
IN THE APPELLATE COURT OF MARYLAND

—————
No. 0194, September Term 2024
ACM-REG-0194-2024
—————

JOSEPH WATTS

Appellant

v.

PRINCE GEORGE'S COUNTY, MARYLAND

Appellee

—————
On Appeal from the
Circuit Court for Prince George's County
The Honorable Peter Killough, Presiding

—————
BRIEF FOR METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS
ASSOCIATION AS AMICI CURIAE IN SUPPORT OF APPELLANT AND FOR
REVERSAL

Omar Vincent Melehy
(Atty No. 8701010070)
Melehy & Associates LLC
8403 Colesville Road, Ste. 610
Silver Spring, Maryland 20910
301-587-6364
ovmelehy@melehylaw.com

—————
Alexandre Todorov
Pro Hac Vice Motion Pending
Melehy & Associates LLC
8403 Colesville Road, Ste. 610
Silver Spring, Maryland 20910
301-587-6364
stodorov@melehylaw.com

Counsel to Amicus Curiae Metropolitan Washington Employment Lawyers
Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF INTEREST OF AMICI..... 1

The Local Government Tort Claims Act Does Not Apply to Statutory Claims under Md. Code, State Gov’t §§ 20-1013 and 20-1202, Against a Local Government. 1

A. The LGTCA Does Not Apply to Statutory Employment Discrimination Claims Because Those Claims Have no Relation to Common Law or Constitutional Torts. 4

1. The MTCA and the LGTCA Apply to the Same Scope of Claims. 4

2. Statutory Claims Are Not Torts Within the Meaning of the LGTCA If They Have No Connection to a Common Law or Constitutional Tort...... 6

3. The LGTCA Is Inapplicable to Employment Discrimination Claims Under State Gov’t §§ 20-1013 And 20-1202 Because They Are Pure Creations of the General Assembly With No Relation to Common Law or Constitutional Torts. 8

4. The LGTCA’s Notice Provision, and State Gov’t § 20-1202(b)’s Damages Provision, Do Not Create Gaps Within the Statutory Schemes of State Gov’t §§ 20-1013 and 20-1202 that a Trial Court can Fill by Applying the LGTCA...... 12

CONCLUSION..... 14

TABLE OF AUTHORITIES

Cases

<i>Adler v. American Standard Corp.</i> , 291 Md. 31, 432 A.2d 464 (1981).....	9, 10.
<i>Coleman v. Soccer Ass’n of Columbia</i> , 432 Md. 679, 69 A.3d 1149 (2013).....	8.
<i>Copperopolis Mining Co. v. Grant County Assessor</i> , 442 Md. 311, 112 A.3d 442 (2015).....	1, 5, 7.
<i>Dillon v. Great Atlantic & Pacific Tea Co.</i> , 43 Md. App. 161, 403 A.2d 406 (1979).....	9.
<i>Halloway-Johson v. Beall</i> , 220 Md. App. 195, 103 A.3d 720 (2014).....	4.
<i>Hansen v. City of Laurel</i> , 420 Md. 670, 25 A.3d 122 (2011).....	11, 12.
<i>Jacome de Espina v. Jackson</i> , 442 Md. 311, 112 A.3d 442 (2015).....	4, 7.
<i>Lee v. Cline</i> , 384 Md. 245, 863 A.2d 397 (2004).....	5, 6.
<i>Makovi v. Sherwin-Williams Co.</i> , 316 Md. 603, 561 A.2d 179 (1989).....	<i>passim</i> .
<i>Pabst Brewing Co. v. Federick P. Winner, Ltd.</i> , 478 Md. 61, 272 A.3d 324 (2022).....	5.
<i>Shabazz v. Bob Evans Farms, Inc.</i> , 163 Md. App. 602, 881 A.2d 1212 (2005)....	4, 12, 13, 14.
<i>Watson v. Peoples Sec. Life Ins. Co.</i> , 322 Md. 467, 588 A.2d 760 (1991).....	<i>passim</i> .
<i>Williams v. Morgan State Univ.</i> , 484 Md. 534, 300 A.3d 54 (2023).....	<i>passim</i> .

