IN THE

COURT OF APPEALS OF MARYLAND

September Term, 2009

No. 66

PRINCE OF PEACE ET AL.,

Petitioners/Cross Respondents,

v.

MARY LINKLATER,

Respondent/Cross Petitioner

On Writ of Certiorari to the Court of Special Appeals of Maryland

BRIEF OF METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION and MARYLAND EMPLOYMENT LAWYERS ASSOCIATION AS *AMICI CURIAE* FOR PETITIONER

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Amici MELA and MWELA have a strong interest in ensuring that the residents of the counties of Maryland continue to have the option of obtaining greater protection under their county ordinances than that provided by the state-wide employment discrimination statutes. These protections include, in the Montgomery County Code, the ability to name individuals as defendants.

As set forth herein, the plain language of the Montgomery County's anti-discrimination ordinance expressly provides for individual liability. Moreover, a number of other states have similarly provided for individual liability in their similarly-worded state anti-discrimination statutes. The public policy in preventing and deterring discrimination in the workplace is favored by allowing individual liability in circumstances such as those covered by the Montgomery County Code.

2. The Plain Language of the Montgomery County Anti-Discrimination Ordinance Expressly Provides for Individual Liability.

This Court must find that the Montgomery County anti-discrimination ordinance, MCC 27-19, expressly provides for individual liability for workplace discrimination. The ordinance provides, in relevant part, that:

> (c) A person must not:
> (1) retaliate against any person for:

(A) lawfully opposing any discriminatory practice prohibited under this division; or
(B) filing a complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this division;
(2) assist in, compel, or coerce any discriminatory practice prohibited under this division;
(3) obstruct or prevent enforcement or compliance with this division; or
(4) attempt directly or indirectly to commit any discriminatory practice prohibited under this division.

See Montgomery County Code, § 27-19(c). A "person" is defined to include individuals:

> ***Person* means an individual**; a legal entity; or a department, agency, or instrument of the County or, to the extent allowed by law, of federal, State, or local government. . . .

Id., § 27-6 (emphasis added).

Thus, when read in conjunction with Section 27-6, the retaliation provision of Section 27-19(c)(1) applies to any individual who retaliates against an employee who engaged in protected conduct, and the anti-discrimination provision of Section 27-19(c)(2) similarly applies to any individual who conspires with the employer or any other person to discriminate or retaliate against an employee.

This Court has repeatedly explained that: "If the language of the statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends." *Ray v. State*, 410 Md. 384, __, 978 A.2d 736, 748 (2009) (collecting cases); *accord Kortobi v. Kass*, 410 Md. 168, __, 978 A.2d 247, 252 (2009) ("the Legislature is presumed to have meant what it said and said what it meant") (citations omitted). Hence, "when construing a statute, we recognize that it 'should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory.'" *Kortobi*, 978 A.2d at 252

(quoting *Collins v. State*, 383 Md. 684, 691 (2004)). Here, the plain language of the Montgomery County anti-discrimination ordinance is clear and unambiguous – it prohibits discrimination and retaliation by persons, a term that encompasses individuals, not just corporate entities. This Court should find that Petitioner's attempt to exclude individual liability would impermissibly render the statutory definition of "person" superfluous or nugatory.

Section 20-1206(b) of the Maryland Code reinforces the existence of individual liability. That section provides that: "a person that is subjected to a discriminatory act prohibited by the county code may bring and maintain a civil action against the person that committed the alleged discriminatory act for damages, injunctive relief, or other civil relief" (emphasis added).

3. Numerous Other Jurisdictions Have Recognized Individual Liability under State and Local Anti-Discrimination Statutes.

Even if this Court were to find that the plain language of the Montgomery County anti-discrimination ordinance was somehow susceptible of multiple interpretations, it should still find that individual liability is a proper remedy, as recognized by the courts in a number of other jurisdictions in interpreting comparable state or local statutes.

