

IN THE SUPREME COURT OF MARYLAND

SCM-MISC-0017-2024
September Term, 2024

ESTEFANY MARTINEZ,

Appellant,

v.

AMAZON.COM SERVICES, LLC,

Appellee.

Certified Question of Law from the United States District Court for the District of
Maryland (Civil Action No. 22-00502-BAH)

BRIEF OF AMICI CURIAE

THE PUBLIC JUSTICE CENTER,
THE NATIONAL EMPLOYMENT LAW PROJECT, AND
THE BALTIMORE ACTION LEGAL TEAM

IN SUPPORT OF APPELLANT, BY WRITTEN CONSENT

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STATEMENT OF INTEREST

The Public Justice Center (“PJC”) is a non-profit civil rights and anti-poverty legal organization established in 1985. Adopting a race equity lens, PJC uses impact litigation, public education, and legislative advocacy to reform the law for its clients. Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts. PJC has a longstanding commitment to ending wage theft and ensuring that Maryland’s wage laws are liberally interpreted consistent with the General Assembly’s humanitarian objectives. *See, e.g., Amaya v. DGS Construction, LLC*, 479 Md. 515 (2022) (amicus); *Pinnacle Group, LLC v. Kelly*, 235 Md. App. 436 (2018); *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646 (2014); *Salinas v. Com. Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017); *Heath v. Perdue Farms*, 87 F. Supp. 2d 452 (D. Md. 2000). The Statements of Interest of other Amici are contained in the attached Appendix.

ARGUMENT

Wage theft is an epidemic that costs workers billions of dollars each year, particularly in low-wage, labor-intensive industries. Estimates suggest that wage theft deprives U.S. workers of up to \$50 billion annually. *See* David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers’ Paychecks Each Year*, Econ. Pol’y Inst. 1–4 (May 10, 2017), <https://files.epi.org/pdf/125116.pdf>. Even this staggering figure may underestimate the problem, as wage theft is notoriously difficult to measure accurately.

Maryland is no exception. A recent study revealed that Maryland ranks as the worst state for wage theft in the United States. Salome Ramirez, *Maryland Named Worst State for Wage Theft in New Study*, Fox 5 D.C., (Aug. 27, 2024), <https://www.fox5dc.com/news/maryland-named-worst-state-wage-theft-new-study>. This issue is particularly acute for Maryland’s large immigrant workforce in low-wage jobs, who are especially vulnerable to exploitation and face added challenges in asserting their rights.

Certain companies, including Appellee, embed wage theft into their business models to maximize profits. As the second-largest employer in the country, Amazon has significant market power and sets the standard for many business practices, including labor practices that can contribute to wage theft. When employers like Appellee are not held accountable, they are incentivized to shift costs onto their workers, creating a race to the bottom that harms employees and the integrity of the labor market.

It is imperative that this Court uphold the promise of Maryland’s wage laws, which were enacted to ensure that workers are paid all wages due, promote general health and wellbeing, protect against unfair competition, and reduce reliance on public benefits. *See* Maryland Wage and Hour Law (“MWHL”), Md. Code Ann., Lab. & Empl. (“LE”) §§ 3-401 to 3-431; Maryland Wage Payment and Collection Law (“MWPCCL”), LE §§ 3-501 to 3-509; *Peters*, 439 Md. at 660; *see also Qun Lin v. Cruz*, 247 Md. App. 606, 631–32 (2020) (citing this Court’s precedents to support that the wage laws are interpreted broadly to effectuate the legislature’s remedial and humanitarian purposes).

Imposing the federal de minimis doctrine on Maryland law—in a way that denies workers like Ms. Martinez compensation for time spent waiting for and undergoing a

security screening mandated by her employer—would effectively condone coercive off-the-clock labor, thus undermining the state’s framework and exacerbating wage theft. This Court should reject the extratextual call to judicially limit the protections of Maryland’s wage laws when the legislature has declined to do so. *Cf. Wash. Suburban Sanitary Comm’n v. Phillips*, 413 Md. 606, 618–19 (2010) (“A court’s primary goal in interpreting statutory language is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision under scrutiny.”).

