IN THE MARYLAND COURT OF SPECIAL APPEALS

ACTION COMMITTEE FOR TRANSIT et al.,
Appellants

v.

TOWN OF CHEVY CHASE et al.,
Appellees

No. 01204, September Term, 2015

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APPELLANTS' OPENING BRIEF

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ON APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY,
Judge Cheryl A. McCally

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STATEMENT OF THE CASE

This appeal is about a municipal government's discriminatory denial of fee waivers to prevent a nonprofit group and a journalist from accessing public documents under the Maryland Public Information Act ("MPIA"). Appellants Action Committee for Transit ("ACT") and Benjamin Ross sought documents concerning the use of public money in connection with the high-profile regional transportation project known as the "Purple Line." Appellees Town of Chevy Chase and Town Council of Chevy Chase (collectively "the Town") repeatedly rebuffed their requests by refusing to turn over the public documents or even begin to search for them unless ACT and Mr. Ross agreed to pay initial fees of nearly $1,000. The Town never offered an estimate of a potential total bill, making the initial fees a down payment on an unknown sum with unpredictable results.

ACT and Mr. Ross requested that the Town waive the fees under a provision of the MPIA that permits fee waivers for requesters acting in the public interest. The Town repeatedly denied the fee waiver requests without explanation. It later admitted that it denied the fee waivers because Town officials felt distrust and hostility toward ACT and Mr. Ross based on the officials' interpretation of prior statements ascribed to ACT and Mr. Ross about the Purple Line and about the Town.

ACT and Mr. Ross filed suit in the Circuit Court for Montgomery County on January 30, 2015. They said they satisfied the MPIA's fee waiver provision because the requested documents are in the public interest, their intention was to disseminate the documents to the public, and they lacked the ability to pay. Before any discovery was

taken, the parties filed cross motions for summary judgment. The Town did not deny that dissemination of the documents would be in the public interest, but it claimed that it properly denied the fee waivers based on the Town's belief that ACT and Mr. Ross had criticized the Town's longstanding opposition to the Purple Line.

Circuit Court Judge Cheryl A. McCally held a motions hearing on June 30, 2015, and issued an oral ruling from the bench in favor of the Town. On July 8, 2015, the Circuit Court entered judgment in favor of the Town. Neither in the oral hearing nor in the one-page judgment did the Circuit Court address the Town's unlawful (and unconstitutional) reliance on the viewpoints of ACT and Mr. Ross to deny their fee waiver requests. ACT and Mr. Ross timely appealed on July 30, 2015.

QUESTIONS PRESENTED

1. Whether the Circuit Court erred in holding that the Town of Chevy Chase was permitted to use "past negative comments" by a public-interest group and a journalist as a basis for denying their requests for fee waivers under the MPIA.
2. Whether the Circuit Court erred in holding that the Town of Chevy Chase was permitted to deny fee waiver requests based on "other relevant factors" it neither articulated nor explained.

STATEMENT OF FACTS

A. The Purple Line project attracts significant controversy and public interest

The municipalities and citizens of the inner Maryland suburbs of Washington, D.C. have battled for more than two decades over the Purple Line, a planned light rail transit project that will extend from Bethesda to New Carrollton. The 16-mile rail line,

which has an expected cost of $2 billion, will provide citizens with better access to Metrorail, MARC, Amtrak and bus routes.[1] It is the highest-profile transportation project in the northern D.C. suburbs since the construction of the Metro. Supporters and opponents of the Purple Line have legitimate, sincerely held views about whether and how the project can best serve the public interest.

ACT is a nonprofit advocacy group that promotes better communities through increased public transportation. Mr. Ross is a blogger and journalist who writes about the Purple Line and how local politics influence its viability. Like numerous local governments, the University of Maryland, the Maryland General Assembly, and Governor Larry Hogan, ACT and Mr. Ross support construction of the Purple Line. They believe it will create new jobs, increase property values, and improve public transportation throughout the region.

The Town of Chevy Chase and its Town Council have long been among the most prominent opponents of the Purple Line. That opposition peaked in late 2013 and early 2014 when the Town entered into a $20,000-per-month agreement with the firm Buchanan Ingersoll & Rooney to lobby against the Purple Line. A January 23, 2014 *Washington Post* article discussed allegations that the Buchanan firm was chosen because federal money is expected to finance a portion of the Purple Line, and Buchanan attorney

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[1] Katherine Shaver, *How many people will ride the Purple Line?*, WASH. POST (Sept. 26, 2015), https://www.washingtonpost.com/local/trafficandcommuting/how-many-people-will-ride-the-purple-line/2015/09/26/5c2da4ec-51ac-11e5-8c19-0b6825aa4a3a_story.html.