As a threshold matter, the U.S. Supreme Court has held that it is entirely permissible for state and local governments to provide greater protection to employees than that provided by federal statutes. *Calif. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987). Title VII (42 U.S.C. § 2000e-5 *et seq.*) does not pre-empt state law absent an

actual conflict with federal law, *id.* at 281-82, which "reflects the importance Congress attached to state antidiscrimination laws in achieving Title VII's goal of equal employment opportunity." *Id.* at 283. Hence, California's anti-discrimination statute, which provided greater protection for pregnant employees than did Title VII, was proper, since Congress allowed the states to go beyond Title VII's protections and remedies. *Id.* at 292. Here, too, that Title VII does not allow for individual liability, as Petitioners argue, is of no moment. Montgomery County remains free, under *Guerra*, to provide greater protection and remedies for its employees than does Title VII.

Thus, as the courts in at least fourteen other states and the District of Columbia have recognized, individual liability is proper in various circumstances under their state or local anti-discrimination statutes, usually because those statutes define "person" with respect to those who take discriminatory or retaliatory actions to include individuals, not just corporate entities.

California. The Supreme Court of California held that there was individual liability for harassment claims under the California Fair Employment and Housing Act, Cal. Govt. Code § 12940(j), because the statute provides that: "An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee." *McClung v. Employment Development Dept.*, 99 P.3d 1015, 1018-19 (Cal. 2004) (quoting Cal. Govt. Code § 12940(j)).

District of Columbia. The D.C. Court of Appeals has held that there is individual liability under the D.C. Human Rights Act, D.C. Code § 2-1401 *et seq.* (2001 ed.), because the statutory definition of "employer" included "any person who, for

compensation, employs an individual . . . [and] any person acting in the interest of such employer, directly or indirectly." *Purcell v. Thomas*, 928 A.2d 699, 714 (D.C. 2007) (quoting D.C. Code § 2-1401.02(10)), *cert. denied*, 129 S. Ct. 94 (2008); *see also Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 887-89 (D.C. 1998) (same).

Hawaii. Several U.S. District Courts in Hawaii have held that there is individual liability under the Hawaii Fair Employment Act, Haw. Rev. Stat. § 378-2, because the statute expressly prohibits discrimination by individuals: "For any person whether an employer, employee, or not, to aid, abet, incite, compel, or coerce the doing of any of the discriminatory practices forbidden by this part, or attempt to do so." Haw. Rev. Stat. § 378-2(3). Hence, there is "individual liability for aiding, abetting, inciting, compelling, or coercing a discriminatory practice." *Hale v. Hawaii Publications, Inc.*, 468 F. Supp. 2d 1210, 1227 (D. Hawaii 2006); *accord Black v. Honolulu*, 112 F. Supp. 2d 1041, 1056-57 (D. Hawaii 2000) (same). The courts have further held that the other provisions of the Hawaii Fair Employment Act, even though referring to "any employer" and not "any person," also support individual liability for discrimination and harassment, since the term "employer" was defined to include "any person." *Hale*, 468 F. Supp. 2d at 1228; *Steinberg v. Hoshijo*, 960 P.2d 1218, 1227 (Haw. 1998).

Iowa. The Supreme Court of Iowa held that supervisory employees could be subject to individual liability under the Iowa Civil Rights Act, Iowa Code § 216.6(1), because the statute prohibited discrimination by any "person," *id.* at § 216.6(1)(a), in contrast to Title VII's definition (42 U.S.C. § 2000e-2) which only applies to

"employers." *Vivian v. Madison*, 601 N.W.2d 872, 873 (Iowa 1999). Further, the statute had a separate prohibition against aiding and abetting discrimination by "any person." *See* Iowa Code § 216.11(1). Hence, the court held that the "legislature's use of the words 'person' and 'employer' in section 216.6(1), and throughout the chapter, indicates a clear intent to hold a 'person' subject to liability separately and apart from the liability imposed on an 'employer.'" *Vivian*, 601 N.W.2d at 878. To hold otherwise "would strip the word 'person' of any meaning and conflict with our maxim of statutory evaluation that laws are not to be construed in such a way as to render words superfluous." *Id.*

Massachusetts. The Court of Appeals of Massachusetts, in interpreting the Massachusetts anti-discrimination statute, Mass. Gen. Laws ch. 151B, § 4, held that there was individual liability since numerous statutory provisions expressly prohibited discriminatory or retaliatory conduct by "any person." *Beaupre v. Cliff Smith & Assoc.*, 738 N.E.2d 753, 764 & n.16 (Mass. App. Ct. 2000).