Statutes

Md. Code, Cts. & Jud. Proc. § 5-303.....	<i>passim</i> .
Md. Code, Cts. & Jud. Proc. § 5-304.....	3, 12, 13.
Md. Code, State Gov’t § 12-104.....	1, 4, 5, 7.
Md. Code, State Gov’t § 20-601.....	8, 10.
Md. Code, State Gov’t § 20-606.....	11.

Md. Code, State Gov't § 20-903.....11.
Md. Code, State Gov't § 20-1009.....12.
Md. Code, State Gov't § 20-1013.....*passim*.
Md. Code, State Gov't § 20-1202.....*passim*.

County Ordinances

Prince George's County Code § 2-186.....11.
Prince George's County Code § 2-222.....8, 10.

STATEMENT OF INTEREST OF AMICI

The Metropolitan Washington Employment Lawyers Association (“MWELA”), founded in 1991, is a professional association and is the local chapter of the National Employment Lawyers Association, a national organization of attorneys who specialize in employment law. MWELA conducts continuing legal education programs for its more than 350 members, including an annual day-long conference which usually features one or more judges as speakers. MWELA also participates as amicus curiae in important cases in the federal and state courts of Maryland, the District of Columbia, and Virginia, the three jurisdictions in which its members primarily practice. Because the outcome of this case will directly impact the potential employment discrimination cases of workers represented by MWELA members that are brought against local governments in Maryland, MWELA has an interest in the fair resolution of the issues presented in this appeal.

ARGUMENT

The Local Government Tort Claims Act Does Not Apply to Statutory Claims under Md. Code, State Gov’t §§ 20-1013 and 20-1202, Against a Local Government.

Amicus MWELA submits that the limits to liability imposed by the Local Government Tort Claims Act (“LGTCA”), Md. Code, Courts & Jud. Proc. § 5-303, should not be applied to statutory employment discrimination claims under State Gov’t §§ 20-1013 and 20-1202 because those claims are not torts. The scope of claims governed by the LGTCA is interpreted identically to the scope of claims governed by the Maryland Tort Claims Act (“MTCA”). *See, e.g., Copperopolis Mining Co. v. Grant County Assessor*, 442 Md. 311, 324-26, 112 A.3d 442, 450-51 (2015). Both the LGTCA and MTCA are “gap-

filler” provisions which govern the waiver of immunity, and limits to liability, for claims with some relation to common law or constitutional torts. *See Williams v. Morgan State Univ.*, 484 Md. 534, 548-55, 300 A.3d 54, 61-67 (2023). These two statutes only apply to claims where the General Assembly is not in complete control over the remedy to enforce a violation of public policy. *Id.* at 552-53, 300 A.3d at 64-65.

The Maryland Supreme Court has specifically cited employment discrimination as an area of public policy where the General Assembly has total control to craft the intended remedy, so that the “gap-filler” MTCA and the LGTCA would not apply. *Id.* at 553, 300 A.3d at 64-65. When the General Assembly crafts any statutory remedy to enforce violations of a public policy expressed in a statute, the General Assembly eviscerates any possibility of the judiciary creating their own remedy through common law or constitutional tort. *Watson v. Peoples Sec. Life Ins. Co.*, 322 Md. 467, 480, 588 A.2d 760, 766 (1991); *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 561 A.2d 179 (1989). Simply put: if a statutory remedy exists to enforce a public policy, and if that statutory remedy is not itself, in some way, connected to a common law or constitutional tort, then no independent tort can exist that would be within the scope of the MTCA or LGTCA. *Id.*

The Maryland General Assembly has crafted statutory remedies to enforce both the Maryland Fair Employment Practices Act (“MFEPA”) and the Prince George’s County Human Rights Act (“PGCHRA”): State Gov’t §§ 20-1013 and 20-1202. Maryland employees routinely bring claims under those remedial schemes. Both remedial schemes are pure creations of statute with no connection to tort. *Williams*, 484 Md. at 553, 300 A.3d at 64-65; *Makovi*, 316 Md. 603, 561 A.2d 179 (discussing at length that employment

discrimination is a pure creation of statute). The very existence of these statutory remedies prevents the possibility of a common law or constitutional tort to enforce the MFEPA and the PGCHRA. *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179. The Maryland General Assembly held total control over the crafting of both remedies. They are thus not “torts” governed by the “gap-filler” provisions of the MTCA and the LGTCA. *Williams*, 84 Md. at 552-55, 300 A.3d at 64-66; *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179.