Robert L. Shuster's brother, Congressman Bill Shuster, is Chairman of the Transportation and Infrastructure Committee of the U.S. House of Representatives.[2]

B. ACT and Mr. Ross request public records and seek fee waivers

ACT and Mr. Ross believe that the public should be informed about how public money is being spent on the politics of the Purple Line. After the public exposure of the Town's hiring of the Buchanan lobbying firm (and the connection to a prominent member of the U.S. House of Representatives), ACT and Mr. Ross made several independent requests under the MPIA for public documents from the Town.

1. ACT's February 4, 2014 request

On February 4, 2014, ACT filed an MPIA request seeking Town records related to the retention of the Buchanan firm. (E. 23). On March 6, 2014, the Town made limited documents available for review and charged ACT only copying fees. (E. 24-25).

Shortly thereafter, still in March of 2014, the Town extended its engagement of the Buchanan firm at a cost of $29,000 per month. (E. 26-30). The new contract called for the firm to represent the Town in "federal and Maryland state government relations matters," and two other firms—Chambers, Conlon & Hartwell, LLC and Alexander & Cleaver—were listed as subcontractors. (E. 26-30).

2. ACT's April 1, 2014 and April 6, 2014 requests

Following reports of the new and more expensive contract with the lobbying firm

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[2] Katherine Shaver, *Purple Line advocates question Town of Chevy Chase hiring congressman's brother*, WASH. POST (Jan. 23, 2014), https://www.washingtonpost.com/local/trafficandcommuting/purple-line-advocates-question-town-of-chevy-chase-hiring-congressmans-brother/2014/01/23/f83d29ce-8382-11e3-9dd4-e7278db80d86_story.html.

(and others), ACT filed on April 1, 2014 a second, distinct MPIA request for access to or copies of all of the Town's agreements, contracts, invoices, bills, correspondence, and meeting minutes related to the Buchanan, Chambers, and Alexander firms. (E. 31-33). After learning about possible additional activities the Town may have undertaken related to the Purple Line, ACT on April 6, 2014 submitted an MPIA request for records about the public relations firm Xenophon Strategies. (E. 34). It did not occur to ACT's Board members, who were neither represented nor assisted by counsel at that time, to request a formal waiver of fees associated with these requests because the Town had not charged research fees for ACT's previous request in February. (E. 24-25).

The Town demanded a $700.00 "deposit" to begin searching for the documents requested on April 1, 2014, and it demanded a $250.00 "deposit" for the April 6, 2014 request. (E. 35-36). ACT applied for a waiver of those fees under § 4-206(e) of the MPIA on April 18, 2014, citing the fact that the documents related to a matter of substantial public interest. (E. 37-41). ACT, a nonprofit, volunteer group with a limited budget, explained to the Town that it believed it was entitled to a waiver because it sought to disseminate the information in order to "contribute to public understanding of government operations and activities." (E. 37, 40). In a four-sentence letter on April 23, 2014, and without offering any explanation, the Town wrote that it "has decided to deny" the fee waiver requests. (E. 42).

3. ACT's May 21, 2014 request

ACT made another MPIA request on May 21, 2014, seeking new documents relating to the three lobbying firms and the Xenophon public relations firm. (E. 43-50).

In its request, ACT sought a waiver of all fees because the documents would "contribute significantly to the public's understanding of the business, activities, and public-money expenditures of a government body (the Town of Chevy Chase) related to a major public infrastructure project (the Purple Line)." (E. 45). In addition, the individual who submitted the request on behalf of ACT—Miriam Schoenbaum, an *ex officio* Board member of the organization—sought a fee waiver because she expected to publish the information on *Greater Greater Washington*, an independent D.C. metro-area news website. (E. 47).

The Town responded on June 20, 2014, agreeing to make limited documents available for inspection by Ms. Schoenbaum. (E. 51-52).[3] However, the Town denied the fee waiver requests without explanation and demanded at least $1,345.00 to search for and review the remaining responsive documents. (E. 52). The Town did not disclose the potential total bill; indeed, it stated that "the Town reserves the right to request additional deposits." (E. 52).

