on their MES credit cards. The amounts McGrath and Sherring charged MES significantly exceed the expenses of former Directors Harkins (\$15,923.31) and O'Neill (\$17,963.47), who were both at MES for 11 years. **Exhibit 9.** In response to questions about their travel and expenses during their tenures at MES, McGrath asserted his rights under the Fifth Amendment 60 times, and Sherring asserted his Fifth Amendment rights 140 times.

2. MES Expense Policies

The MES Travel Advance and Expense Reimbursement Procedures state that MES follows the Standard Travel Regulations issued by the State Travel Management Unit of the Maryland Department of Budget and Management. **Exhibit 26.** According to the regulations, set forth at Chapter 23.02.01 of the Code of Maryland Regulations, “[a]n employee traveling on official business is expected to exercise the same care incurring expenses as would a prudent person traveling for personal reasons.” COMAR 23.02.01.03(B). “Official business” means “the authorized duties performed by an employee or official of the State in the employee's or officer's defined capacity under the duties and responsibilities prescribed by the employment or office.” COMAR 23.02.01.02(B)(7). COMAR further prescribes that “[t]ravel for business should be conducted at a minimum cost for achieving the success of the mission.” COMAR 23.02.01.03(B). The regulations prohibit reimbursement for the cost of alcoholic beverages, COMAR 23.02.01.12(E)(3), and reimbursement for meals when the registration fee for a conference, convention, seminar, or training includes the meal, COMAR 23.02.01.12(E)(9). The regulations also set forth rules for payment of transportation, lodging, porter fees and hotel tips, cleaning expenses, and other travel-related expenses.

¹⁹ McGrath reported that he “was issued an MES credit card initially and ultimately used [a] personal [credit card] when we downsized the number of cards that were available to employees.” **Appendix 28** (McGrath Tr., 90:18-21).

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The MES Travel Advance and Expense Reimbursement Procedures state that an expense report form is to be used for reimbursement of business travel expenses paid by the employee. **Exhibit 26.** All expenses incurred must be itemized on a daily basis and shall not be shown as a lump sum. *Id.* Expense reports are due to Accounts Payable within five business days of the completion of travel. *Id.* Employees on extended travel status shall submit expense reports on a monthly basis. *Id.* “Only original invoices, receipts, or other supporting detail for lodging, transportation, etc.” are acceptable for reimbursement of expenses. *Id.* Finally, the “Purpose of Travel” section must be filled out on all reports, regardless of whether mileage is claimed and travel destination and starting/ending time must be shown. *Id.*

MES’ Meal Reimbursement Policy (Policy 10.16) states that employees are eligible for meal reimbursement when employees are (1) on Travel Status, (2) working unscheduled approved Overtime, or (3) working during an Emergency Event, and meet work hour requirements set forth in the policy. **Exhibit 25.** The policy defines Emergency Event, Overtime, and Travel Status. *Id.* Reimbursement for meal expenses requires an original receipt for the cost of the meal, except for out of state travel lasting five days or more. *Id.* The authorized meal reimbursement amount is limited to the rate established by the State of Maryland Department of Budget and Management for State employees on travel status. *Id.* In 2019, the standard meal reimbursement rates were \$10 for breakfast, \$12 for lunch, and \$25 for dinner. **Appendix 53** (2019 Reimbursement Rates). In FY 2020, the standard meal reimbursement rates were \$13 for breakfast, \$15 for lunch, and \$28 for dinner. **Appendix 54** (2020 Reimbursement Rates). Higher reimbursement rates were established for meals taken in high-cost metropolitan areas. *See Appendices 53 – 56.*²⁰

Meal reimbursement requests must be submitted on MES forms with supporting documentation and necessary supervisory approvals within the pay period when the expense was incurred, or as soon as reasonably possible thereafter. **Exhibit 25.**

As explained below, an external auditor determined that McGrath routinely violated MES’s expense policies. *See* discussion of RSM findings *infra* at p. 48.

3. *MES’s process for approving McGrath and Sherring’s Expenses*

During McGrath’s tenure at MES, several people were charged with approving his travel and other reimbursable expenses. In March and April 2017, then-Deputy Director O’Neill approved McGrath’s expenses. **Exhibit 79** (analysis of McGrath’s expense reports); **Appendix 57** (McGrath expense report). From June 2017 to March 2018, Wojton approved McGrath’s expenses. **Exhibit 79.** Soon after Harris joined MES, he approved McGrath’s expenses, including a large batch of expenses McGrath submitted in August 2018 that dated back

²⁰ Throughout McGrath and Sherring’s tenures at MES, the standard meal reimbursement rates fluctuated. In FY 2017, the Department of Budget and Management set the standard rates at \$9 for breakfast, \$11 for lunch, and \$25 for dinner. **Appendix 55** (2017 Reimbursement Rates). That rate was unchanged for FY 2018. **Appendix 56** (2018 Reimbursement Rates). The different rates were taken into account by counsel when calculating the amount McGrath and Sherring exceeded per diem.

to January of that year. *Id.* From September 2018 through June 2019 McGrath did not submit any expense reimbursements. *Id.* Then in July 2019, McGrath approved his own expenses, totaling \$12,464.81, including New York City travel, hotel rooms for McGrath, Sherring, and Harris at an MES all staff meeting, and a leadership course at Walt Disney World. *Id.*; **Exhibit 87** (expense reports McGrath approved for himself). McGrath acknowledged that it was his signature on the “approved by” line of these expense reports, but asserted his rights under the Fifth Amendment when he was asked why he was approving expenses he incurred. **Appendix 28** (McGrath Tr., 93:13–94:9; 121:5–124:2). After the period during which McGrath approved his own expenses, Harris approved McGrath’s expenses from October 2019 until McGrath departed MES for the Governor’s office. **Exhibit 79**.

Although Harris ostensibly was responsible for approving McGrath’s expenses during much of McGrath’s tenure at MES, he acknowledged that his “approval” was limited. For example, when Harris was asked whether he had the authority to reject McGrath’s requested reimbursements, he testified that “I assumed that him being my supervisor[,] he did not report to me, so I assumed that I was only checking for receipts and back up, not approving where he traveled, when he traveled or what was spent.” **Appendix 38** (Harris Tr., 38:10-16). As a result, Harris never questioned McGrath about the nexus of his expenses to the business of MES. *Id.* 40:2-4. Harris also did not enforce the MES policy that meal reimbursements are not to exceed the rates established by the Maryland Department of Budget and Management. *Id.* 42:11-20; *see also* “MES Expense Policies.” Nor did Harris enforce the MES policies that original receipts are required for all expenses and that expense reports are due to Accounts Payable within five business days of the completion of travel. **Appendix 38** (Harris Tr., 44:5-16). Instead, Harris reported that McGrath was routinely late in submitting his expense reports and would regularly submit a large batch of expenses after they had accumulated for months or even years. *Id.* 48:10-20. Harris further testified that MES “didn’t have the problem with said delinquency with other employees.” *Id.* 119:12-18.

The process for reviewing McGrath’s expenses was different than the process for reviewing other MES employees’ expenses. MES Senior Fiscal Associate Jennifer Brown explained that for MES employees other than McGrath: (1) an MES employee submits an expense report through the agency’s expense software; (2) a Senior Fiscal Associate reviews the reimbursement request to ensure that the request follows MES policies and guidelines; and (3) assuming there are no issues with the request, it is finalized in the system and a reimbursement check is issued. **Appendix 21**, p. 56 (Brown). For McGrath, Harris directed that the finance office not substantively review McGrath’s expenses for compliance with MES policies; instead, the finance office was expected to process McGrath’s expenses after Harris signed off on them. *Id.*; *see also* **Appendix 38** (Harris Tr., 49:18–50:16). Brown explained that it was Harris’ practice to sign off on any expense for McGrath. **Appendix 21**, p. 58 (Brown). Finally, Brown reported that while it is her regular practice to follow up with an employee directly if there are issues with expense reimbursements, she was not permitted to communicate with McGrath about his expenses and instead had to direct any questions to Harris. *Id.* The direction not to speak to McGrath about his expenses came from Harris, “per Roy.” *Id.*

McGrath approved several of Sherring's expense forms. *See, e.g., Exhibits 31, 33, 36, and 43* (various Sherring expense reports). As with McGrath, when Harris reviewed Sherring's expenses, he did not hold Sherring to the MES rule that meal reimbursements are not to exceed the rates established by the Maryland Department of Budget and Management. **Appendix 38** (Harris Tr., 43:7-14).

4. *McGrath's and Sherring's Travel Expenses*

McGrath went on at least 96 trips or overnight stays during his roughly three and a half years with MES. Sherring accompanied him on at least 48 such trips. *Id.*²¹ McGrath described Sherring's extensive travel with McGrath as "a core function of Sherring's job for MES." **Appendix 28** (McGrath Tr., 195:1-12). Other MES employees rarely accompanied McGrath and Sherring during their travels.

McGrath and Sherring's travel can be broken down into four categories: U.S. travel, travel within Maryland, international travel, and professional development/leadership training-related travel.

U.S. Travel

From March 2017 (three months after assuming the role of MES Director) through February 2020, McGrath took at least 21 trips outside Maryland at a cost to MES of \$34,896.50. **Appendix 58** (analysis of McGrath and Sherring's domestic travel).²² Some of this travel was relevant to MES work, such as the GreenBiz Conference, the WASTECON Convention, and the North East Recycling Council Conference. *Id.* Other travel, however, did not have any apparent nexus to the work performed by MES.

For example, McGrath attended the International Council of Shopping Centers (ICSC) Conference, which is held each May in Las Vegas, Nevada. **Appendix 58**. McGrath attended the ICSC conferences in 2017, 2018, and 2019. *Id.* Sherring accompanied him in 2017 and 2018. **Exhibit 39** (ICSC expenses and conference information). The stated mission of ICSC is unrelated to the environmental work MES performs. *See Appendix 59* (ICSC Purpose statement) ("The member organization for industry advancement, ICSC promotes and elevates the marketplaces and spaces where people shop, dine, work, play and gather as foundational and vital ingredients of communities and economies."). McGrath attended ICSC while he worked at NACDS (an organization whose mission has nothing to do with the environment) as "part of his job duties" with that organization. **Appendix 21**, p. 23 (Bettleyon). McGrath also billed MES \$534.13 for a two day "ICSC Reception" that he claimed took place in Las Vegas during

²¹ While McGrath occasionally reported to the MES Board regarding his own travel to conferences, he rarely mentioned when Sherring attended those conferences with him. *See, e.g., Exhibits 17, 23* (July 23, 2018 and Apr. 27, 2017 MES Board Minutes).

²² This total does not include expenses listed on **Exhibit 85** for the Disney's Approach to Leadership Excellence Course, which are discussed in "Travel Related to Professional Development/Leadership Training."

February 2020. **Exhibit MH-19** (McGrath expense report). Sherring billed MES \$1,566.17 for the same trip. *Id.* A representative of ICSC confirmed that there were no major events on the ICSC central office calendar for February 2020. **Appendix 60**, p. 1 (other interview notes).

On at least one occasion, McGrath sought and received reimbursement for a non-State employee's lodging. McGrath submitted a receipt for a one-night stay at the W Hotel in New York City on June 24, 2018. The receipt listed the number of guests as two, but did not identify the other guest. **Exhibit MH-11** (McGrath expense report #699563 with receipts). McGrath also submitted a receipt for two guests dining the next day at the restaurant Sauce & Barrel in New York City. *Id.* McGrath did not complete the "purpose of travel" portion of the expense reimbursement form for these expenses and approved the expenses himself. *Id.*

McGrath also sought and received reimbursement for the costs of attending a conference he skipped. McGrath submitted a bill for \$704.80 related to the Public-Private Partnership (P3) Conference & Expo, scheduled in Dallas, Texas from March 2–4, 2020. **Exhibit MH-19**. However, Sherring, who billed MES \$1,415.80 for the trip, contacted the conference on February 28, 2020 and stated "[w]hile we were looking forward to attending, due to our state government responsibilities, it has become unlikely we will be able to travel to Dallas for the Conference. Is there a possibility to receive a refund?" **Appendix 61** (Plombon email); **Exhibit 37** (P3 expenses and conference information). The organization was unable to offer Sherring or McGrath a refund. *Id.* On McGrath's June 4, 2020 expense report in which he sought reimbursement for this expense, he noted that the event was "delayed due to COVID-19." **Exhibit MH-19**. The P3 conference confirmed, however, that the event was *not* delayed due to COVID-19 and instead took place, as scheduled, in March 2020. **Appendix 61**.

McGrath also sought and received reimbursement for an expense that was partially refunded to him. As part of his June 2020 expense reimbursement blitz described in Section IV.H., McGrath requested a \$326 reimbursement for an "Amtrak ticket for ICSD." **Exhibit MH-18**, p. 2. Examination of the actual Amtrak receipt shows that McGrath received a \$244.50 credit from Amtrak after he cancelled his train seat in September 2019. *Id.* p. 31. Thus, while McGrath requested and received the full \$326 he originally paid for the seat, at most MES should have only reimbursed him \$81.50 (the cost of the cancellation fee).

McGrath's domestic travel included stays at many lavish and costly locations, including \$390.02 for one night at the Encore hotel in Las Vegas for the ICSC Conference, **Exhibit MH-11**, and \$1,227.02 for two nights at the Phoenician hotel in Scottsdale for the Greenbiz Conference, **Exhibit MH-19**. One MES employee explained that McGrath would always book an executive king hotel room or have Sherring book a suite in Sherring's name. **Appendix 21**, p. 30 (Bettleyon). When McGrath and Sherring arrived at the hotel, they would swap rooms, so McGrath could stay in the suite. *Id.* According to the MES employee, McGrath arranged for the "switch" to avoid the appearance that he was charging MES for "the best room." *Id.* McGrath often opted to charge MES for the most expensive or extravagant hotel room available. *See, e.g.*, **Appendix 31** (Bettleyon: "THE HOTEL Rates: All Standards are 2 queen beds at group rate: \$189[;] Suite with a king at group rate \$229 (upgraded standard room)[;] Executive suite (king) at group rate \$239 (Upgraded amenities; and access to the executive

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lounge; comp breakfast)[.]” McGrath: “Exec King thanks[.]”); (Bettleyon: “... Angie said she will book 4 rms unless you prefer to book your own? ...” McGrath: “Sounds fine. Angie can book: Ocean King rooms if available. ...”); (Bettleyon: “Pam Ruff said she didn’t see your name on the MEDA hotel list[.] Room rates go up tomorrow. Do you want me to take care of or you got it?” McGrath: “I’m all set. Her block didn’t have any King rooms left. Booked my own. She will know how to pick up my room into her block directly with the hotel if she wants[.T]hanks [.]”).

During his time at MES, Sherring, who had no leadership or project related role at the agency, took at least 13 trips outside Maryland at a cost to MES of \$19,418.85. **Appendix 58.** These trips included attending the GreenBiz conference in Phoenix, the International Conference on Sustainable Development in New York City, and the ICSC convention in Las Vegas. *Id.* Sherring’s travels had no apparent benefit to MES.

On at least one occasion, Sherring also appears to have sought and received reimbursement for the costs of attending an event he skipped. Sherring sought a \$495.00 reimbursement for the Greater Washington Board of Trade 2020 Mid Winter Dinner, which was held on February 27, 2020 from 6:00 p.m. to 9:00 p.m. at the National Cathedral in Washington, DC. **Exhibit 43.** A representative of the Board of Trade explained that there was no record of Sherring attending the dinner. **Appendix 62** (Hasan email). It is unlikely that Sherring could have attended the dinner in Washington, DC, as a parking receipt for which Sherring sought reimbursement revealed that he was in Annapolis—not Washington, DC—on the night of the dinner. **Appendix 63** (Sherring expense report). The hotel parking receipt shows that Sherring entered the parking garage at 126 West Street in Annapolis at 6:54 p.m. and exited at 8:20 p.m. *Id.* Even assuming that Sherring traveled the 35 miles between the Annapolis garage and the National Cathedral at 60 mph, he would have arrived at the Board of Trade event five minutes before it concluded.

A complete list of McGrath and Sherring’s U.S. travel is attached as **Appendix 58.**

Travel within Maryland and Washington, DC

Excluding leadership related travel, McGrath stayed in hotels in Maryland or Washington, DC 48 times from April 2017 through February 2020, at a cost to MES of \$18,870.16. **Appendix 64** (analysis of McGrath Hotel Stays). McGrath—who resided in Charles County until September 2018 and Anne Arundel County after that—charged MES for overnight stays in Annapolis, Baltimore, Hunt Valley, Linthicum, or Owings Mills on 17 occasions. *Id.* Examples of McGrath’s overnight stays in local hotels, set forth in **Appendix 65**, include:

- May 11, 2017: \$361.10 to stay at the Sagamore Pendry in Baltimore for the Bay Cabinet Meeting.
- January 23, 2018: \$362.42 to stay at the Sagamore Pendry in Baltimore for a “Breakfast Business Meeting in Baltimore County.”
- March 11, 2018: \$119.78 to stay at the Westin in Annapolis for the International Solid Waste Conference.