I. Wage Theft Is Widespread and Deeply Harmful to Workers, Their Communities, and the Economy

The state laws at issue are Maryland’s legal protection against unfair pay practices. The “MWHL and the MWPCCL are wage enforcement laws, with the MWHL aiming ‘to protect Maryland workers by providing a minimum wage standard[,]’ and the MWPCCL requiring ‘an employer to pay its employees regularly while employed, and in full at the termination of employment.’” *Amaya*, 479 Md. at 553 (quoting *Peters*, 439 Md. at 652–53). “Read together, these statutes allow employees to recover unlawfully withheld wages from their employer, and provide an employee with two avenues to do so.” *Id.*

In this case, the Court is called upon to determine how these statutes apply to a mandatory workplace practice that steals minutes of unpaid time from workers daily. This practice is a clear example of the pervasive problem known as wage theft. Wage theft is not a marginal concern in this case; it is central to understanding the broader context in which these statutes operate. *Sinai Hosp. of Balt. Inc. v. Dep’t of Emp. &*

Training, 309 Md. 28, 39–40 (1987) (stating, when “dealing with a question of legislative intent,” that “[w]e . . . consider the particular problem or problems the legislature was addressing, and the objective it sought to attain”). Wage theft keeps working families in poverty, increases reliance on public benefits, and stunts local economies. Because the legislative purpose of the statutes is to prevent these harms, the following context should weigh heavily in the Court’s construction of the statutory text.

A. Wage theft is Commonplace and Enormously Expensive.

Wage theft occurs when a business denies an employee the wages or benefits to which they are entitled. Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 Wash. L. Rev. 759, 765 (2019) (defining wage theft as “the illegal non-payment or underpayment of wages in violation of wage and hour law or contract law”). This definition covers many different practices, but common examples include payment below the minimum, promised, or overtime wage; misclassifying employees as independent contractors; taking unauthorized deductions from a worker’s pay; or failing to pay for all hours worked. *Id.*

While framing this issue as one of “theft” may strike some as overwrought or unfairly maligning of business, *see* Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol’y Rev. 93, 99 & n.29 (2018) (collecting criticisms), the term accurately reflects the reality for workers who are victimized: they go home with less pay in their pocket than their hard work should have earned, while their employer—knowingly or not—keeps the money that is the worker’s by right. Moreover, this language aligns with how businesses refer to the same practices when, in their view, they are carried out by

workers. See, e.g., Brad Johnson, *It's Always the Right Time to Watch for Time Card Falsification*, Horizon Payroll Solutions (June 6, 2018), <https://www.horizonpayroll.com/blog/its-always-the-right-time-to-watch-for-time-card-falsification> (cautioning, in blog post for payroll company, that employees “steal time” and commit “time fraud” and “time theft”). For example, Wal-Mart, the world’s largest private employer, has long referred to work breaks beyond the slated fifteen or thirty minutes as “theft of company time,” see, e.g., *Bynum v. Wal-Mart Stores, Inc.*, No. CIV 03-682, 2004 WL 7337843, at *2 (D.N.M. June 22, 2004) (quoting Wal-Mart employee handbook, in 2002, referring to long breaks, as “theft of company time”), and Amazon itself, the world’s second largest private employer, investigates employees for “time-theft,” see, e.g., *Kendrick v. Amazon*, No. 221-CV-02699, 2023 WL 5090043, at *1 (W.D. Tenn. June 29, 2023) (noting such an investigation).

The sheer prevalence of these violations suggests that many businesses knowingly decide to shortchange their employees. A landmark survey of workers revealed that one-quarter of workers suffered minimum wage violations and three-quarters of overtime-eligible workers suffered overtime violations. Annette Bernhardt et al., *Employers Gone Rogue: Explaining Industry Variation in Violations of Workplace Laws*, 66 Indus. Lab. Rev. 808, 817–18 (2013). Another study found that 68% of workers experienced at least one wage-related violation in just the week prior, with 17% of workers facing off-the-clock violations. Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*, Nat’l Emp. L. Project 5 (2009), <https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>

[hereinafter “*Broken Laws*”]. Additionally, studies repeatedly find that 11–30% of businesses incorrectly classify at least one worker as an independent contractor instead of an employee, thereby depriving the worker of critical benefits and legal protections to which they are entitled. Francoise Carre, *(In)Dependent Contractor Misclassification*, Econ. Pol’y Inst. 2 (2015).

The financial toll of wage theft is staggering. Estimates suggest that wage theft costs workers as much as \$50 billion annually. See Cooper, *supra*, at 1–4. Minimum wage violations *alone* account for an estimated \$15 billion withheld from workers each year—a number exceeding the value of property crimes committed each year in the United States. *Id.* (referring to FBI data concluding that total value of all robberies, burglaries, larceny, and motor vehicle theft in the United States was \$12.7 billion).

The full extent of wage theft is likely even greater than reported, as its elusive nature makes measurement difficult. “Employers are unlikely to admit that they are paying workers less than the minimum wage, denying workers meal breaks, or otherwise breaking the law,” *Broken Laws, supra*, at 11, and employees cannot complain about wage theft if they do not know it is occurring, see Matthew Fritz-Mauer, *The Ragged Edge of Rugged Individualism*, 54 Mich. J. L. Reform 735, 769 (2021) (citing research showing that unawareness of legal rights limits enforcement and that “many low-wage workers do not have a clear understanding of their workplace rights”). “It is not easy or convenient for people to track their hours, check their own records against their paystubs, and do the weekly math required to verify that they are being paid correctly.” Fritz-Mauer, *supra*, at 770. Additionally, workers often fear retaliation for reporting. *Id.* at

771–77. And for good reason: in a survey of 4,000 workers, 43% of those who complained of wage theft experienced retaliation from their employer. Laura Huizar, *Exposing Wage Theft Without Fear*, Nat’l Emp. L. Project 4 (June 2019), <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>. At base, the cost of wage theft surpasses even the staggering sums established by existing research.

