TESTIMONY BEFORE THE MARYLAND GENERAL ASSEMBLY ON HB832 AND SB839

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

HB832 and SB839 (collectively, "the bills") would simply codify the longstanding common law rule, as recognized by Justice Thomas writing for the United States Supreme Court in Uzuegbunam v. Preczewski, 141 U.S. 792 (2021), that damage claims lie when plaintiffs have incurred only nominal damages. In so doing, the bills would prevent courts from abandoning our country's tradition simply by changing the common law.

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

Maryland Already Permits Nominal Damages. The Maryland courts have also approved awards of nominal damages. Thus, in Shell Oil Co. v. Parker, 26 Md. 631, 636, 291 A2d. 64, 67 (1972), a case founded on the common law, the Court of Appeals of Maryland affirmed an award of nominal damages on the ground that the defendant had violated the plaintiffs "technical rights." See also Kleban v. Eghrari-Sabet, 174 Md.App. 60, 95, 920 A.2d 606, 627 (2007) (citing Wlodarek v. Thrift, 178 Md. 453, 461, 13 A.2d 774 (1940) for the proposition that "there is a right to at least nominal damages where damages cannot be proven").

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

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

The impact of this legislation would be to provide certainty that protected Maryland residents would have a statutory right to seek reasonable nominal damages in litigation and would not have to fear that the courts will change the common law. In addition, the legislation would prevent courts from turning their backs on the ancient rule that blocks those suffering only modest injuries from obtaining a judicial remedy when appropriate. In codifying existing common law, the legislation would join many other statutes that codify other common laws, including, for example, much of the Uniform Commercial Code.

For these reasons, I respectfully urge the Maryland General Assembly to VOTE FAVORABLE on HB832 AND SB839.

Respectfully submitted,

Jeff Sovern