

HB818 PJC testimony favorable.pdf

Uploaded by: Debra Gardner

Position: FAV



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HB 818
Award of Attorney's Fees and Expenses – Violation of Maryland Constitutional Right
House Judiciary Committee, February 19, 2025
FAVORABLE

The Public Justice Center and many other public interest legal advocacy organizations, some of which have joined this testimony (see p. 3), have long supported this legislation. HB 818 will accomplish one simple objective:

A Maryland court may award reasonable attorney's fees and costs to a person who wins a claim under the Maryland Constitution or Maryland Declaration of Rights.

Under current law, plaintiffs who have valid Constitutional claims usually bring them in federal court, because federal law provides for reasonable attorney's fees under 42 U.S.C. § 1988. Without the possibility of an attorney's fee award, it is difficult to find an attorney to bring meritorious cases, especially when the damage amount is low or none (as with injunctions to restore rights).

By creating a similar attorney's fee provision in Maryland law, **Maryland constitutional claims will be decided in Maryland courts by Maryland judges under Maryland standards** instead of in federal courts under federal law. **The option to rely on Maryland's court to enforce our Constitution is more important now than ever before.** Among other reasons, Marylanders from the Eastern Shore or Western Maryland must find an attorney who practices in federal court, and must assert their claims in Baltimore or Greenbelt, rather than in their home counties. For those concerned about federal courts telling state and local governments what to do, this bill allows litigation about state and local government to be addressed in local state courts.

Will awarding attorney's fees mean more cases will be filed? Will this cost the State or local governments more? No.

- For the most part, these cases are already being brought, and when plaintiffs prevail, the state and local governments are already paying attorney's fees – because plaintiffs bring them in federal court. **This bill will not create more cases, but it will shift cases from federal to state courts.** The same state and local government resources that go into defending and paying losing claims in federal court will be used to defend and pay losing claims in Maryland courts. Maryland courts however, can be faster and more efficient than federal courts, so there can be savings to all parties in bringing these cases home.
- **Fee-shifting increases compliance with the law while generating the lowest level of litigation, because government will face increased incentives to comply with the law, to avoid litigation in the first place, and to settle any meritorious claims that do arise.** Because plaintiffs only receive fees if they prevail,

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there still is no incentive to bring non-meritorious claims. Private attorneys who practice in this field have testified in supporting this bill in the past that they simply cannot afford to pursue civil rights and constitutional litigation unless there is a strong chance of success, even with a fee-shifting provision. And prevailing defendants may be awarded attorney's fees if the case is frivolous. This standard, awarding fees to defendants only in frivolous cases, is right in line with hundreds of state and federal remedial statutes that award attorney's fees. This approach is tested and it works. All of these laws recognize that the purposes of the fee-shifting provision are to enable meritorious cases in the public interest that otherwise could not be brought, to encourage defendants' compliance with the law, and to discourage scorched-earth litigation. Suggestions to amend the bill to provide for attorney's fees to defendants whenever they prevail are misguided. Such a provision would make it far riskier for any plaintiff to seek enforcement of constitutional rights even than it is currently, chilling enforcement of important constitutional protections, exactly the opposite of what this tried and true fee-shifting mechanism intends to accomplish.

- **The assurance of a reasonable fee if successful will also attract private lawyers who could not otherwise take on poor clients or unpopular causes.** The inclusion of the private bar will lead to greater access to the courts for those who live in rural areas distant from federal courts. Attorneys outside of the major metropolitan areas, where most public interest law organizations are located, are more willing to take on local clients if they can litigate on home turf. Plaintiffs outside of urban areas will have more options for counsel and so will be more able to protect their rights.
- When, as sometimes regrettably happens, the government is the wrong-doer, **private enforcement is the only possibility for vindication of constitutional rights.** When individuals or large classes of persons are denied equal protection or due process of law, there is likely to be no one who can step up to enforce the Maryland Constitution if a private individual cannot afford to pay a lawyer's fees or cannot find a private lawyer who is willing to take on a major, complex case pro bono. This bill is critical to our system of checks and balances.

What are some examples of cases that could be brought under the Maryland Constitution and Declaration of Rights, in which prevailing plaintiffs could be awarded attorney's fees?

- ✓ A farmer seeking judicial review of a zoning decision outlawing mineral extraction on land zoned for agricultural use, as a regulatory taking in violation of Article 24 (due process clause) of the Maryland Declaration of Rights.
- ✓ Seeking an injunction to achieve equal rehabilitation opportunities for girls in the juvenile justice system under Articles 24 (equal protection clause) and 46 (equal protection based on sex clause) of the Maryland Declaration of Rights.
- ✓ Seeking relief from police brutality under Articles 24 (due process clause) and 26 (unreasonable searches and seizures clause) of the Maryland Declaration of Rights.
- ✓ Seeking adequate access to health care for prisoners, under Articles 24 (due process clause) and 16 (cruel and unusual pains and penalties clause) of the Maryland Declaration of Rights.

