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**To:** Members of The Senate Judicial Proceedings Committee

**From:** Family Law Section Council (FLSC)

**Date:** February 16, 2026

**Subject:** Senate Bill 548:
Family Law- Child Support Guidelines – Determination of Custody Agreements Between Parents

**Position:** OPPOSED

The Maryland State Bar Association (MSBA) FLSC **opposes Senate Bill 548**.

This testimony is submitted on behalf of the Family Law Section Council ("FLSC") of the Maryland State Bar Association ("MSBA"). The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and law and, at the same time, tries to bring together the members of the MSBA who are concerned with family related laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,100 attorney members.

SB 548 attempts to override the decision of the Supreme Court of Maryland in the recently decided *In the Matter of the Marriage of Houser*, 490 Md. 592 (2025). The MSBA filed an *amicus curiae* brief in support of the ultimate decision in *Houser*, which was consistent with the understanding and experiences of family law practitioners throughout the State.

SB 548 would lead to an evisceration of the entire child support statute and decades of Maryland Law, as it would permit parents to agree to waive child support and ignore the statutory scheme and Maryland Child Support Guidelines. The underpinning of the entire child support statute is the accepted premise that Maryland Judges *must* utilize the Guidelines in an objective manner in order to protect the financial needs of the children in the child support and custody matters which come before them on a daily basis.

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SB 548 would not just throw the baby out with the bath water of that accepted premise, but is, frankly, a solution in search of a problem. It is critical to note that Md. Code Ann., Fam. Law § 12-204 already permits a court to deviate from the child support guidelines, including by agreement of the parties—it simply requires that the parties "show their work" to explain *why* that deviation should occur and, more importantly, how that deviation will serve the best interest of the child. As the MSBA wrote in its brief in *Houser*, this is not a particularly difficult burden to meet, yet provides our courts with a baseline assurance that any agreement between the parties is child-focused, rather than parent-focused.

The FLSC refers the Committee to the MSBA's *amicus curiae* brief filed in the *Houser* case, a copy of which has been submitted for consideration alongside this written testimony.

For the reason(s) stated above, the MSBA FLSC **opposes Senate Bill 548 and urges a unfavorable committee report**.

Should you have any questions, please contact Michelle Smith, Esquire at 410-280-1700 or msmith@lawannapolis.com.

**Enclosure:**
**Brief of Amicus Curiae Maryland State Bar Association in *In the Matter of the Marriage of Houser***

**IN THE SUPREME COURT OF MARYLAND**

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**September Term, 2024**

**Case No. SCM-REG-0034-2024**

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**IN THE MATTER OF THE MARRIAGE OF HOUSER**

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**Petition from the Appellate Court of Maryland,**
**Case No. ACM-REG-2220-2022**

**Appeal from the Circuit Court for Anne Arundel County**
**(Honorable Michael J. Wachs)**

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# BRIEF OF AMICUS CURIAE MARYLAND STATE BAR ASSOCIATION

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## TABLE OF CONTENTS

## TABLE OF CITATIONS

### CASES

## INTERESTS OF AMICUS CURIAE AND STATEMENT OF THE CASE

Amicus curiae Maryland State Bar Association ("MSBA") files this Brief in support of the reported opinion issued by the Appellate Court of Maryland in *Houser v. Houser*, ACM-REG-2220-2022, as well as the positions of fellow Amicus Curiae Attorney General of the State of Maryland. While their arguments differ to some extent, the Cross-Petitioners in this case, Erica Hall Houser ("Mother") and Nicholas Houser ("Father"), both seek reversal of the decision of the Circuit Court for Anne Arundel County rejecting a child support agreement entered into as part of a global settlement agreement arising out of their divorce. This Brief represents the positions of the MSBA, the Family Law Section Council of the MSBA, the members of the Family Law Section of the MSBA, and other members of the MSBA that practice family law.[1]