The only waivers of immunity to – and limits to damages under – claims brought pursuant to those statutes are thus those that the Maryland General Assembly has crafted within the statutory schemes themselves. *Williams*, 84 Md. at 553, 300 A.3d at 64-65. There are no such limits within the statutory scheme of State Gov’t § 20-1202, which enforces violations of the PGCHRA. There is no gap in this statutory scheme that would require applying the LGTCA’s notice provision under Md. Code, Courts & Jud. Proc. § 3-304(a) to interpret the scope of claims whose damages are limited by Courts & Jud. Proc. § 3-303(a)(1). Nor can a gap be created through the fact that “damages” under State Gov’t § 20-1202(b) is interpreted under Maryland common law. MWELA thus submits that this Court should hold that it is reversible error to apply the LGTCA’s gap-filling damages limit provisions to employment discrimination claims under State Gov’t §§ 20-1013 and 20-1202.

A. The LGTCA Does Not Apply to Statutory Employment Discrimination Claims Because Those Claims Have no Relation to Common Law or Constitutional Torts.

1. The MTCA and the LGTCA Apply to the Same Scope of Claims.

The MTCA and the LGTCA serve the same purpose: to waive the state of Maryland's general sovereign immunity to tort claims (MTCA), or local governments' governmental immunity to tort claims (LGTCA), as a bargain in return for limiting the damages available for tort claims against the state of Maryland or its local governments. *Jacome de Espina v. Jackson*, 442 Md. 311, 337-338, 112 A.3d 442, 457-58 (2015) (citing *Halloway-Johson v. Beall*, 220 Md. App. 195, 212-13, 103 A.3d 720, 730-31 (2014), and explaining that the LGTCA primarily serves to waive governmental immunity to tort claims for local governments and thus permit claims for damages that would otherwise be unavailable). The MTCA and the LGTCA contain slightly differing language used to define the scope of claims that they cover. The MTCA limits the liability of the State of Maryland for a "tort action." State Gov't. § 12-104(a)(1). The LGTCA limits the liability of local governments in Maryland for damages resulting from "tortious acts or omissions." Courts & Jud. Proc. § 5-303(a)(1).

The meaning of "tort action" under the MTCA is identical to the meaning of "tortious act or omission." State Gov't § 12-104(a)(1); Courts & Jud. Proc. § 5-303(a)(1). The General Assembly did not define either "tort action" under the MTCA or "tortious act or omission" under the LGTCA. *Id.* When the General Assembly does not define a term, it is interpreted under Maryland common law. *See, e.g., Shabazz v. Bob Evans Farms, Inc.*, 163 Md. App. 602, 638-39, 881 A.2d 1212, 1233-34 (2005). It is clearly apparent from the

plain language and ordinary understanding of “tort action” and “tortious act or omission” that they apply to the exact same scope of claims. *Id.*; *Pabst Brewing Co. v. Federick P. Winner, Ltd.*, 478 Md. 61, 75-76, 272 A.3d 324, 332-33 (2022) (statutory analysis begins with the “plain language of the statute” and the ordinary understanding of its language). The Maryland Supreme Court clearly understands both terms to have the same meaning. *See, e.g., Lee v. Cline*, 384 Md. 245, 255, 863 A.2d 397, 303 (2004) (determining “whether the Maryland Tort Claims Act grants qualified immunity to state personnel for *tortious acts or omissions.*”) (emphasis added). This is reinforced by the statutory scheme of the MTCA, which uses the same language as the LGTCA for its heightened damages limit for torts by police officers: “intentional *tortious acts or omissions* or a violation of a constitutional right committed by a law enforcement officer.” Courts & Jud. Proc. § 5-303(a)(3); *compare with* State Gov’t § 12-104(a)(2)(ii); *Pabst Brewing*, 478 Md. at 75, 272 A.3d at 333 (“plain language must be viewed within the context of the statutory scheme in which it belongs.”)