B. The Damage Wrought by Wage Theft is Consequential, Disproportionate, and Far-Reaching.

The costs of wage theft are felt deeply by those who bear them, particularly because these violations are most prevalent in low-wage industries like retail, construction, food services, and health care. U.S. Dep’t of Labor, *2024b Low Wage, High Violation Industries*, <https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries> (2024).

Wage theft results in increased poverty rates. In a study of the ten most populous states, workers lost nearly a quarter of earnings to minimum wage violations each week, resulting in an average annual income of just \$10,500—\$3,300 less than the \$13,800 they should have received. Cooper, *supra*, at 9; *see also* Daniel Galvin, *Deterring Wage Theft*, 14 *Perspectives on Politics* 324, 330–31 (2016) (noting that in 2013, an estimated 16.9% of low-wage workers experienced a minimum wage violation and that, on average, those workers earned \$5.92 an hour instead of the \$7.68 they should have received). Highly relevant to the case before the Court, another study found that 70% of workers did not receive pay for work performed outside of their regular shift, Fritz-Mauer, *supra*, at 748, thereby reducing both their overall wage relative to the hours worked and the hours

that would otherwise count toward overtime, *see, e.g.*, Muhammad Faraz et al., *Working Off the Clock and Its Impact*, 122 J. Bus. Ethics 395, 400–03 (2014). The U.S.

Department of Labor concluded that, in New York and California, wage violations kept 67,000 families living below the poverty line. U.S. Dep’t of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York* 48 (2014), <https://www.dol.gov/resource-library/social-and-economic-effects-wage-violations-estimates-california-and-new-york>. Additionally, the several millions of workers who are paid off the books or misclassified result in billions of dollars in unreported payroll, “robbing unemployment insurance and workers’ compensation funds of billions.”

Catherine Ruckelshaus & Ceilidh Gao, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, Nat’l Emp. L. Project 2 (2017).

For individuals and families already struggling to make ends meet, “[b]eing denied payment often cascades into other escalating harms.” Fritz-Mauer, *supra*, at 749.

“Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor.” James Baldwin, *Fifth Avenue, Uptown*, Esquire, July 1960, at 70. “The essence of poverty lies in how a person’s hardships coalesce, interact, and build upon one another.”

Fritz-Mauer, *supra*, at 748–51. If wages are late, short, or unpaid, a worker may be forced to decide what to prioritize: rent, groceries, medicine, a car note, utility bills, or other necessary expenses. *Id.* That decision might trigger further costs in fees and penalties and, eventually, legal problems like eviction or debt collection. *Id.* The spectre of eviction “looms larger and larger over time,” and if evicted, the wage theft victim then

faces “homelessness, . . . joblessness, hunger, [and] trauma.” *Id.* Facing this cycle, “many low-income families who suffer wage theft . . . [must] rely more heavily on public assistance programs.” Cooper, *supra*, at 13–15.

These ripple effects impact low-wage workers across all demographics, but they fall hardest on the same communities historically subject to greater exploitation at work: women, Black and Latine people, and immigrants. One survey found that the rate of minimum wage violations for Black workers was three times higher than for white workers. *Broken Laws, supra*, at 48. Additionally, “[w]omen were significantly more likely than men to experience minimum wage violations, and foreign-born workers were nearly twice as likely as their U.S.-born counterparts.” *Id.* at 5, 43.

Several compounding factors contribute to these disproportionate burdens. Wage theft is most prevalent in under-regulated industries with low-wage workforces—industries that disproportionately employ women, Black and Latine people, and both documented and undocumented immigrants. See Matt Finkin, *From Weight Checking to Wage Checking*, 90 Ind. L. J. 851, 851–55 (2015). Businesses looking to minimize labor costs while avoiding penalties often target these populations, knowing they are the least empowered to complain. “[E]mployers understand that the odds that one of their employees will file a claim against them is miniscule,” and “they can decrease the likelihood . . . by retaliating against any worker who does complain.” See Hallett, *supra*, at 107–08. Retaliation is illegal, but a worker would have to file a claim and wait for the outcome, and “[i]n the meantime, the worker is out of a job, unable to pay his or her bills (or deported to his or her home country, unable to return).” *Id.* Ultimately, businesses

know that women, Black people, Latine people, and immigrants “are less likely to have the luxury of the time it takes” to challenge exploitation and face the consequences. *See id.*

Although immigration status is not relevant to a worker’s right to be paid for work they have performed, it is “[p]erhaps the biggest inflection point for worker exploitation.” Fritz-Mauer, *supra*, at 775–76. For undocumented workers, there is the “deportation threat dynamic.” *Id.* (“[E]mployers assume, often correctly, that the Spanish-speaking people they hire will not report wage theft because they are afraid of government authorities.”).