The MSBA (and specifically, its Family Law Section) represents the interests of over 1000 licensed family law attorneys practicing in the State of Maryland and routinely advocates in support of or against proposed legislation and rules that affect the practice of family law in this State. The arguments presented by the Cross-Petitioners are not only a foundational challenge to this State's laws on child support,

[1] Undersigned counsel, Daniel V. Renart, Esquire, is the current chair of the Family Law Section Council of the MSBA, a former president of the Maryland Hispanic Bar Association, and a fellow in the American Academy of Matrimonial Lawyers. He and his law firm, Reinstein, Glackin, & Herriott, LLC, practice regularly in courts throughout Southern and Central Maryland, including in Anne Arundel County.

but the Cross-Petitioners purport to speak for the interests and experience of other practitioners in this State. It is of fundamental importance that the Court receive the input of family law practitioners of this State, so that it can appropriately weigh the impact of the decision now pending before it. The MSBA endorses the opinion of the Appellate Court of Maryland, which sets forth a thorough review of established Maryland law that is consistent with the understanding and experiences of family law practitioners throughout the State.

## QUESTIONS PRESENTED

1) Did the trial court err when it issued a child support order after the parties had voluntarily withdrawn child support as a justiciable issue, and the court did so over the objections of the parents who the court found to be fit and proper?

2) Did the trial court mis-apply the statute, or abuse its discretion, when the court ordered child support and arrears over the express objection of the parents who the court found to be fit and proper?

3) Did the trial court violate the parents' constitutional rights when the court *sua sponte,* and without evidence, rejected their agreement regarding the financial support of their child when the parents were found to be fit and proper?

4) Does the Maryland child support statute permit parents to waive a party's child support obligation, as part of a global settlement agreement, where the parties have shared physical custody, and their combined adjusted gross income exceeds the highest level of income set forth in the Maryland Child Support Guidelines?

5) Does the ACM's decision have a chilling effect on parents' rights to enter into agreements that they believe to be in their children's best interest?

## ARGUMENT

### I. THE OPINION OF THE APPELLATE COURT SETS FORTH A RECITAL OF ESTABLISHED AND UNCONTROVERSIAL MARYLAND LAW, NOT AN UNWRITTEN "LOCAL RULE"

The Cross-Petitioners argue that the decision of the trial court in this matter is the result of an isolated and improper "local rule" followed by the Circuit Court for Anne Arundel County, and that—by adopting that supposed "rule"—the Appellate Court's opinion will have a "chilling effect" on the rights of parents seeking to enter agreements they believe to be in their children's best interests.

This opinion is not shared by the MSBA, whose members practice throughout the courts of this State (including in the Circuit Court for Anne Arundel County). Far from an endorsement of a "local rule," the Appellate Court's ruling is understood by the MSBA as little more than a quotidian restatement of firmly established Maryland law. It is well known to the members of the MSBA that trial courts possess the authority to override agreements that pertain the interests of parties' minor children.

Furthermore, while courts may have the authority to override these agreements, they do so only sparingly. To the contrary, courts are often very willing to accept agreements that deviate from a strict application of the child support guidelines, so long as the parties present sufficient reasons justifying that deviation in accordance with Maryland statutory and case law. Ultimately, it is a relatively

simple task to establish meaningful deviations from a recommended child support guideline.

In fact, far from creating a "chilling effect" on the ability of parties to enter into negotiated agreements, as Cross-Petitioners claim, the knowledge that a trial court maintains an independent obligation to assess and set child support is a powerful tool in the daily practice of family law that assists in shaping expectations and brokering agreements both inside and outside of the courtroom. It forces parties to moderate their sometimes-extreme positions regarding child support, providing a springboard for negotiations and ensuring some degree of concessions from even the most recalcitrant parent (or, as may be the case, that parent's recalcitrant attorney). Litigants are restricted from taking a hard-line approach on child support because of the knowledge that the trial court has an independent obligation to assess support regardless of what the parties say to the contrary.

