

CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO
(410) 576-7844

Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the House Judiciary Committee
In Support of House Bill 832
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House Bill 832 will provide a uniform definition of damages and losses for the purpose of enforcing civil rights and consumer protection statutes. Importantly, the Bill will also ensure that nominal damages are included in the definition of damages and losses. For these reasons the Office of the Attorney General urges a favorable report on House Bill 832.

Nominal damages are an award of a small sum where there has been a violation of a person's rights, but injuries that would justify the award of compensatory damages are not present. The availability of nominal damages has been critical throughout the history of civil rights enforcement. In the absence of the availability of this form of relief, it would be impossible for some clear rights violations to be addressed. Under current Maryland law, nominal damages are unavailable under the Consumer Protection Act. *Frazier v. Castle Ford*, 27 A. 3d 583, 200 Md.App 285 (2011).

Nominal damages serve several critical functions. First, nominal damages provide standing to address a constitutional or statutory law violation. For example in *Uzuegbunam v. Preszewski*, 141 S.Ct. 792 (2021) students challenged a public college policy that resulted in limiting access of religious organizations to distribute literature on campus. The school changed the policy after challenged, but the student sought clear judicial vindication. The Court held "it is undisputed that Uzuegbunam experienced a completed violation of his constitutional rights when respondents enforced their speech policies against him. Because 'every violation [of a right]

imports damage,’ nominal damages can redress Uzuegbunam’s injury even if he cannot or chooses not to quantify that harm in economic terms.” *Id.* At 802.

Second, by defining nominal damages as damages for the purpose of the statute, punitive damages may be available in appropriate circumstances despite that economic damages might not be provable. *Frazier* at 589 citing *Caldor, Inc. v. Bowden*, 330 Md. 632, 661, 625 A.2d 959 (1993).

Finally, the award on nominal damages confers on the plaintiff the status of prevailing party for the purposes of the award of reasonable attorneys fees and costs. The availability of fees and costs are critical to incentivize the private enforcement of the civil rights and consumer laws. As the fourth Circuit recently held that “in recognition of the costly burdens of litigation and to ensure ‘effective access to the judicial process’ for those with civil rights grievances” the award of attorney’s fees in necessary. *Stinnie v. Holcomb*, 77 F.4th 200 (4th Cir. (2023), quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

For the foregoing reasons, the Office of the Attorney General urges a favorable report on House Bill 832.