Michigan. The Supreme Court of Michigan held that the Michigan Civil Rights Act, Mich. Comp. Laws § 37.2101 *et seq.* provided for individual liability, since the statute "expressly defines an 'employer' as a 'person,' which … includes an 'agent of that person.'" *Elezovic v. Ford Motor Co.*, 697 N.W.2d 851, 857 (Mich. 2005) (quoting Mich. Comp. Laws § 37.2103(g) and § 37.2201(a)). Hence, the court "concluded that liability … applies to an agent who sexually harasses an employee in the workplace." *Id.* at 861.

Missouri. The Supreme Court of Missouri recently agreed with several decisions of the lower courts in that state in holding that the Missouri Human Rights Act, Mo. Rev.

Stat. § 213.010, provided for individual liability, since the statute has a broad definition of employer as including "any person directly acting in the interest of an employer." *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 669 (Mo. 2009) (quoting Mo. Rev. Stat. § 213.010.7).

New York. The U.S. Court of Appeals for the Second Circuit, in interpreting the New York Human Rights Law, N.Y. Exec. Law § 296, held that there was individual liability since the statute "states that it shall be an unlawful discriminatory practice 'for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or attempt to do so.'" *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2d Cir. 1995) (quoting N.Y. Exec. Law, § 296(6)). Hence, "a defendant who actually participates in the conduct giving rise to a discrimination claim may be held personally liable." *Id.* (collecting cases); *accord Prince v. Madison Square Garden*, 427 F. Supp. 2d 372, 385 (S.D.N.Y 2006) (citing *Tomka*).

Ohio. The Supreme Court of Ohio, in interpreting the Ohio anti-discrimination statute, Ohio Rev. Code ch. 4112, held that there was individual liability because the statute defines "employer" to include "any person acting directly or indirectly in the interest of an employer." *Genaro v. Central Transport, Inc.*, 703 N.E.2d 782, 785 (Ohio 1999) (quoting Ohio Rev. Code ch. 4112.01(A)(2)). The court concluded that the "clear and unambiguous language" of this statute "evidence[s] that individual supervisors and managers are accountable for their own discriminatory conduct occurring in the workplace environment." *Id.* at 787.

Pennsylvania. The U.S. Court of Appeals for the Third Circuit, in interpreting the

Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. §§ 951-963, held that there could be individual liability under the statutory provision that prohibits "any person, employer, employment agency, labor organization or employee, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice." *Dici v. Pennsylvania*, 91 F.3d 542, 552 (3d Cir. 1996) (quoting 43 Pa. Cons. Stat. Ann. § 955(e)).

Rhode Island. A U.S. District Court, in interpreting the Rhode Island Fair Employment Practices Act, R.I. Gen. Laws § 28-5-1 *et seq.*, held that there was individual liability, since the definition of employer includes "any person acting in the interest of an employer directly or indirectly." *Wyss v. General Dynamics Corp.*, 24 F. Supp. 2d 202, 209 (D.R.I. 1998) (quoting R.I. Gen. Laws § 28-5-6(6)(i)). The court further held that there was also individual liability under the Rhode Island Civil Rights Act, R.I. Gen. Laws § 42-112-1 to -2, since that statute was modeled after 42 U.S.C. § 1981, which also has individual liability. *Wyss*, 24 F. Supp. 2d at 210-11.

Tennessee. The Supreme Court of Tennessee, in interpreting the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-301(2), held that there can be individual liability "under the common law civil liability theory of aiding and abetting." *Allen v. McPhee*, 240 S.W.3d 803, 818 (Tenn. 2007). The court explained that such liability could be imposed where there was "evidence that the supervisor encouraged the employer to engage in employment-related discrimination or prevented the employer from taking corrective action." *Id.*

Vermont. The Supreme Court of Vermont recently held that there was individual

liability under the Vermont Fair Employment Practices Act, Vt. Stat. Ann. tit. 21, § 495, since the term "employer" includes "any individual, organization, or governmental body … and any agent of such employer." *Payne v. US Airways, Inc.*, 2009 VT 90, 2009 VT Lexis 114, at *6 & *24-*25 (Vt. Sept. 25, 2009) (quoting Vt. Stat. Ann. tit. 21, § 495d(1)).