Indeed, beyond a mere willingness to accept agreements, judges will often work with the parties and their counsel in order to facilitate those very same agreements. The trial judge in this case did exactly that—the record indicates that he initially tried to identify a factual basis that might help justify the significant deviation downward from a recommended child support guideline. That he was ultimately unable to do so speaks more to the extraordinary terms of the agreement

in this case, and is hardly proof of the existence of the sort of overreaching policy spoken of by the Cross-Petitioners.

## II. THE CHILD SUPPORT AGREEMENT IN THIS CASE IS A MAJOR OUTLIER AND SHOULD NOT SERVE AS THE BASIS FOR THE TYPE OF MAJOR POLICY CHANGE REQUESTED BY THE CROSS-PETITIONERS

The MSBA also wishes to confirm what the Court has likely assumed: that the child support agreement in this case is a major outlier and is hardly representative of the types of negotiated child support agreements that litigants typically present for approval by the courts. As such, whatever weight this Court may give to the Cross-Petitioners' legal arguments, the actual facts of this case provide a questionable platform for the type of major policy shift that would result from a ruling in the Cross-Petitioners' favor.

Despite earning just 30% of the parties' combined monthly income, Mother not only waived her right to support (and support arrears of roughly $41,000) but also assumed the costs for nearly every significant itemized expense for the child moving forward (daycare, extracurriculars, and extraordinary medical expenses up to $6,000 per year). *See Houser,* 262 Md. App. at 483-84.[2] In addition to those day-

[2] Father, meanwhile, would only be obligated to maintain existing health insurance for the child ($150 per month), in addition to incidental expenses while the child is in his care. *Id.* at 484. The MSBA will also note that while Father may technically have the child roughly 40% of the time, that does not equate to 40% of the overall childcare expenses. *See, e.g., Payne v. Payne*, 132 Md. App. 432, 444-45 (2000) ("Clearly, some periods of time in the life of a child are more costly for a parent than others. The reality is that all of a child's

to-day terms of the child support agreement, Mother also agreed to restrict her ability to modify the support agreement for "at least a period of twenty-four months," and that attempting to do so would "immediately constitute a material change in circumstances" entitling either parent to seek a modification of their separate custody agreement. *Id.* at 483, 485.

The agreement itself suggests that there is additional consideration for this apparently one-sided deal beyond the terms set forth within the document itself, without actually disclosing what those terms were:

> [The parties] recited that they had "reached this agreement in consideration for many factors and considerations, some of which would not be considered by a court of competent jurisdiction if this matter were to be decided by that Court."

*Id.* at 486.[3] When pressed by the trial judge, the parties declined to provide any meaningful basis for these significant deviations, which eventually led to the following exchange:

> The court responded [to Mother's counsel] that it had heard no reason "other than...this is what the parents would like to do." Counsel for Mother replied, "That is exactly the argument."

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financial needs and expenses are not incurred in precise weekly increments, even though child support may be paid on that basis.").

[3] The Appellate Court noted that the support agreement "did not identify the 'factors and considerations' that a court would not consider or why a court would not consider them." *Id.*

*Id.* at 487.

As mentioned, despite such unbalanced terms, the trial judge did not dismiss the proposed agreement out of hand, but instead undertook his own fact-finding to try and justify those terms consistent with the requirements of Maryland law. It was only after it became clear that no real justification existed that the trial judge exercised his independent authority to reject the agreement and establish a separate child support order determined to be in the best interest of the child.

The MSBA does not believe that such an extraordinary and unusual agreement warrants the sweeping shift in Maryland law that would occur in the event of a ruling for the Cross-Petitioners, whatever legal arguments they may offer in support. To the extent that Maryland wishes to adopt a policy that empowers parties to waive child support freely and without the intervention of the courts, it should be a decision made by the legislature after considering the full breadth of the alleged issue, not by this Court relying on the narrative presented in a single, isolated case.

