

IN THE COURT OF APPEALS OF MARYLAND

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September Term, 2021

MISC. No. 005

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JESSE J. MURPHY, et al.,

Appellants

v.

LIBERTY MUTUAL INSURANCE COMPANY,

Appellee

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CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(The Honorable Stephanie A. Gallagher)

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BRIEF OF AMICUS CURIAE  
MARYLAND ASSOCIATION FOR JUSTICE, INC.

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## INTEREST OF AMICUS CURIAE

The Maryland Association for Justice, Inc. (“MAJ”), is a voluntary association of attorneys from every county within Maryland who primarily represent people injured by the acts of others. MAJ has a vital interest in the laws affecting Maryland in general as well as the laws attendant to civil litigation. The bylaws of MAJ specify that the association’s mission is to improve and protect the justice system through advocacy and professional development of trial lawyers.

Because of the extensive practical experience of MAJ’s members in handling civil cases, MAJ can provide this Court with valuable input regarding the practical, legal, and public policy impact this case can have. As was noted by a commentator:

[F]acts which describe the effect of deciding a case a particular way upon persons who are not parties...may be of value to a court properly concerned as to the effect of a decision beyond the immediate parties to a case.

R. Stern, *Appellate Practice in the United States* 306 (1989). *See also* M. Tiger, *Federal Appeals: Jurisdiction and Practice* 72 (1987) (“Amici can sometimes address the implications of a particular rule or application of a rule, in a broader context than the advocate for a party.”). MAJ seeks to pursue its mission to improve and protect the civil litigation system by bringing to this Court’s attention the urgent and significant impacts that this Court’s ruling in this case may have on the civil justice system and provide insight based on MAJ’s members’ extensive, practical civil litigation experience.

On November 2, 2021, counsel for amicus curiae MAJ contacted counsel for Appellants and counsel for Appellee requesting consent to file this amicus brief. Counsel for Appellee consented to the filing of this amicus brief. Counsel for Appellants did not

consent. Accordingly, MAJ has simultaneously filed a motion with this brief respectfully requesting that this Court permit MAJ to file this brief.

### **QUESTIONS PRESENTED**

The United States District Court for the District of Maryland, the Honorable Stephanie A. Gallagher presiding, certified one question for this Court's consideration:

- I. Did the Maryland Court of Appeals act within its enabling authority under, inter alia, the State Constitution and the State Declaration of Rights when its April 24, 2020 Administrative Order tolled Maryland's statutes of limitation in response to the COVID-19 pandemic?

### **ANALYSIS**

The United States District Court certified one question for this Court to answer, arising out of this Court's judicial tolling of statutes of limitations and statutory and rules deadlines during the state of emergency that arose in Maryland as a result of the unprecedented coronavirus pandemic. On April 3, 2020, this Court issued the first Administrative Order that enacted the judicial toll, recognizing the severe threat posed by the worldwide pandemic and stating that "an emergency exists that poses a threat of imminent and potentially lethal harm to individuals who may come into contact with a court or judicial facility and personnel." Administrative Order on Emergency Tolling or Suspension of Statutes of Limitations, (Md. Ct. App. April 3, 2020) <https://mdcourts.gov/sites/default/files/admin-orders/20200403emergencytollingor>



suspensionofstatutesoflimitationsetc.pdf (“**April 3, 2020 Order**”) at 1. To enact “comprehensive measures to protect the health and safety of Maryland residents and Judiciary personnel,” this Court tolled the limitations periods. *Id.*

This Court issued an amended order on April 24, 2020 which further outlined the significant impact of the pandemic on litigants and set forth the justification for judicially tolling the limitations periods:

The impact of the restrictions required to respond to the COVID-19 pandemic has had a widespread detrimental impact upon the administration of justice, impeding the ability of the parties and potential litigants to meet with counsel, conduct research, gather evidence, and prepare complaints, pleadings, and responses, with the impact falling hardest upon those who are impoverished.

Amended Administrative Order Clarifying the Emergency Tolling or Suspension of Statutes of Limitations, (Md. Ct. App. April 24, 2020)

<https://mdcourts.gov/sites/default/files/admin-orders/20200424clarifyingemergency>

tollingorsuspensionofstatutesoflimitationsamended.pdf (“**April 24, 2020 Order**”) at 1.