4. ACT's October 15, 2014 request

Following the unexplained June denial of ACT's fee waiver request and the escalation of deposit demands, ACT sought and retained *pro bono* legal counsel. On October 15, 2014, Baker Hostetler LLP, on behalf of ACT, submitted a final MPIA request to the Town that encompassed all of the information ACT previously had sought

[3] Although the Town claimed that responding to the request had been "very time consuming and expensive," the Town provided access only to a few meeting minutes, a copy of its March 14, 2014 engagement with the Buchanan firm, and two pages of non-itemized invoices from the firm to the Town. (E. 52).

but had not received. (E. 53-58). It also requested a fee waiver, explaining that ACT lacked the ability to pay and was seeking the documents for a public purpose, rather than a personal or commercial one. (E. 56-57). The Town responded to the MPIA request through outside counsel, Alexander & Cleaver, on October 27, 2014, denying the fee waiver and demanding $879.00 before it would begin to compile a response. (E. 58A-59). The Town did not guarantee that the $879.00 deposit would be sufficient to fulfill the entire request. (E. 59).

5. Mr. Ross's November 10, 2014 request

Mr. Ross, a published author who has written extensively on issues regarding the Purple Line and is also a Board member of ACT, filed an MPIA request with the Town on November 10, 2014, similar to the October request from ACT. (E. 119-24). He requested a waiver of fees both in the public interest and in his capacity as a member of the media. (E. 122-24).

On or about November 21, 2014, the Town denied Mr. Ross's request for a fee waiver because, it said, it did not "believe" that his request was made in his "capacity as a member of the media." (E. 66-67). In its denial, the Town referred to Mr. Ross's "known affiliation" with ACT, which it said had made previous requests "relating to the same general topic." (E. 66-67).

C. ACT and Mr. Ross file suit

ACT and Mr. Ross filed this lawsuit on January 30, 2015, on grounds that the Town failed to apply the MPIA properly in denying their requests for fee waivers. (E. 9-22). The parties filed cross motions for summary judgment, and the Circuit Court for

Montgomery County, without a formal written opinion, issued an order granting summary judgment to the Town. (E. 163). The Court stated from the bench:

> The letters that the plaintiffs have cited cite reasons to grant the waiver in them, and the town has responded by saying that it's considered those request [*sic*] in the letters that were sent, and it has denied them.
>
> . . . [*Mayor and City Council of Baltimore v.*] *Burke* stood for the proposition that a blanket rejection is not appropriate, but it doesn't say then what is the formula for making that determination for any entity that a public information request is made to. . . .
>
> So, the town considered the information that was presented to it, said in its response have [*sic*] considered that request, and, based on one of their factors being past negative comments and other relevant factors they were denying the request. There's nowhere that it says that they have to report what those factors are. . . .
>
> . . . So, there is a disagreement as to whether factors were considered by each party, and defendants say they did consider other relevant factors, plaintiffs say they didn't.
>
> But that, in and of itself, does not create a dispute of a material fact that I can grant relief upon, because the case doesn't say what they have to do, the statute doesn't say specifically what is a win in other relevant factors, and what isn't going to fly for other relevant factors. It says they have to be considered. Defendant maintains they were considered.

(E. 158-59). ACT and Mr. Ross noticed an appeal of the Circuit Court's ruling on July 30, 2015. (E. 164-65).

STANDARD OF REVIEW

In a lawsuit brought under the MPIA, an appellate court reviews a grant of summary judgment *de novo*. *City of Balt. Dev. Corp. v. Carmel Realty Assocs.*, 910 A.2d 406, 415 (Md. 2006). In conducting its *de novo* review, this Court "must look to whether the court correctly interpreted and applied the relevant law to the uncontested material

facts." *Prince George's Cnty. v. The Wash. Post Co.*, 815 A.2d 859, 868 (Md. Ct. Spec. App. 2003).

ARGUMENT

The Maryland Public Information Act provides that "all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees." MD. CODE ANN., GEN. PROV. § 4-103(a). The right to public information must be "construed in favor of allowing inspection of a public record, with the least cost and least delay to the person . . . that requests the inspection." *Id.* § 4-103(b). In furtherance of that principle, the statute provides for certain types of requesters to obtain public records free of charge. A fee waiver is appropriate when "the applicant asks for a waiver," and "after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest." *Id.* § 4-206(e). A court must overturn a government body's denial of a fee waiver when the denial does not conform to the MPIA. *See Mayor and City Council of Balt. v. Burke*, 506 A.2d 683, 688 (Md. Ct. Spec. App. 1986) (reversing city's denial of fee waiver because the city could not offer adequate justifications for its denial and thus "did not abide by" the statute's guidelines).