Though the most vulnerable shoulder the greatest burden, the effects of wage theft reach everyone. For the “many people genuinely seek[ing] to run law-abiding businesses,” wage theft “distorts the competitive market.” Fritz-Mauer, *supra*, at 755–57; *see also* Elizabeth J. Kennedy, *Wage Theft as Public Larceny*, 81 Brooklyn L. Rev. 517, 529–32 (2015) (“By engaging in wage theft, employers can illegally—and significantly—reduce their payroll costs and underbid competitors.”). Meanwhile, the local government bears the cost of lost tax revenue. Kennedy, *supra*, at 531. Then, “[i]n a double blow to state and local economies, since low-income workers are likely to circulate their earnings in the local economy by spending on basic necessities like food, clothing, and housing,” wage theft also burdens local businesses where workers would have spent that money. *Id.* at 531–32. Plus, “the workers and their families are often forced to rely on already strained public safety nets, such as food stamps, food banks, . . . subsidized housing, and shelters.” *Id.* at 532; Cooper, *supra*, at 13–15 (showing,

empirically, that wage theft losses increase reliance on public assistance). While the enormous toll of wage theft falls most directly on low-wage workers, especially those in more marginalized groups, everyone pays the price.

C. Wage Theft Affects Maryland and Is Inadequately Policed

Wage theft is a significant problem in Maryland. The state was recently ranked as the worst state for wage theft violations when considering the amount of back wages due per effected employee. Ramirez, *supra* (describing a study that found that each effected Marylander is owed \$2,221 on average). One study estimated minimum wage violations deprive 580,000 workers of \$875 million in gross wages each year. Rachel Deutsch & Kate Hamaji, *Combating Wage Theft with the Maryland Paystub Transparency Act of 2016*, Ctr. for Popular Democracy 2 (Feb. 2016), <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>.

Wage theft disproportionately affects Maryland's immigrant and minority communities. Immigrants, who make up 21% of the workforce in the state, are particularly impacted as they are overrepresented in sectors such as healthcare, accommodation, food services, and construction, which are rife with wage theft violations. *See* Am. Immigration Council, *Immigrants in Maryland* 1–3 (2022), <https://map.americanimmigrationcouncil.org/locations/maryland/>. In these communities, wage theft occurs with alarming frequency, with workers turning to labor lawyers after months or even years of unpaid wages. Liza Zamd, *All in a Day's Work: Advocating the Employment Rights of Day Laborers*, 3 *The Modern American* 56, 56 (2007). Home healthcare workers, most of whom are Black and Latina women, are particularly affected,

experiencing both misclassification and denial of overtime pay. *See* David Rodwin, *Independent Contractor Misclassification Is Making Everything Worse: The Experience of Home Care Workers in Maryland*, 14 St. Louis U. J. Health L. & Pol’y 47, 48 (2020) (finding that 87% of home care workers are women and 76% are people of color, and further noting that misclassification is widespread in other industries that employ Black and Latine people at high rates, like construction, cleaning, and driving).

As is true elsewhere, wage theft in Maryland goes largely unredressed. Often, workers are unaware of the violations, do not know of available procedures for reporting, and fear retaliation. *Fritz-Mauer*, *supra*, at 763–85. “Even when workers know their rights,” and choose to assert them, “they face severe obstacles in coming forward.” Hallett, *supra*, at 105. To pursue a claim, workers often must navigate a complex legal system, frequently without the aid of an attorney. *See id.* Filing fees and court costs may exceed the wages sought, creating yet another barrier to justice. *Id.* The high cost of litigation, combined with the difficulty in collecting judgments, only exacerbates the challenges workers face. *Id.* The alternative path is to report to a regulatory agency, but such agencies are notoriously under-resourced for wage theft enforcement. *See id.* at 106.