Washington. The Supreme Court of Washington, in interpreting the Washington Law Against Discrimination, Wash. Rev. Code ch. 49.60, held that there was individual liability, since the statute expressly defined "employer" to include "any person acting in the interest of an employer, directly or indirectly…" *Brown v. Scott Paper Worldwide Co.*, 20 P.3d 921, 925-26 (Wash. 2001) (quoting Wash. Rev. Code ch. 49.60.040(3)). Further, the aiding and abetting provision of this statute also encompassed individual wrongdoers. *Id.* at 927 (quoting Wash. Rev. Code ch. 49.60.220).

West Virginia. The Supreme Court of Appeals of West Virginia, in interpreting the West Virginia Human Rights Act, W. Va. Code § 5-11-1 *et seq.*, held that there was individual liability because the statute prohibited discrimination by "any person, employer, employment agency…" and included an aiding and abetting provision, thereby encompassing individuals. *St. Peter v. Ampak-Division of Gatewood Products, Inc.*, 484 S.E.2d 481, 489 (W. Va. 1997) (quoting W. Va. Code § 5-11-9(7)).

Recognizing individual liability in the Montgomery County Code, as well as in the statutes and ordinances of other jurisdictions, serves several useful policy goals in furthering workplace protections against discrimination and retaliation. Individual liability may provide a greater deterrent effect, both as to the discriminator and as to

others in the workplace, and may also provide an incentive to individual supervisors and co-workers to refrain from taking such acts in the workplace. Individual liability also provides a strong incentive to the employer to ensure that there are effective anti-discrimination policies in the workplace, and proper measures to investigate and remedy internal complaints. Individual liability may also ensure that the employee is made whole, particularly if the corporate employer becomes insolvent or is undercapitalized. The "net result" of individual liability is "added protection for employees from workplace discrimination." *See* Lisa M. Candera, "Aiding and Abetting Liability under the New Jersey Law Against Discrimination: What's the Appropriate Standard for Imposing Individual Liability?," 35 *Rutgers L.J.* 1139, 1177 (2004); *see also* Richard D. Worth, "No 'Free Pass' for Employees: Missouri Says 'Yes' to Individual Liability under the Missouri Human Rights Act," 72 *Mo. L. Rev.* 947, 960-64 (2007) (discussing rationales for individual liability); Tammi J. Lees, "The Individual vs. the Employer: Who Should Be Held Liable under Employment Discrimination Law?," 54 *Case W. Res. L. Rev.* 861, 882-88 (2004) (same).

Thus, Amici respectfully urge this Court to affirm the Court of Special Appeals, and to find that individual liability is proper under the Montgomery County Code, because (1) the plain language of that ordinance expressly provides for individual liability; (2) numerous other jurisdictions, in interpreting comparable statutes, have similarly recognized individual liability; and (3) the public policy goals of preventing workplace discrimination and retaliation will be furthered by recognizing individual liability.

B. SECTION 20-1202 DOES NOT VIOLATE THE EQUAL PROTECTION DOCTRINE

1. Amici Interest and Summary of Argument

Amici have a strong interest in ensuring that the Maryland counties continue to have the option of providing greater protection to their employees – protection that goes above and beyond that provided by the state-wide employment discrimination statutes.

Md. Code (State Government) § 20-1202 (2009) (formerly Article 49B § 42) (recodified effective October 1, 2009) should be subjected to a "rational review" equal protection analysis because it neither interferes significantly with a fundamental right nor implicates a suspect classification. Under a rational review, Section 20-1202 passes equal protection muster because the Petitioners have failed to show, by clear and convincing evidence, that it does not rest upon any rational basis and is essentially arbitrary. Quite to the contrary, Section 20-1202 survives rational review because it is designed to protect against discrimination and retaliation which, even Petitioners concede, is an important legislative purpose. The fact that Section 20-1202 does not apply in each County is of no consequence because geographic under-inclusiveness does not create an equal protection violation under the rational basis test.

2. Heightened Review is Entirely Inappropriate

This Court should find that Montgomery County's anti-discrimination ordinance is constitutional under a rational basis level of scrutiny. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall deny to any person within its

jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

In *Conaway*, this Court reiterated the three general standards that courts employ when analyzing equal protection challenges: (1) strict scrutiny for distinctions based on "clearly suspect criteria" or that infringe on "fundamental" personal rights and interests; (2) intermediate scrutiny for quasi-suspect criteria; and (3) rational basis level of scrutiny for acts that "neither interferes significantly with a fundamental right nor implicates a suspect classification."