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- March 19, 2018: \$113.42 to stay at the Westin in Annapolis for the Clean Energy Summit.
- May 16, 2018: \$249.11 to stay at the Sheraton Inner Harbor in Baltimore with no event explanation.
- May 23, 2018: \$249.11 to stay at the Sheraton Inner Harbor in Baltimore for a Maryland Tech Council event in Columbia.
- July 18, 2018: \$218.97 to stay at the Westin in Annapolis for the MES-sponsored Environmental Business Leadership conference.
- September 9, 2018: \$111.24 to stay at the Delta Hotels Marriott in Hunt Valley for an MES all staff Meeting.
- October 15, 2018: \$172.38 to stay at the Annapolis Waterfront Hotel for an MES Leadership Meeting.
- July 9, 2019: \$611.02 to stay at the Four Seasons Hotel in Baltimore for the MES-sponsored Environmental Business Leadership conference.
- October 16, 2019: \$737.21 to stay at the Ritz-Carlton in Washington, DC for a U.S. Chamber of Commerce event.
- October 20, 2019: \$480.88 to stay at the Inn at Perry Cabin in St. Michaels for the MEDA Fall Conference.
- November 13, 2019: \$461.04 to stay at the Bethesda North Marriott for an MES Leadership Meeting.
- January 14, 2020: \$123.17 to stay at the BWI Airport Marriott in Linthicum for a BWI Business Partnership Meeting.

Sherring also submitted reimbursement requests for numerous overnight stays in Maryland, including stays in Annapolis, **Exhibit 19**, and College Park (even though he lived a short metro ride away in Washington, DC). **Exhibit 28**; *see also* **Exhibit 10** for additional examples of Sherring's MD/DC trips. In addition, McGrath booked rooms for Sherring for internal MES leadership activities in Hunt Valley and Bethesda. **Appendix 66** (McGrath expense reports).

Travel Related to Professional Development/Leadership Training

From June 2017 through February 2020, McGrath took 24 trips to locations throughout the country for leadership training conferences and courses. **Appendix 67** (analysis of McGrath and Sherring's Professional Development/Leadership Training Related Travel). These trips included conferences and events for the American Society of Association Executives, the Baltimore Business Journal, CEO Update, Disney's Approach to Leadership Excellence, Leadership Maryland, the U.S. Chamber of Commerce Institute for Organization Management, and the Young Jewish Professionals CEO program. *Id.* In total, McGrath appears to have been on the road for 80 days to attend these events. *Id.* Sherring took 11 such trips (accompanying

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McGrath all but three times).²³ **Appendix 67.** The total cost to MES of McGrath and Sherring’s leadership training trips was \$43,666.28. *Id.*

In addition to these trips (and the Harvard University Senior Executive Fellows tuition and the University of Pennsylvania Executive Education program discussed *infra*) McGrath also charged MES \$10,153.48 for tuition reimbursement related to courses at the University of Maryland University College and through the program CEO Update. *Id.*

McGrath dedicated substantial time and MES resources to the U.S. Chamber of Commerce Institute for Organization Management (IOM). The IOM program markets itself as an opportunity for participants to “receive instruction from and engage in discussion with leading industry experts who understand how to help you be successful in your career” and “develop a network of peers throughout the country you can turn to for advice and guidance in your pursuit for excellence.” **Exhibit 16** (IOM information). McGrath attended IOM events and pursued a certification from the organization at MES’s expense. **Appendix 67.** Eventually, McGrath became an IOM “teacher” and directed his administrative assistant to print name plates and materials for his classes. **Appendix 21**, pp. 23, 34 (Bettleyon). IOM became a regular part of McGrath’s identity, so much so that the Governor’s office press release naming him Chief of Staff read “Governor Larry Hogan today announced the appointment of Roy McGrath, *IOM, CAE* as the new chief of staff for the State of Maryland.” **Appendix 68** (Governor’s Press Release) (emphasis added). Like McGrath, Sherring was also pursuing a “degree” from the U.S. Chamber of Commerce IOM and billed his related expenses to MES. **Exhibit 13** (Sherring expense report); **Appendix 21**, p. 18 (Ahmed).

McGrath also attended Disney’s Approach to Leadership Excellence Course in Orlando, Florida for five days in March 2018 at a cost of \$9,217.39 to MES. **Exhibit 80** (McGrath expense report). He stayed at Disney’s Grand Floridian Resort & Spa and the Marriott Grand Lakes (by the time McGrath checked into the Marriott, the course had ended). *Id.* The cost of McGrath’s room at the Grand Floridian Resort & Spa, including tax, was \$887.63 per night. *Id.* On March 28, 2018, McGrath left the resort and visited Magic Kingdom Park. *Id.* While inside the park, McGrath charged MES for coffee from the Main Street Bakery and a chicken parmesan entrée and a bottle of water from Pinocchio Village Haus. *Id.* In his MES timesheets for the dates he attended the Disney leadership course, McGrath reported full work days. **Appendix 69** (McGrath’s Workday timesheet). The day McGrath flew home, he checked out of the Marriott at 3:09 p.m. **Exhibit 80.** Simultaneously, on his timesheet he reported that he was working that day from 1:30 p.m. until 6:30 p.m., earning five hours of “comp time” in the process. **Appendix 69.**

²³ In one instance, Sherring submitted receipts for five days in New York City for the Young Jewish Professionals Leadership Innovation and Diversity Symposium, even though McGrath only spoke once at the event and left two days before Sherring. Sherring had no role at the symposium, and it is reasonable to infer that Sherring simply billed MES for a personal trip to New York. **Exhibit 11** (Sherring expense report). Sherring asserted his rights under the Fifth Amendment when he was questioned on the topic. **Appendix 33** (Sherring Tr., 45:17–49:17).

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McGrath took steps to avoid full disclosure of his trip to Disney. First, McGrath reserved his slot in the course using his personal email address, as opposed to his MES email address that he typically used for conferences. **Exhibit 80**. Second, under “purpose of travel/expenditures” on his MES request for reimbursement regarding the trip, McGrath wrote only: “March business travel to Orlando.” *Id.* Third, no MES employee or member of the MES Board of Directors reported being aware that McGrath had traveled to Disney World to take the course. Finally, McGrath submitted a separate expense reimbursement in the amount of \$5,155 for “registration” related to the Disney’s Approach to Leadership Excellence Course that McGrath approved himself. *Id.*, **Appendix 28** (McGrath Tr., 93:13-18).

Harkins, who led MES for 11 years, reported that he never attended a leadership conference during his time with the agency. Harkins explained that he was appointed to head MES because he “had certain leadership skill sets already.” **Appendix 21**, p. 102 (Harkins).

International Travel

During McGrath’s time at MES, he charged the agency \$20,025.69 for international travel on three occasions. **Appendix 70** (analysis of McGrath and Sherring’s International Travel). Sherring accompanied McGrath on all three of these trips at a cost of \$9,643.69 to MES. *Id.* Sherring had no leadership role at MES and no technical expertise about the systems and projects that were viewed on these trips. None of McGrath or Sherring’s requested expenses for international travel, or any travel for that matter, appear to have been rejected when submitted for approval.

First, McGrath and Sherring traveled to Brussels, Belgium, by way of Paris, France from April 11–14, 2017 to meet with a company called Sibelco and tour its glass recycling facility. *Id.* McGrath charged \$4,928.06 to MES for this trip, while Sherring charged \$3,507.13. *Id.* The trip did not result in any business for MES. **Appendix 21**, p. 179 (Tomczewski). Second, McGrath and Sherring traveled to Italy from October 27–November 2, 2017 to conduct a site visit at BTS Biogas. **Appendix 70**. McGrath charged MES \$4,311.03 for this trip, while Sherring charged \$3,297.69. *Id.* McGrath and Sherring’s expenses in Italy included large expenditures for alcohol on MES credit cards. **Appendix 21**, pp. 125, 128 (Long). When an MES employee informed McGrath that it was against MES policy to charge MES for alcohol, McGrath responded by angrily asking how this employee learned about the purchases. *Id.* p. 125. BTS recently entered into a partnership with the Maryland Department of the Environment but it is unclear whether McGrath and Sherring’s time in Italy played a role in the project. *See Appendix 71* (Press Release). Third, McGrath and Sherring traveled to Israel from November 16–21, 2019 for the Water Technology and Environment Control (WATEC) Conference. **Appendix 70**. McGrath charged MES \$10,786.60 for this trip, which included the cost of Sherring’s hotel at the conference (\$3,606.88). *Id.* Sherring charged an additional \$2,838.87 for the Israel trip. A third

MES employee who attended this conference reported that he stayed at the conference hotel while McGrath and Sherring stayed at another hotel off site. **Appendix 21**, p. 87 (Gillespie).²⁴

5. *Dining Expenses*

McGrath and Sherring regularly sought reimbursement for meals together. Under the “Charge Description” section of the expense reimbursement report for these expenses, McGrath frequently wrote “Business Meal with M. Sherring.” Between June 2017 and March 2020, McGrath and Sherring submitted receipts totaling \$7,623.27 for meals the two shared alone. **Appendix 72** (analysis of McGrath/Sherring Dining Expenses). This amount represents \$2,599.54 over the per diem rate set by the Maryland Department of Budget and Management. *Id.* As featured in **Appendix 73**, examples of the dining receipts McGrath and Sherring submitted for meals together (some of which occurred during travel), include:

- \$8.79 for ice cream at Dumser’s Dairyland.
- \$12.16 for lunch at Panera Bread.
- \$13.65 for lunch at McDonald’s.
- \$14.80 for lunch at Burger King.
- \$78.00 for lunch at RPM Italian.
- \$70.25 for dinner at Old Ebbitt Grill.
- \$108.50 for dinner at Off The Record.
- \$154.90 for dinner at Fleming’s Prime Steakhouse & Wine Bar.
- \$162.12 for dinner at Joe’s Seafood, Prime Steak & Stone Crab.
- \$201.23 for dinner at STK - The Cosmopolitan of Las Vegas.

It remains unclear why McGrath or Sherring believed that a meal with another MES employee was a reimbursable expense.

For several McGrath-Sherring meals, MES effectively paid for McGrath’s meal twice (one reimbursement to McGrath and a separate reimbursement to Sherring for McGrath’s meal). In these instances, Sherring submitted expense reports with restaurant receipts indicating that he was seeking reimbursement for himself *and* McGrath. McGrath approved many of these expense reports as Sherring’s supervisor. Then, McGrath separately sought reimbursement for what appears to be a separate portion of the same meal. For example, for a November 11, 2019 meal at The Hay Adams Hotel in Washington, DC, Sherring sought reimbursement for \$63.90,

²⁴ McGrath was also reimbursed for expenses incurred while he was on vacation in Europe in August 2019. *See Appendix 3*, ¶ 45. McGrath submitted a receipt for a \$175.76 “Business meeting – BBJ staff (while traveling) M/M A. Payne” and \$16 for a “train to business meeting and return.” **Exhibit MH-18**. The “business meeting” consisted of McGrath and his partner dining in Cinque Terra with a Baltimore Business Journal (BBJ) employee and her husband. **Appendix 60**, p. 2. The BBJ employee reported that the only mention of business during the meal was when McGrath departed and thanked her for the partnership BBJ shared with MES. *Id.* The BBJ employee offered to pay for her and her husband’s portion of the meal, but McGrath paid the entire tab—without mentioning that he intended to have the expense reimbursed by MES. *Id.*

and indicated on the restaurant receipt that the meal was for “M. Sherring” and “R. McGrath” (“\$31.95 each”). **Exhibit 88** (side-by-side examples of McGrath’s and Sherring’s meal expense requests). Separately, McGrath submitted a \$108.50 receipt from the same restaurant bearing the same date. *Id.* McGrath and Sherring engaged in the same practice for high-priced meals at Balthazar in New York, Limoncello in St. Michael’s, and La Chaumiere in Washington, DC. *Id.* Because McGrath (who was approving Sherring’s expense reports) and Sherring often submitted their expense reimbursement requests months apart, and sought reimbursement for many meals and other expenses in the same expense report, the MES Finance Department did not detect their practice of “double billing” MES for the same meal.

On several occasions, McGrath also included the same receipt more than once and appears to have been reimbursed twice for the same expense. *See, e.g., Appendix 74.*

6. *McGrath’s Miscellaneous Expenses*

As featured in **Appendix 75**, McGrath also sought and received reimbursement for incidental, nominal expenses, including:

- \$1.00 for parking in Annapolis.
- \$1.25 for parking in Baltimore City.
- \$2.50 written on a post-it note for parking with “no receipt.”
- \$3.70 for one Elmer’s Glue Stick from CVS Pharmacy.
- \$4.10 for a child cup of ice cream from Lappearts in California.
- \$4.38 for a small hot fudge sundae with whipped cream from the Creamery in Cumberland.
- \$4.64 for a bottle of water and a dental kit from Walgreens in Las Vegas.
- \$5.00 for three cupcakes from Sprinkles Cupcakes in Las Vegas.
- \$5.62 for popcorn from the Garrett Popcorn Shop in O’Hare International Airport.
- \$7.84 for popcorn from the Garrett Popcorn Shop in O’Hare International Airport.
- \$8.60 for popcorn from the Garrett Popcorn Shop in O’Hare International Airport.

When Harris was asked whether these types of charges were “typical expenses that employees at MES would seek reimbursement for,” he responded, “I’m not sure. I’m not for certain but I don’t think they would.” **Appendix 38** (Harris Tr., 50:20–51:3).

7. *McGrath’s Harvard University Senior Executive Fellows Tuition*

On May 29, 2020—two days before McGrath became Governor Hogan’s Chief of Staff—Sherring submitted a reimbursement request for \$14,475 to cover tuition for the Harvard University Senior Executive Fellows course, which was set to begin two days later and run through June 26, 2020. **Exhibit 43.** McGrath confirmed that the receipt was for *his* attendance at the Harvard course but declined to testify why Sherring submitted the reimbursement request, invoking his rights under the Fifth Amendment. **Appendix 28** (McGrath Tr., 144:1-7). Harvard University confirmed that McGrath participated in the program and “was granted a certificate of completion for his matriculation from this professional development program.” **Exhibit 44**

(Harvard letter). McGrath approved the MES reimbursement request for the course cost himself. **Appendix 28** (McGrath Tr., 144:11–145:2). McGrath also asserted his rights under the Fifth Amendment when he was asked why he had MES incur the cost for a course he took while he was no longer with the agency. *Id.* 146:3-7.

Harvard advertises the Senior Executive Fellows program as “designed for top-level managers who aspire to be executives in all types of organizations,” but limits its recommended applicants to “top managers from the U.S. federal government (GS-14 and 15); senior officials from the military (O-5 and O-6); executives from the corporate and nonprofit sectors; [and] international participants from backgrounds similar to the above.” **Exhibit 44**. McGrath’s course work in pursuit of his Harvard certificate overlapped with his first month as Chief of Staff to Governor Hogan. McGrath testified that his Harvard courses were “synchronous classes and asynchronous, meaning that some of them were self-study, so to speak. So I participated in the ones that I could. I did the asynchronous work in the evenings and on the weekends and things like that. And then there were also recordings of the session, which I was able to refer back to later. Unfortunately due to the new position timing [as the Governor’s Chief of Staff], it wasn’t possible for me to participate live in most of them with only a few exceptions.” **Appendix 28** (McGrath Tr., 149:15–150:3). McGrath testified that both his administrative assistant and Governor Hogan were aware that he was taking the Harvard course. *Id.* 146:8-15.

8. *Donations to the Academy Art Museum in Easton*

McGrath orchestrated thousands of State dollars in gifts to the Academy Art Museum in Easton, Maryland in conjunction with joining the institution’s board of trustees. In July 2018, McGrath received a letter from the Chairman of the Academy Art Museum’s annual Craft Show requesting a “\$20,000 commitment (which could be cash and a pledge to raise the balance).” **Appendix 76**, p. 3 (Art Museum communications). In response, McGrath emailed Ken Holt, the Secretary of DHCD, and stated “as MES owns and operates the MidShore II Landfill in nearby Ridgely, we are supporting this worthwhile community program with a \$10k commitment. Is this possibly something DHCD would have budget for and interest in partnering with us on for the second-half \$10k.” *Id.*, p. 5. On September 21, 2018, MES issued a \$10,000 check to the museum. **Appendix 77** (2018 MES check and request). DHCD elected to donate \$5,000 to the Craft Show, with Sherring ensuring the payment went through. **Appendix 76**, pp. 9, 19. As the Craft Show approached, McGrath continued to look for opportunities for the State to be involved in the event—linking the museum with the Director of the Governor’s Office of Grants, and repeatedly pressing the Governor’s Office to arrange for the First Lady to attend the Craft Show. *See id.*, pp. 13–15.