The federal district court has now asked this Court to consider whether this Court acted within the scope of its authority in issuing the administrative orders tolling limitations periods during the state of emergency. This is an issue that will impact countless litigants statewide, all of which relied upon this Court’s judicial tolling to file a pleading within the extended period. Among these litigants are individuals who were unable to pursue their cases during the state of emergency, as they lost access to resources such as public libraries and legal assistance and as courthouses closed their doors across the state. Many of these litigants are indigent and have suffered significantly during the pandemic; and will

continue to suffer if this Court denies them access to the justice system by overturning this Court's judicial tolling.

This Court should uphold its Administrative Orders enacting judicial tolling of limitations periods during the state of emergency. This Court has the authority to judicially toll statutory limitation periods pursuant to the judicial tolling exception doctrine, which was appropriately exercised in this case. In the alternative, numerous litigants across the state relied on this Court's apparent authority to issue its Administrative Orders and this Court's representation that the limitations periods had been tolled and, as a result, this Court should decline to deny those litigants access to justice under the doctrine of equitable estoppel. Finally, this Court has constitutional authority pursuant to Article IV § 18 to adopt rules and regulations concerning the practice and procedure of the judiciary. Md. Const. art. IV, § 18(a).

**I. The Administrative Orders were Appropriate Exercises of this Court's Authority Under the Judicial Tolling Exception Doctrine.**

This Court has long recognized that statutes of limitations may be appropriately tolled by the judiciary in certain circumstances. More than fifty years ago, this Court stated that a limitations period can be tolled by the judiciary where such tolling is appropriate and necessary to uphold the policy behind the implementation of limitations periods:

The fact that the six months' limitations period in § 112 is part of the right does not mean that the period can never be tolled under appropriate circumstances such as those in the present case to prevent perversion of the policy and purpose of a statute of limitations.

*Bertonazzi v. Hillman*, 241 Md. 361, 368, 216 A.2d 723, 727 (1966). As this Court reasoned, “[s]tatutes of limitations are designed primarily to assure fairness to defendants

on the theory that claims, asserted after evidence is gone, memories have faded, and witnesses disappeared, are so stale as to be unjust.” *Id.* at 367. But on the other hand, this Court recognized the fundamental unfairness of strictly applying statutes of limitation to bar suits where suits were timely filed but procedurally deficient: “Both federal and state jurisdictions have recognized the unfairness of barring a plaintiff’s action solely because a prior timely action is dismissed for improper venue after the applicable statute of limitations has run.” *Id.* (quoting *Burnett v. New York Central R. Co.*, 380 U.S. 424, 85 S. Ct. 1050, 13 L.Ed.2d 941 (1965)).

Judicial tolling of statutes of limitation to avoid fundamental unfairness to litigants is even older than this Court’s holding in *Bertonazzi*, dating back hundreds of years. As early as 1623, English judges were judicially tolling statutes of limitation in the name of fairness and equity:

The English judges extended the statute greatly by applying it to situations but remotely analogous to those mentioned in the statute when they found it fair and equitable to do so, because of the hardship that would have been inflicted in particular cases on a litigant by a rigid adherence to the terms of § 4, as, for example, where a defendant who had been sued within the period of limitations, died and the action abated and, after limitations had then run, suit was permitted against his executor.

*Id.* at 370 (citing *Swindell v. Bulkeley*, 18 Q.B. 250; *Curlewis v. Lord Mornington*, 7 El. & Bl. 285, 119 Eng.Rep. 1252). This Court “followed [the] spirit” of the English courts in finding that courts were permitted to judicially toll statutes of limitation “to save a claim for determination on the merits if an action to enforce had been timely filed, even though the action failed for a technical or procedural, rather than a meritorious or substantive reason.” *Id.* at 371. Later, this Court recognized in 1880 that the judiciary may construct

exceptions to limitations periods, finding that “[a]part from the savings and disabilities expressed in the Statute itself, there must, in order to defeat its operation, be some insuperable barrier, or some certain and well-defined exception clearly established by judicial authority.” *Weaver v. Leiman*, 52 Md. 708, 718 (1880) (emphasis added). This Court chose to follow, as “legislatures and courts have followed” for “over three hundred years,” the spirit of the English courts. *Bertonazzi*, 241 Md. at 371.

This Court clarified a decade later that judicial tolling was “a narrow exception to the traditional rule against engrafting implied exceptions upon the statute of limitations” that was warranted in *Bertonazzi* to avoid “great injustice on unwitting plaintiffs in particular cases,” as “Maryland was one of but a mere handful of states having neither a saving statute nor a venue transfer statute.” *Walko Corp. v. Burger Chef Sys., Inc.*, 281 Md. 207, 214, 378 A.2d 1100, 1103 (1977). In other words, this Court acknowledged that judicial tolling was appropriate and necessary where the legislature had not directly addressed situations in which great injustices could arise—leaving it to this Court to judicially toll statutes of limitations where a failure to do so would result in “great injustice.”