Conaway v. Deane, 401 Md. 219, 273-76, 932 A.2d 571, 603-05 (2007); *see also Attorney General of Maryland v. Waldron*, 289 Md. 683, 707, 426 A.2d 929, 942 (Md. 1981) (holding that a statute will be upheld generally unless the classification is "wholly irrelevant to the achievement of the State's objective")

This Court must find that there is no basis to apply "heightened scrutiny" to Section 20-1202, as Petitioners argue. In order to establish entitlement to heightened review, the claimant must demonstrate that it belongs to a quasi-suspect classification:

> (1) whether the group of people disadvantaged by a statute display a readily-recognizable, obvious, immutable, or distinguishing characteristics ... that define the group as a "discrete and insular minority; (2) whether the impacted group is saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process; and (3) whether the class of people singled out is subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities to contribute meaningfully to society.

Conaway, 401 Md. at 279. Here, none of these three elements are applicable, on a county-wide basis, to Montgomery County "employers" and "persons." Hence, Petitioners instead propose that heightened review is appropriate because the Montgomery County Code, in conjunction with Section 20-1202, implicates "a sufficiently personal right" to trigger such review. *See* Petitioners' Brief at 42 (relying on *Attorney General v. Waldron*, 289 Md. 683, 426 A.2d 929 (1981)). However, as this Court recently clarified in *Lonaconing Trap Club, Inc. v. Maryland Dept. of Environment*, 978 A.2d 702, 711 (Md. 2009), this approach to heightened review is justified only when the enactment "affect[s] 'important' personal interests or work[s] a 'significant interference with liberty or a denial of a benefit vital to the individual.'"

Petitioners cannot satisfy their burden under *Lonaconing* of demonstrating any such important right or liberty interest. Petitioners only assert that it is somehow unfair that Montgomery County managers face the "prospect of being hauled into court with the attenuating costs, and potential unlimited liability, while others throughout Maryland faced no such burdens." Petitioners Brief at 43. Petitioners are evidently asserting that the personal liberty that should warrant heightened equal protection review is the right to discriminate and retaliate against employees without the prospect of being held accountable under the Montgomery County Code's anti-discrimination provision. This Court should not consider discrimination to be a "right" that is subject to constitutional protection.

3. Section 20-1202 Passes Rational Review

Under the rational basis test, "a statutory classification enjoys a strong presumption of constitutionality, and will not be held void if there are any considerations relating to the public welfare by which it can be supported. Thus, it is not necessary for a reviewing court to identify the reasons that actually prompted the General Assembly to legislate as it did. Furthermore, the party attacking a statutory classification must show by clear and convincing evidence that it does not rest upon any rational basis but is essentially arbitrary." *Lonaconing Trap Club*, 978 A.2d at 711.

In this case, the Maryland Code (State Government) § 20-1202 (formerly Article 49B § 42) (recodified effective October 1, 2009) survives rational review because it is designed to protect against discrimination and retaliation which even Petitioners concede is an important legislative purpose. Petitioners' Brief at 49. Section 20-1202, moreover, was enacted to clarify that the Montgomery County anti-discrimination provision, MCC 27-19 (which preceded the State-wide antidiscrimination legislation), was not preempted by State statute.

The differential treatment of Montgomery County, Howard County, and Prince George's County in Section 20-1202, and of Baltimore County in Section 20-1203, is explained by the fact that the residents of those four counties have, via the political process, elected to impose more stringent laws protecting against discrimination than were applicable in other counties. This is an important political matter, and given that it offends no valid rights and affects no suspect or quasi-suspect classifications, it should be left to the political process. *See City of Cleburne*, 473 U.S. at 440 ("When social …

legislation is at issue, the Equal Protection Clause allows … wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes.").