Good reasons for the Judiciary Committee to issue a FAVORABLE report on HB 818:

- Providing better access to our courts –
- Discouraging state agencies from violating our constitutional rights –
- Making people whole when the state does violate their constitutional rights –
- Having Maryland courts decide Maryland constitutional issues.

If you have any questions, please contact Debra Gardner, Legal Director, 410 625 9409 ext. 228, gardnerd@publicjustice.org.

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MD HB0818_Support (Attorney's Fees).pdf

Uploaded by: Keisha James

Position: FAV



SUPPORT - HB 0818

Written Testimony of National Lawyers Guild-National Police Accountability Project, Keisha James, Staff Attorney
House Judiciary Committee – Wednesday, February 19, 2025

Dear Chair Clippinger and Members of the Committee,

The National Lawyers Guild National Police Accountability Project (“NPAP”) is a nonprofit organization dedicated to holding law enforcement officers accountable to constitutional and professional standards. We urge you to give a favorable review to HB 0818, which will allow state courts to award prevailing plaintiffs reasonable attorney’s fees and expenses in cases where a Maryland constitutional right was violated by the government or a government employee. Although HB 0818 applies to all government employees, it was initially conceived as a response to demands for police accountability.¹ HB 0818 will enable attorneys at private firms and nonprofit organizations to afford to take on cases that would otherwise be rejected due to the prospect of low damages and high costs. The bill will help deter government misconduct, including police misconduct, by increasing the likelihood that meritorious cases will be brought against bad actors.

Many civil rights cases do not involve large damage awards for plaintiffs, particularly where the challenged conduct did not result in serious injury or death. Accordingly, contingent fee arrangements in civil rights cases are often insufficient to compensate attorneys. As a solution to this problem at the federal level, Congress enacted the Civil Rights Attorney’s Fees Award Act.²

Currently, if a Marylander’s state constitutional rights are violated and they have suffered harm, there is no guarantee that their case will be brought in state court since these are difficult—and often expensive—cases to bring. If an attorney does decide to take on the case, they are more likely to bring it in federal court because they can get justice for their clients and attorney’s fees to help cover their significant investment of time and resources into the case if they prevail. When attorneys file these cases in federal court, Maryland judges are missing the opportunity to interpret and issue opinions on the Maryland Constitution and Maryland residents are inconvenienced by traveling further to federal court when they could be going to their local circuit court instead.

¹ HB 0818, or a version of it, has been introduced in prior sessions and has previously received a favorable review from this committee. *See* HB 0903, HB 0393, HB0283.

² 42 U.S.C. 1988.



HB 0818 will help victims of police misconduct obtain counsel irrespective of the damage value of their case and promote enforcement of the Maryland Constitution and the Maryland Declaration of Rights in local communities by state court judges.³ Without this law, many meritorious civil rights cases will never be filed, or they will be exclusively filed in federal court where federal judges will be interpreting and issuing opinions on Maryland state law claims along with federal claims.

Any concerns that HB 0818 will open the floodgates to civil rights claims and overwhelm state courts is overblown. Attorneys know they will only recover fees and expenses if the claims are valid and well-vetted and prospective cases will still need to meet the case selection criteria set by private firms and public interest legal organizations. It is worth noting that federal courts were not overwhelmed with civil rights cases after the Civil Rights Attorney's Fees Award Act was enacted.

There is also precedent in other states for bills like HB 0818. At least a dozen other states have enacted similar laws. In fact, some are even more broad than HB 0818, covering all civil rights violations enforceable by statute or any civil action brought against the state. Others require mandatory fee awards rather than leaving it to the court's discretion to award fees. HB 0818, by comparison, is narrower in its approach to attorney's fees.

We urge you to help expand access to justice in Maryland and give HB 0818 a favorable review. I am happy to answer any questions you may have. You can contact me at keisha.npap@nlg.org.

Sincerely,

Keisha James
National Police Accountability Project

³ See *Riverside v. Rivera*, 477 U.S. 561, 578 (1986) (“The function of an award of attorney’s fees is to encourage the bringing of meritorious civil rights claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel[.]”) (internal citation omitted).

HB 818 Position Paper.pdf

Uploaded by: Michael Winkelman

Position: FAV



2025 POSITION PAPER

HB 818

Award of Attorney's Fees and Expenses – Violation of Maryland Constitutional Right

HB818 FAVORABLE

The Maryland Association for Justice respectfully requests a favorable report on HB818, and would encourage a clarifying amendment.