This Court distilled its holding in *Bertonazzi* into a two-factor test in *Philip Morris USA, Inc. v. Christensen*, 394 Md. 227, 905 A.2d 340 (2006), abrogated on other grounds by *Mummert v. Alizadeh*, 435 Md. 207, 77 A.3d 1049 (2013), stating:

we will recognize a tolling exception to a statute of limitations if, and only if, the following two conditions are met: (1) there is persuasive authority or persuasive policy considerations supporting the recognition of the tolling exception, and (2) recognizing the tolling exception is consistent with the generally recognized purposes for the enactment of statutes of limitations.

*Id.* at 238. This Court noted that the second requirement was adopted specifically to “ensure[] that our recognition of a tolling exception to a statute of limitations does not invade the prerogative of the General Assembly.” *Id.* at 239. In fact, this Court expressly *rejected* the petitioners’ argument that judicial tolling would be unconstitutional and violate the Maryland Constitution, as this Court’s judicial tolling exceptions operate to enforce the *intent and purpose* of the legislative intent underpinning limitations periods by ensuring that fundamental fairness is not defeated by strict applications of limitations periods:

we discern no merit in petitioners' suggestion that recognition of a tolling exception to a statute of limitations is per se inconsistent with the separation of powers principles embodied in Article 8 of the Maryland Declaration of Rights. Interpreting statutory enactments in order to ascertain legislative intent is unquestionably a core judicial function; it hardly needs to be said that this Court does not exceed the scope of its powers under Article 8 in so doing.

*Id.* at 239 n.3. In considering the tolling of limitations periods within the context of class action suits, this Court additionally noted that it had the authority to toll the limitations period because it has the authority to establish procedures for class action cases:

In addition, as discussed *infra*, our conclusion that we have the authority to recognize a version of *American Pipe* tolling is bolstered by the fact that we find support for its recognition in Md. Rule 2–231, which establishes the procedures for class actions. We have long held that Article 8 “does not impose a complete separation between the branches of government.” *Benson v. State*, 389 Md. 615, 644, 887 A.2d 525, 542 (2005). Consequently, we do not exceed our authority under Article 8 when we exercise our rulemaking authority to adopt a Maryland Rule that effects the operation of a statute of limitations enacted by the General Assembly.

*Id.*

Thus, this Court has constructed a judicial tolling exception to statutes of limitations that can be appropriately enacted where the tolling exception is consistent with the legislature's purpose in enacting statute of limitations and the tolling exception protects litigants from fundamental unfairness that may result from strict application of limitations periods. This Court has the authority to enact such tolling exceptions because *first*, this Court has the authority to interpret the intention of the legislature and to enact exceptions to strict limitations periods where the purpose and intent of the statute would be best served by tolling, and *second*, because this Court has the authority to construct court procedures, which may include tolling periods in appropriate circumstances.

This Court has not shied away from judicially tolling limitations periods where necessary in the interest of justice to ensure fundamental fairness. For example, this Court applied the tolling exception rule to toll the statute of limitations where a plaintiff initially filed in the Health Care Alternative Dispute Resolution Office, the incorrect forum for her personal injury case. As the plaintiff's injury was "medically-related," this Court justified that the ambiguity on which was the appropriate forum combined with basic considerations of fairness was sufficient to satisfy the first *Bertonazzi* prong: "persuasive policy supporting the exception in this case is the ambiguity regarding the appropriate forum for a medically-related claim and basic fairness to the parties." *Swam v. Upper Chesapeake Med. Ctr., Inc.*, 397 Md. 528, 543, 919 A.2d 33, 41 (2007).