## III. THE FINDING OF "PARENTAL FITNESS" IS NOT SUFFICIENTLY SCRUTINIZED AT THE TRIAL LEVEL TO WARRANT THE IMPORTANCE BEING PLACED ON IT BY THE CROSS-PETITIONERS

The Cross-Petitioners' constitutional arguments rest largely on the finding that both parties were "fit and proper" parents. While the MSBA recognizes that such a finding may hold significant import from a constitutional standpoint, at the trial level, it is a largely meaningless, *pro forma* determination made in nearly every

private custody case. Part of that is likely due to the serious ramifications that may result from a finding of unfitness—e.g., third-party visitation, removal proceedings under CINA, etc. In private custody and support disputes, however, it is common that a court will open its best interest analysis with a general finding of parental fitness, only to pillory and harangue one or sometimes even both parents on its way to a final custody determination. Anecdotally, members of the MSBA can recall cases where a finding of "fitness" is accompanied by findings of physical and emotional abuse for the same parent. While this is not to say that a finding of "fitness" has *no* value at the trial-level, the significant import that has been placed on this term in the context of high-level constitutional analysis does not carry over to its day-to-day application by courts of general jurisdiction.

In the context of a non-adversarial hearing, as occurred here, the value of a "parental fitness" finding is even lower. When presented with a custody/child support agreement, courts will engage in little more than a *pro forma* voir dire of the parties. The reason that a court is justified in relying on the bare representations of the settling parties is *because of* its independent ability and obligation to consider any agreements regarding custody and child support on behalf of the interests of the child. A court is not required to engage in exhaustive fact finding about the parties because it understands that any agreement regarding their minor children has been made in light of the knowledge that it will be subject to that court's independent

review. Adopting the arguments of the Cross-Petitioners here would basically eliminate that safeguard, as courts would not be permitted to challenge or question the custody and support agreements of parents it has determined to be fit and proper, with the caveat that no evidence will be presented to undermine that determination.

At oral argument, the Appellate Court referred to a "collusive relationship" between the parties in bringing this appeal. Of course, these types of agreements are somewhat "collusive" by their nature, given the highly charged and emotional nature of family law. It should be no shock to this Court that many agreements arising in the realm of divorce, custody, and child support are entered into with significant reservation by one or both of the parties, who may stomach meaningful concerns about the other parent's ability or willingness to adequately care for and/or support the minor child in order to get a deal done. Once an agreement is entered, however, both sides will have a vested interest in pushing it through the courts without issue or delay. While certainly imperfect, the independent authority vested in the Court allows it to exercise its own judgment to set aside an agreement that it determines to be against a child's interest. As discussed above, while this authority is rarely applied, that is in part because the possibility of that outcome has already helped shape the agreements entered into by litigants.

Were this Court to accept the arguments presented by the Cross-Petitioners, it would not relieve the obligation of trial courts to place a critical eye on the

agreements placed before them. Rather, it would simply shift the analysis of the trial court from the propriety of the agreement itself to the character of the parties standing before it—i.e., whether they *are* in fact "fit and proper" to warrant the total deference of a court in regard to decisions about the care and support of a minor child. Courts are not well-equipped to engage in that sort of fact finding, without notice and when both parties have a vested interest in putting their best faces forward.

## IV. THE ABOVE-GUIDELINES DISTINCTION RAISED BY FATHER IS IMMATERIAL TO THE PRINCIPLES AT ISSUE IN THIS CASE

Father presents a more limited argument than Mother, asserting that deference should have been given to the parties in this case because they were "above-guidelines," i.e., their combined monthly income of the parents exceeds the statutory maximum for child support guidelines.[4] The Appellate Court, relying on this Court's opinion in *Voishan v. Palma*, 327 Md. 318 (1992), has explained that this is a "numerical" difference, not a "conceptual" one:

> When the statute and the case law speak of the inapplicability of the Guidelines to cases involving monthly parental income of more than $10,000, it is clear that they mean that the numerical component of the Guidelines does not apply. We underscore that, even in an

[4] It should be reemphasized that the parties in this case were "above guidelines" only by a quirk of timing, since their case initiated before the maximum statutory guidelines amount increased from $15,000 per month to $30,000 per month in July 2022. Were the parties to return to court on a modification with the same income levels, they would be subject to a rote application of the Maryland Child Support Guidelines.