This dynamic plays out in Maryland. Historically, the Employment Standards Service, responsible for enforcing the Maryland’s wage and hour laws, has been severely underfunded. After budget cuts in 1991, the Service’s ability to effectively enforce the law was nearly eliminated, “render[ing] State enforcement of the [Wage] Act a virtual nullity.” *Balt. Harbor Charters, Ltd. v. Ayd*, 365 Md. 366, 382–83 (2001). After “the

crippling of the [agency's] ability to enforce" the laws, the General Assembly in 1993 provided a private right of action. *Friolo v. Frankel*, 373 Md. 501, 516 (2003). As explained above, private suits alone are hardly a sufficient mechanism. In the years since, agency enforcement has not improved to the degree necessary. For example, in 2012, the Maryland Division of Labor and Industry received 887 wage payment complaints. Rebecca Lineberry, Comment, *Combatting Wage Theft*, 77 Md. L. Rev. 1229, 1235 (2018). Most were "resolved informally," but the agency issued 89 wage orders against employers. *Id.* Of those 89 orders, 79 were referred for collection. *Id.* Compounding the problem, even when workers manage to beat the odds and obtain a judgment in their favor, "employers use a plethora of creative tactics to avoid paying the judgments entered against them, such as dissolving corporations, filing for bankruptcy, or moving out of state." *Id.* The Public Justice Center regularly faces these tactics and more in its work combatting wage theft.

In the end, workers who decide to report a violation can try to file suit, win, and collect the judgment, or they can report to a government agency and hope that the complaint receives adequate attention. *See also* LE §§ 3-1100 to 3-1110 (providing, additionally, for pre-judgment wage liens on employer property, though that procedure presents similar challenges and remains underutilized). Altogether, the lack of employee knowledge, unscrupulous employer practices, and institutional barriers create a "self-perpetuating enforcement gap in low-wage workplaces" that leaves already vulnerable Marylanders most at risk for exploitation. Charlotte Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 Ind. L.J. 1089, 1107 (2014).

In conclusion, wage theft in all its forms—including forced off-the-clock work as presented in this case—is widespread and deeply damaging to workers, their communities, and the economy. The pervasive nature of wage theft undermines the financial stability of working families, perpetuates poverty, and strains public resources. In Maryland, inadequate enforcement exacerbates the problem, allowing employers to continue exploiting workers. Addressing wage theft through stronger legal protections and enforcement is essential to ensuring fair compensation and promoting a healthier, more equitable economy. Weakening Maryland’s wage laws, as suggested by Amazon here, is an aggressive step in the wrong direction.

II. Interpreting the Maryland Wage Statutes as Constrained by the Federal De Minimis Rule Would Exacerbate Wage Theft

Adopting the federal de minimis rule in Maryland would allow businesses to exploit small amounts of unpaid time, further entrenching wage theft and incentivizing employers to adopt policies that maximize profits at the expense of workers. Narrowing Maryland’s wage laws by engrafting this doctrine on them would undermine the legislature’s intent to ensure fair compensation for all workers.

A. Amazon’s Profit-Maximizing Policies Illustrate the Problem

By failing to compensate workers for even small amounts of unpaid time, Amazon exemplifies how the de minimis doctrine facilitates wage theft. Beyond this specific issue, Amazon’s broader labor practices, including relatively low-wages, performance quotas, and constant surveillance, reflect a business model designed to extract maximum

profit by pressuring workers in ways that may seem small individually but add up to significant negative impacts on employees.

1. Amazon's Security Screening Policies Are a Clear Form of Wage Theft

Amazon's security screening policies at the Maryland fulfillment centers at issue deprive workers of rightful compensation. Despite being a daily requirement for the employer's benefit, Amazon requires workers to clock out before starting the screening, leaving the time spent waiting or undergoing screenings unpaid—even though workers remain under Amazon's control throughout the procedure. The process includes three options: an "express lane" for workers with no personal items, a "divestment lane" where workers can slide items that would trigger the metal detector for a visual inspection, and a "bag scan lane" where bags are placed on a belt to be scanned. *Id.* In any lane, if an alarm is triggered, a secondary screening further prolongs the process. *Id.* In addition, Amazon's rounding policy further exacerbates the issue by depriving workers of even more compensation. If workers clock out within five minutes after their scheduled time, the time is rounded to the end of the shift, resulting in no pay for those last few minutes. *Id.*

The cumulative impact of Amazon's security screening policies and rounding practices is significant. For example, an analysis of Ms. Martinez's time records revealed that over sixty-eight shifts, she lost more than 9.6 hours of unpaid time. Appellant Br.8. In more than twenty instances, it took her over five minutes to complete the security process and leave the facility, and at times, it took her over fifteen minutes. *Id.* Her

times were not anomalies. When it took Ms. Martinez five or more minutes to exit the warehouse, over forty of her fellow class-members recorded similar times and more than 160 had exit times of three or more minutes. E0562. One man who “took pains to avoid long waits at the security screening area” by, for example, leaving his lunch bag in the car, and who “[a]fter going through security, [always] went straight to [his] car,” spent an average of 4.93 minutes per day in the security line and as a result of Amazon’s rounding rules, incurred an average of 7.18 unpaid minutes per day. E0561.

Additionally, Amazon’s security screening policies disproportionately affect workers with specific needs, such as those who carry menstrual hygiene products, medical devices, or are on call and need a phone for caregiving responsibilities. E0558. These workers are forced to use either the slower divestment or bag check lane, resulting in longer delays and uncompensated time. *Id.* This can exacerbate the time and financial burden on already disadvantaged workers.