Here, the Town repeatedly abused the MPIA by using the prospect of indefinite and potentially exorbitant fees against those who were critical of the Town's policy to stymie access to public information. In granting summary judgment to the Town and upholding the Town's repeated denials of fee waivers, the Circuit Court strayed from the language and the purpose of the MPIA in two primary ways. First, the Circuit Court

erred when it held that "past negative comments" by ACT and Mr. Ross were an appropriate and permissible basis for the Town to deny fee waivers. Second, the Circuit Court erred when it held that the Town was not required to articulate the other "relevant factors" it purportedly considered in denying the fee waivers.

I. DENYING FEE WAIVERS ON THE BASIS OF "PAST NEGATIVE COMMENTS" CONSTITUTES IMPERMISSIBLE VIEWPOINT-BASED DISCRIMINATION

The Circuit Court recognized only one specific, identifiable "factor" as the basis for upholding the Town's denial of fee waivers for ACT and Mr. Ross: "past negative comments" that ACT and Mr. Ross allegedly had made about the Town. (E. 159). The Circuit Court's ruling apparently relied on the Town's briefing below, in which the Town candidly acknowledged that its primary reason for refusing to grant fee waivers was that the Town was hostile to the opinions expressed by ACT and Mr. Ross. (E. 95, 100, 102, 105-07). The Town asserted that it had "distrust" for ACT and Mr. Ross because they had criticized the Town's opposition to the Purple Line, and the Town characterized these criticisms as "smear tactics" that the Town "was entitled to consider . . . in denying the fee waiver request." (E. 100). In crediting the Town's explanation, the Circuit Court expressly held that "past negative comments" are "relevant" to a decision of whether to waive fees in the production of public documents under the MPIA. (E. 159). That holding was legal error.

Any consideration of "past negative comments" is impermissible in deciding whether to waive fees for the release of public documents. Citizens, journalists, and advocacy groups are entitled under the First Amendment and Article 40 of the Maryland

Constitution's Declaration of Rights to express disagreement with the policies and actions of elected officials. Whether such expression constitutes legitimate public debate or unfair "smear tactics" is, of course, in the eye of the beholder. But, as a matter of law, the Town is not permitted to consider the content of previous publications or publicly expressed views when deciding—as required by the MPIA—whether the release of public information is "in the public interest."

An overwhelming body of law makes clear that a government entity may not discriminate against a speaker based on the speaker's message. *E.g.*, *R.A.V. v. City of St. Paul*, 506 U.S. 377, 382 (1992) ("The First Amendment generally prevents government from proscribing speech . . . because of disapproval of the ideas expressed."). This prohibition on content-based and viewpoint-based discrimination includes attempts by governments to inflict uneven financial burdens on certain speakers. *Rosenberger v. Rector and Visitors of the U. Va.*, 515 U.S. 819, 828 (1995) ("[T]he government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression."); *see also Bd. of Cnty. Comm'rs v. Umbehr*, 518 U.S. 668 (1996) (holding that a local government may not retaliate against a government contractor for criticizing government policy); *State v. Sheldon*, 629 A.2d 753, 758-59 (Md. 1993) (explaining that content-based and viewpoint-based restrictions warrant strict scrutiny and "rarely" survive such scrutiny).

These principles apply strongly in the context of citizens' access to government resources, including public documents. The Supreme Court has recognized that states cannot apply their freedom-of-information laws in ways that differentiate among

requesters based on their viewpoints. In *Los Angeles Police Department v. United Reporting Publishing*, 528 U.S. 32 (1999), a company challenged a provision of the California public information act that required requesters to declare how they intended to use the information. At least six Justices recognized that any viewpoint-based restriction on access to public information would be unconstitutional. *See id.* at 43 (Ginsburg, J., concurring) ("California could not, for example, release . . . information only to those whose political views were in line with the party in power."); *id.* at 45-46 (Stevens, J., dissenting) ("[I]f the State identified the disfavored persons based on their viewpoint, or political affiliation, for example, the discrimination would clearly be invalid."). In an analogous situation involving access to a town hall, the Seventh Circuit recognized that, although a municipality need not grant unbridled access, it certainly "could not deny access in a manner that discriminated against a speaker based on his viewpoint." *DeBoer v. Vill. of Oak Park*, 267 F.3d 558, 567 (7th Cir. 2001).