> above Guidelines case, "[t]he conceptual underpinning" of the Guidelines applies. *Voishan*, 327 Md. at 322. As we said earlier, the Guidelines are founded on the premise "that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, [that] he or she would have experienced had the child's parents remained together." Id. That rationale is no less applicable here, merely because this is an above Guidelines case.

*Smith v. Freeman,* 149 Md. App. 1, 19-20 (2002).

Moreover, it is not clear how the distinction sought by Father would square with principles of equal protection, as it would allow parties with greater combined resources to enter agreements that place them outside the scrutiny of the courts, while parents who fall within the statutory guidelines would be entitled to no such privilege.

## V. THE COURT SHOULD CLARIFY WHETHER THE ISSUE OF CHILD SUPPORT CAN BE RAISED BY A TRIAL COURT *SUA SPONTE*, WHETHER OR NOT THE ISSUE HAS BEEN RAISED BY THE PARTIES

As a final note, the MSBA addresses its sole concern regarding the opinion of the Appellate Court. In a footnote, the Appellate Court discusses Father's "characteriz[ation] [of] the effort to withdraw the request for child support as an oral amendment of the pleadings" made on the day of trial, based on his argument that "a court has no power to address issues not framed by the pleadings." *See Houser*, *supra*, at 494 n.5. The Appellate Court rejected this argument on the basis that Father had failed to obtain leave of court for the purported amendment under Rule 2-341(b), even though it had occurred within 15 days of trial. *Id.* Further, in its conclusion, the

Appellate Court begins that "[t]he circuit court correctly considered child support in this matter, as the issue was appropriately presented for review to that court." *Id.* at 503-504.

Perhaps unintentionally, this procedural response fails to answer an important question—would the trial court be precluded from addressing the child support issue if the amendment *had* been timely made outside of the 15-day window? In other words, do the courts of this state have the authority to assess child support even if the issue has not been raised by either of the parties? The MSBA has long understood that the answer to that question is "yes," based on the existing case law regarding child support.

Given the uniquely broad framing of the issues in this case, the opinion of this Court—as well as the opinion of the Appellate Court—are likely to become the bellwether cases regarding the authority and obligation of a trial court to order child support. As with any decision, however, clever litigants (and their clever attorneys) will look for any gaps that allow them to evade its stated restrictions.

Ironically then, despite its forceful defense of the child support regime, the Appellate Court's response in Footnote 5 of its opinion may be destined to create an exception where one did not previously exist. As written, the opinion appears to suggest that Father's argument failed because of timeliness; the MSBA suggests that this Court may wish to clarify whether the argument would also fail simply because

Maryland courts possess the ability to raise the issue of child support on a *sua sponte* basis when custody is at issue, whether or not it has been raised by the parties.

## CONCLUSION

For the reasons stated above, the Court should affirm the opinion of the Appellate Court of Maryland and the decision of the Circuit Court for Anne Arundel County.

**Respectfully Submitted,**

*/s/ Daniel V. Renart*

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## CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

This brief contains 3,212 words, excluding the parts of the brief exempted from the word count by Rule 8-503. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ *Daniel V. Renart*

Daniel V. Renart

## CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2025, this Brief was submitted through MDEC to the following, with paper copies to be delivered to the same on the disposition of the contemporaneously filed Motion for Permission to File Brief of Amicus Curiae Maryland State Bar Association:

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