

Testimony on HB832 and SB839 2-24.pdf

Uploaded by: Jeff Sovern

Position: FAV

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

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Testimony of Jonathan M. Smith, Chief of the Civil Rights Division
Before the House Judiciary Committee
In Support of House Bill 832
February 21, 2024

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]

Page 2

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 is 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.

HB 832 FAV Del Stewart.pdf

Uploaded by: Vaughn Stewart

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB 832
Testimony by Delegate Vaughn Stewart
February 21, 2024 • Judiciary Committee

What the Bill Does

HB832 codifies the definition of “damages” in Maryland law. Crucially, that definition includes nominal damages. Nominal damages are awarded when the defendant has violated a plaintiff’s rights but the plaintiff has not suffered any quantifiable harm.

Why the Bill is Important

About a decade ago, Taylor Swift countersued a radio personality who groped her for assault and battery. However, she requested only one dollar in damages, which the court awarded her. She explained that she did not sue for more substantial damages because her goal was to hold the defendant accountable and to strengthen social norms against sexual assault. This bill aims to protect plaintiffs like Ms. Swift and others whose aim is vindication and dignity, and for whom the damages are unimportant or unquantifiable.

Nominal damages are a long-established judicial remedy for invasions of personal legal rights. Under English common law, nominal damages were often awarded to plaintiffs who proved a legal violation, but could not prove they were entitled to compensatory damages. *See, e.g., Robinson v. Byron* (1788), reported in 30 Eng. Rep. 3, 3 (1903) (awarding nominal damages where the plaintiff’s riparian rights were violated and where the plaintiff elected not to seek compensatory damages); *Marzetti v. Williams* (1830), reported in 109 Eng. Rep. 842, 846 (1910) (concluding “that wherever there is a breach of contract or any injury to the right arising out of that contract, nominal damages are recoverable”).

American courts have largely embraced the use of nominal damages. In a 19th century case, Justice Story wrote that “wherever there is a wrong, there is a remedy to redress it and, if no other damage is established, the party injured is entitled to a verdict for nominal damages.” *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 507 (C.C.D. Me. 1838) (No. 17-322).

The Supreme Court’s recent decision in *Uzuegbunam v. Preczewski* endorsed the use of nominal damages. The Court held in an 8-1 opinion written by Justice Thomas that an award of nominal damages can redress a past injury and therefore defeat mootness. Justice Thomas wrote: “By permitting plaintiffs to pursue nominal damages whenever they suffered a personal legal injury, the common law avoided the oddity of privileging small-dollar economic rights over

important, but not easily quantifiable, nonpecuniary rights.” In that case, nominal damages would provide relief for the dignitary harm resulting from restrictions on students’ ability to distribute religious literature at a public college.

However, Maryland courts have never been asked to weigh in on the validity of nominal damages as a basis of a lawsuit under state law. Given a rash of federal cases that have closed the courthouse doors to plaintiffs in a variety of ways, there is a legitimate risk that this remedy could be stripped from Marylanders. For example, in *TransUnion v. Ramirez*, the Court went the other way, reversing a class action award after finding that a legal violation without “concrete harm” could not survive standing requirements.

This bill would make it more difficult for future courts to limit the rights of Marylanders to have their day in court.

Why the Committee Should Vote Favorably

When our neighbors, constituents, and favorite pop stars bring civil lawsuits, they often express sentiments like “I just wanted the defendants to admit they were wrong” or “I wanted my rights respected by a court of law.” That’s because civil litigation has never solely been about material redress for quantifiable loss. Litigation is often a quest for less tangible forms of relief—respect, dignity, or vindication.

A nominal, in-name-only award of one dollar signals that the plaintiff is entitled to dignity. To phrase it differently, nominal damages do provide relief from a genuine harm: the denial of respect. By codifying the availability of nominal damages, this bill protects Marylanders from judicial activism designed to rewrite our law by blocking plaintiffs from having their rights vindicated.