The *Bertonazzi* test is satisfied here. When this Court enacted the Administrative Order that tolled statutes of limitations and other statutory and rules deadlines on April 3, 2020, this Court explicitly noted that "an emergency exists that poses a threat of imminent

and potentially lethal harm to individuals who may come into contact with a court or judicial facility and personnel.” April 3, 2020 Order at 1. The coronavirus pandemic required “comprehensive measures to protect the health and safety of Maryland residents and Judiciary personnel.” *Id.*

The danger that this Court explicitly recognized more than satisfies the persuasive policy prong of the *Bertonazzi* analysis. Potential litigants across the state were facing unprecedented hardships and peril at the time this Court issued its emergency order. Many potential litigants were simply unable to prepare for or file complaints during this time; a considerable number of disadvantaged individuals in Maryland do not own computers, or have reliable access to housing or internet, and are only able to research, prepare, and file complaints with access to public spaces such as libraries where they can use public computers and internet. Many litigants are unable to navigate the legal process on their own and are heavily reliant on lawyers who were unable to meet with them in person during this time. Many law firms were also not operating at full capacity as the entire industry attempted to effectively transfer from working in office spaces to working remotely from home. The courts were closed during this time; potential litigants who needed access to court documents to research their potential cases, or who needed to file in person, or use court library resources were unable to do so. Many potential litigants also faced unprecedented economic struggles, as Maryland’s unemployment rate skyrocketed at the beginning of the pandemic. *See* Holden Wilen, *Maryland loses 349,000 jobs in April, unemployment rate hits record high*, Baltimore Business Journal, (May 22, 2020, 11:15 AM) <https://www.bizjournals.com/baltimore/news/2020/05/22/maryland-unemployment->

hits-record-high.html. A significant number of Maryland residents were struggling with their own health, the health of their friends and families, and, in many instances, the death of loved ones.

All of these policy considerations are persuasive considerations that support the recognition of the tolling exception this Court enacted in its April 3, 2020 Order, which recognized the danger and difficulties litigants were facing and acted accordingly. Strictly enacting limitations periods that overlap with this unprecedented pandemic would be fundamentally unfair and detrimental to potential litigants—especially potential litigants who are impoverished—and would not serve the fundamental purpose and intent behind limitations periods. All of the litigants who suffered during the pandemic would suffer again in being denied access to the justice system for the sole reason that they were not able to file complaints when the courts were closed, when they could not consult with lawyers because face-to-face interactions had potentially deadly consequences, when they had no access to a computer or internet, when they were hospitalized with a deadly disease, or when they lost their jobs and were barely able to put food on the table. The judicial tolling of the limitations period during the unprecedented pandemic will ensure that litigants will fairly have the opportunity to access the justice system and allow their case to be determined on the merits. This Court explicitly acknowledged these issues as the basis for tolling the limitations periods, stating in its clarification order dated April 24, 2020 that:

The impact of the restrictions required to respond to the COVID-19 pandemic has had a widespread detrimental impact upon the administration of justice, impeding the ability of the parties and potential litigants to meet



with counsel, conduct research, gather evidence, and prepare complaints, pleadings, and responses, with the impact falling hardest upon those who are impoverished.

April 24, 2020 Order at 1. The first *Bertonazzi* prong is met.

The second *Bertonazzi* prong is also met. As this Court has recognized, there is no “magic” to any specific limitations period prescribed by the legislature: rather, limitations periods are constructed to ensure that defendants are provided notice of the suit within a reasonable period:

Statutes of limitations, ... are intended simultaneously to provide adequate time for diligent plaintiffs to file suit, to grant repose to defendants when plaintiffs have tarried for an unreasonable period of time, and to serve societal purposes, including judicial economy. There is no magic to a three-year limit. It simply represents the legislature's judgment about the reasonable time needed to institute suit.

*Shailendra Kumar, P.A. v. Dhanda*, 426 Md. 185, 209, 43 A.3d 1029, 1043 (2012). The key is *reasonable*: Maryland’s general limitations statute is the legislature’s judgment regarding a reasonable limitations period. But a reasonable period under *normal* circumstances is substantially different from a reasonable period during an *unprecedented* state of emergency. As explained above, litigants across the state were experiencing unprecedented difficulties—both plaintiffs and defendants. As a limitations period has no particular “magic” for the length of time prescribed, the Maryland legislature could not have intended strict adherence to a limitations period set during “normal” times that would result in incredible unfairness and denial of justice to countless litigants across the state.

Like in *Bertonazzi*, there was a void in the statutory scheme that would have led to unjust result. In *Bertonazzi*, the void was Maryland’s lack of a saving statute or a venue

transfer statute to avoid injustice where a plaintiff timely files suit in the wrong forum. There, this Court judicially resolved the void by judicially tolling suits in that circumstance, effecting the intention of the legislature. Here, the void in the statutory scheme is the lack of emergency provisions to account for an unforeseen, unprecedented, state of emergency arising out of a worldwide pandemic. If this Court had not judicially resolved the void by enacting its April 3, 2020 Administrative Order, significant injustice would have resulted as litigants across the state were denied access to the judicial system. This judicial resolution, like in *Bertonazzi*, effects the intent of the legislature to provide for a reasonable amount of time for the filing of suits.