The Maryland Supreme Court treats the MTCA and the LGTCA as applying to the same scope of claims and analyzes the LGTCA through its jurisprudence analyzing the MTCA. In *Copperopolis*, the Maryland Supreme Court treated the scope of claims covered by “tort action” under the MTCA, and “tortious act or omission” under the LGTCA, identically and used the case law governing the MTCA to determine the scope of claims covered by the LGTCA. *Copperopolis*, 442 Md. at 324-26, 112 A.3d at 450-51. There is nothing within the legislative history of either the MTCA or the LGTCA to indicate any intent of the Maryland General Assembly to the contrary. In short, the MTCA and the LGTCA apply to the same scope of claims and the jurisprudence governing the

interpretation of the applicability of the MTCA applies to interpreting equivalent provisions in the LGTCA. *Id.*; *Lee*, 384 Md. at 255, 863 A.2d at 303.

2. Statutory Claims Are Not Torts Within the Meaning of the LGTCA If They Have No Connection to a Common Law or Constitutional Tort.

The damages cap under the LGTCA is specifically limited to “tortious acts or omissions.” State Gov’t Art. § 5-303(a)(1). In 2023 the Maryland Supreme Court ruled in *Williams* that the MTCA’s definition of “tort action” did not extend to statutory claims that were unrelated to common law and constitutional torts. *Williams*, 484 Md. at 548-552, 300 A.3d at 61-64. While the specific claim in controversy in *Williams* was a federal statutory claim, the Maryland Supreme Court analyzed whether a statutory claim was a “tort action” regardless of whether the claim emerged under Maryland or federal statute. *Id.* at 550-54, 300 A.3d at 63-66. In particular, the Court centered the fact that statutory claims are not automatically “torts” for the purposes of the MTCA, and thus also for the purposes of the LGTCA. *Id.* at 551, 300 A.3d at 62-63 (“Second, this Court has never held that ‘tort action’ or any similar phrase, either as used in the MTCA or in any other statute, applies generally to state statutory claims”) (emphasis added).

Further, the Court stressed that the MTCA, as a statutory general limit on liability, exists as a “gap-filler provision” for common law and constitutional claims which the Maryland General Assembly does not completely control.¹ *Id.* at 552-553, 300 A.3d at 64-65. The MTCA does not apply where the General Assembly has sole control over the

¹ This is because such claims originate from the judiciary, which shapes Maryland common law, and which holds the sole authority to interpret the Maryland constitution.

statutory claim it creates and thus can decide for itself the scope of the claim and any waivers of immunity or limits of liability for it. *Id.* In particular, the Maryland Supreme Court in *Williams* specifically highlighted state employment discrimination claims as a type of claim where the Maryland General Assembly exercises sole control and thus the MTCA does not apply. *Id.* at 553, 300 A.3d at 65 (citing Md. Code, State Gov't § 20-606).

The Maryland Supreme Court's reasoning in *Williams* applies equally to the LGTCA as it does to the MTCA. *Copperopolis*, 442 Md. at 324-26, 112 A.3d at 450-51. As addressed above, the meaning of "tort action" under the MTCA is identical to the meaning of "tortious act or omission" under the LGTCA. The LGTCA is a "gap-filler provision" created by the Maryland General Assembly for the same reason as the MTCA: to waive the governmental immunity of local governments to common law and constitutional tort claims outside the complete control of the General Assembly and to limit liability for those claims. *See Williams*, 484 Md. at 552-553, 300 A.3d at 64-65; *Espina*, 442 Md. at 337-338, 112 A.3d at 457-58; State Gov't § 12-104(a)(1); State Gov't § 5-303(a)(1). If a claim does not emerge, in some fashion, from common law, or constitutional, tort, it is within the sole control of the General Assembly and/or the Prince George's County Council and the LGTCA does not apply. *Id.* Instead, the only possible waiver to governmental immunity for the claim, and the only applicable limits to liability for the claim, are those that the General Assembly (or County Council) choose to create when enacting, or amending, the statute creating the cause of action. *Id.*

3. The LGTCA Is Inapplicable to Employment Discrimination Claims Under State Gov't §§ 20-1013 And 20-1202 Because They Are Pure Creations of the General Assembly With No Relation to Common Law or Constitutional Torts.