The next spring, on March 27, 2019, McGrath was invited to join the Academy Art Museum Board of Trustees, after having lunch with the Chairman and several members of the museum staff. **Appendix 3**, ¶ 41; **Appendix 76**, p. 20. The day the lunch occurred, McGrath texted his partner stating “looks like I’m going to need to join this board ... which is fine. I just want to come off the other one first[. T]he timing should be good ... The people involved are at a much higher level and far better networked ... so I think it will be more beneficial in that respect too.” **Appendix 3**, ¶ 42. The next week, at McGrath’s direction, \$500 was charged to

Bettleyon’s MES credit card for two tickets to the museum’s “Kentucky Derby-themed Spring Gala.” **Appendix 21**, p. 41 (Bettleyon); **Appendix 3**, ¶ 43; **Appendix 76**, p. 22. After McGrath assumed his role on the board, he asked that museum-related correspondence be sent to his personal P.O. Box, writing that his service “will not be an official function of my work role (although I certainly anticipate some overlap).” **Appendix 76**, p. 23.

On September 12, 2019, as the annual Craft Show approached, the museum sent McGrath—now a museum trustee—a letter stating “we appreciate your willingness to consider sponsoring the Academy Art Museum’s Craft Show this year at the \$15,000 level.” **Appendix 78** (2019 MES check and request). On October 25, 2019, MES issued a \$15,000 check to the museum. *Id.* Around this time, Sherring wrote to DHCD that “the Maryland [DHCD] team generously supported the Academy Art Museum in Easton last year and we’d ask that you consider supporting again.” **Appendix 76**, p. 25. McGrath was aware that Sherring was reaching out to DHCD. *See id.*, p. 27. Sherring repeatedly pressed DHCD on the status of a donation, to the point that one DHCD employee asked Sherring about his role with the museum. *Id.*, p. 28. Sherring responded, “we helped facilitate DHCD’s relationship/support of the organization the year before and [are] interested in the outcome for this most recent year.” *Id.* Ultimately, DHCD did not make a 2019 donation.

Harris reported that he understood the requests for checks from MES to the museum to be directly from McGrath and, just like McGrath’s other expenses, Harris did not feel he was in a position to question the requests. **Appendix 21**, pp. 115–116 (Harris).²⁵

9. *Charges to Bettleyon’s MES Credit Card*

McGrath and Sherring’s own expense reimbursement requests to MES do not tell the entire story. McGrath also arranged for several MES employees in the executive suite to charge expenses related to his travel and course work on his behalf. **Appendix 21**, p. 36 (Bettleyon). McGrath carried out this practice most frequently with MES employee Bettleyon. McGrath, who knew Bettleyon’s MES credit card number, would sometimes charge expenses to the card without informing Bettleyon. *Id.* Some of the purchases on Bettleyon’s card were for coffees, candies, and sodas McGrath instructed Bettleyon to keep in his office or in the MES vehicle. *Id.* Other charges were much larger.

²⁵ This does not appear to be the only instance of McGrath directing MES funds to boards he was personally involved with. On September 8, 2017, McGrath approved an MES check for \$10,000 to the University of Maryland College Park Foundation after receiving a request for the donation from the College of Behavioral and Social Sciences two weeks earlier. **Appendix 79** (2017 MES check, approval form, and letter). Two months later, on November 17, 2017, McGrath became a member of the College of Behavioral and Social Sciences’ Board of Visitors. **Appendix 80** (MES Press Release). While McGrath was serving on the Board of Visitors, MES pledged to donate an additional \$40,000 to the University over four years, with the first payment of \$10,000 issued on November 23, 2018. **Appendix 81** (MES check and pledge summary).

As shown in **Appendix 52**, Bettleyon’s MES credit card statements reveal at least \$14,604.76 in expenses directly related to McGrath’s personal endeavors.²⁶ \$10,015 of those expenses related to leadership courses and trainings. *Id.* Examples of these expenses include:

- \$175 for a Leadership Maryland renewal
- \$325 for an American Society of Association Executives “training”
- \$419 for a “CEO Update” subscription
- \$1,099 for an American Society of Association Executives annual meeting
- \$1,295 for a U.S. Chamber of Commerce IOM “training”
- \$1,725 for registration at the GreenBiz conference
- \$2,200 tuition for a “Business Analytics: From Data to Insights” course from the University of Pennsylvania’s Executive Education program

McGrath also used or instructed Bettleyon to use her credit card to buy numerous gifts for members of the MES Board, including \$109.92 for candy from Candy Kitchen to go in hotel room gift baskets, \$285.72 for Godiva chocolates, \$873 for jackets, \$1,115.60 for a holiday celebration at the restaurant Blackwall Hitch, and \$1,855 for polo shirts. **Appendix 21**, pp. 37, 38, 46, 48 (Bettleyon).

At least \$1,850.86 in charges on Bettleyon’s MES credit card were directed by or related to Sherring. **Appendix 52**.

H. Anonymous Complaint to OLA About Spending at MES and MES’s Response

In the spring of 2019, the Office of Legislative Audits (OLA) received multiple anonymous tips related to spending activities at MES. Consistent with OLA’s standard practices, it gathered additional information concerning these anonymous allegations, and ultimately referred them directly to MES. McGrath acknowledged that “there was an anonymous complaint shared by the Office of the Legislative Auditors,” but disagreed that the complaint was about him specifically. **Appendix 28** (McGrath Tr., 171:2-12).

McGrath offered the following testimony:

Q: Okay. Did you understand that the auditors had directed the agency to investigate the allegation?

A: If you have the letter, I could confirm that, but absent the letter, my recollection was that they put it to the attention of our finance office. They said this is something that MES may want to investigate, look into. I don’t remember what

²⁶ These expenses are not included in the above sections specific to travel such as “Travel within Maryland and Washington D.C.,” “Travel Related to Professional Development/Leadership Training,” etc.

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the language was. And as best I recall, that was done by our finance department. And as far as I knew reported up into Ms. Wojton, who oversaw finance.

Q: And what's the basis of your knowledge that the investigation was done?

A: Mr. Harris and I had a conversation about it, and he advised me that it would be considered and looked into, and there would be a disposition of it.

Q: Did he ever—did he ever give you a report of the investigation?

A: He gave me a verbal update on it and said based on the facts at hand, there didn't appear to be merit to investigate it any further than what efforts he had already made, which he indicated that he'd look into, and that, I believe, tabled the matter for the time being.

Q: Did Mr. Harris tell you what he did to investigate the allegation?

A: I just recall him saying that he would look into it.

Q: Did he tell you anything about the substance of what he investigated?

A: Not that I recall.

Q: Did he tell you whose expenses he examined?

A: Again, Mr. Coe, it's a year ago, and the answer is, I don't recall.

Q: Did he tell you whether he examined your expenses?

A: He was familiar with my expenses since he was the person who would accumulate, review and approve them. And he expressed to me he didn't see any merit in his complaint, which goes back to my expenses.

Id. 172:19–174:20.

Harris contradicted McGrath's account. Regarding MES's response after receiving notice of the anonymous complaints, Harris testified that he and Wojton discussed the complaints and agreed that MES should engage an outside auditor to conduct an investigation, but that MES never engaged an auditor. **Appendix 38** (Harris Tr., 89:3–90:20). According to Harris, McGrath "didn't tell [Harris] to do anything about it" and never followed up to see whether an investigation had actually taken place. *Id.* 87:20–91:4.

Wojton confirmed Harris' account. According to Wojton, after OLA notified McGrath and Harris about the anonymous complaints, Harris raised the issue with Wojton "in absolute confidence," because Harris believed he would be in "big trouble with Roy" if McGrath knew about the discussion. **Appendix 21**, p. 201 (Wojton). During that discussion, Wojton recommended that MES engage an outside auditor to investigate the anonymous complaints. *Id.*

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Wojton also reminded Harris that MES was required to disclose the anonymous complaints in MES's annual audit, because she was worried that disclosure would "slip through the cracks." *Id.* After her conversation with Harris, Wojton did not hear about the anonymous complaints again, and was not in the loop concerning any MES response or investigation. *Id.*

Neither McGrath nor Harris informed the MES Board about the anonymous complaints concerning MES spending. In fact, the Board did not learn about the complaints until July 22, 2020, when Wojton (who had recently retired) wrote the following email to the Board:

There are two issues that I feel I need to call to your attention for proper resolution. First, as you know, as part of the audit process the Director and/or Deputy sign-off on a letter saying that there have been no allegations of fraud, misuse of funds, etc. during the audit period. Since I obviously won't be signing that letter, you should know that last summer/fall I was unofficially told that the Legislative Auditors notified a Finance Group member that an anonymous complaint was received about the Director's spending. I was unofficially told that the Agency was directed to investigate the allegation. I do not know the results of the investigation, but obviously this needs to be divulged to the auditors. Second, during the short time period where I had assumed the duties of the Director, MES reimbursed the previous Director for approximately \$50,000 in expenses. These expenses were not submitted to me nor did I authorize payment. My intent was to establish policies and guidelines pertaining to the approval process for the Director's expenses at the June Board meeting, which ultimately I didn't attend. My best to everyone and may MES continue to be an independent state agency!

Exhibit 98 (Wojton email).²⁷ Most Board members recalled that they were generally unaware of McGrath's expenses until after Wojton's July 22, 2020 email to the Board, and that McGrath typically did not report back to the Board after trips or conferences. **Appendix 21**, pp. 15–16, 120–121, 157–158, 166, 168, 175–176, 190, 192 (Addison, Jackson-Jenkins, Smith, Snee, Streett, Wojton).

²⁷ Shortly after Wojton informed the MES Board about the anonymous complaints to OLA, McGrath learned about Wojton's email and contacted MES Board members to downplay it. McGrath told Board members that (1) all of his expenses were legitimate and he thought Wojton sent the email because she was mad that she did not get the Director position, (2) "there's nothing to this," and (3) he was only guilty of not timely submitting expense reports. **Appendix 21**, pp. 124, 157–158, 176 (Jackson-Jenkins, Smith, Streett); *see also* **Appendix 28** (McGrath Tr., 176:1-15).

I. No Internal Auditor During Most of McGrath's Tenure

When McGrath became MES Director, Diana Olson was serving as the MES internal auditor (a position she had held since 2013). Olson reported to Wojton. **Appendix 21**, p. 138 (Olson). The formal job description for the MES internal auditor includes the following: (1) “[d]evelops, implements and maintains internal controls to assure that the Service operates efficiently, legally and ethically,” (2) [i]nforms the Director and the Deputy Director of situations involving major or controversial issues evolving from the MES hotline or where extraordinary circumstances exist,” (3) “[b]riefs agency management and their respective staffs at headquarters and field sites and when appropriate, the office of the Attorney General, regarding audit results,” and (4) “analyzes and recommends appropriate solutions to identified problems.” **Exhibit 76** (MES Internal Auditor Position Description).

Olson explained that, when she first arrived at MES, she performed large and impactful audits. **Appendix 21**, p. 138 (Olson). When McGrath arrived, Olson's position was all but eliminated. *Id.*, pp. 138, 200 (Olson, Wojton) (McGrath was “not a fan” of the internal auditor position.). According to Olson, McGrath did not know who she was, and she “did nothing” while McGrath was at MES. *Id.*, pp. 138–139 (Olson). Olson recalls that the only audits she performed after McGrath arrived required her to count the small amount of petty cash that certain MES facilities kept on site. *Id.*, p. 138. Olson characterized these minor audits as a waste of time. *Id.*

Olson sought to perform more audits during McGrath's tenure. For example, she wanted to audit MES expense reimbursements. *Id.* But when she raised ideas for new audits, her colleagues told her that the audits were not a good idea. According to Olson, her colleagues told her that she was “getting into McGrath territory and you don't want to do that,” or that it was not a good idea to “audit or touch anything McGrath touched unless asked to.” *Id.* In Olson's words: “I learned real fast to keep your mouth shut and get out of the way. Once I learned that, it was time to get out of there.” *Id.*

In April 2018, Olson resigned to accept another position. **Appendix 82** (MES Board Minutes (Closed Session)). After Olson's resignation, MES “consider[ed] issuing an RFP to hire an outside auditor on an as-needed basis,” rather than hiring a new MES employee to fill Olson's position. *Id.* The proposal to reassign the internal auditor's job functions to an outside firm originated during a discussion between McGrath and Wojton. **Appendix 21**, p. 200 (Wojton).

After Olson's resignation, MES never issued an RFP for an outside auditor. Nor did MES fill the internal auditor job vacancy with a full-time employee until after McGrath departed MES. According to Wojton, she and Harris tried to raise the issue with McGrath, but McGrath would “blow it off” or indicate that the time was not right to issue an RFP for an outside auditor. *Id.*

Thus, when OLA informed MES about the anonymous complaints discussed above, there was no internal auditor in place to investigate those allegations. Ultimately, MES engaged an outside auditor to review McGrath's expenses after McGrath left MES. *Infra* at p. 48; **Exhibit 100** (RSM Audit Report).

When Dr. Glass assumed his position as MES Director, he was unaware that the internal auditor position had been vacant since 2018. **Appendix 21**, p. 93 (Glass). In response, Dr. Glass undertook to hire an internal auditor immediately; this was one of several measures Dr. Glass assured the MES Board he would take to address the allegations concerning “the Director’s spending” that Wojton raised in her July 2020 email. *Id.*

In October 2020, after MES conducted an open and competitive hiring process, MES hired Winsome Chondra to fill the vacant internal auditor position. *See Appendix 83* (MES Audit Minutes). Shortly after Chondra arrived at MES, she conducted a formal review of “Executive T&E (Travel and Expenses) ... to determine adherence to MES’ reimbursable and [credit card] policies to ensure controls are in place to deter misuse.” *Id.* Among other things, Chondra found:

- “The MES reimbursable policy was not being adhered to.”
- “Many of the corporate card purchases did not have a receipt attached.”
- “There was an observed lack of controls validating employees’ commute miles and the reduced mileage rate which resulted in overpayments.”
- “Reimbursable transactions that appeared to be non-reimbursable, such as the purchase of fuel, and tuition reimbursement were observed on expense reimbursements.”
- “Several One Card [the MES credit card] purchases exceeded the \$5,000 limit, and some transactions had date discrepancies or lacked pre-authorization.”

Id. Chondra offered various recommendations to curb the executive spending abuses she uncovered during her investigation.

When McGrath was questioned about the internal auditor position, he stated that he (1) did not recall Olson or her resignation in 2018, (2) was unfamiliar with the MES job description for the internal auditor position, and (3) did not recall whether there was an internal auditor at MES during his tenure as Director. **Appendix 28** (McGrath Tr., 79:14–83:13).²⁸

J. Conclusion on Expenses

McGrath and Sherring took advantage of the lack of expense oversight at MES by interpreting “official business” as whenever the two of them were together and spent money. One of many examples was their trip to the Maryland Association of Counties (MACO) conference in Ocean City in August 2018. They lunched at Panera in Easton, then stopped at Dunkin Donuts on DuPont Highway on the way down. They treated themselves to mid-afternoon sundaes at Dumser’s and drove to Rehoboth to go to the raw bar at the Big Fish Grill in the evening. McGrath approved all of the expenses and MES paid them.

²⁸ Wojton contradicted McGrath’s testimony that he was unaware whether there was an internal auditor at MES during his tenure, explaining that McGrath was aware of the internal auditor vacancy. **Appendix 21**, p. 200 (Wojton).

IV. McGrath's Transition to Chief of Staff

A. Offer of the Chief of Staff Job

On May 19, 2020 at 9:19 a.m., Governor Hogan's Chief of Staff Matthew Clark emailed Mona Vaidya (Director of Financial Administration, Office of the Governor) to notify her that McGrath would "take over as Chief of Staff on June 1." **Appendix 84** (Clark email). Copying McGrath on the email, Clark wrote that "[McGrath] and the Governor have agreed to a salary of approximately \$233,000 which is an increase from my current salary, but is the same as his base pay at MES." *Id.* Clark directed Vaidya to provide an offer letter to McGrath. *Id.* Vaidya responded at 10:04 a.m., confirming that she would draft the offer letter and send it to McGrath within 24 hours. *Id.* McGrath responded from a personal email account at 10:44 a.m., informing Vaidya that his transition was confidential, "as we will not begin soft notices until at least later this week." *Id.* McGrath also informed Vaidya that his current base pay at MES was actually \$233,647.23, not \$233,000, as Clark had stated.

On May 20, 2020, in an email at 12:27 PM, Vaidya sent a formal offer letter to McGrath by email. **Appendix 85** (McGrath Offer Letter). The offer letter explained that McGrath's first day of work would be June 1, 2020 and his starting annual salary would be \$233,648. *Id.* McGrath accepted the offer on May 28, 2020. *Id.*

B. Communications Among Wojton, McGrath, and Snee Leading to the May 2020 Board Meeting

McGrath called Wojton on May 22, 2020 at 1:31 p.m. **Exhibit 54** (McGrath phone records). McGrath told Wojton that he was leaving MES to work as the Governor's Chief of Staff. **Appendix 21**, p. 197 (Wojton). The call lasted 14 minutes. **Exhibit 54**.