The significant impact of the coronavirus pandemic on litigants and attorneys, as previously recognized by this Court in this Court's Administrative Orders, cannot be overstated. Maryland had over a half million cases and 10,000 Covid deaths. Maryland Department of Health, *Coronavirus Disease 2019 (COVID-19) Outbreak*, (last visited November 2, 2021) <https://coronavirus.maryland.gov>; Hannah Gaskill, "Deep Loss:" *Maryland Surpasses 10,000 COVID-19 Deaths*, Maryland Matters, (September 16, 2021) <https://www.marylandmatters.org/2021/09/16/deep-loss-maryland-surpasses-10000-covid-19-deaths>. The people facing this devastation need the time the Court granted them. Many were unexpectedly ill for weeks and unable to gather evidence, talk to witnesses, meet with lawyers or otherwise prepare their cases. See Lisa Maragkis, *Coronavirus Diagnosis: What Should I Expect?*, Johns Hopkins Medicine, (last updated October 22, 2020) <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/>

diagnosed-with-covid-19-what-to-expect (an individual “with a mild case of COVID-19 usually recover[s] within one to two weeks” but “[f]or severe cases, recovery can take six weeks or more.”). Many people saw Covid move through their entire household such that no sooner had one person ended their convalescence than they had to become a caregiver for the next victim in their family. This meant *months* of diversion from other tasks as people cared for themselves and one another.

Then there were the deaths. Over 10,000 Marylanders died, many unexpectedly. These deaths were particularly traumatic not only because they were relatively sudden, but because loved ones often died alone isolated on a ventilator. To expect their survivors to immediately go about the administrative tasks of opening estates and filing any lawsuit the decedent may have had is simply too much.

There were also enormous administrative hurdles. Courts, government agencies and private companies were closed for long periods. *See, e.g., Maryland Courts, Coronavirus Phased Reopening Plan*, (last visited November 2, 2021) <https://mdcourts.gov/coronavirusphasedreopening> (most operations of the courts closed to the public during the early phases of reopening). Many of the prerequisites to filing suit simply were not possible. For example, medical and employment records, often necessary for lawyers to properly evaluate and build cases, were simply unavailable for months on end.

Government records were likewise unobtainable for many months. Agencies were permitted to delay responding to requests under the Public Information Act. The State Public Information Act Compliance Board released a report that noted “the overall need

for access to public records during the pandemic did not diminish” but stated that “while most agencies attempted to respond to PIA requests during the state of emergency, many were unable to do so within the deadlines provided by the PIA, and they often required **significant extensions of time** to provide a complete or final substantive response.” John H. West, *et al.*, *Sixth Annual Report of the State Public Information Act Compliance Board*, Maryland Attorney General, (September 2021) <https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIACB/AnnualReportFY2021.pdf> at 31-33 (emphasis added). On numerous occasions during the pandemic, the undersigned also experienced significant delays by government agencies in response to PIA requests. As recently as the date of filing this brief, the undersigned received a letter from Baltimore County in response to a PIA request which stated that they will be unlikely to provide a response within the statutory deadline because of limited staff and office operations due to the coronavirus pandemic. Often, such responses are necessary to identify the name of a particular individual defendant. In civil rights cases, for instance, the victim often knows which police agency was involved, but not the officer's names. Without responses from the government, the proper defendant remains unknown.

Finally, the Court should consider the effect on the lawyers involved. The members of the Maryland Association for Justice no doubt fared better than many during the ongoing pandemic. But as essential workers whose duties required them to aid many clients with Covid or in high-transmission settings like jails or nursing homes, our members were significantly impacted by Covid as well. Some became ill and even died, all shared in one

way or another the world's grief. No client of a lawyer should have his or her case impacted because the lawyer became ill or passed on or near a statute of limitations.

This Court's orders were a merciful exercise of the Court's power to do justice. They helped ease the terrible burden of this disease on many people across the state. They should be upheld as a matter of fundamental justice.

Accordingly, this Court should find that this Court was within its authority to enact the April 3, 2020 Order judicially tolling limitations periods during the beginning of the unprecedented worldwide pandemic and Maryland's state of emergency.