Violations of an employee's rights under State Gov't § 20-606 of the MFEPA to be free of employment discrimination or retaliation are enforced through State Gov't § 20-1013. Violations of an employee's right under the PGCHRA to be free of employment discrimination are enforced through State Gov't § 20-1202. These three rights, and the two statutory remedies used to enforce them, are pure creations of the General Assembly or Prince George's County Council, and they have zero relation to common law or constitutional torts. State Gov't §§ 20-606, 20-1013, 20-1202; Prince George's County Code § 2-222. To repeat, the Maryland Supreme Court *specifically cited* employment discrimination claims as being the exact kind of pure legislative creation with zero connection to common law or constitutional torts that "gap-filler" laws like the LGTCA do not apply to. *Williams*, 484 Md. at 553, 300 A.3d at 65 (citing the MFEPA, State Gov't § 20-606, as the type of pure creation of statute that the MTCA did not apply to).

That statutory remedies for employment discrimination have no connection to common law or constitutional tort is cemented by the fact that the existence of *any* statutory remedy for employment discrimination, or retaliation, eviscerates the possibility of a tort to enforce violations of employment discrimination statutes. *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179. Declaring public policy, such as it pertains to employment discrimination, is the function of the Maryland General Assembly. *Coleman v. Soccer Ass'n of Columbia*, 432 Md. 679, 689-90, 69 A.3d 1149, 1155 (2013).

In *Makovi*, the Maryland Supreme Court found that the public policy against employment discrimination emerged from statute and that the existence of any statutory remedy for employment discrimination affirmatively preempted any effort by the judiciary to enforce it through tort. *Makovi*, 316 Md. 603, 561 A.2d 179. In *Watson*, the Maryland Supreme Court ruled that no remedy for retaliation in connection with employment discrimination could exist in tort because a remedy already existed in statute. 322 Md. at 480, 588 A.2d at 766. Once the General Assembly enacted State Gov't §§ 20-1013 and 20-1202, they destroyed any possibility of a common law or constitutional tort to enforce violations of the MFEPA or the PGCHRA. *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179.

This firm dividing line between statutory remedies for employment discrimination and common law or constitutional tort is rooted in the history of employment discrimination as a cause of action. Employment discrimination claims not only have no connection to common law, but they also operate in *derogation* of the common law. *Dillon v. Great Atlantic & Pacific Tea Co.*, 43 Md. App. 161, 166-67, 403 A.2d 406, 409 (1979). The only available common law or state constitutional tort claim for employment discrimination is wrongful discharge, which encompasses wrongful, abusive, or retaliatory discharge. *Adler v. American Standard Corp.*, 291 Md. 31, 35-36, 36 fn. 2, 46-47, 432 A.2d 464, 467-68, 467 fn. 2, 472-73 (1981). Wrongful discharge is a tort that exists solely to enforce public policies clearly expressed by statute. *Id.* at 46-47, 432 A.2d at 472-73. There can be no wrongful discharge without a statute explicitly stating a “clear mandate” of public policy. *Id.* The employer’s motivation for discharging the employee must then

violate that statute. *Id.* Even though it is a creation of the judiciary, wrongful discharge emerges solely from statute, as it exists to enforce violations of statutes where the General Assembly has not provided a remedy. *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179. If such a statutory remedy exists, any possible tort for wrongful discharge cannot. *Id.*

The MTCA and LGTCA exist as “gap-filler” statutes to cover claims which the General Assembly does not completely control. *See Williams*, 484 Md. at 552-53, 300 A.3d at 64-65. It is clear that the General Assembly had, and continues to have, complete and total control over claims to enforce the MFEPA and the PGCHRA through State Gov’t §§ 20-1013 and 20-1202. Employment discrimination under the MFEPA and PGCHRA are pure creations of public policy expressed by the statutes drafted, or adopted, by the General Assembly. State Gov’t § 20-606; Prince George’s County Code § 2-222 (adopted by the General Assembly through the enforcement mechanism under State Gov’t § 20-1202). The sole remedies for employment discrimination under the MFEPA and PGCHRA are the enforcement statutes enacted by the General Assembly, State Gov’t §§ 20-1013 and 20-1202. *Watson*, 322 Md. at 480, 588 A.2d at 766; *Makovi*, 316 Md. 603, 561 A.2d 179. By creating those remedies, the General Assembly destroyed any possibility of a tort to enforce the MFEPA and PGCHRA. *Id.* Statutory employment discrimination claims thus cannot be torts covered by the LGTCA.