The proposed legislation seeks to provide a mechanism for a prevailing plaintiff to receive reasonable attorney fees for violations of the Maryland Constitution or the Maryland Declaration of Rights in actions against the State. The legislation would discourage bad conduct by State actors, and would provide remedy to those injured by unconstitutional conduct. The Maryland Association for Justice, whose members represent individuals harmed by unconstitutional State action, support this goal.

We would encourage an amendment which clarifies any award of attorney fees would be separate and apart from the cap established by the Maryland Tort Claims Act or similar law. This would provide victims of Constitutional deprivations a system more fairly designed to fairly and completely compensate them for unconstitutional acts.

The Maryland Association for Justice urges a FAVORABLE Report on HB818

About Maryland Association for Justice

The Maryland Association for Justice (MAJ) represents over 1,250 trial attorneys throughout the state of Maryland. MAJ advocates for the preservation of the civil justice system, the protection of the rights of consumers and the education and professional development of its members.

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Corrected testimony

Uploaded by: Angelica Bailey Thupari

Position: UNF



Maryland Municipal League
The Association of Maryland's Cities and Towns

TESTIMONY

February 19, 2025

Committee: House Judiciary

Bill: HB 818 - Award of Attorney's Fees and Expenses - Violation of Maryland Constitutional Right

Position: Oppose

Reason for Position:

The Maryland Municipal League (MML) respectfully opposes House Bill 818, which would authorize courts to award attorney's fees to prevailing plaintiffs in civil rights cases against local governments. This approach risks draining municipal resources, encouraging excessive litigation, and forcing settlements even in defensible cases—ultimately harming taxpayers and public services.

While ensuring accountability for civil rights violations is a critical goal, awarding attorney's fees to prevailing plaintiffs in lawsuits against local governments presents serious concerns for the following reasons.

Financial Burden on Local Governments and Taxpayers. Authorizing attorney's fees in civil rights cases against municipalities would impose a direct financial burden on local governments, which must fund these awards from taxpayer dollars.

- Limited budgets and essential services: Local governments operate under strict financial constraints, and fee awards could divert resources away from critical public services such as policing, education, road maintenance, and emergency response.
- Taxpayer impact: Unlike private entities, municipalities cannot simply absorb increased legal costs—they must either raise taxes or cut essential services to cover the expense. This creates an unfair burden on residents who rely on these services.

Encourages Weak or Opportunistic Lawsuits. Allowing the awarding of attorney's fees incentivizes lawsuits, even those with marginal claims, because plaintiffs and their attorneys know they may recover fees regardless of the degree of harm or complexity of the legal question.

- Increased litigation against municipalities: Municipalities may face an uptick in lawsuits, not necessarily because of clear wrongdoing, but because plaintiffs and their lawyers see an opportunity to recover fees, even in borderline or technical claims.
- Profit-driven lawsuits: In some cases, attorneys may take advantage of fee inflation tactics, driving up litigation costs to secure higher awards, rather than focusing on just and fair resolutions.

The Maryland Municipal League uses its collective voice to advocate, empower and protect the interests of our 160 local governments members and elevates local leadership, delivers impactful solutions for our communities, and builds an inclusive culture for the 2 million Marylanders we serve.

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Maryland Municipal League

The Association of Maryland's Cities and Towns

Forces Settlements Even in Defensible Cases. Local governments will often feel pressured to settle cases early, even when they have strong legal defenses, simply to avoid the risk of paying high attorney's fees in addition to potential damages.

- Chilling effect on legal defenses: Municipalities may decide not to fight valid legal claims simply because the risk of losing and paying high attorney's fees is too great.
- Encourages inflated settlements: Knowing that municipalities fear excessive fee awards, plaintiffs' attorneys may use this as leverage to demand larger settlements than they might otherwise receive.

Unfairly Penalizes Good-Faith Municipal Actions. Not all civil rights violations are the result of intentional wrongdoing. Many cases involve complex constitutional or policy questions, and municipal officials may act in good faith but later be found to have technically violated a law.

- Reasonable policy decisions could result in fee awards: For example, a local government's law enforcement policy might be upheld in lower courts but later ruled unconstitutional. Under this bill, municipalities could be penalized with attorney's fees, even if their original policy was based on reasonable legal interpretation.
- Judges currently have discretion to award fees: Existing federal law (such as 42 U.S.C. § 1988) already allows courts to award attorney's fees in appropriate cases. A state-level authorization dilutes judicial discretion and punishes municipalities even in close or unclear cases.

Disproportionate Impact on Small and Rural Municipalities. Larger cities may have legal departments and financial reserves to absorb attorney's fees, but small towns and rural municipalities do not.

- Small towns may lack legal resources: Many local governments, especially in rural areas, have small legal teams or rely on outside counsel. Increased litigation and fee awards could financially cripple these municipalities.
- Could lead to higher insurance costs or reduced services: If municipalities face increased legal expenses, they may have to increase liability insurance premiums, pass costs onto taxpayers, or reduce essential services to stay within budget.