McGrath then called MES Board member Joseph Snee at 10:14 a.m. on May 23, and they spoke for 29 minutes. *Id.* During that call, McGrath notified Snee that he was leaving MES to work as the Governor's Chief of Staff. **Appendix 21**, pp. 161, 169 (Snee). McGrath asked for a severance of one year's salary, which McGrath likened to the severances MES paid to its two previous Directors. *Id.*, p. 170. Snee told McGrath that he would not recommend MES pay the severance unless the Governor approved it. *Id.* McGrath assured Snee that the Governor knew about and approved the severance. *Id.* Snee and McGrath discussed a succession plan; Snee told McGrath that he thought Wojton was uniquely qualified for the position but McGrath was noncommittal, making Snee think "it was not going to happen." *Id.*, p. 169. At some point during their conversations about McGrath's departure, Snee asked McGrath not to do anything to harm MES after he left. *Id.*, p. 197 (Wojton).

At 11:07 a.m. on May 23, shortly after the call between Snee and McGrath, Snee called Wojton and they spoke for eight minutes. **Appendix 86** (Wojton phone records). Neither Snee nor Wojton recalls anything specific about that call.

C. Resignation to the MES Staff and Board

McGrath announced his resignation to the MES staff at the conclusion of a virtual all staff meeting at 11:30 a.m. on May 26, 2020. **Appendix 87** (All-Team Meeting video). McGrath informed the MES staff: “[I]n recent days, I have been asked to serve our State and its many challenges in a different way ... I will be leaving MES at the end of this month, however, I am also honored to let you know that I have been asked by Governor Larry Hogan to rejoin his team in Annapolis where I will serve as Chief of Staff to the State and to the Governor.” *Id.* 0:17:59–0:18:25.

At 3:19 p.m. on May 26, 2020, McGrath emailed the MES Board—Addison, Jackson-Jenkins, Hall, Harris, Smith, Snee, Street, and Wojton—to notify them of his resignation. **Exhibit 56** (McGrath MES resignation email). McGrath’s email stated: “I will be departing MES to serve as Chief of Staff for the State of Maryland and Governor Hogan.” *Id.* “I proudly leave MES in its strongest financial position ever and with a solid leadership team and an able Board to guide it forward.” *Id.*

D. HR Committee Meetings and McGrath/Wojton/Snee Communications after the First HR Committee Meeting

Snee called Wojton at 1:40 p.m. on May 26, 2020 and they spoke for 20 minutes. **Appendix 86**. Later that day, at 4:37 p.m., McGrath called Wojton and they spoke for 18 minutes. *Id.*; **Exhibit 54**. Wojton recalls that, during this call, she and McGrath discussed Wojton possibly succeeding McGrath as Director. **Appendix 21**, p. 198 (Wojton). Wojton described McGrath’s reception to that idea as cool. *Id.* Even though Snee had requested it three days earlier, McGrath told Wojton that he had not previously considered the idea of Wojton succeeding him. *Id.* Either during this call or their earlier call on May 23, McGrath told Wojton that the Governor knew about and approved his request for a severance from MES. *Id.* McGrath told Wojton that the Governor expected that he would receive the same severance as the two prior Directors. *Id.*, p. 183. McGrath told Wojton that he could only afford to take the Governor’s Chief of Staff position if MES agreed to pay him the severance because the pay was lower than his pay at MES. *Id.*, p. 197. McGrath knew this was not true, as Vaidya had sent McGrath an offer letter on May 20, 2020 stating that his salary at the Governor’s office would match his MES salary. **Appendix 85**.

On May 26, 2020 at 5:13 p.m., Wojton called Snee, but he did not answer. Wojton left a voicemail notifying Snee that an MES Human Resources Committee meeting was being scheduled for the next day. **Appendix 88** (Wojton voicemail). In the voicemail, Wojton told Snee that she had spoken to McGrath and that he “pretty much is expecting his full salary as a severance.” *Id.* Wojton added that McGrath’s accrued leave time would transfer to his new job, but that he was not planning to take Sherring with him. *Id.* Wojton told Snee that she felt McGrath was asking them to keep Sherring “in place” and stated that she would give Sherring other duties if MES “ha[s] to keep him.” *Id.* Sherring’s salary at the time was \$120,000 and Wojton was trying to find ways to save MES money. **Appendix 21**, p. 197 (Wojton). In her

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view, Sherring did not contribute much to MES but he was “untouchable” because of his close relationship with McGrath. *Id.*

During the evening of May 26, 2020, Wojton and Snee exchanged nine phone calls between 5:48 p.m. and 5:57 p.m., each 3 minutes or less. **Appendix 86**. The next morning, on May 27, 2020, Wojton emailed Snee. **Appendix 21**, p. 169 (Snee). Wojton listed McGrath’s (1) salary of \$233,647.23, (2) tuition reimbursement for \$5,250, and (3) leave balances that McGrath intended to transfer to the Governor’s Office. **Exhibit 57** (Wojton email). The email did not include any explanation of the tuition reimbursement request, and Wojton was unaware why the tuition reimbursement request was included with the severance. *Id.*; **Appendix 21**, pp. 183–184 (Wojton). Wojton was not aware that McGrath had already received tuition reimbursements through the MES tuition reimbursement program prior to his resignation. **Appendix 21**, p. 198 (Wojton). Several months before McGrath’s resignation, Wojton heard from Harris that McGrath was getting a master’s degree. *Id.*, pp. 183–184.

A closed session of the HR Committee began at 10:47 a.m. on May 27, 2020. Wojton and Coleman joined HR Committee members Snee, Streett, and Addison. **Exhibit 58** (MES HR Committee Minutes). According to the minutes of the meeting:

Mr. Snee then initiated a discussion regarding a request by Mr. McGrath that he be paid a severance upon his resignation as Director. Mr. McGrath had requested that the Board approve a severance payment like the severance the Board had approved for the two prior Directors. Mr. Snee stated that he had told Mr. McGrath that he would not recommend that a severance payment be made unless the Governor was aware of the proposed severance and did not object. Mr. McGrath had assured Mr. Snee that the Governor was aware of the proposed severance payment and did not object.

Id. According to the minutes, the Committee discussed that McGrath would forego his FY 2020 executive incentive payment of approximately \$47,000. *Id.* In addition, the Committee recognized that McGrath “ha[d] a significant amount of unused leave, which he intend[ed] to transfer to his new position.” *Id.* According to McGrath, the value of his unused leave was approximately \$211,000. *Id.* “However, members of the Committee expressed reservation over the fact that McGrath, unlike the two previous Directors, was leaving MES to immediately take another position in State government.” *Id.*

The HR Committee members discussed their discomfort with McGrath’s requested severance. **Appendix 21**, pp. 169, 173 (Snee, Streett). As the Governor’s Chief of Staff, McGrath would oversee MES. *Id.*, p. 170 (Snee). If the Chief of Staff was asking for a severance and the Governor approved it, but MES declined to pay it, that would reflect poorly on the agency and could make things more difficult for MES. *Id.*, p. 173 (Streett).

In deciding whether to recommend the severance, the MES HR Committee’s only concern was the Governor’s approval. *Id.*, pp. 169–170 (Snee). Snee volunteered to call

McGrath to confirm that the “second floor” knew about and approved the severance. *Id.* Snee believes that, if the HR Committee could not get assurance that the Governor’s office knew and approved of the requested severance, the HR Committee would not have recommended it to the full MES Board. *Id.* The HR Committee meeting ended at 11:20 a.m. with plans to reconvene the next morning at 9:00 a.m. **Exhibit 58.**

At the time, Wojton was concerned that McGrath would be vindictive toward MES if his expectations concerning the severance were not met. **Appendix 21**, p. 197 (Wojton). She described his demeanor as “matter-of-fact,” as if the severance was not up for discussion. *Id.* She thought the requested severance was outrageous and wanted to confirm that the Governor knew about it. *Id.* At 11:38 a.m. on May 27, 2020, Wojton sent a text message to McGrath stating:

Hi, The HR committee wants to make sure that the governor would be OK with you receiving severance equal to one year’s pay. They are worried about the optics and don’t want to do anything to make the Governor look bad. I told them that I thought that the governor was aware and was OK with it. Correct?

Exhibit 59 (Wojton/McGrath Text Messages). McGrath responded: “It’s anticipated, yes. Not to mention the precedences[.] [*sic*]” *Id.*

Then at 3:37 p.m. on May 27, Wojton emailed Snee with “[a] couple of points.” **Appendix 89** (Wojton email). Wojton wrote that “Roy says that the ‘Governor anticipates’ a severance equal to one year’s salary.” *Id.* Wojton noted that Jim Harkins had worked at MES for 11 years and that, while his severance may have been related to his longevity, the minutes approving Harkins’ severance did not reflect that. *Id.* According to Wojton’s email, during McGrath’s tenure, MES revenue increased over 6% and labor sales increased over 14%. *Id.* Wojton suggested that Snee make the following motion:

During Roy’s tenure, MES has achieved its highest revenue and labor sales (this was even after Baltimore County terminated our contract the year before), in appreciation of Roy’s Leadership during the State’s COVID crisis, and in recognition that Roy will continue to serve the Governor and the State of Maryland in his new role as Chief of Staff (at a lesser salary?), and in recognition that Roy will not be an MES employee at the time of the executive incentive payout, the Board hereby authorizes a payment equivalent to Roy’s annual salary and thanks him for his service.

Id.

Snee viewed McGrath’s statement that the “Governor anticipates” that MES will pay McGrath a severance equal to one year’s salary as ambiguous. **Appendix 21**, p. 163 (Snee). Snee called McGrath at 8:30 p.m. on May 27, 2020 and they spoke for seven minutes. **Exhibit 54.** At 8:54 p.m., McGrath called Snee again, and they spoke for an additional 27

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minutes. *Id.* During those calls, McGrath assured Snee again that the “second floor” knew about and approved McGrath’s request for severance. **Appendix 21**, p. 169 (Snee). Snee recalled that, at one point, he asked McGrath how he would justify the severance if a news reporter “put a microphone in your face” and McGrath said he would justify it with his performance at MES. *Id.*

Addison recalls McGrath telling him that his pay as the Governor’s Chief of Staff would be considerably less than he was earning at MES. *Id.*, p. 13 (Addison).

Another closed session meeting of the HR Committee began at 9:06 a.m. on May 28, 2020. **Exhibit 60** (MES Board Minutes (Closed Session)). According to the meeting minutes, “Mr. Snee stated that he had been assured by Mr. McGrath that the Governor was aware of the proposed severance payment and did not object Mr. Snee was therefore recommending that the Committee agree to Mr. McGrath’s request for a severance.” *Id.* Streett made a motion to approve a severance payment for McGrath that included one year’s salary (\$233,647.23) plus tuition reimbursement (\$5,250), which they would round up to \$239,000. *Id.* The motion was unanimously approved. *Id.*

Streett recalled that the May 28, 2020 HR Committee Meeting was the first time he had heard about McGrath’s tuition reimbursement. **Appendix 21**, p. 174 (Streett). They were not told what the tuition was for at the meeting, nor were they shown any documentation of the expense. *Id.* When McGrath was asked questions about the requested \$5,250 tuition reimbursement, he asserted his rights under the Fifth Amendment. **Appendix 28** (McGrath Tr., 32:4-17, 40:7-13, 41:6-13, 44:9-18).

E. May 28, 2020 MES Board Meeting

The full MES Board of Directors convened a virtual meeting on May 28, 2020. **Exhibit 45** (MES Board Minutes). The following directors were present: McGrath, Wojton, Harris, Streett, Snee, Jackson-Jenkins, Smith, Addison, and Hall. *Id.* Eventually, the Board initiated a closed session, McGrath left the meeting, and the Board undertook a discussion of his severance. **Exhibit 60**. The meeting minutes state:

Mr. McGrath had requested that the Board approve a severance payment like the severance that the Board had approved for the two prior Directors. Mr. Snee stated that he had told Mr. McGrath that he would not recommend that a severance payment be made unless the Governor was aware of the proposed severance and did not object. Mr. McGrath had assured Mr. Snee that the Governor was aware of the proposed severance payment and did not object.

Id. Snee reported to the Board that the HR Committee recommended approval of a severance payment to McGrath including one year’s salary of \$233,647.23, plus tuition reimbursement in the amount of \$5,250, for a total amount of \$238,897.23, rounded up to \$239,000. *Id.* Snee noted that McGrath would not receive his \$47,000 executive incentive payment for fiscal year 2020, and would take a significant amount of unused leave with him, valued at \$211,000. *Id.*

Harris told the Board that MES had sufficient cash to make the proposed payment to McGrath. *Id.* The Board did not ask for documents justifying the tuition expense. **Appendix 21**, p. 120 (Jackson-Jenkins).

The Board unanimously approved a \$239,000.00 severance payment to McGrath.²⁹ **Exhibit 60.** The Board also authorized McGrath to take his agency-issued laptop and cell phone with him to his new position as the Governor’s Chief of Staff. *Id.*

F. The Governor’s and the Governor’s Staff’s Statements Regarding the Governor’s “Approval” of McGrath’s Severance

The Governor and members of his staff offered the following accounts of the Governor’s position concerning McGrath’s severance:

- **Governor Hogan:** On August 20, 2020, less than a week after the *Baltimore Sun* first reported on McGrath’s severance, the Governor sent the following text message to his former Chief of Staff (Clark):

I thought MES was outside the state personnel system. They are state employees! How in the hell do you get a severance for a lateral transfer within state service? How do they pay bonuses based on profits? But also get state pension and leave?!

Appendix 90 (Hogan/Clark Text Messages).

On August 25, 2020, Governor Hogan issued the following public statement:

It has recently come to light that the Maryland Environmental Service has a longstanding practice of paying large bonuses, expense reimbursements, and severance packages to its top executives. This is something no normal state-operated agency should or would ever grant. *To be clear, I did not approve, recommend, or have any involvement whatsoever in any of these decisions made by the board of directors of MES with respect to the former director Roy McGrath or any other individual.*

Exhibit 50 (Governor Hogan’s Statement) (emphasis added).

On the same day Governor Hogan issued his statement that he “did not approve, recommend, or have any involvement whatsoever” in the MES Board’s approval of McGrath’s severance, McGrath wrote the following text message to the Governor: “Gov, could we have a

²⁹ Under to the Reform Act, the MES “Board may not award a severance package to an executive of the Service if the executive accepts another position in the State government within 1 year after the date on which the executive’s employment with the Service is terminated.” NR § 3-103.4(b)(1).

short call tonight? I'm trying to figure out what's next and would appreciate your thoughts. Asking as a friend. Thank you." **Exhibit 53** (McGrath/Hogan Text Messages). Governor Hogan did not respond to McGrath's text message.

The next day, McGrath wrote another text message to the Governor:

I talked with Pedone last night. The statement yesterday is being misinterpreted. Can you please say something about us discussing severance? That it was ok for me to handle with MES. Only what we agreed. Without your support, it looks like I mislead [*sic*] MES. I did not. I've been one of your loyalist supporters from the beginning. Never asked for anything, but need your help now, please. This is devastating my life.

Id. Again, Governor Hogan did not respond to McGrath's text message. In response to questions regarding his August 2020 text messages to the Governor, McGrath asserted his rights under the Fifth Amendment. **Appendix 28** (McGrath Tr., 21:10–26:6).

During a press conference on August 27, 2020, Governor Hogan stated that he was "concerned" when he heard about MES's severance payment to McGrath. **Appendix 91** (*Baltimore Sun* article). According to Governor Hogan, "I called Mr. McGrath in and said, 'What's this all about?'" *Id.* The Governor further recalled that, when he offered McGrath the Chief of Staff position, McGrath had told the Governor that the move would result in a "big cut in pay" requiring McGrath to "figure out" his expected MES bonus before joining the Governor's staff. *Id.* Governor Hogan summed up his position concerning McGrath's severance as follows:

I knew nothing about the details of what his [McGrath's] discussions were with his current employer or the board members of MES. I mean, *I didn't discuss it or approve it or know anything about the amounts of it or anything.*

Id. (emphasis added).