The only possible waivers of Prince George’s County’s governmental immunity for statutory employment discrimination claims are those within the statutory schemes themselves. If the General Assembly had not explicitly waived the immunity of local

governments to employment discrimination claims under the MFEPA, then Prince George's County would have governmental immunity to claims under State Gov't § 20-1013 and the LTGTCA could not be applied to waive it. *Williams*, 484 Md. at 552-53, 300 A.3d at 64-65; *Hansen v. City of Laurel*, 420 Md. 670, 694 fn. 15, 25 A.3d 122, 138 fn. 15 (2011); Md. Code, State Gov't §§ 20-601(d)(2), 20-903. If Prince George's County had not affirmatively included itself within the definition of "employer" under the PGCHRA, it would have governmental immunity to claims under State Gov't § 20-1202 and the LGTCA could not be applied to waive it. Prince George's County Code § 2-186(a)(8) ("Employer includes the Prince George's County Government"). Similarly, if the General Assembly had overridden Prince George's County's waiver of governmental immunity under the PGCHRA by preventing individuals from bringing claims under State Gov't § 20-1202(b) against local governments, the LGTCA could not be applied to waive that immunity.

Just as the LGTCA could not be applied to override a potential decision by the General Assembly or Prince George's County Council not to waive governmental immunity within the statutory scheme of the MFEPA and the PGCHRA, it cannot be applied to override their decisions as to whether or not to cap the damages for violations of those laws within their statutory schemes. *Williams*, 484 Md. at 552-53, 300 A.3d at 64-65. Simply put, there is no gap to fill within State Gov't §§ 20-1013 and 20-1202 when it comes to limits on damages. The General Assembly already determined the caps that apply to damages for MFEPA claims under State Gov't § 20-1303, including special limits that only apply to claims against governmental units or political subdivisions like Prince

George's County. Md. Code, State Gov't §§ 20-1009(b)(2)-(3), 20-1013(d), (e)(1)-(2). By contrast, the General Assembly made the specific decision not to limit the damages for PGCHRA claims, including for claims against local governments, within the statutory scheme of State Gov't § 20-1202(b). *Shabazz*, 163 Md. App. at 638, 881 A.2d at 1233.

This Court should hold that it is reversible error to apply the “gap filler” damage limits of the LGTCA to employment discrimination claims under the MFEPA and the PGCHRA. The General Assembly had complete control over both State Gov't §§ 20-1013 and 20-1202(b). The only possible limits to damages under those statutory remedies are those that the Assembly chose to enact. *Williams*, 484 Md. at 552-53, 300 A.3d at 64-65.

4. The LGTCA's Notice Provision, and State Gov't § 20-1202(b)'s Damages Provision, Do Not Create Gaps Within the Statutory Schemes of State Gov't §§ 20-1013 and 20-1202 that a Trial Court can Fill by Applying the LGTCA.

Finally, Amicus MWELA submits that this Court should find that the “notice” provisions in the LGTCA do not require importing the LGTCA's damages caps into statutory employment discrimination claims and that the lack of a definition of “damages” under State Gov't § 20-1202(b) does not create a gap that the LGTCA can be used to fill.