While ensuring accountability for civil rights violations is essential, enforcing attorney's fees against municipalities is not the right approach. It risks draining local government resources, encouraging excessive litigation, and forcing unfair settlements, to the detriment of taxpayers and the benefit of plaintiff's attorneys. For these reasons, the Maryland Municipal League urges this Committee to consider these unintended consequences and respectfully requests an unfavorable report on House Bill 818. For more information, please contact Angelica Bailey Thupari, Director of Advocacy & Public Affairs, at angelicab@mdmunicipal.org or (443) 756-0071. Thank you in advance for your consideration.

The Maryland Municipal League uses its collective voice to advocate, empower and protect the interests of our 160 local governments members and elevates local leadership, delivers impactful solutions for our communities, and builds an inclusive culture for the 2 million Marylanders we serve.

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HB 818 opposition testimony II.pdf

Uploaded by: Roscoe Leslie

Position: UNF



Worcester County Administration

One West Market St. Room 1103 | Snow Hill MD 21863 | (410) 632-1194 | www.co.worcester.md.us

From: Roscoe R. Leslie, Worcester County Attorney

Date: February 13, 2025

RE: HB 818 Opposition (UNF)

My name is Roscoe Leslie, County Attorney for Worcester County, Maryland. Thank you for the opportunity today to testify against HB 818. I have represented Worcester County for the past five years. Before that, I represented many local governments, including Wicomico County, the City of Salisbury, Pocomoke City, the Town of Sharptown, Princess Anne, Pittsville, and Fruitland. I also have experience litigating cases in many jurisdictions across the state and in federal court as well.

I oppose this bill because it will create an unfunded mandate on our local courts. Awarding attorneys' fees for state constitutional claims has the potential to create a whole new class of litigation for which our judiciary is not prepared.

Fee shifting—the exception to the general American Rule that parties are responsible for their attorney fees—is designed to encourage and increase litigation. If this bill accomplishes what it is designed to do, it will create a new category of civil litigation in our county circuit courts.

This new category of cases will further strain our courts that are already unable to meet the judiciary's standard times for case termination. The system will require more judges and more staff to handle increased demand. The courts will be bogged down with cases that are either frivolous in nature or eligible to be brought in federal court.

Ultimately, the costs of the additional litigation will be borne by the County taxpayers who fund the courts and who will pay for the increased insurance premiums that the government will incur.

The federal court system currently handles the bulk of claims that would be covered by this bill. The federal system is well-versed and accomplished in this area of law. Additional venues for this type of litigation aren't needed and would unduly burden the courts and ultimately, the taxpayer.

HB0818-JUD_MACo_OPP.pdf

Uploaded by: Sarah Sample

Position: UNF



House Bill 818

Award of Attorney's Fees and Expenses - Violation of Maryland Constitutional Right

MACo Position: **OPPOSE**

To: Judiciary Committee

Date: February 19, 2025

From: Sarah Sample

The Maryland Association of Counties (MACo) **OPPOSES** HB 818. The bill establishes a path toward granting attorney's fees in any case asserting a State constitutional claim. In practice, the bill would likely lead to an increase in litigation and costs for the State and local governments and create an unbalanced system that enriches attorneys at the taxpayer's expense.

Counties take no issue with the general intent to increase legal representation to resource scarce communities but currently, there is little, if any, evidence that trial attorneys are refusing to take these cases. With the provisions of HB 818 in place, however, trial attorneys would be incentivized to seek more of these cases regardless of a plaintiff's interest in filing or the strength of the case. This sets in motion an alarming set of circumstances that could impair local governments significantly.

HB 818 would authorize a court to award a prevailing plaintiff reasonable attorney's fees and expenses in a civil action to enforce a right secured by the Maryland Constitution or Declaration of Rights. This includes claims such as due process, seizure of goods or property, right to an adequate education, freedom of the press, and the like. Currently, these claims are often for injunctive or non-monetary relief and do not include a monetary component. The effects of the bill would upend this and take these claims from having a balanced impact on local and state government, as well as taxpayers, to a cascading array of new fiscal and operational challenges.

An increased number of claims are likely to be filed as trial attorneys attempt to pursue payment for newly eligible fees, while doing very little to extend more justice to victims. That cost will be paid by Maryland residents as expenses of the state and local governments. This will be necessitated due to increases in claims, defenses, settlements, and judgments. Additional attorneys and support staff will need to be hired by both state and local agencies for defense but also for the courts to research and vet the flood of new cases. Insurance premiums and costs to self-insure government activities will surge.

The current process for these claims to be brought and resolved appropriately is sufficient to balance justice and taxpayer impact. HB 818 would severely erode the operations and efficiency of current procedures for the benefit of private attorneys. Accordingly, MACo urges an **UNFAVORABLE** report on HB 818.