- **Pedone (Chief Legal Counsel):** As McGrath indicated in his August 26, 2020 text message to Governor Hogan, McGrath discussed his MES severance payment with Pedone on August 25. According to Pedone, shortly after Governor Hogan issued his August 25, 2020 statement concerning McGrath's severance payment, McGrath contacted Pedone to request that the Governor clarify his statement to present the facts concerning the severance in a light more favorable to McGrath. **Appendix 21**, p. 147 (Pedone). In response, Pedone told McGrath that the Governor stood by his statement, and that the Governor only makes statements consistent with the truth. *Id.* When asked whether McGrath discussed his MES severance with the Governor or anyone on the Governor's staff before the MES Board approved the severance in May 2020, Pedone responded: "To my knowledge, no, the severance was not discussed." *Id.*

Pedone also spoke to MES Board member Snee in August 2020, shortly before the *Baltimore Sun* published its initial article concerning McGrath's severance. *Id.* According to Pedone, Snee explained that the MES Board had approved McGrath's severance because McGrath had represented that the Governor wanted that to happen. *Id.* Pedone recalls asking Snee whether anyone on the MES Board considered confirming the Governor's position with someone on the Governor's staff, rather than relying solely on representations by the person who was requesting the payment. *Id.* Snee responded that the Board had not considered confirming the Governor's position with his staff. *Id.* In retrospect, Snee believed that the Board should have done so. *Id.*

- **Clark (Former Chief of Staff):** Clark served as the Governor's Chief of Staff from July 2017 through May 2020, when McGrath assumed the position. *Id.*, p. 59 (Clark). Clark, therefore, was Chief of Staff when McGrath represented to the MES Board that the Governor was aware of the proposed severance payment and did not object. Clark was unaware of McGrath having discussed his requested severance with the Governor or anyone on the Governor's staff before the MES Board approved it. *Id.*, pp. 60–61. Nor did McGrath mention the severance to Clark during the numerous telephone calls and meetings McGrath and Clark scheduled throughout May 2020 to facilitate McGrath's transition to Chief of Staff. *Id.* According to Clark, McGrath's representation to the MES Board about the Governor's knowledge of the severance was inconsistent with what Clark is aware of. *Id.*

G. Wojton's Communications With McGrath After the Board Approved the Severance

On May 28, 2020, shortly after the MES Board approved McGrath's requested severance payment, Wojton sent McGrath a text message to notify him that the severance had been approved. **Appendix 92** (Wojton/McGrath Text Messages). In response, McGrath wrote: "Good thing - I'd have had to stay put!" *Id.* Later that day, having secured his severance, McGrath sent his executed offer letter back to the Governor's office. **Appendix 85.**

On June 1, 2020 (McGrath's first day as the Governor's Chief of Staff), Wojton emailed McGrath to address two subjects. **Exhibit 92** (Wojton email).

First, Wojton wrote: "As per your direction, we are in the process of transferring the MES vehicle you've been using over to the governor's office." *Id.* McGrath had told Harris that McGrath was going to take the car with him to the Governor's office a few days before he departed MES. **Appendix 38** (Harris Tr., 80:2-11).³⁰ Wojton explained that McGrath never mentioned to her that he planned to take his MES vehicle with him to the Governor's office; instead, Wojton learned about McGrath's decision to take the vehicle on May 29, 2020, when Harris shared that information with her. **Appendix 21**, p. 198 (Wojton). According to Wojton, McGrath informed Harris that he was taking the MES vehicle. *Id.*, p. 200. He did not seek

³⁰ McGrath told Harris that he was taking his MES vehicle to the Governor's office because the Governor's office did not have vehicles for employees. **Appendix 21**, p. 112 (Harris).

authorization to take it. *Id.* Wojton recalls that McGrath drove the MES vehicle off the MES lot on his final day of work at the agency. *Id.*

At first, Wojton objected to McGrath's taking the MES vehicle for several reasons: (1) McGrath had already "gotten a lot out of MES," (2) McGrath should have sought the Board's approval, (3) providing the vehicle to McGrath would remove a vehicle from MES's fleet, and (4) it raised concerns that McGrath would continue to use MES resources for his benefit when he assumed his new position in the Governor's office. *Id.* In response to Wojton's objection to transferring the MES vehicle to the Governor's office, Harris informed her that, at the time McGrath took the vehicle from MES's fleet, he was still the MES Director, so Wojton had no authority to block him. *Id.*³¹

When Wojton sent her June 1, 2020 email to McGrath, MES had not yet formally transferred the vehicle McGrath took with him to the Governor's office. Around that time, Wojton asked Harris to get something in writing from McGrath "telling [MES] to transfer the car to him in his new position." **Appendix 38** (Harris Tr., 80:13–81:2). Ultimately, neither Wojton nor Dr. Glass approved the transfer of an MES vehicle to the Governor's office for McGrath's use. *Id.* 81:3-9. MES recovered the vehicle and returned it to the MES fleet after McGrath resigned as the Governor's Chief of Staff. *Id.* 81:10-11; **Appendix 21**, p. 112 (Harris).

Second, Wojton's June 1, 2020 email to McGrath addressed his request that he maintain access to MES's accounting and human resources portal (Workday), so that he could submit expense reimbursements that he had failed to timely submit before he left MES (*see infra* at pp. 43–45):

I understand you would like to continue to have access to workday. Unfortunately, as I'm sure you'll understand access can't be allowed past this Wednesday. We have to process your final pay which includes severance. There are a number of business processes linked to your profile that need to be reassigned. This can't happen until you're terminated in the system. If we allow employees no longer with the agency access to our system it presents several issues from an internal control standpoint. It will impact our current financial and future legislative audits. There is a high probability it will result in an audit finding as termination dates and access to the system are highly scrutinized areas. If there is any specific information you need, please let me know and we will do our best to get it to you.

Exhibit 92.

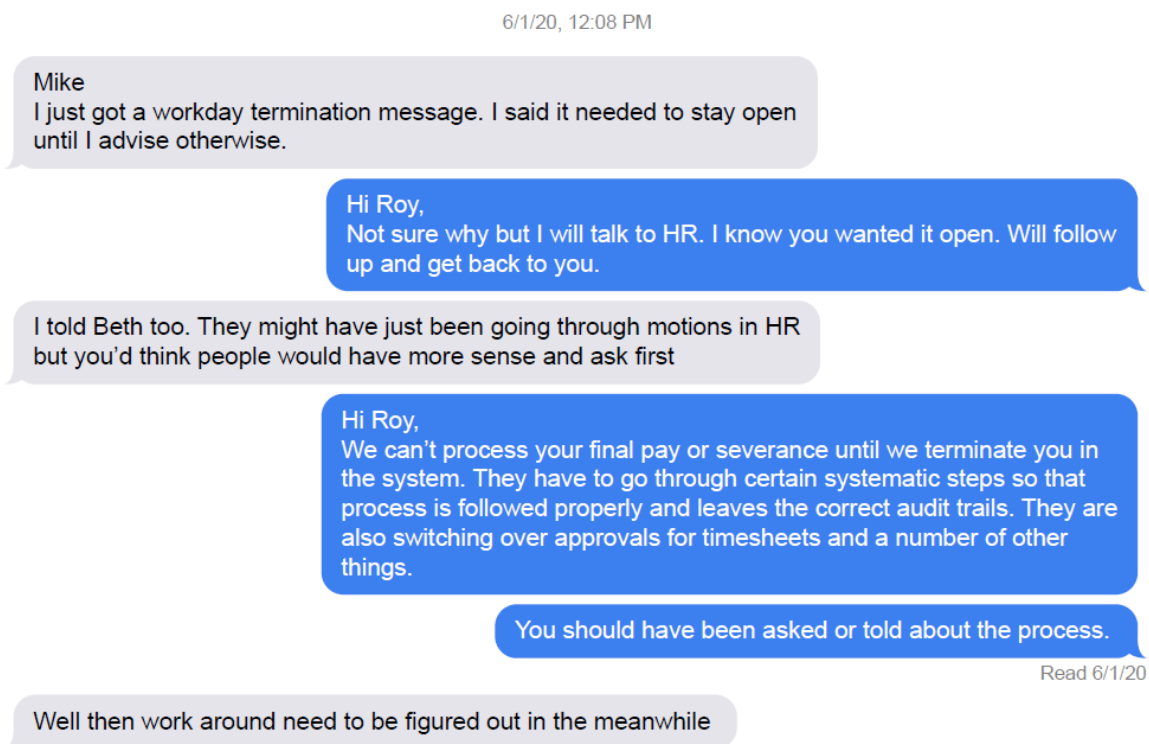
³¹ Harris confirmed that, after McGrath departed MES for the Governor's office, he continued to require an MES employee to clean the MES vehicle that he had taken with him. **Appendix 38** (Harris Tr., 81:12–82:19); **Exhibit MH-25** (Harris/Donald Gittings (MES Equipment Control Specialist) Text Messages).

McGrath never responded to Wojton’s June 1, 2020 email. **Appendix 21**, p. 188 (Wojton).

H. June 5 Expense Submissions

On June 1, 2020, McGrath’s first day as the Governor’s chief of staff, he exchanged text messages with Harris to express concern that he could no longer submit expense reimbursements to MES:

**Figure 2.
Harris/McGrath June 1, 2020 Text Messages (Exhibit MH-14)³²**

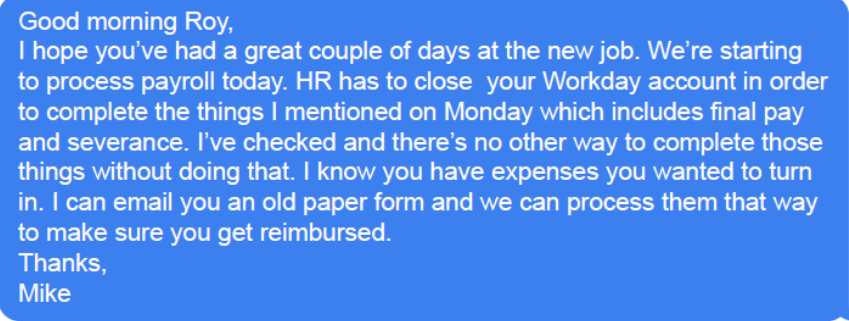


By June 4, 2020, McGrath still had not submitted the reimbursement requests, prompting Harris to send McGrath the following text message:

³² It appears that McGrath’s June 1, 2020 text messages with Harris regarding continued access to Workday prompted Wojton to address the issue in her email to McGrath that day. *See supra* at p. 42.

Figure 3.
Harris/McGrath June 4, 2020 Text Message (Exhibit MH-14)

6/4/20, 7:47 AM



Good morning Roy,
I hope you've had a great couple of days at the new job. We're starting to process payroll today. HR has to close your Workday account in order to complete the things I mentioned on Monday which includes final pay and severance. I've checked and there's no other way to complete those things without doing that. I know you have expenses you wanted to turn in. I can email you an old paper form and we can process them that way to make sure you get reimbursed.
Thanks,
Mike

Later that evening, McGrath submitted requests for reimbursement of \$55,888.32 in expenses he had incurred while he was MES Director. **Exhibits MH-16, MH-17, MH-18, MH-19** (McGrath expense reports). These expense reimbursement requests included expenses incurred between December 22, 2018 and April 23, 2020 (with scores of expenses dated as incurred the date of the report, June 4, 2020). *Id.*

After McGrath submitted the reimbursement requests, the evening unfolded as follows: Brown (an MES Finance Department employee) was at home when she received a call from Acosta, the Financial Accounting Manager at MES. **Appendix 21**, pp. 6, 57 (Acosta, Brown). Acosta was on the phone with Harris, who was reporting that the expense reports that McGrath/Harris entered into the MES system that evening had errors. *Id.*, p. 57 (Brown). Harris requested that Brown, who has more access to the system than Harris or Acosta, review the errors because the reimbursements were for McGrath and they needed to be processed immediately. *Id.*³³ Brown reviewed the system errors and emailed Harris to report that the problem in the system was that receipts for some expenses were missing. **Appendix 21**, p. 57 (Brown). In response, Harris instructed Brown to approve the expenses despite the missing receipts. *Id.* Because the MES system requires a receipt for any reimbursement, Brown used Harris' email in place of the missing receipts. *Id.* During the review of McGrath's \$55,000+ expense reimbursement request, Harris told Brown that he would look over McGrath's receipts to ensure they complied with MES policy. *Id.*

All of the expenses were approved by Harris within minutes after they were first entered into the MES system:

- Report for \$13,611.77 – Entered by the MES finance office at 8:02 p.m. and approved by Harris at 8:17 p.m.

³³ Brown noted that in her nearly ten years as a Senior Fiscal Associate at MES, she had never before been asked to process expense reports after hours. **Appendix 21**, p. 57 (Brown).

- Report for \$14,165.38 – Entered by the MES finance office at 8:17 p.m. and approved by Harris at 8:19 p.m.
- Report for \$6,413.74 – Entered by the MES finance office at 8:19 p.m. and approved by Harris at 8:21 p.m.
- Report for \$21,697.43 – Entered by the MES finance office at 8:36 p.m. and approved by Harris at 8:39 p.m.

Exhibit 89. Harris testified that he was doing a “cursory review” of the receipts as they came in and stated that “it wasn’t like [finance] submitted it and I took like three minutes.” **Appendix 38** (Harris Tr., 64:5-11). McGrath testified that Harris’ role in the review process was to “process and consider and review and handle through normal procedures and, you know, routine processes, review[] of expenses.” **Appendix 28** (McGrath Tr., 140:1-5).

I. Sherring’s and McGrath’s Attempt to Alter the May 2020 Board Minutes

In June 2020, after McGrath had departed MES for the Governor’s office, Sherring and McGrath sought to edit the meeting minutes from the May 28, 2020 MES Board meeting during which the Board approved McGrath’s severance payment.³⁴ On June 16, 2020, Sherring emailed MES senior paralegal Fuller requesting “a word version ... of the May BOD minutes for review/editing.” **Appendix 93** (Ex. No. 1).³⁵ After consulting with Wojton, Fuller wrote Sherring that “Beth [Wojton] and Sean [Coleman] have already reviewed [the minutes]. If you have any corrections, just let me know, and I’ll fix on my copy.” **Appendix 93** (Ex. No. 3); **Appendix 21**, p. 83 (Fuller). Fuller’s June 16, 2020 email to Sherring did not include an editable version of the draft meeting minutes. In response, Sherring insisted that he receive a Word version of the minutes, explaining to Fuller that “[i]t’s significantly more efficient to edit the word version, as we’ve done historically. Please share the word document.” **Appendix 93** (Ex. No. 3).

On June 17, 2020, before Sherring had received an editable version of the draft May 2020 Board meeting minutes, he sent the following text message to McGrath: “We’re preparing for BOD mtg, 6/25. Would you like to review the BOD mtg minutes from May?” Approximately fifteen minutes later, McGrath responded, “Yes... offline,” without elaborating on what he meant by “offline.” **Exhibit 47** (McGrath/Sherring Text Messages).³⁶ Later that day, after

³⁴ A timeline with exhibits summarizing Sherring’s and McGrath’s attempt to edit the May 2020 MES Board meeting minutes is attached as **Appendix 93**.

³⁵ During McGrath’s tenure, Sherring received copies of the previous month’s Board meeting minutes before they were distributed to the Board. **Appendix 21**, pp. 80–81 (Fuller/Coleman). This was a departure from MES’s standard procedures before McGrath arrived. *Id.* When McGrath departed MES and Wojton assumed the Acting Director position, she instructed that Sherring no longer receive communications related to the Board or the Board minutes. *Id.*

³⁶ The documents that counsel received in connection with their investigation did not indicate whether McGrath and Sherring communicated using so-called “offline” email accounts or phone

consulting with Wojton, Fuller sent Sherring an editable version of the draft May 2020 open session minutes; Fuller did not send Sherring the draft closed session minutes. **Appendix 93** (Ex. No. 3). Less than two hours later, Sherring sent Fuller minor edits to the May 2020 open session minutes; these minor edits were consistent with the types of non-substantive edits Sherring typically proposed. *Id.* (Ex. No. 4); **Appendix 21**, p. 83 (Fuller).³⁷

On June 27, 2020, ten days after Sherring had provided his edits to the May 2020 meeting minutes, Sherring sent Fuller an email stating “it has been brought to my attention that **we** have some additional edits to the May BOD minutes.” **Appendix 93** (Ex. No. 6) (emphasis added). Sherring’s email attached two documents that Sherring described as: “(1) Updated May BOD minutes (additional edits and closed session minutes removed) and (2) Updated May closed session minutes (separated out from the regular BOD minutes; should probably be put on same template as the regular BOD minutes or whichever you see fit).” *Id.* The federal indictment states that McGrath proposed the changes to the public version of the minutes. For the draft open session minutes, McGrath proposed deleting most of a section titled “Closed Session,” which was required by law. *Id.* The paragraphs that McGrath proposed deleting summarized the Board’s discussion and approval of McGrath’s severance. *Id.* After McGrath’s proposed edits, the open session minutes did not mention McGrath’s severance. For the draft closed session minutes, Sherring (on McGrath’s behalf) created a new document and pasted into the document – word-for-word – the content about the Board’s action on McGrath’s severance that he had deleted from the open session minutes; these proposed closed session minutes did not mention the Governor’s knowledge of or approval of McGrath’s severance. *Id.* Neither Sherring nor McGrath attended the May 2020 closed session, and would have had no basis to describe what occurred during that session.

The effects of McGrath’s proposed edits to the May 2020 meeting minutes were to (1) eliminate any reference to McGrath’s severance payment in the public, open meeting minutes, and (2) omit from the closed session minutes any reference to the Governor’s alleged knowledge of and approval of McGrath’s severance payment.

MES rejected McGrath’s proposed substantive edits to the open and closed session minutes. Shortly after Sherring circulated these edits on McGrath’s behalf, Coleman explained to Sherring that “some of [the] changes are not consistent with the Open Meetings Act requirements.” *Id.* (Ex. No. 7). After subsequent correspondence between Coleman and Dr. Glass in which Coleman explained why MES should reject Sherring’s edits, Fuller emailed Sherring to inform him that “Sean has discussed your proposed edits to the Closed Session section with Dr. Glass, and they both agreed the original language should remain.” *Id.* (Ex. No. 10).

numbers. The federal indictment states that McGrath proposed the changes to the public minutes which deleted references to the amount of his severance. **Appendix 2**, ¶ 37.