As the California Supreme Court explained in *Troester v. Starbucks Corp.*, “[a] few extra minutes of work each day can add up.” 421 P.3d 1114, 1125 (Cal. Sup. 2018). Ms. Martinez, for instance, lost 9.61 hours of unpaid time, which included 1.95 hours of time that pushed her over the forty-hour overtime threshold, resulting in \$161.65 in lost wages. Appellant Br. 8. Similarly, the *Troester* Court, in determining that \$102.67 over a seventeen-month period was significant enough to warrant compensation, explained that it was enough to “pay a utility bill, buy a week of groceries, or cover a month of bus fares.” *Troester*, 421 P.3d at 1125. While Amazon may wish to view these amounts as

de minimis to increase its already massive profits, they are “not de minimis at all to many ordinary people who work for hourly wages.” *Id.*

Finally, it is worth noting that Amazon made no effort to measure the time workers spent idling or undergoing security checks. Despite being known for its rigorous monitoring of worker productivity, the company did not conduct time studies to measure the duration of security procedures or assess how much time workers lose because of its policy. Appellant Br. 6. Nor did Amazon preserve video footage of workers undergoing security screenings during the relevant period. *Id.* While Amazon’s time is treated as money, the workers’ was free to be squandered.

2. Amazon Maximizes Profit by Pressuring Workers in Often Overlooked Ways that Cumulatively Have Major Effects

Appellee’s promotion of the de minimis doctrine must also be viewed in its broader context. Beyond the unpaid screening process, the company engages in a range of practices that maximize its profits at the expense of employees. With over a million workers nationwide and over 32,000 in Maryland, the company’s practices have far-reaching consequences.

Despite its immense wealth, Amazon pays its warehouse workers lower wages than counterparts in other warehouse jobs. Irene Tung & Yannet Lathrop, *A Good Living: Amazon Can and Must Make a Middle-Income Livelihood Possible for the People Who Work in its Warehouses*, Nat’l Emp. L. Project 9-13 (September 2023) (finding that in counties that are similar with respect to average earnings for all workers in all industries, warehouse workers in counties where an Amazon warehouse operates make,

on average, 18% less—\$822 less a month—than warehouse workers in non-Amazon counties). Amazon’s entry into certain regions has led to wage reductions in the areas it operates, contributing to a “race to the bottom” in the warehouse sector. For example, real wages for warehouse workers in Minnesota declined over 14% between 2015 and 2018, the years after Amazon began operating there. Irene Tung et al., *Injuries, Dead-End Jobs, and Racial Inequity in Amazon’s Minnesota Operations*, Nat’l Emp. L. Project 16 (Dec. 2021).

For workers already struggling to make ends meet, this means fewer resources to cover basic living expenses. More than half of Amazon’s warehouse employees experience food insecurity, and nearly half report housing insecurity. Beth Gutelius & Sanjay Pinto, *Handling Hardship: Data on Economic Insecurity Among Amazon Warehouse Workers*, UIC Ctr. for Econ. Dev. 9-15 (May 2024). A large portion of Amazon workers—particularly women, Black workers, or those in households with minors—are unable to meet basic needs, with 56% unable to pay all their bills and one-third relying on public assistance programs like SNAP. *Id.* Legalizing the time-shaving presented in this case by adopting the de minimis rule would exacerbate this financial strain by condoning the suppression of wages, deepening the financial insecurity already plaguing Amazon workers.

Amazon’s business model relies on high-performance quotas that impose significant physical and mental strain on workers. Enforced by “intensive surveillance, automated discipline, and constantly changing quotas generated by algorithms,” these quotas have led employees to push themselves to the brink, often skipping essential

breaks out of fear of discipline or losing their job. Irene Tung et al., *Amazon's Outsized Role: The Injury Crisis in U.S. Warehouses and a Policy Roadmap to Protect Workers*, Nat'l Emp. L. Project (May 2024).

While on company time, no time is considered de minimis. Amazon uses two metrics: "rate" and "time off task ('TOT')" to make every second count. It has been reported that Amazon sets rates at the 25th percentile of a five-week rolling average of workers in the same position. *Id.* If workers fall under a certain rank, which is established through a continual monitoring and ranking system, they are automatically flagged to their managers. *Id.* To monitor TOT, Amazon uses the radio-frequency handheld scanners used by warehouse associates to track customer packages to record the number of seconds between scans all day, including when workers take bathroom breaks or experience disruptions such as machine malfunctions. *Id.*; Lauren Kaori Gurley, *Internal Documents Show Amazon's Dystopian System for Tracking Workers Every Minute of Their Shifts*, Vice News (June 2, 2022), <https://www.vice.com/en/article/internal-documents-show-amazons-dystopian-system-for-tracking-workers-every-minute-of-their-shifts/>. The system automatically flags employees whose TOT exceeds set limits. *Outsized Role, supra.* Workers have reported being penalized for accumulating 120 minutes of TOT in a single day or thirty minutes of TOT on three separate days within a year. Gurley, *supra.* Workers are often unaware of the amount of TOT they have accumulated or the thresholds that lead to penalties, and many are pulled aside to be disciplined or fired without access to this information. *Id.*