Here, the Town has declared that it considered the opposing views of ACT and Mr. Ross in denying their fee waiver requests—denials that indisputably constitute restrictions on access to public information. The Circuit Court erroneously stamped with approval this impermissible consideration. If that decision were upheld, any government body controlled by one political party could deny fee waivers—and, therefore, impede access to information about the conduct of government—to members of the media or the public whom the government associates with an opposing party. The government would need merely to declare distrust of "past negative comments," an outcome not tolerated by the MPIA. It is inimical to the First Amendment and to the most fundamental principles

of democracy. *See, e.g.*, *Rosenberger*, 515 U.S. at 829 ("When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."); *Sheldon*, 629 A.2d at 757 ("If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.") (quoting *Texas v. Johnson*, 491 U.S. 397, 412 (1989)).

II. NEITHER THE TOWN NOR THE CIRCUIT COURT ARTICULATED ANY APPROPRIATE FACTORS TO JUSTIFY THE DENIAL OF FEE WAIVERS

The only other basis for the Circuit Court's grant of summary judgment denying the fee waiver requests, aside from its reliance on impermissible viewpoint discrimination, was the Town's purported reliance on "other relevant factors." (E. 159). But, neither the Town nor the Circuit Court identified specifically any "other relevant factors"; instead, the Circuit Court deferred to the Town's bare, self-serving assertions in its correspondence with ACT and Mr. Ross that the fee waiver requests were "considered" and "denied." (E. 51, 58A). It is impossible, therefore, to trace the Town's path of reasoning in denying the fee waiver requests.

Such unbridled and unexplained discretion is improper and dangerous in the arena of public access to public resources. *See, e.g.*, *Child Evangelism Fellowship of S.C. v. Anderson Sch. Dist. Five*, 470 F.3d 1062, 1068-69 (4th Cir. 2006) (explaining that differential access to public resources cannot be based on unlimited government discretion but rather must be based on "sufficient criteria to prevent viewpoint discrimination"). A government body may not use "unproven subjective determinations"

to justify imposing uneven burdens on speakers; rather, it "must prove the links in its chain of reasoning." *United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 357-58 (6th Cir. 1998). As a matter of law, it is not enough for a government body to declare a box checked, hiding what it may have considered "relevant" while failing to cite anything in particular. *See id.* ("An official harboring bias against a particular viewpoint could readily exclude ads communicating that viewpoint simply by 'determining' that the ad was controversial, aesthetically unpleasing, or otherwise offensive. We simply will not allow such speculative allegations to justify the exclusion of a speaker from government property.").

In crediting the Town's conclusory assertions, the Circuit Court held that, although the statute requires a government entity to consider "relevant factors," there is no legal requirement for the government entity to "report what those factors are" or otherwise articulate them. (E. 159). Counterintuitively, the Circuit Court recognized that "a blanket rejection is not appropriate" (E. 158), yet the Circuit Court granted summary judgment to the Town on the basis that the Town "maintains" that unspecified relevant factors "were considered" (E. 159).

It would be difficult to distinguish between what the Circuit Court found acceptable here and a "blanket rejection." The record reveals nothing more, the Town volunteered nothing more, and the Circuit Court probed not at all. There is no evidence that what the Town considered was "relevant." There is only the evidence that it impermissibly considered the viewpoints of the requesting citizens. It is impossible to

know from the record, including the hearing, whether other "relevant" factors were similarly impermissible.

The Circuit Court's extreme deference to the Town's own self-serving assertions also directly violates *Burke*, the seminal case on fee waiver denials under the MPIA. In *Burke*, this Court overturned the City of Baltimore's fee waiver denial because there was no evidence that the city undertook a sufficient analysis "of whether the waiver would be in the public interest." 506 A.2d at 688. That analysis, the Court explained, should have included "the importance of public exposure" to an issue of significant interest and controversy. *Id.* Similarly, here, there is no evidence that the Town conducted a good-faith review of whether fee waivers for ACT and Mr. Ross would be in the public interest, nor is there any evidence that the Town considered the level of public interest in the Purple Line generally or in the specific information sought by ACT and Mr. Ross. The Town's assertion that it "considered" unspecified "factors" is not evidence that the Town undertook the review required by *Burke*.