³⁷ Historically, most of Sherring’s edits related to correcting typos/formatting. **Appendix 21**, p. 83 (Fuller).

In August 2020, Dr. Glass terminated Sherring’s employment. *See Exhibit 8*. Dr. Glass explained that he took this executive action because Sherring had received access to the May 2020 MES Board meeting minutes, and had attempted to edit those minutes. **Appendix 21**, p. 97 (Glass). According to Dr. Glass, he had an “epiphany” concerning the “ramifications of Sherring being in the middle of closed session meetings of the Board,” and determined that Sherring’s conduct warranted termination. *Id.*, p. 92.

J. Wojton’s Resignation and Final Communication to the Board

On June 18, 2020, the Governor appointed Dr. Glass MES Director. **Appendix 94** (Governor Announcement). Shortly after Dr. Glass arrived at MES, he spoke with Wojton about her future at the agency. **Appendix 21**, p. 189 (Wojton). Dr. Glass informed Wojton that he wanted to hire his own Deputy Director, rather than have Wojton assume that role (as she had under McGrath). *Id.* Dr. Glass assured Wojton that his decision was not personal, and offered her the Director of Administration position (with a 10% salary reduction). *Id.* After considering Dr. Glass’ offer for one day, Wojton informed Dr. Glass that she would resign from MES at the end of June 2020 after 32 years of service to the agency, rather than accept the Director of Administration position. *Id.* Wojton explained that she resigned because she believed that McGrath would continue to have influence at MES after he became the Governor’s Chief of Staff, and she “didn’t want to be a part of that.” *Id.*, p. 203.

Although Dr. Glass did not expressly ask Wojton to submit her resignation, Wojton did not view her departure as voluntary. *Id.*, p. 189. For that reason, she requested the following: (1) \$1,000 for each of her 32 years of MES service (\$32,000 total), (2) her share of the FY 2020 Executive Incentive Bonus (a bonus she earned, having served as MES Deputy Director for all of FY 2020), (3) reimbursement for her unused annual, personal, and compensatory leave, and (4) ownership of her MES-issued cellphone and laptop.³⁸ *Id.* The MES Board unanimously approved Wojton’s request on June 29, 2020, and she retired from the agency two days later. **Exhibit 73** (MES Board Minutes).

As discussed *supra* at pp. 29–31, 43–45, three weeks after Wojton’s retirement, she emailed the MES Board about two issues: (1) “an anonymous complaint [to OLA] about the Director’s spending,” and (2) McGrath’s \$55,000+ expense reimbursement request after he had departed MES. **Exhibit 98**. Wojton explained that she did not feel right that she knew about

³⁸ Dr. Glass conferred with McGrath about Wojton’s requested exit package, explaining that “I am unfamiliar with these types of payouts.” **Appendix 95** (McGrath/Glass Text Messages). Dr. Glass inadvertently sent one such communication related to Wojton’s request to Wojton herself, rather than to McGrath; when Wojton saw this communication, it confirmed her suspicion that McGrath would remain involved in MES business after he left the agency for the Governor’s office. **Appendix 21**, p. 189 (Wojton). McGrath remained involved in MES business while at the State House. For example, after McGrath left MES for the State House, he contacted Bhatia to request access to his MES email account to “wrap up” emails and expense reports. Bhatia had reservations about granting McGrath such access, as McGrath was no longer with the organization, but he relented and provided the access. Bhatia was unsure how long McGrath maintained access to his MES email. **Appendix 21**, p. 54 (Bhatia).

these issues and did not inform the Board about them before she left MES, and she wanted the Board to have this information before its July 2020 meeting. **Appendix 21**, p. 190 (Wojton).

Immediately after the Board received Wojton’s July 2020 email and learned about McGrath’s spending practices, MES undertook several measures to investigate and curb executive spending abuses. In early August 2020, MES engaged an outside auditor to audit McGrath’s and other MES Managing Directors’ expenses from July 1, 2019 through June 30, 2020. **Appendix 96** (Jackson-Jenkins email).³⁹ With respect to McGrath’s 269 expense reimbursement requests during that period, the outside auditor reached the following conclusions:

- Employee was reimbursed for more than the appropriate amount based on MES Policies: 69 expenses
- Employee did not use state service contracts when booking hotel/flight: 106 expenses
- Employee did not submit expenses within five days of incurring expenses while on travel: 69 expenses
- Expense is not listed as an acceptable expense within policies provided: 29 expenses
- A receipt or applicable support was not provided upon reimbursement submission in order to be eligible for reimbursement: 52 expenses
- Employee submitted for expense reimbursement after leaving MES: 69 expenses

Exhibit 100.

K. The *Baltimore Sun* Reports on McGrath’s Severance and MES Responds

On August 12, 2020, a *Baltimore Sun* reporter left a voicemail for Dan Faoro (MES’s then-Director of Communications) seeking a comment on a forthcoming story about McGrath’s “compensation agreement.”⁴⁰ Faoro forwarded *The Sun*’s voicemail to Sherring. **Exhibit 48** (Aug. 12, 2020 – 4:18 pm).⁴¹ After Faoro emailed Sherring, they spoke on the phone. **Appendix 21**, p. 66 (Faoro). Sherring explained that he had spoken to McGrath, that Faoro should not respond to the voicemail, and that Faoro should not notify anyone at MES about *The Sun*’s request for comment. *Id.* Faoro recalled being uncomfortable with Sherring’s instructions. *Id.* Shortly after Faoro’s initial conversation with Sherring, Faoro received a follow-up email

³⁹ Dr. Glass recommended including all Managing Directors in the RSM audit—not only McGrath—so he could understand whether MES had a broader “cultural issue.” **Appendix 21**, pp. 93, 95 (Glass).

⁴⁰ A compilation of August 2020 communications is attached as **Exhibit 48**.

⁴¹ During McGrath’s tenure, Faoro did not respond directly to media without clearing the response through Sherring and McGrath. **Appendix 21**, pp. 65–66 (Faoro). As Faoro put it, McGrath made it clear that everything goes through McGrath. *Id.* Even after McGrath departed MES, Faoro still reported to Sherring. *Id.*

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from the *Baltimore Sun*; Faoro forwarded *The Sun*'s follow-up email to Sherring, stating that he "would suggest notifying [counsel]." **Exhibit 48** (Aug. 12, 2020 – 10:58 pm). Approximately two minutes later, Sherring called Faoro and chastised him about sending the email suggesting that Counsel be notified. He said that he had spoken to McGrath, who said not to notify anyone. **Appendix 21**, p. 66 (Faoro).

On August 14, 2020, the *Baltimore Sun* posted its story about McGrath's severance payment. See **Exhibit 48** (*Baltimore Sun* article). Over the next 48 hours, McGrath and Sherring coordinated MES's response. The following chronology summarizes the flurry of activity in response to *The Sun*'s reporting.

August 14, 2020

3:54 am – David Nevins (MES's outside public relations consultant at the time) texts McGrath: "If you feel like discussing your current matter just give me a call. As is typical, making a mountain out of mole hill. But like all else, this too shall pass." **Appendix 97** (McGrath/Nevins Text Messages).

6:52 am – McGrath responds to Nevins' text: The *Baltimore Sun* story "left out the important fact that this was routine – my predecessors got the exact same thing, as did the deputy when she left recently. Will touch base around 8 if you're available." *Id.*

6:14 pm – McGrath texts Dr. Glass asking to talk and indicating that it is "time sensitive." **Exhibit 48** (Aug. 14, 2020 – 6:14 pm). Dr. Glass and McGrath speak shortly after the text message. McGrath directs Dr. Glass to work on a press release responding to *The Sun* story, and explains that Sherring, Faoro, and Nevins are already working on the release. **Appendix 21**, p. 96 (Glass).

6:16 pm – Sherring, who had just spoken to McGrath, tells Faoro to "go on the offensive" and issue a press release that evening defending McGrath's severance. Faoro emails the Nevins Firm with McGrath's instructions. **Exhibit 48** (Aug. 14, 2020 – 6:16 pm).

7:01 pm – McGrath calls Faoro and dictates talking points for the MES press release. *Id.* (Aug. 14, 2020 – 7:01 pm).

7:04 pm – The Nevins Firm circulates a first draft of the MES press release. *Id.* (Aug. 14, 2020 – 7:04 pm).

8:04 pm – Faoro incorporates McGrath's talking points into the Nevins Firm draft and sends a draft to Sherring with a request to "share with Roy." Sherring tells Faoro to "standby for edits." *Id.* (Aug. 14, 2020 – 8:39 pm).

8:44 pm – Sherring circulates an updated draft press release. *Id.* (Aug. 14, 2020 – 8:44 pm). Faoro believes that the edits came from McGrath. **Appendix 21**, p. 69 (Faoro). Harris provided McGrath and Sherring the financial numbers that they added to the draft press release (*e.g.*, previous Directors' severance amounts). *Id.*, p. 112 (Harris).

9:00 pm – Dr. Glass tells Faoro that the press release is not going out that night because “this is ridiculous.” *Id.*, p. 96 (Glass).

9:02 pm – Faoro emails the Nevins Firm to thank them for “reaching out to Roy to slow this down.” **Exhibit 48** (Aug. 14, 2020 – 9:02 pm). Faoro then explains to the Nevins Firm that he “just received this revised draft from Roy/Matthew and suggest[s] we dial back some of the language.” *Id.* Nevins follows up with a phone call to Faoro explaining that McGrath is not pleased, but he understands that the MES press release will not go out until the next morning. **Appendix 21**, pp. 69–70 (Faoro).

August 15, 2020

8:18 am – Dr. Glass edits the draft press release and circulates his revised draft. Among other things, Dr. Glass removes all reference to Wojton’s retirement package. (The McGrath/Sherring/Nevins draft from the previous evening had distorted the comparison between McGrath’s severance and Harkins’ and Wojton’s severances: For McGrath, the draft included only the severance payment that the Board had approved. For Harkins and Wojton, the draft totaled their severance payments *and* payments for accumulated leave/earned benefits, and represented the entire amount as severance.) Dr. Glass circulates his draft and instructs Faoro and the Nevins Firm to edit for grammar and clarity only, and not to “change the intent.” **Exhibit 48** (Aug. 15, 2020 – 8:18 am).

8:29 am – Faoro sends the updated draft press release to Sherring. *Id.* (Aug. 15, 2020 – 8:29 am).

8:47 am to 9:30 am – The Nevins Firm and Faoro make minor edits to the press release. The Nevins Firm recommends that the press release restore the language about Wojton’s total payout upon her retirement (\$32,000 severance and leave payout), but Dr. Glass refuses, explaining that “I purposefully did not include Beth’s severance and I choose not to have it included.” *Id.* (Aug. 15, 2020 – 10:10 am).

Approximately 9:30 am – MES press release is posted online. *Id.* (Final Press Release).

L. McGrath Resigns as Governor Hogan’s Chief of Staff

On August 17, 2020, four days after the *Baltimore Sun* broke the news of McGrath’s severance payment, he resigned as Governor Hogan’s Chief of Staff. **Exhibit 52**. McGrath had occupied the role for 77 days. *Id.* Upon his departure, McGrath wrote the following to colleagues in the State House and state government:

As you may be aware, there has been discussion in recent days related to my **transition back to state employment**. Some do not agree with the circumstances, which has led to an unfortunate, terribly-timed distraction. Reasonable people can disagree. However, this role, especially at this time, does not have the bandwidth to not be focused fully on the urgent matters at hand. As

such, I have decided to step aside, and I will be transitioning out of the public sector and back into the private. I will remain available to the Governor and to you until a new chief of staff is selected, and for transition purposes.

Appendix 98 (McGrath resignation email) (emphasis added).

M. McGrath’s Public Statements

On August 21, 2020—one week after the *Baltimore Sun* broke the news concerning McGrath’s severance from MES—McGrath wrote an op-ed. **Exhibit 49** (*Baltimore Sun* Op-ed). McGrath’s op-ed explained that he sought to address “a few points I have not previously had the opportunity to express relative to The Sun’s coverage of the severance package I received after leaving [MES] to take the position in the governor’s office.” *Id.* According to McGrath, “countless people who know me and my character, have reached out to say this is the state’s loss, not mine” and the “underlying tone of The Sun’s coverage is grossly unfair.” *Id.*

Several of McGrath’s assertions in his August 2020 op-ed were false or require additional context.⁴²

- In an apparent attempt to claim that MES is tantamount to a private sector entity, McGrath stated that his position as “CEO at MES” was not a “state job,” and that “MES was my employer, not the state of Maryland.” But the Maryland Code provides that MES is an instrumentality of the State, MES exercises essential government functions, and the MES Director is appointed by the Governor. *See* Md. Code, Nat. Res. §§ 3–103(a); (b)(1)(i); *see also* **Appendix 21**, pp. 99, 103 (Harkins) (explaining that MES is an instrumentality of the State).
- McGrath wrote that his severance payment from MES was “an earned, performance bonus . . . , not severance.” But the MES Board members who approved that payment disagreed. Board members explained that the payment to McGrath was always understood to be a severance payment, and did not recall the Board considering performance standards in deciding whether to issue the payment. *See id.*, p. 156 (Smith); **Exhibit 60**. Further, the relevant documents concerning the MES payment to McGrath (including McGrath’s text messages to Governor Hogan) refer to the payment as a “severance.” *See* **Exhibits 53, 58, 59, 60; Appendix 89**.
- To justify his \$239,000 payment from MES, McGrath’s op-ed twice referenced “record-setting financial results” during his tenure as MES Director. McGrath appeared

⁴² Text messages between McGrath and Harris reveal that Harris (who still worked at MES at the time) was likely the source of certain data used in the op-ed. For example, on August 19, 2020, McGrath texted the following to Harris: (1) “When did O’Neill leave, what year? 2017 or 18?” and (2) “Anything new on earlier severances? And reconfirming Beth’s was \$153,000?” **Exhibit MH-26** (Harris/McGrath Text Messages).

to be referring to the fact that MES recorded its highest revenues and total net assets in FY2020 (the final fiscal year of McGrath’s tenure).⁴³ See **Appendix 99** (Summary of MES Financial Data). But McGrath’s suggestion that he was responsible for “record-setting” financial performance requires additional context. First, when former Director Harkins arrived at MES in 2005, its total revenue was \$78.68 million and its total net assets were \$6.4 million. *Id.* As Harkins explained, when he took over MES, it was losing money and was on track to require a subsidy from the General Assembly to stay afloat. **Appendix 21**, p. 99 (Harkins). By the time McGrath arrived at the agency in 2017, MES’s total revenue was \$165.78 million and its total net assets were \$26.24 million. **Appendix 99**. McGrath, therefore, benefitted from the foundation that Harkins built at MES. Second, during McGrath’s first two full fiscal years at MES—FY 2018 and FY 2019—total revenues decreased from FY 2017. *Id.* Third, the largest year-to-year increases in MES revenues (FY2008 and 2015) and total net assets (FY2009 and 2010) occurred under Harkins’ direction. Fourth, the FY2020 increases in MES total net assets were modest compared to several years during Harkins’ and O’Neill’s tenures.

- McGrath’s op-ed misrepresented the severance payments previous MES Directors received in an apparent attempt to show that his severance amount was consistent with previous Directors’ payments. First, McGrath wrote that Harkins “received a \$256,000 severance in 2016” when Harkins retired after 43 years in State and county government. But Harkins’ severance was \$160,000. **Exhibit 70**; **Exhibit 71** (Acosta email); **Appendix 21**, p. 102 (Harkins). The additional payment Harkins received upon his retirement was for accumulated leave time that Harkins earned during his many years of government service. **Appendix 21**, p. 102 (Harkins).⁴⁴ Second, McGrath wrote that Wojton “received \$150,000 in severance just a few weeks after me.” But Wojton’s severance was \$32,000 (\$1,000 for every year Wojton worked at MES). **Appendix 100** (Wojton severance email); **Exhibit 73**. The other payments Wojton received upon her retirement after 32 years at MES were for an FY2020 Executive Incentive Bonus (which she had earned) and her unused annual, personal, and compensatory leave (to which she was entitled). **Exhibit 73**. Third, McGrath wrote that “a severance package of about \$79,000 was awarded to former acting CEO John O’Neill in 2017.” But O’Neill did not receive a severance; rather, he received a \$30,560 executive bonus for the previous fiscal year that he had earned and a \$39,957 payment for accumulated leave time. **Exhibit 72** (MES Board Minutes); *see also* **Appendix 21**, p. 143 (O’Neill). McGrath’s op-ed also failed to mention that, when he resigned from government service in August 2020, he received \$55,399.86 for unused leave time. *Infra* at p. 59. But unlike his calculations of Harkins’, Wojton’s, and O’Neill’s severance payments, McGrath did not include this amount in calculating his own severance payment. Moreover, McGrath failed to mention

⁴³ Total net assets is the value of MES’s assets after subtracting its liabilities.