As a result of these measures, workers often skip necessary breaks, including bathroom and water breaks. *Id.*; see also Beth Gutelius & Sanjay Pinto, *Pain Points: Data on Work Intensity, Monitoring, and Health at Amazon Warehouses*, UIC Ctr. for Econ. Dev. 19 (May 2024) [hereinafter, “*Pain Points*”] (finding that 23% of surveyed workers reported that their “production standard or rate makes it hard for [them] to take time to use the bathroom” “always/most of the time,” and another 31% saying it sometimes does). This problem is particularly acute for workers that require more frequent breaks, such as those with disabilities or who are pregnant or breastfeeding. For example, these quotas, combined with inadequate accommodations for breastfeeding (such as a single room dedicated to pumping within a warehouse), have compelled many to forgo pumping and switch to formula feeding rather than risk discipline. Daniel Wiessner, *Amazon Didn’t Give Workers Breaks to Pump Breast Milk – Lawsuit*, Reuters (Aug. 2022), <https://www.reuters.com/legal/litigation/amazon-didnt-give-workers-breaks-pump-breast-milk-lawsuit-2022-08-01/>.

Furthermore, these production quotas leave little room for rest or recovery. *Pain Points*, supra, at 4 (explaining that 60% of workers experience more workplace monitoring than at previous jobs with 42% feeling pressure to work faster “always/most of the time”). As a result, nearly 41% of Amazon workers report being injured on the job, and more than half of long-term employees have suffered injuries. *Id.* The company’s quotas and the mystery around how they are determined also lead to burnout, with more than half of workers reporting feelings of exhaustion and stress. *Id.* Overall, over 69% of workers reported having to take unpaid time off due to pain or exhaustion

from working for the company. *Id.* Both federal and state OSHA inspectors have repeatedly cited Amazon for illegal job hazards such as poor ergonomic job design and excessive worktime without breaks. *Outsized Role, supra*, at 12; OSHA, *US Department of Labor finds Amazon Exposed Workers to Unsafe Conditions, Ergonomic Hazards at Three More Warehouses in Colorado, Idaho, New York*, (February 12, 2023)

<https://www.osha.gov/news/newsreleases/national/0201202>.

B. Without Enforced Legal Restraint, Employers Use Wage Theft to Maximize Profits at Workers' Expense.

When legal restrictions are insufficient or underenforced, some employers will use wage theft to improve their bottom lines and seek a competitive edge. If this Court sanctions a practice that requires workers' time and labor without pay, employers will surely take advantage of the legalized wage theft and a host of new, unpaid mandates on workers' time will result. Amazon's market dominance gives it the power to set industry standards, and if Maryland were to adopt the de minimis rule, it would encourage further wage theft.

Despite being illegal and immoral, wage theft turns on an economically rational equation. "[A]n employer's decision to pay less than the minimum wage involves a cost-benefit analysis that takes into account the probability of detection, the expected penalties that would occur if detected, and the profit the employer expects to make by violating the law." Hallett, *supra*, at 103. Because "the [worker] complaint rate remains abysmally low," and businesses often evade judgments even when an enforcement action succeeds, the cost-benefit ratio is all too enticing for a business willing to skirt the law. Hallett,

supra, at 108–13. Some employers will knowingly engage in wage theft and regard any penalties as a cost of doing business. *Id.* (giving the example of a restaurant that was sued three times, each time settling and then reneging on the terms and terminating the complaining workers). Thus, when businesses reduce labor costs through wage theft, the resulting pressure on competitors often forces otherwise law-abiding businesses to follow suit. David Weil, *Enforcing Labour Standards in Fissured Workplaces: The U.S. Experience*, 22 *Econ. & Lab. Rel. Rev.* 33, 37 (2011).

When it comes to off-the-clock wage theft, in cases the Public Justice Center has litigated, we have seen how—when wage theft goes unaddressed—businesses maintain inefficiencies, so long as they fall on workers. For instance, in *Trotter v. Perdue Farms, Inc.*, No. CIV.A.99-893-MPT, 2002 WL 34226966 (D. Del. Aug. 5, 2002), poultry plant employees spent about eight unpaid minutes a day obtaining, donning, and doffing personal protective equipment off the clock, which added up to about \$500 in unpaid wages per worker per year. Steven Greenhouse, *Poultry Plants to Pay Workers \$10 Million in Compensation*, N.Y. Times, May 10, 2002, at A-10. This company, one of the largest employers on Maryland’s Eastern Shore, tried to save millions of dollars by nickel and diming its workers this way. Once required to pay, the company changed its process to reduce the time involved. *Id.* Similarly, if Amazon does not have to pay workers for security screening, it will have no incentive to make the process more efficient and waste less worker time. It is no accident that workers are required to clock out before rather than after the screening.