Burke and the MPIA forbid the kind of blanket rejection manifest in the Town's failure to name but one, impermissible factor, without any reference to a consideration of the public interest. As the Maryland Court of Appeals has made clear routinely, the MPIA's provisions "must be liberally construed." *E.g.*, *Kirwan v. The Diamondback*, 721 A.2d 196, 199 (Md. 1998); *see also Md. Dep't of State Police v. Md. State Conf. of NAACP Branches*, 59 A.3d 1037, 1043 (Md. 2013) (explaining that the intent of the MPIA is that "citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government").

The parties do not dispute the enormous public curiosity and discussion about the Purple Line, and as *Burke* recognized, a fee waiver is in the public interest when the requester seeks to "mak[e] available to the . . . community information concerning one of the City's major financial undertakings." 506 A.2d at 688. The Purple Line is a major financial undertaking, and opposition to it has been a major financial undertaking of the Town. The Town apparently wants the public to know only about the major financial undertaking to build the Purple Line, but not the Town's financial undertaking to stop it. ACT and Mr. Ross want the public to know about both.

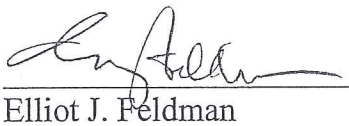
CONCLUSION

When a legislature grants a statutory right to all citizens, it cannot revoke that right from certain citizens merely because those citizens' views are "thought inimical to the Government's own interest." *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548-49 (2001) (invalidating statute that revoked public funding from lawyers who tried to challenge or reform welfare laws). The Maryland right to public information—including the right to a fee waiver in appropriate circumstances—is one such statutory right. *See* MD. CODE ANN., GEN. PROV. § 4-103(a) (granting right of freely flowing public information to "all persons"). The Town of Chevy Chase sought to restrict ACT and Mr. Ross from exercising that right based on the Town's admitted hostility to the viewpoints they expressed. In repeatedly denying their requests for fee waivers, the Town committed unconstitutional viewpoint discrimination, and it failed to conduct the legally required, good-faith review of whether fee waivers would be in the public interest.

For the foregoing reasons, the judgment of the Circuit Court should be reversed, and this Court should order that judgment be entered in favor of ACT and Mr. Ross, with the Town to bear all fees and costs.

December 11, 2015

Respectfully submitted,



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RELEVANT CONSTITUTIONAL & STATUTORY PROVISIONS

U.S. Const. amend. I

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . .

Maryland Constitution, Declaration of Rights

We, the People of the State of Maryland, . . . declare:

. . .

Art. 40. That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.

Maryland Code, General Provisions § 4-103
General right to information

In general

(a) All persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees.

General construction

(b) To carry out the right set forth in subsection (a) of this section, unless an unwarranted invasion of privacy of a person in interest would result, this title shall be construed in favor of allowing inspection of a public record, with the least cost and least delay to the person or governmental unit that requests the inspection.

. . .

Maryland Code, General Provisions § 4-206
Fees

Definitions

(a)(1) In this section the following words have the meanings indicated.

. . .

(3) "Reasonable fee" means a fee bearing a reasonable relationship to the recovery of actual costs incurred by a governmental unit.

Charging reasonable fee

(b)(1) Subject to the limitations in this section, the official custodian may charge an applicant a reasonable fee for:

(i) the search for, preparation of, and reproduction of a public record prepared, on request of the applicant, in a customized format; and

(ii) the actual costs of the search for, preparation of, and reproduction of a public record in standard format, including media and mechanical processing costs.

(2) The staff and attorney review costs included in the calculation of actual costs incurred under this section shall be prorated for each individual's salary and actual time attributable to the search for and preparation of a public record under this section.

. . .

Waiver

(e) The official custodian may waive a fee under this section if:

(1) the applicant asks for a waiver; and

(2) (i) the applicant is indigent and files an affidavit of indigency; or

(ii) after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest.

RULE 8-504(a)(9) CERTIFICATE

This document complies with Rule 8-112(c)(1) because it was prepared with 13-point, Times New Roman, proportionally spaced typeface.

CERTIFICATE OF SERVICE

I certify that, on this 11th day of December, 2015, two copies of the foregoing Appellants' Opening Brief, and two copies of the Record Extract, were served by first-class mail, postage prepaid, to:

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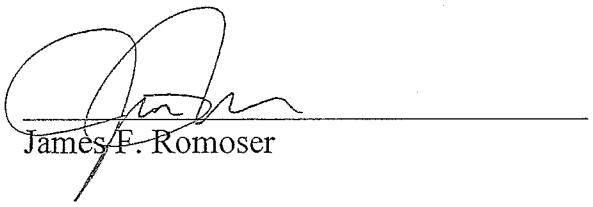

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