⁴⁴ Unlike McGrath, former MES Director Harkins did not request a severance payment; when the MES Board raised the possibility of paying Harkins a severance upon his retirement, he told the Board that they should only approve such a payment if they saw fit to do so. **Appendix 21**, p. 102 (Harkins).

that, unlike Harkins, Wojton, and O’Neill, he was transferring to another government position with a six-figure salary when he received his severance payment.

- McGrath wrote that “[t]he decision to award my non-taxpayer funded severance was made nearly three months ago by the MES board of directors, in mid-May, when the fiscal circumstances were certainly not the same as today,” and “[i]f the same decision were being made today, with the knowledge we now have, it may have been handled differently[.]” In fact, when the Board approved McGrath’s severance payment in May 2020, the pandemic’s toll on Maryland’s economy generally, and MES specifically, was well known. News headlines around the time McGrath accepted his severance included: (1) “Md. releases ‘staggering’ forecast of economic damage; 103,633 filed jobless claims last week,” (2) “Maryland faces budget shortfall of \$925 million to \$1.1 billion in current fiscal year,” and (3) “Maryland Reports Largest Rise Yet In Coronavirus Cases 4 Days After Reopening.” During the same May 2020 meeting in which the MES Board approved McGrath’s severance, Board members (including McGrath himself) raised several red flags concerning MES’s finances, including: (1) “FY21 will be challenging,” (2) “[t]he list of accounts past 90 days is longer than usual,” (3) “[l]ate payments are expected,” (4) “[t]he team remains cautious going forward, as many clients will be seeing a decrease in revenues,” and (5) “[s]ome work [related to MDOT projects] may be postponed or eliminated.” **Exhibit 45**. Moreover, on May 8, 2020—a few weeks before McGrath received his severance payment—the Governor’s office requested that McGrath “review any outstanding or upcoming bills or invoices for our county or local government partners to see if MES can delay/suspend payments and/or extend terms so they have more time to pay.” **Exhibit 62** (Schatz email). The Governor’s office explained that “[w]ith everyone stretched for cash, our partners may[] need more time.” *Id.* McGrath responded that MES “couldn’t support that approach in any meaningful way,” emphasizing that “the public sector revenue shortfalls are going to hit our projects – the only question is how hard.” McGrath added that “[w]e have begun modeling financial shortfalls and remedies.” *Id.* Yet three weeks later, Harris assured the MES Board that “the agency has sufficient cash to make the proposed payment to Mr. McGrath.” **Exhibit 60**.
- McGrath wrote that, “before I arrived [at MES], there was no formal strategic plan for this massive, \$178.7 million enterprise.” But Harkins explained that MES had a strategic plan during his tenure as MES Director. **Appendix 21**, p. 104 (Harkins).

McGrath made other public statements to defend his severance payment. In an email to the *Baltimore Sun*, McGrath claimed that the severance payment was intended to offset “anticipated, future, bonus earnings at MES.” **Appendix 101** (*Baltimore Sun* article). Neither the MES Board nor Board members in interviews indicated that the Board considered McGrath’s loss of future bonuses in approving the severance.

In August 2020, McGrath posted on Facebook about his severance payment. In one post, he wrote, in part:

Even the most basic review of procedures would have shown that severance is a standard business practice and zero tax dollars were used. In most operations, senior executives are entitled to such benefits upon their departures, even more so when they grow a business \$16 million in the past year, as I did. In 2016, upon his departure, my predecessor received an exit package far larger than mine.

Exhibit 69 (McGrath Facebook posts). First, McGrath’s attempt to equate himself with other corporate executives ignores that he was not a corporate executive; he was a political appointee who headed an agency that is an instrumentality of the State. Second, McGrath’s reference to growing MES “\$16 million in the past year” appears to be an attempt to justify the severance as a performance bonus. But as discussed above, the MES Board did not consider performance factors; instead, their approval of the severance was based principally, if not exclusively, on McGrath’s representations about the Governor’s position concerning the payment. Third, McGrath’s statement that a “predecessor received an exit package far larger than mine” is misleading for the reasons discussed above. Finally, McGrath’s reference to “zero tax dollars” being used to pay his severance is misleading: 95% of MES’s revenues are from political subdivisions of the State.

In a subsequent Facebook post made in August 2020, McGrath wrote:

Nice to see the Sun report some actual facts today – finally. Although, from their headline, they still don’t seem to understand I wasn’t in a ‘state job,’ before. And with all due respect to Speaker Jones, I’ll gladly return my well-earned, non-taxpayer funded severance when every other executive who has ever received one does too.

Id.

In McGrath’s many public statements attempting to justify his severance payment and in his text messages to the Governor, he never claimed that the Governor approved the severance, let alone that the Governor was aware of the severance and did not object to it. Nor did McGrath deny that he represented to the MES Board that the Governor was aware of the severance and did not object.

On October 7, 2021, after the federal indictment and state criminal information were made public, McGrath issued a Facebook post stating that “politically motivated bullies originated this twisted mess” and complaining that “my loyalties and our system prevent me from speaking freely.” He still did not claim that the Governor approved his severance.

In November 2021, McGrath provided the *Washington Post* copies of two documents that he claimed related to his severance from MES. **Appendix 102** (*Washington Post* article); **Appendix 103** (screen shots of documents). The first document is a screen shot of text messages between McGrath and the Governor between August 13, 2020 (when the *Sun* published its first

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story about McGrath's severance) and August 17, 2020 (when McGrath stepped down as the Governor's Chief of Staff). **Appendix 103**; **Appendix 104** (Baltimore Sun article). In two text messages to McGrath, Governor Hogan stated:

Probably should figure out a strategy on this legislative witchhunt [sic]. They are going to try to tear us down on this thing. Probably get Ron, Pedone Ricci and Keiffer develop strategy. Dem party planning big social media campaign. Mike thinks will be a continuing press story. Keiffer thinks legislators going to try to make it bridge gate. It is not a legal concern but is a media coms political pr one particularly in a pandemic as we are taking away 3% raises furloughing and laying people off. Govs chief of staff. Businesses closing and 500k unemployed. I know you did nothing wrong. I know it is unfair. I will stand with you. But we need our team to have all facts so they can all help us circle the wagons and fight back.⁴⁵

Governor Hogan's spokesman, Michael Ricci, confirmed the authenticity of the text messages. **Appendix 102.** According to Ricci, the Governor's texts were "consistent with what the Governor has previously said, which was confirmed by yearlong federal and state investigations," and at the time the Governor sent the texts, he was "reserving judgment until all the facts came to light, and that fact-finding is what led to [McGrath's] resignation." *Id.*

The second document is a typewritten "memo" addressed to Governor Hogan, which is reproduced here:

⁴⁵ The Governor's reference to a legislative witch hunt appears to be to Senate President Ferguson's and House Speaker Jones' call for legislative hearings on August 14, 2020.

**Figure 4.
Memo (Appendix 103)**

MEMO

DATE: May 18, 2020

TO: Governor Hogan

RE: EMPLOYMENT AGREEMENT – ROY MCGRATH

Position: Chief of Staff, Maryland Office of the Governor

Start Date: TBD

Salary: \$233,647.23

Other Compensation: Severance package from MES

Terms: Through end of Administration (January 2023)
Cancellable upon mutual agreement
Telework as needed

Approved
 Disapproved
 Needs Further Discussion

McGrath claims that he drafted the memo himself and presented it to the Governor for approval, and that the Governor “nonchalantly approved [the memo] with his customary blue check mark.” **Appendix 102.**⁴⁶

Ricci stated to the *Post* that the memo was a “complete fabrication” that Governor Hogan had never seen until state prosecutors showed it to him. He pointed out that it “bears no resemblance to the memos or documents submitted to the Governor. There is no ‘from line. Political appointees do not have ‘mutually cancellable’ agreements.” He also stated that all documents related to personnel hiring are processed by the Governor’s Office of Financial Administration, not by the Governor.

⁴⁶ It appears that McGrath met with the Governor to accept the Chief of Staff position on May 18 or the morning of May 19, 2020. At 9:19 am on May 19, 2020—one day after the date of the memo McGrath provided the *Washington Post*—Clark notified the Governor’s Director of Financial Administration that McGrath would take over as Chief of Staff on June 1 and that “[McGrath] and the Governor have agreed to a salary of approximately \$233,000[.]” **Appendix 84.** The Governor’s office sent McGrath a formal offer letter the next day, explaining that McGrath’s start date was June 1, 2020 and that his starting annual salary was \$233,648. **Appendix 85.**

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During a November 5, 2021 press conference, Governor Hogan denied putting the check mark on the document and stated:

This is just a sad situation. This is the end of a year-long federal and state investigation that resulted in this individual being charged ... at the federal and state level. This was all part of that investigation. It's an on-going court case. I've been very clear about this numerous times from the beginning and not at all was aware of these things – and when we found out, he was terminated within a matter of days.⁴⁷

Doug Mayer, a political strategist and advisor to the Governor, stated to the *Sun* that he spoke to McGrath in the days between the *Sun*'s first report and McGrath's resignation. He stated that "I gave him multiple opportunities to confirm what the Governor knew and when, and he was never willing and never did confirm that the Governor confirmed any of his severance or payouts.... You'd ask him directly and he'd dance around it."

The Legislative Policy Committee's subpoena to McGrath required his production of both documents. Neither was produced, with McGrath asserting his Fifth Amendment rights through counsel. (*Supra* at p. 2).

The Joint Committee, by letter dated August 26, 2020 to the Governor's Chief Legal Counsel and Acting Chief of Staff, requested seven categories of documents, including "any text messages, emails, or written communication between Mr. McGrath and Governor Hogan relating to compensation and expense reimbursement for Mr. McGrath." **Appendix 5**. By letter of August 31, 2020, the Governor's Office of Legal Counsel produced responsive documents. **Appendix 105** (Pedone letter). The Office withheld production of 11 pages of documents as privileged, and the two undated texts were not produced. The "Memo" also was not produced but, as noted, the Governor's Office contends that it is a fabrication.

McGrath stated to the *Post* that his loyalty to Hogan and the Governor's message caused him to remain silent about the severance package. He further stated that he resigned as Chief of Staff because of the Governor's written promise to "stand with me." McGrath apparently is drafting a book about his experience in government entitled "Operation Enduring Friendship: A Maryland Politician's Legacy of Lies and Deception." According to the *Post*, in the book, McGrath describes three of Governor Hogan's news conferences after McGrath's departure in which "his story shifted each time he was asked about it.... Ultimately, he finally failed to keep his promise to me and, instead, he misled everyone. He hung me out to dry."

Counsel requested that McGrath produce the documents he provided the *Washington Post* and sought to interview McGrath about the matters he discussed with the *Post* reporters.

⁴⁷ McGrath has maintained that he resigned as the Governor's Chief of Staff. Ricci also referred to McGrath's departure as a resignation. **Appendix 102**. The Governor's November 5, 2021 statement indicates that McGrath's employment was terminated.

Appendix 106 (Coe letter to Marcus). As of the date of this report, McGrath had not responded to counsel's requests.

V. Legal Issues and Analysis

McGrath was MES Director from December 2016 through May 2020. During his tenure, MES paid him \$1,127,811.83 in total compensation. Separately, he charged MES \$169,306.96 for expenditures over the course of approximately three and a half years. This does not include expenses that Sherring or other employees incurred on McGrath's behalf. Sherring's total MES expenditures were \$93,461.53 during his three-plus years with the agency.

When he left MES, McGrath transferred the following leave hours to the Governor's office: 32 hours personal leave, 17 hours holiday leave, 16 hours compensatory leave, 800 hours annual leave, and 349.4 hours sick leave. *See Appendix 107* (Maintain Accrual and Time Off Adjustments/Overrides). When he resigned from the Governor's office in August 2020, McGrath was compensated for 425.08 hours of annual leave, 7 hours of compensatory leave, and 25 hours of holiday leave, totaling \$55,399.86. The remaining 400 hours of annual leave, 377.78 hours of sick leave, and 0.75 hours of personal leave were transferred to the leave bank.

At MES's expense, McGrath earned a Master's in Business Administration from the University of Maryland Global Campus, a certificate of completion from the Harvard Kennedy School Executive Education Program Senior Executive Fellows, participation in the Disney Institute: Approach to Leadership Excellence, and certificates from The Center for Association Leadership and the Institute for Organization Management.

McGrath's severance and his and Sherring's expenses raise significant legal issues.

A. Maryland Environmental Service's Legal Authority to Pay Severance

The Maryland Code provides that:

1. The [MES] Executive Director shall be appointed by the Governor, with the advice and consent of the Senate solely with regard to the qualifications for the duties of the office.
2. The Executive Director serves at the pleasure of the Board with the concurrence of the Governor and shall receive such compensation as may be determined by the Board.

Md. Code Ann., Nat. Res. § 3-103(b)(2)(ii). Maryland law, therefore, confers broad authority on the Board, which may be sufficient for it to award severance payments within reason and consistent with their fiduciary duties to MES.

The Board engaged in political considerations in determining to pay McGrath his requested severance. They were concerned that the severance was improper because McGrath was transferring to another state job. Because McGrath would be in a supervisory position over

MES as the Governor's Chief of Staff, the Board was also worried about offending him, or worse, that he would harm the agency if they declined to approve his severance. Ultimately, the Board sought assurance from McGrath that the Governor knew and approved of the severance, and McGrath provided that assurance. They trusted and relied on his response. They also inquired of their Treasurer if MES had sufficient funds to pay the severance and were assured that it did. Although it would have been more prudent for the Board to have obtained a representation from the Governor's office that the severance was approved, we cannot say that the Board exceeded its broad statutory authority in approving McGrath's severance.

In new policies promulgated by the Board at the direction of the Reform Act, the Board grants itself explicit authority to award a severance payment to the Director, provided that the amount of any severance payment shall be set forth in the Director's employment contract and severance may be paid only if the Director's contract is terminated by the Board for convenience. **Appendix 108** (Severance Pay Policy). The Reform Act expressly prohibits the Board from awarding a severance package to an MES executive if the executive accepts another position in the State government within one year after terminating employment with MES. Any former MES executive who receives a severance package in violation of the Act's prohibition must reimburse MES for the value of the severance package within one year after terminating employment with MES.

B. Potential Fraud Claim Against McGrath

To prove an action for civil fraud based on affirmative misrepresentation, the plaintiff must establish that:

(1) the defendant made a false representation to the plaintiff, (2) the falsity of the representation was either known to the defendant or the representation was made with reckless indifference to its truth, (3) the misrepresentation was made for the purpose of defrauding the plaintiff, (4) the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) the plaintiff suffered compensable injury as a result of the misrepresentation.

Hoffman v. Stamper, 385 Md. 1, 28 (2005) (collecting cases). Each element of fraud must be proven by clear and convincing evidence. *VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 704 (1998).

There is substantial evidence that McGrath made misrepresentations of fact in order to obtain his \$233,647.23 severance from MES. On at least four occasions, he represented to Snee and Wojton that the Governor knew and approved of the severance, statements that the Governor has emphatically denied. In addition, McGrath stated to Wojton and one Board member that he would be taking a pay cut to become Chief of Staff, another statement he knew was false.⁴⁸

⁴⁸ The two documents McGrath recently produced to the *Washington Post* do not undermine the potential fraud claim. The Governor's August 2020 text messages have nothing to do with

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McGrath knew the falsity of his representations to Snee and Wojton, or at least made them with reckless indifference to their truth. Reckless indifference exists where a defendant knows that he lacks knowledge as to a statement's truth or falsity, but makes the representation without regard to that lack of knowledge. *See Ellerin v. Fairfax Savs. F.S.B.*, 337 Md. 216, 232 (1995). The Governor has refuted McGrath's claim that he knew about and approved McGrath's request for severance. In his August 25, 2020 statement calling for an independent audit of MES by the Department of Budget and Management, the Governor stated: "To be clear, I did not approve, recommend, or have any involvement whatsoever in any of these decisions made by the board of directors of MES with respect to the former director Roy McGrath or any other individual." **Exhibit 50**. When asked whether this statement was correct, McGrath declined to answer and instead chose to invoke his Fifth Amendment rights. **Appendix 28** (McGrath Tr., 17:7–18:9).

McGrath's assurances that the Governor knew about and approved his severance were made for the purpose of convincing MES to pay the severance. According to the minutes from the HR Committee's May 27, 2020 meeting, "Mr. Snee stated that he had told Mr. McGrath that he would not recommend that a severance payment be made unless the Governor was aware of the proposed severance and did not object." The May 27, 2020 text exchange between McGrath and Wojton underscores McGrath's purpose. Wojton alerted McGrath to the Human Resources Committee's concerns about the severance and need for assurance that the Governor approved. McGrath immediately provided the assurance.

The HR Committee and the Board relied on McGrath's representation that the Governor approved the severance. The HR Committee ended its meeting on May 27 to confirm that the Governor approved McGrath's requested severance. **Exhibit 58**. The next day, the HR Committee voted to pay the severance only after "Mr. Snee stated that he had been assured by Mr. McGrath that the Governor was aware of the proposed severance payment and did not object." *Id.*, May 28, 2020. Snee confirmed that the HR Committee would not have recommended the severance without assurance that the Governor's office knew and approved it. **Appendix 21**, p. 169 (Snee).