Violations of Marylanders constitutional, civil, and consumer rights leave a wound that cannot always be calculated. Violators of the rights of Marylanders should not avoid judicial accountability merely because the harm they caused cannot be quantified into a compensatory award.

I urge a favorable report.

Testimony on HB 832.pdf

Uploaded by: William Steinwedel

Position: FAV



**MARYLAND
LEGAL AID**

Advancing
**Human Rights and
Justice for All**

**House Bill 832
In the Judiciary Committee – General Provisions – Damages or
Losses- Definition
Hearing on February 21, 2024
Position: FAVORABLE**

Maryland Legal Aid (MLA) submits its written and oral testimony on HB 832 in response to a request from Delegate Stewart.

Maryland Legal Aid (MLA) is the largest non-profit law firm in the State of Maryland and represents low-income individuals in consumer cases, individual rights cases, and expungement cases. HB 832 amends the definition of damages in civil rights and consumer cases to allow for reasonable nominal damages in cases where a violation of the law was established. Because MLA believes that this bill would provide for just compensation for the violation of consumer and civil rights statutes and would serve as a deterrent to those who violate consumer protection and civil rights statutes, MLA testifies in strong support of HB 832.

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

For example, when MLA was helping homeowners in obtaining assistance in curing mortgage arrears from the Maryland Homeowners Assistance Fund (HAF), one servicer was particularly slow in processing claims, which sometimes resulted in state assistance checks being sent back by the creditor and rejection of state assistance because the amount of mortgage default had changed in the time period between the award and the servicer applying the award to the mortgage default. MLA filed numerous administrative complaints with both the Consumer Financial Protection Bureau (CFPB) and the Maryland Office of Financial Regulation (OFR), against the servicer and finally the servicer began to process the claims correctly. MLA could not bring an affirmative claim in the District or Circuit Court against this creditor for violating any Maryland consumer protection laws because HAF was a temporary source of funds designed to protect homeownership. Through its efforts in assisting and supporting our clients through the HAF program, MLA prevented many of these homes from going to a foreclosure sale, yet the lack of a statutory violation prevented a suit for damage. If the change proposed by HB 832 had existed at the time, MLA would have been able to sue and obtain nominal damages for the clients affected by the servicer's negligent behavior.

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

to negotiate a financial settlement, but because the servicer had offered the loan modification, MLA's ability to litigate in this matter and negotiate a better settlement when there was a clear mistake was limited. Had the change proposed in HB 832 existed at the time, because the law would have created some responsibility even when actual damages had been mitigated, MLA would have had more ability to litigate and a stronger position to negotiate a better settlement when the mortgage servicer admitted that they made an error.

Because this provides an additional remedy for MLA to hold bad actors responsible in the state courts for both consumer and civil rights violations, MLA testifies in strong support of HB 832. If you need additional information in regards to this bill, please contact William Steinwedel, Supervising Attorney, Foreclosure Legal Assistance Project, Maryland Legal Aid Bureau, at wsteinwedel@mdlaborg and (410) 951-7643.

info letter

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To: Members of the Senate Judicial Proceedings Committee
From: Maryland State Bar Association (MSBA)
Subject: HB 832 – General Provisions – Damages or Losses - Definition
Date: February 28, 2024
Position: **Informational Letter**

The Maryland State Bar Association (MSBA) files this informational letter regarding **HB 832– General Provisions – Damages or Losses – Definition**. HB 832 defines "damages" or "losses" in statutory causes of action to protect civil rights or consumer rights and provides that "damages" or "losses" includes reasonable nominal damages.

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

As drafted, HB 832 may cause confusion about what types of claims would be entitled to nominal damages. MSBA suggests deleting Paragraph (1) of §1-107.1 (Page 1, Lines 16-18), given the bill’s goal in codifying nominal damages from existing case law. This would result in the clear inclusion of “reasonable nominal damages” in “damages” or “losses.”

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

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