Contrary to the Petitioners' argument, this Court has not applied any heightened scrutiny towards classifications based on political or geographical boundaries of the type at issue here. *See Department of Transp., Motor Vehicle Admin. v. Armacost*, 299 Md. 392, 408-09, 474 A.2d 191, 199 (Md. 1984) ("Uniformity of treatment throughout the State is not a prerequisite to satisfying the requirements of the equal protection clause. ... In reviewing statutory distinctions based on territory, the rational basis test applies because no fundamental right or suspect class is affected."). While this Court has examined certain geographical classifications, it has struck them down only where those classifications arose from purely economic legislation or regulations that differentiated among individuals based on their county of residency.[1] The rationale for this distinction is because these "classifications . . . are intended … to confer the monopoly of a profitable business upon residents of one geographical area to the exclusion of the residents of other areas." *Lonaconing*, 978 A.2d at 713, n.18. Here, in contrast, Section

[1] *See Petitioners* Brief at 45 (relying on *Verzi v. Baltimore County,* 333 Md. 411 (1994) (requiring police to call in-county towing operators), *Bruce v. Dir. of Chesapeake Bay Affairs*, 261 Md. 585 (1971) (limiting crabbing and oyster harvesting to county of residence); *Maryland Coal & Realty Co. v. Bureau of Mines*, 193 Md. 627 (1949) (mining for coal outlawed in one of two counties where coal was present); *Dasch v. Jackson*, 170 Md. 251, 270 (1936) (paper hangers in Baltimore subjected to more rigorous licensing requirements than in the rest of the state); and *City of Havre de Grace v. Johnson*, 143 Md. 601 (Md. 1923) (only residents of city could operate taxi cabs)).

20-1202 reflects no intent to impose any economic barriers that would nurture monopolies or specifically grant economic benefits based upon county of residency.

While Petitioners argue that Section 20-1202 creates economic advantages for Montgomery County residents (Petitioners' Brief at 48), even if the anti-discrimination provisions at issue here may have some peripheral economic impact (e.g., victims of discrimination may be entitled to greater remedies, and employers who do not wish to be subject to the more stringent anti-discrimination provisions could relocate out of the county), the primary goal of the legislation is to protect against discrimination and any tangential economic effects do not raise any constitutional concerns. *See Verzi v. Baltimore County*, 333 Md. 411, 422 (1994) (in cases that passed rational review, "economic ramifications were secondary to the primary … purpose of the classification").

In essence, the only basis for the employer's challenge to Section 20-1202 is that any system that creates a "patchwork" of anti-discrimination protections is somehow inherently irrational. *See* Petitioners' Brief at 46-49, esp. 49 ("under Art. 49B, § 42, only the few counties selected by the General Assembly could allow a private cause of action, while the remainder of the State was left with an administrative claim"). However, this Court's reasoning in *Lonaconing* rejects that argument. The Lonaconing Trap Club, which was enjoined from operation under Md. Code (Environmental Article), § 3-401, which applied to target shooting in several counties, argued that this statute violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 24 of the Maryland Declaration of Rights, by distinguishing between shooting

sports clubs in different counties. This Court held, however that "Underinclusiveness does not create an equal protection violation under the rational basis test. The Constitution does not demand that the Legislature strike at all evils at the same time or in the same way." 978 A.2d at 713. The Court went on to state that:

> … some laws have been characterized as unwise, complex, a patchwork, a crazy quilt, a labyrinth, a legal maze, unnecessarily befuddling statutory crabgrass, an inconvenience, a hypocrisy. But even were that so, those laws could not for those reasons be voided by the judiciary. As we have indicated, absent some constitutional infirmity the judiciary simply has no power to interfere. … Were we the prophesied King of Asia, we might sever [the legislation's] Gordian knot. Under the rational basis standard of review, however, only the Legislature properly possesses that ability.

Id. at 715-16.

Here, too, the geographic classification here is not irrational. Section 20-1202 (and 20-1203) simply recognizes and protects those counties that proactively chose to adopt anti-discrimination measures of their own as a result of popular political support within the county – support that may not exist as strongly in the rest of the State.

C. ENDORSEMENT OF AMICI CURIAE POSITIONS

Amici hereby adopt and endorse the positions taken by Respondent *Linklater* with respect to the arguments addressed therein, in particular the argument with respect to the Ministerial Exception, which is an issue that affects countless employment discrimination cases, throughout Maryland and the rest of the Washington D.C. metropolitan area.

Amici also hereby adopt and endorse the positions taken by *amicus* People for the American Way Foundation as well as *amicus* Public Justice Center.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court affirm the Court of Special Appeals' decision with respect to the Petitioner's Individual Liability and Equal Protection challenges, and that the Court otherwise grant the relief requested by Respondent Linklater.

Respectfully submitted,

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