The Board had the right to rely on McGrath's representation. Under Maryland law, a director is "entitled to rely on" the statements of an officer or employee of the corporation as long as the director reasonably believes the officer to be reliable and competent in the matters presented. Md. Code, Corps. & Ass'ns § 2–405.1(d)(1). A director is also entitled to rely on a committee of the board on which the director does not serve, provided the director reasonably believes the committee to merit confidence. *Id.* Here, the directors on the HR Committee (Snee, Addison, and Streett) relied on the statement of an officer (McGrath) that the Governor knew about and approved the severance. Based on McGrath's statement, the HR Committee recommended that the MES Board approve the severance. **Exhibit 58**. The directors on the

representations McGrath made to the MES Board about his severance. The Governor challenges the authenticity of the March 18, 2020 memo. In any event, the memo does not reflect the Governor's approval of a "severance equal to one year's pay." *Supra* at pp. 54–56.

MES Board relied on the HR Committee's recommendation in voting to approve McGrath's severance. **Exhibit 60.**

McGrath asserted his rights under the Fifth Amendment in response to questions about his representations to the Board. Because the facts gathered at this point are sufficient to allege the elements of fraud on his part, we recommend that MES consider bringing such an action against him.

C. Potential Breach of Fiduciary Duty Claim Against McGrath

To make a claim for breach of fiduciary duty, a party must show the existence of a fiduciary relationship, a breach of the duty owed to the beneficiary, and harm to the beneficiary. *Plank v. Cherneski*, 469 Md. 548, 559 (2020). Once a fiduciary relationship is established, the fiduciary owing the duty bears the burden to show that his conduct was proper. *Desser v. Woods*, 266 Md. 696, 708–09 (1972).

MES could claim that McGrath owed both a statutory and common law duty to MES as a director and member of the Board. Common law imposes a fiduciary duty on high-level management employees to their corporation. *BEP, Inc. v. Atkinson*, 174 F. Supp. 2d 400, 405 (D. Md. 2001). Additionally, the Maryland Code requires that a corporate director act (1) in good faith; (2) in a manner the director reasonably believes to be in the best interests of the corporation; and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances. Md. Code, Corps. & Ass'ns § 2-405.1(c).⁴⁹

MES could allege that McGrath used his status as Director and as future Chief of Staff, coupled with misleading statements suggesting that the Governor approved McGrath's requested severance, to convince MES to approve a severance that was not in the best interest of the organization but, in fact, served only his interest. MES could make a similar breach of fiduciary duty claim with respect to certain expenses that McGrath claimed. MES could argue, for instance, that travel and attendance at leadership conferences were unrelated to MES business and only had the purpose of promoting McGrath's success as an individual. We recommend that the MES Board consider bringing a breach of fiduciary claim against McGrath.

D. Other Causes of Action

MES should consider additional claims against McGrath such as negligent misrepresentation and constructive fraud. A claim for negligent representation requires the following elements:

- (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement;
- (2) the defendant intends that his statement will be acted upon by the

⁴⁹ The Reform Act expressly applies the statutory duty of good faith on MES Board member. *See* NR § 3-103.4(a) ("Board members shall observe the same standard of care required of corporate directors under § 2-405.1 of the Corporations and Associations Article.").

plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

White v. Kennedy Krieger Inst., Inc., 221 Md. App. 601, 641 (quoting *Lloyd v. General Motors Corp.*, 397 Md. 108, 135–36 (2007) (emphasis omitted)), cert. denied, 443 Md. 237 (2015). Negligent misrepresentation must be proven by a preponderance of the evidence. *Brock Bridge Ltd. Partnership, Inc. v. Development Facilitators, Inc.*, 114 Md. App. 144, 160 (1997).

“Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud.” *Ellerin v.*, 337 Md. at 236 n.11(citations omitted). Constructive fraud must be proven by clear and convincing evidence. *See Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 96 (2002).

McGrath's actions in obtaining his severance could support claims by MES for negligent misrepresentation and constructive fraud. Wojton's May 27, 2020 text message to McGrath (**Exhibit 59**) made it explicit that the HR Committee would be relying on McGrath's representations about the Governor's position concerning the severance. McGrath's response had the clear purpose of inducing the MES Board's reliance and was effective in doing so. McGrath's duties to MES mandated that he not use his position to deceive it or take advantage of it in any way. There are ample facts to allege that he violated these duties, and we recommend that the MES Board consider bringing actions for negligent misrepresentation and constructive fraud against him.

E. Potential Claims Against Sherring Relating to the Severance

Stating a claim against Sherring relating to McGrath's severance would require additional facts not gathered through this investigation. Civil conspiracy is defined as “a combination of two or more persons by an agreement or understanding to accomplish an unlawful act or to use unlawful means to accomplish an act not in itself illegal, with the further requirement that the act or the means employed must result in damages to the plaintiff.” *Hoffman v. Stamper*, 385 Md. 1, 24 (2005) (citations omitted). Proving the tort requires proof of “an overt act, in furtherance of the agreement, that caused the plaintiff to suffer actual injury.” *Id.* Civil conspiracy “may be shown by a preponderance of the evidence and may be proved by circumstantial evidence.” *Daugherty v. Kessler*, 264 Md. 281, 292 (1972).

Here, there is no evidence of any agreement by Sherring to assist McGrath with obtaining the severance. Moreover, it does not appear that Sherring became involved until he and McGrath revised the May 2020 MES Board meeting minutes (*i.e.*, after McGrath received the severance and MES suffered injury). We also have not uncovered evidence that Sherring knew that McGrath had misrepresented to the Board that the Governor approved of the severance.

While civil conspiracy involves an agreement to participate in tortious conduct, aiding and abetting does not. *See Duke v. Feldman*, 245 Md. 454, 458 (1967). The elements of an action for tortious aiding and abetting are: (1) independent tortious conduct by the direct perpetrator of the tort; (2) substantial assistance, aid, or encouragement to the principal tortfeasor; and (3) actual knowledge of the aider and abettor of the wrongful conduct and his or her role in furthering such conduct. *See Manikhi v. Mass Transit Admin.*, 360 Md. 333, 360 (2000); *Alleco Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 199 (1995); *Saadeh v. Saadeh, Inc.*, 150 Md. App. 305, 328 (2003); *see also* Restatement (Third) of Torts: Liab. for Econ. Harm § 28 (2020). Assuming McGrath’s conduct was tortious, a claim against Sherring for aiding and abetting would require alleging that Sherring provided substantial assistance, aid, or encouragement to McGrath, knowing that McGrath’s conduct was wrongful.

Sherring’s attempt to scrub references to the severance from the May 2020 Board minutes could be sufficient to allege that he aided and assisted McGrath, even though MES had already paid the severance. *See Great Am. Ins. Co. v. Nextday Network Hardware Corp.*, 73 F. Supp. 3d 636, 643 (D. Md. 2014) (rejecting the argument that one cannot aid and abet a completed offense and denying dismissal of aiding and abetting claims against purchasers of stolen equipment because they provided substantial assistance, aid, or encouragement by “providing an outlet through which [the tortfeasor] could dispose of the stolen goods”).

The third element of a claim for aiding and abetting—actual knowledge of the wrongful conduct and his role in furthering such conduct—would require alleging that Sherring knew McGrath’s conduct was wrongful. By the time Sherring reviewed and edited the May 2020 meeting minutes reflecting the Board’s approval of the severance, Sherring knew that McGrath had represented to the Board that the Governor approved his severance and that the Board relied on that representation. But it is unclear whether Sherring had any reason to doubt McGrath’s representations to the Board. Sherring and McGrath communicated “offline” about their edits to the minutes. *See Exhibit 47*. Those communications (which were not available to counsel) may reveal additional evidence about what Sherring knew concerning McGrath’s representations to the MES Board and when Sherring acquired that knowledge.

F. Potential Claims Against McGrath and Sherring for Their Expenses

There may be facts to support unjust enrichment claims or constructive fraud claims against Sherring and McGrath to recover the expenses they incurred in violation of MES policies. The elements of a constructive fraud claim are set forth above. *See supra* at pp. 62–63. The following elements must be established to sustain a claim for unjust enrichment: “[a] benefit conferred upon the defendant by the plaintiff; [a]n appreciation or knowledge by the defendant of the benefit; and [t]he acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.” *Robinson v. Fountainhead Title Grp. Corp.*, 447 F. Supp. 2d 478, 493 (D. Md. 2006) (quoting *County Comm’rs of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 95 n. 7 (2000)).

McGrath and Sherring often spent MES's money without any regard for whether MES benefitted from their expenses. In submitting their expenses, they implied that the expenses were for "official business." See e.g., **Exhibit 33** (expense report approval note from McGrath to Sherring for Burger King receipt stating "going forward, please note more descriptively in the memo field the purpose of the expense (eg – not only 'lunch' but 'business lunch – MML Fall Conference.)"). But several expenses counsel reviewed had no reasonable connection to MES business. For example, McGrath and Sherring sought reimbursement for their trips to the ICSC conference in Las Vegas (McGrath attended ICSC three times during his tenure at MES and Sherring attended the conference twice). See *supra* at pp. 19–21. ICSC is tailored to individuals, companies, and organizations with connections to the shopping center and real estate industries, neither of which has any relationship to MES's mission. To underscore the types of individuals who attend ICSC, McGrath attended the conference during his time at NACDS (*i.e.*, an organization that represents the interests of chain drug stores, which often are located in large shopping centers). Putting aside the tenuous connection between ICSC and MES's environmental mission, MES reimbursed McGrath and Sherring for their overnight stays at lavish Las Vegas hotels and their meals at expensive Las Vegas restaurants; these expenses appear to have advanced only McGrath's and Sherring's personal interests. See **Exhibits MH-11**, pp. 13, 25, 26; **MH-16**, pp. 3, 84, 89; **MH-19**, pp. 1, 30, 31; **Appendix 73**, p. 10.

Moreover, on at least a few occasions where McGrath and Sherring charged MES for purported "business meals" that they ate together (typically at high-priced restaurants, such as Limoncello in St. Michaels and the Hay-Adams Hotel in Washington, DC), it appears that they "double billed" MES for McGrath's meal (*see supra* at pp. 25–26); a closer inspection of McGrath's and Sherring's expense reimbursement reports and communications may reveal why McGrath and Sherring engaged in this practice and whether this practice was more widespread than the handful of examples counsel uncovered.

We recommend that the MES Board consider making claims against McGrath and Sherring to recover unauthorized expenses.

G. Statute of Limitations, Collateral Estoppel, and Recovery

MES must file the above-described claims against McGrath and Sherring within the applicable statute of limitations. According to Maryland law, a civil action must be filed within three years, measured "from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Md. Code, Cts. & Jud. Proc. ("CJP") § 5–101. The three-year statute of limitations applies to all claims contemplated by this report. See *Fairfax Sav., F.S.B. v. Weinberg & Green*, 112 Md. App. 587, 618, 685 A.2d 1189 (1996) (discussing a claim for fraud); *Ladzinski v. MEBA Pension Tr.*, 951 F. Supp. 570, 574 (D. Md.), *aff'd*, 120 F.3d 261 (4th Cir. 1997) (discussing a claim for breach of fiduciary duty); *G & M Oil Co. v. Glenfed Fin. Corp.*, 782 F. Supp. 1085, 1088 (D. Md.), *aff'd sub nom. G & M Oil Co. v. Glenfed Fin. Corp.*, 947 F.2d 940 (4th Cir. 1991) (discussing a claim for negligent misrepresentation); *Fairfax Sav.*, 112 Md. App. at 618 (discussing a claim for constructive fraud); *Bresler v. Wilmington Tr. Co.*, 348 F. Supp. 3d 473, 483 (D. Md. 2018), *aff'd*, 761 F. App'x 160 (4th Cir. 2019) (discussing a claim for civil conspiracy); *Id.* (discussing a

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claim for aiding and abetting); *Ver Brycke v. Ver Brycke*, 379 Md. 669, 698, 843 A.2d 758 (2004) (discussing a claim for unjust enrichment that seeks the remedy of restitution of money).

The date on which an action accrues is qualified by the “discovery rule,” providing that a cause of action accrues when the claimant knew or reasonably should have known of the wrong. *See Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677 (1981). Conversely, CJP § 5–203 provides that, “[i]f the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.”

With regard to claims for the recovery of the \$239,000 payment to McGrath that was approved by the Board on May 28, 2020, we recommend filing all causes of action within three years of the Board’s approval of McGrath’s severance, or by May 28, 2023. With regard to claims for the recovery of expenses incurred by McGrath and/or Sherring, the three-year statute of limitations arguably began to run at the time of reimbursement, meaning MES should file such claims as soon as possible.

MES could file and stay a civil action against McGrath, pending adjudication of the information and indictment, but should consider whether delay will prejudice MES’s likelihood of recovery. As a practical matter, McGrath’s ability to satisfy a judgment may diminish as the criminal cases proceed and legal fees associated with his defense accrue. Additionally, the indictment includes a forfeiture allegation, indicating that the “United States will seek forfeiture as part of any sentence in accordance with 18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461(c), in the event of a defendant’s conviction of any of the offenses charged[.]”

While the criminal proceedings may reveal additional facts and evidence, legal conclusions established in the criminal proceedings would neither benefit nor harm MES’s civil claims. Collateral estoppel does not apply in a civil action based on the result of an acquittal on criminal charges because of the government’s heightened burden in a criminal proceeding. *See In re Neil C.*, 308 Md. 591, 596 (1987) (collecting cases). Therefore, acquittal of McGrath on any charge in the indictment or information would not preclude MES from pursuing the same causes of action, or other causes of action, based on the same facts. On the other hand, under Maryland law, conviction of McGrath would generally be inadmissible as substantive proof in a subsequent civil suit arising from the same incident. *Aetna Cas. & Sur. Co. v. Kuhl*, 296 Md. 446, 450, 463 A.2d 822, 825 (“It is a well-settled rule in Maryland that a criminal conviction is inadmissible to establish the truth of the facts upon which it is rendered in a civil action for damages arising from the offense for which the person is convicted.”).

VI. Conclusions and Recommendations

This report documents substantial financial abuses by McGrath and Sherring at MES. The General Assembly has already taken significant steps to ensure that future leadership of MES will not be able to commit the same infractions. Structural reforms have been implemented. A future MES Director will not be able to request a severance package from the MES Board if that Director is heading to another position in the state government. *See* NR § 3-103.4(b)(1). Future Directors will not be able to unilaterally hire close associates without proper vetting, because going forward, “[f]or each open position in [MES] that is not assigned to a project, the Service [must now] reasonably advertise, conduct a search, and conduct a competitive interview process.” NR § 3-103.1(b)(4). Proper financial controls and Board oversight of Directors’ expenses are now mandated and future Directors will not be able to use MES as their personal bank account to rack up expenses for leadership courses and degrees.

In addition, as directed by the Reform Act, the MES Board has recently adopted policies stating that:

- The amount of any severance payment to the Director shall be set forth in the Director’s employment contract, severance may be paid only if the Director’s contract is terminated by the Board for convenience, and severance must be returned if the Director accepts another position in the State government within one year of the Director’s end of employment with MES. **Appendix 108 (Severance Pay Policy)**.
- Expenses incurred “are to be conducted at a minimum cost for achieving the success of [MES’s] mission,” “[e]mployees shall make lodging reservations at reasonably priced hotels,” and no reimbursement will be provided for toiletries, personal IT equipment, or “expenses that may be perceived as being unreasonably lavish or excessive.” **Appendix 109 (Expense Reimbursement Policy)**.
- All expense reimbursements must be submitted, with required documentation, electronically within 30 calendar days of being incurred and “[a]ll reimbursement for expenses must be reviewed, verified, and approved ... by the employee’s supervisor, before any reimbursement is issued.” *Id.*
- “Falsification of any documents related to reimbursement of expenses will result in disciplinary action.” *Id.*
- The Chief of Human Resources shall oversee tuition assistance, assistance is limited to the Internal Revenue Services’ yearly maximum per employee, and “[c]ourses eligible for tuition assistance must be relevant to [MES’s] needs.” **Appendix 110 (Tuition Reimbursement Policy)**.
- “An employee who is separated from employment with [MES], for any reason, within (1) one year of completion of a college credit course for which [MES] has provided tuition assistance, shall be required to reimburse [MES] for the entire cost of the tuition paid for a college credit course in which the employee was enrolled during the previous twelve (12) months.” *Id.*

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- MES may not transfer ownership of one of its vehicles to an employee or another agency of the State unless MES is paid the fair market value of the vehicle. **Appendix 111** (Vehicle Fleet Policy).
- Whistleblowers who suffer adverse personnel actions for reporting “an abuse of authority, gross mismanagement or gross waste of money” shall receive necessary protections and the results of investigations into whistleblower complaints must be immediately reported to the Board. **Appendix 112** (Whistleblower Policy).

The McGrath era abuses, however, should still be individually addressed. We recommend that MES, in consultation with its counsel, consider taking the legal actions described in this report.