**II. As Numerous Litigants Relied on this Court's Representation that the Limitations Period Had Been Tolloed, Equitable Estoppel Should Bar this Court from Revoking the Tolling.**

This Court issued its first Administrative Order tolling the limitations periods during the state of emergency on April 3, 2020, more than a year and a half ago. This Court's judicial tolling of the limitations periods has now been in effect for more than half the standard statute of limitations period, impacting a significant number of cases across the state. Countless litigants have now relied upon the legitimacy and reliability of this Court's orders to prepare and pursue cases during the tolled limitations period. As a result of the substantial number of litigants that have acted, believing this Court's order to be legitimate and valid, this Court should find that equitable estoppel bars this Court from now revoking its tolling of the limitations period.

"Equitable estoppel is comprised of three basic elements: "'voluntary conduct' or representation, reliance, and detriment.'" *Creveling v. Gov't Emps. Ins. Co.*, 376 Md. 72, 102, 828 A.2d 229, 247 (2003) (quoting *Cunninghame v. Cunninghame*, 364 Md. 266, 289,

772 A.2d 1188, 1202 (2001)). The purpose behind the doctrine is to prevent the conduct of one party from detrimentally affecting the position of another party. *See Creveling*, 376 Md. at 101 (“The basis of equitable estoppel is the effect of the conduct of one party on the position of the other party.”). This Court has defined equitable estoppel as:

the effect of the voluntary conduct of a party whereby he is absolutely precluded both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person, who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy.

*Cunninghame*, 364 Md. at 289 (quoting 3 J. Pomeroy, *Equity Jurisprudence*, § 804 (5th ed.1941)). For the doctrine to apply, “the party claiming the benefit of the estoppel must have been misled to his injury and changed his position for the worse, having believed and relied on the representations of the party sought to be estopped.” *Id.* (citing *Dahl v. Brunswick Corp.*, 277 Md. 471, 487, 356 A.2d 221, 230–31 (1976)). “Clearly then, equitable estoppel requires that the voluntary conduct or representation constitute the source of the estopping party's detriment.” *Knill v. Knill*, 306 Md. 527, 535, 510 A.2d 546, 550 (1986).

Here, this Court voluntarily addressed the significant difficulties faced by individuals across the state during the unprecedented global pandemic by issuing its Administrative Orders tolling limitations periods. In those orders, this Court represented to future litigants that its orders were legitimate, stating that “the Chief Judge of the Court of Appeals is granted authority as the administrative head of the Judicial Branch of the State,” and that this Court had the authority to “toll[] or suspend[]” “all statutory and rules

deadlines related to the initiation of matters required to be filed in a Maryland state court, including statutes of limitations.” April 3, 2020 Order at 1. Believing in the authority of this Court to issue Administrative Orders relating to the administration of the Maryland court system, and believing in the legitimacy of this Court’s actions, future litigants acted accordingly.

If this Court determines now—over a year and a half after the issuance of the first Administrative Order, more than halfway through the standard statute of limitations period—that this Court did not have the authority to judicially toll the limitations periods and revokes that tolling, countless litigants across the state will be detrimentally impacted. Those litigants that prepared and filed their cases during the tolled period will wake up after the issuance of this Court’s opinion in this case and discover that they have suddenly been denied access to the judicial system because of that reliance.

As of the date of the filing of this amicus brief, the “Information for the Public” portion of this Court’s coronavirus response website continues to advise litigants that the tolling is valid and in effect, stating the following:

**Deadline for Initiating New Matters Extended.** Deadlines established by Maryland law or court rules regarding when new matters must be filed in state court, including statutes of limitations, were tolled or suspended effective March 16, 2020, by the number of days the courts were closed. This means that the days the offices of the clerks of court were closed due to the COVID-19 health emergency (March 16 – July 20) do not count against the time remaining to initiate that matter.

Maryland Courts, *(COVID-19) Response: Information for the Public*, (last visited November 2, 2021) <https://mdcourts.gov/coronavirusinformationforpublic>. This information is specifically targeted at members of the public—not attorneys—who are

reliant on this Court to provide valid information. A future litigant who reads this Court's orders or this Court's statement regarding statutes of limitations on its website will reasonably conclude that the deadline for filing his or her case has been tolled. Relying on this information, the future litigant may delay researching his or her claim, hiring an attorney, and preparing the pleadings, especially as many individuals across the state are still feeling significant impacts because of the coronavirus pandemic. For this Court to turn around and tell those litigants that they have inadvertently lost their chance to pursue their claim in court because of their reliance on this Court's orders would be fundamentally unfair. In addition, this unfairness is likely to disproportionately impact disadvantaged and indigent future litigants, who are more likely to delay preparation of their case and delay retaining an attorney as the severe economic impact of the pandemic is still ongoing.