First, the County may seek, as they did before the trial court during their motion for judgment notwithstanding the verdict, to use the fact that the LGTCA's notice provisions apply to employment discrimination claims to argue that the LGTCA's damages limits must apply to employment discrimination claims as well. *Hansen*, 420 Md. 670, 25 A.3d 122 (holding that the LGTCA's notice requirements under Md. Code, Courts & Jud. Proc. § 5-304(a) for actions for unliquidated damages apply to employment discrimination

claims). This would be a complete misapplication of *Hansen*. Courts & Jud. Proc. § 5-304(a) applies to “an action”, while the damages limits under Courts & Jud. Proc. § 5-303(a)(1) applies to “damages resulting from tortious acts or omissions.” The Maryland Supreme Court in *Williams* affirmatively disavowed the applicability of *Hansen*’s analysis of the meaning of “action” under Courts & Jud. Proc. § 5-304(a) to the interpretation of the scope of claims covered by “tort action” under State Gov’t § 12-104(a)(1) or “tortious acts or omissions” under Courts & Jud. Proc. § 5-303(a)(1). *Williams*, 484 Md. at 548 fn. 7, 300 A.3d at 62 fn. 7; *compare* E. 200-201. To repeat: in *Williams*, the Maryland Supreme Court explicitly stated that statutory employment discrimination claims were not torts that fell within the scope of “gap-filler” laws like the MTCA and LGTCA. *Williams*, 484 Md. at 553, 300 A.3d at 65.

Second, Prince George’s County may attempt to create a gap that permits application of the LGTCA’s damages limits through State Gov’t § 20-1202(b), which permits a plaintiff to file a civil action for “damages, injunctive relief, or other civil relief.” The Maryland Appellate Court has ruled that this permits a claim for any form and amount of damages permitted under Maryland common law. *Shabazz*, 163 Md. App. at 638, 881 A.2d at 1233-34. This does not mean that the General Assembly did not have complete control over the statutory remedy under State Gov’t § 20-1202(b) and thus that the LGTCA can apply. *Williams*, 484 Md. at 552-53. The General Assembly has at all times since the enactment of § 20-1202(b) held the sole power to cap the damages available under State Gov’t § 20-1202(b) however it sees fit. “Damages” under State Gov’t § 20-1202(b) is a statutory provision whose meaning is interpreted through Maryland common law, but

which emerges solely from statute. *Shabazz*, 163 Md. App. at 638-40, 881 A.2d at 1233-34. The Maryland General Assembly’s decision not to cap damages under State Gov’t § 20-1202(b) thus does not create a gap within the statutory scheme that a trial court can fill with the LGTCA. *Id.*; *see Williams*, 484 Md. at 552-53, 300 A.3d at 64-65.

CONCLUSION

For the foregoing reasons, amicus MWELA urges this Court to rule that it is a reversible error to apply the LGTCA to employment discrimination claims which are brought under the purely statutory remedies of Md. Code, State Gov’t §§ 20-1013 and 20-1202.

Dated: November 4, 2024

Respectfully submitted,

Omar Vincent Melehy
(Atty No. 8701010070)
Melehy & Associates LLC
8403 Colesville Road, Ste. 610
Silver Spring, Maryland 20910
301-587-6364
ovmelehy@melehyllc.com

Alexandre Todorov
Pro Hac Vice Motion Pending
Melehy & Associates LLC
8403 Colesville Road, Ste. 610
Silver Spring, Maryland 20910
301-587-6364
stodorov@melehyllc.com

Counsel to Amicus Curiae Metropolitan Washington Employment Lawyers Association

**CERTIFICATE OF WORD COUNT
AND COMPLIANCE WTH MD. RULE 8-112**

1. This brief contains 3,884 words, excluding the parts of the brief exempted from the word count by Md. Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Md. Rule 8-112.

/s/Omar Vincent Melehy
Omar Vincent Melehy

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2024, two copies of this brief were sent via electronic mail, and first-class mail, postage prepaid to:

Joseph M. Creed
Bramnick Creed, LLC
4550 Montgomery Avenue, Suite 760N
Bethesda, Maryland 20814
jcreed@bramnickcreed.com

Janelle Ryan-Colbert
The Colbert Law Firm, LLC
3060 Mitchellville Road, Suite 218
Bowie, Maryland 20772
jrc@colbertlawfirm.net

Shelley Johnson
Deputy County Attorney
Prince George's County Office of Law
1301 McCormick Drive, Suite 4100
Largo, Maryland 20772
sljohnson@co.pg.md.us

/s/Omar Vincent Melehy

Omar Vincent Melehy