The more that wage theft is penalized and enforced against, and the closer the practice gets to being unprofitable, the less workers will be exploited. *Id.* But if the Court sanctions a wage theft tactic, the practice will become even more profitable, businesses will take advantage, and workers will foot the bill. *Id.* at 112–13.

C. Narrowing Maryland’s Wage Laws by Imposing the De Minimis Standard Would Facilitate Wage Theft and Undermine the Legislative Purpose.

This Court has repeatedly explained that it interprets Maryland’s wage laws to further the General Assembly’s purpose of ensuring fair pay practices and shielding against abuse. *See, e.g., Amaya*, 479 Md. at 566-67 (refusing to incorporate the FLSA’s Portal-to-Portal Act limits to compensable time into Maryland Wage Law without statutory or regulatory support); *Peters*, 439 Md. at 662 (acknowledging that treble damages are available “to cure what the Legislature saw as a problem with ‘wage theft’”); *Cunningham v. Feinberg*, 441 Md. 310, 350 (2015) (Adkins, J., concurring) (collecting cases that reflect the “remedial terms” of the wage statutes); *Ocean City, Md. v. Barufaldi*, 434 Md. 381, 384–85 (2013) (explaining, “in light of the purpose of [the wage laws],” they should be liberally construed, and declining to apply purportedly equivalent federal law in part because of the statutes’ remedial purpose).

Indeed, Maryland’s wage laws share the “remedial and humanitarian” purpose of their federal equivalent, the Fair Labor Standards Act, *Qun Lin*, 247 Md. App. at 631–32, but are even more protective, and there is no reason Maryland law must be subject to identical construction. *Cf. Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482 n.10 (2007) (“Maryland appellate courts have interpreted state statutes . . . differently than

analogous federal provisions on numerous occasions, even where the state provision is modeled after its federal counterpart.”).

Limiting the protection provided by Maryland’s wage laws by judicially imposing the federal *de minimis* rule would not construe the statutes liberally and would be contrary to the legislature’s remedial and humanitarian purpose. *Cf. Stearman v. State Farm Mut. Auto. Ins. Co.*, 381 Md. 436, 454 (2004) (“The formidable doctrine of separation of powers demands that the courts remain in the sphere that belongs uniquely to the judiciary—that of interpreting, but not creating, the statutory law.”). The Court need only consider the consequences of such a ruling here to see why that is true.

Amazon has bet on not having to pay employees for post-shift security screenings, and as a result, has no incentive to make the process more efficient for its employees. If it were required to pay for this time, as a proper reading of the statutes mandates, Amazon likely would promptly implement a better system, like Perdue did at its poultry plants after the Public Justice Center’s clients sued. In contrast, if the Court approves its current practice, it will incentivize businesses across Maryland to find ways to carve out additional claimed “*de minimis*” work duties and shift more costs onto workers whenever possible. That interpretation of Maryland’s wage laws conflicts with the legislature’s purpose in enacting the statutory framework and should be rejected.

CONCLUSION

For these reasons, Amici Curiae respectfully request that this Court answer the certified question in the negative.

Respectfully submitted,

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CERTIFICATE OF RULES COMPLIANCE

1. This brief contains 6,359 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 20-201(g), on January 27, 2025, the foregoing Brief of Amici Curiae in Support of Appellants was served via the MDEC File and Serve Module, and that, pursuant to Rule 8-502(c), two copies each were mailed, postage prepaid, first-class, to:

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APPENDIX

The National Employment Law Project (“NELP”) is a non-profit legal organization with over 55 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP’s areas of expertise include rights under federal employment and labor laws, with a special emphasis on wage and hour rights. Too many employers abuse wage and hour laws to chisel time and wages from their low-paid workers, and robust coverage of these baseline laws is key to economic security for workers and communities. NELP has litigated and participated as amicus in numerous cases addressing the rights of workers under the Fair Labor Standards Act and related state laws in most federal circuits and in the U.S. Supreme Court.

The Baltimore Action Legal Team (“BALT”) is a community lawyering organization that formed in April 2015 in response to a call from community organizations for legal assistance. BALT transitioned from providing emergency response services during the Baltimore Uprising to working towards addressing structural causes of its symptoms. This work includes close partnerships with community organizations in presenting legal education, policy advocacy, and legal representation. BALT operates under 501c3 status. BALT has an interest in this case because of its commitment to reducing economic harm on Black communities and supporting people's and communities’ opportunity to advance.