Further, the legislature is presumed to be aware of this Court's decisions. *See Blevins v. Baltimore Cty.*, 352 Md. 620, 642 (1999). Indeed, when a decision regarding statutory interpretation meets with the disapproval of the legislature, that body is quick to overturn the ruling with corrective legislation. *See, e.g., Parker v. Hamilton*, 453 Md. 127, 138 (2017); *Espina v. Jackson*, 442 Md. 311, 330 (2015). When the legislature is presumptively aware of this Court's decisions and does not legislatively overrule those decisions, the legislature signals its agreement, or, at the very least, acquiescence to the rulings of this Court. *Plein v. Dep't of Labor*, 369 Md. 421, 437-38 (2002) ("consistent with the Legislature's awareness of our cases, we have been reluctant to overrule our prior decisions where it is likely that the Legislature, by its inaction, indicates its adoption, or at least acceptance, of the interpretation reflected in the opinion announcing the decision.");



*see also Allen v. State*, 402 Md. 59, 72 (2007) (citing *Pye v. State*, 397 Md. 626, 635–36 (2007) (“The Legislature is presumed to be aware of our prior holdings when it enacts new legislation and, where it does not express a clear intention to abrogate the holdings of those decisions, to have acquiesced in those holdings.”)).

As the legislature was undoubtedly aware of this Court’s Administrative Orders, and the tolling period enacted by this Court, and made no effort at all to legislatively overrule this Court’s orders in the last year and a half, the legislature has signaled that this Court’s tolling of limitations periods during such extraordinary circumstances as the worldwide coronavirus pandemic is in keeping with the legislative intent of the General Assembly.

Accordingly, even if this Court finds that the tolling of the limitations period was not appropriate at the time this Court issued the orders, this Court should nonetheless uphold the tolled limitations period under the doctrine of equitable estoppel, to avoid the fundamentally unfair impact to litigants across the state who reasonably relied on this Court’s orders and acted accordingly for the year and a half the tolling period has been in effect.

**III. This Court Constitutionally Enacted Maryland Rules Providing Emergency Powers to this Court’s Chief Judge, Which Were Permissibly Utilized to Toll Limitations Periods.**

This Court has complete authority to regulate the practice and procedure of the judiciary in Maryland. Pursuant to the Maryland Constitution, “[t]he Court of Appeals from time to time shall adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in the other courts of this State.” Md. Const.

art. IV, § 18. The rules and regulations adopted by this Court “**shall have the force of law** until rescinded, changed or modified by the Court of Appeals or otherwise by law.” *Id.* (emphasis added).

When this Court enacts rules and regulations, it performs legislative functions. *See Ginnavan v. Silverstone*, 246 Md. 500, 504–05, 229 A.2d 124, 126 (1967) (“The Maryland Rules of Procedure, within their authorized scope, are legislative in nature.”). This Court is authorized to enact rules, with the force of law that are legislative in nature, governing the practice and procedure of law, as this Court is in the best position to ensure the orderly administration of justice. *Kohr v. State*, 40 Md. App. 92, 96, 388 A.2d 1242, 1245 (1978) (“The basis for the grant of this rule-making power is the recognition that in order to provide for the orderly administration of justice reasonable and specific rules of procedure are necessary.”). The rules that are enacted by this Court have the same force and gravity as statutes enacted by the Maryland legislature, and this Court has the authority to enact rules that modify and supersede statutes:

The Maryland Rules of Procedure have the same effect as laws made by the General Assembly; a Rule supersedes a statute unless and until a subsequent statute repeals or modifies the Rule.

*State v. Cardinell*, 90 Md. App. 453, 459, 601 A.2d 1123, 1125 (1992), *aff’d*, 335 Md. 381, 644 A.2d 11 (1994) (citing *Johnson v. Swann*, 314 Md. 285, 289–90, 550 A.2d 703 (1988)).

This Court is not permitted to enact substantive changes, such as adding substantive elements to causes of action, but this Court is authorized to regulate procedures. *See Consol. Const. Servs., Inc. v. Simpson*, 372 Md. 434, 451, 813 A.2d 260, 270 (2002) (noting

that this Court may enact rules relating to procedure and practice but may not add substantive elements to causes of action).

Contrary to Appellants' assertions, Article 8 of the Maryland Declaration of Rights is not so strict as to require the three branches of government to remain so far apart that no branch ever touches another: "this Court repeatedly has noted that Article 8 of the Maryland Declaration of Rights does not impose a complete separation between the branches of government." *Benson*, 389 at 644 (citing *Christ by Christ v. Maryland Dep't of Nat. Res.*, 335 Md. 427, 441, 644 A.2d 34, 40 (1994)). For example, this Court has stated multiple times that the legislature may delegate authority to the executive, and that any formalities for guidelines and safeguards are relaxed where such delegations involve "the complexity of modern conditions with which government must deal." *Benson*, 389 Md. at 645. Specifically, this Court has relaxed standards for separation of powers where the regulations at issue involved the protection of public health and safety:

where the discretion to be exercised relates to ... regulations for the protection of public morals, health, safety, or general welfare, and it is impracticable to fix standards without destroying the flexibility necessary to enable the administrative officials to carry out the legislative will, legislation delegating such discretion without such restrictions may be valid.

*Christ*, 335 Md. at 442 (quoting *Pressman v. Barnes*, 209 Md. 544, 555, 121 A.2d 816, 822 (1956)).

This Court has also previously stated that:

we do not exceed our authority under Article 8 when we exercise our rulemaking authority to adopt a Maryland Rule that effects the operation of a statute of limitations enacted by the General Assembly.

*Philip Morris*, 394 Md. at 239 n.3.

Prior to issuing its first Administrative Order tolling limitations periods during the state of emergency, this Court enacted Md. Rule 16-1003 to grant emergency authority to the Chief Judge. Under Md. Rule 16-1003, during “an emergency declared by the Governor” or any other event that “significantly affects access to or the operations of one or more courts or other judicial facilities of the State,” the Chief Judge of the Court of Appeals may take certain emergency actions to ensure the orderly administration of justice. The rule is procedural and governs the amendment and suspension of other Maryland Rules, the identification of locations to use as judicial facilities, the transfer of pending cases, permission to file in different forums, suspension of particular business, operation of other judicial business, and other actions involving the maintenance of case dockets and court personnel. Alongside the other procedural rules, this Court designated to the Chief Judge the authority to suspend and toll limitations periods:

suspend, toll, extend, or otherwise grant relief from time deadlines, requirements, or expirations otherwise imposed by applicable statutes, Rules, or court orders, including deadlines for appeals or other filings, deadlines for filing or conducting judicial proceedings, and the expiration of injunctive, restraining, protective, or other orders that otherwise would expire ...

Md. Rule 16-1003(a)(7).

As a procedural rule, the tolling of limitations periods is within the authority of this Court to govern. Such authority is vital for this Court to possess to ensure that this Court is able to effectively manage court operations: if an emergency arose that shut down court operations for an extended period of time, and cases sat in the courthouse without being processed while new cases continued to be filed by the day, the court system would be irreparably overrun with incredible backlogs of cases once the emergency ended. It would

be incredibly challenging for this Court to resolve the backlog, when new cases continued to be filed adding on to the backlog that just continues to grow. The management of case dockets and the effective operation of the court system relies just as heavily on *when* cases as filed as *where* cases are filed and *who* handles the cases.

As a procedural rule, this Court had the full authority under Md. Const. art. IV, § 18 to enact Md. Rule 16-1003(a)(7). Further, this Court has already opined on whether rules modifying statutes of limitations violated the separation of powers doctrine and determined that such rules are constitutional. *See Philip Morris*, 349 Md. at 239 n.3. Accordingly, this Court should find that this Court was within its constitutional authority to enact Md. Rule 16-1003(a)(7) and the April 3, 2020 Administrative Order judicially tolling limitations periods during the beginning of the unprecedented worldwide pandemic and Maryland's state of emergency.

### **CONCLUSION**

For the foregoing reasons, amicus respectfully requests that this Honorable Court uphold its Administrative Orders enacting judicial tolling of limitations periods during the state of emergency.

**CERTIFICATE OF COMPLIANCE AND SERVICE**

I hereby certify: 1) the foregoing brief contains 6,498 words, excluding the parts of the brief exempted from the word count by Md. Rule 8-503; 2) this brief was prepared with proportionately spaced type and a typeface of 13 point, Times New Roman; and 3) that on November 3, 2021 a copy of the foregoing Brief of Amicus Curiae was served via first-class mail, postage prepaid on all counsel of record.

  
Ashton Zylstra

