

STATE OF MARYLAND

* IN THE
* CIRCUIT COURT

v.

* FOR
* BALTIMORE CITY

CAESAR GOODSON,

* CASE NO. 115141032

EDWARD NERO,

* CASE NO. 115141033

GARRETT MILLER,

* CASE NO. 115141034

BRIAN RICE,

* CASE NO. 115141035

ALICIA WHITE,

* CASE NO. 115141036

WILLIAM PORTER,

* CASE NO. 115141037

Defendants.

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**MEMORANDUM IN SUPPORT OF MOTION FOR
REMOVAL AND REQUEST FOR A HEARING**

Introduction

The Officers file this motion and argue that removal is constitutionally mandated because a presumption of prejudice exists, as outlined by the United States Supreme Court, requiring removal under the Due Process Clause of the United States Constitution and the Maryland Declaration of Rights. Removal is also compelled under Maryland's constitutional and statutory framework outlined below. The Officers will show that they cannot receive a fair and impartial trial in Baltimore City, or that there are reasonable grounds to show that they cannot receive a fair and impartial trial in Baltimore City. Finally, the Officers will demonstrate that the *voir dire* process, under the unique circumstances of this case, will be totally inadequate to safeguard their constitutional rights to a fair and impartial jury.

In the aftermath of Freddie Gray's death on April 19, 2015, Baltimore City was engulfed by rioting, burning, looting, and massive destruction. In an effort to restore peace, a state of emergency was declared resulting in Baltimore City being occupied by the National Guard, the

State Police, Officers from surrounding counties and states, as well as the Baltimore City Police Department, in addition to a daily curfew being imposed on the citizens.

During the course of the riots, law enforcement personnel and citizens were injured, millions of dollars of property was destroyed, the economy was severely damaged, city government was shut down and the daily functioning of medical facilities, education, the judiciary, public transportation, traffic and business were disrupted. The reaction to the riots was intense and extensive, including coverage by local, national and social media, public comments by city and community leaders and public demonstrations declaring "NO JUSTICE - NO PEACE," and "NO BUSINESS AS USUAL." The criticism from these sources of the actions of the Officers in this case was unrelenting and overwhelmingly negative.

Consequently, each and every citizen of Baltimore City was left with an indelible imprint of the Freddie Gray case as a result of these events. The confluence of these circumstances creates an insurmountable prejudice to these Officers finding fair and impartial juries in Baltimore City that no *voir dire* process could eliminate.

Evolution of the Freddie Gray Case

On April 12, 2015, Freddie Gray was taken into custody by BPD Officers at North and Mount Streets. He was arrested and placed in a transport wagon to be transported to the BPD Western District police station. As a result of a serious medical condition, Mr. Gray was transported to the hospital for medical care from the Western District police station of the Baltimore City Police Department (BPD). Mr. Gray underwent surgery on April 14, 2015, at the University of Maryland Shock Trauma where he remained in a coma from April 15 through April 19, 2015.

Prior to the death of Freddie Gray, protests erupted outside the BPD Western District police station. These protests were documented by the Baltimore Sun newspaper. On Saturday, April 19, 2015, the death of Freddie Gray was reported in the Baltimore Sun by Natalie Sherman, Chris Kaltenbach and Colin Campbell.¹ These reporters noted in their article that protesters had gathered for two days outside the Western District station. The Rev. Jamal Bryant of the Empowerment Temple led a demonstration, and members of the People's Power Movement and New York City-based activist group converged on North Mount Street outside the station after Gray's death was announced Sunday.

William "Billy" Murphy, Jr., a lawyer for the Gray family, publicly contradicted a BPD timeline of the arrest, which said medics were called to the Western District station 30 minutes after the police van carrying Gray left the scene. Murphy said he has information indicating Gray was at the police station for an hour before medics were called. "What we know is that while in police custody for committing no crime -- for which they had no justification for making the arrest except he was a black man running." "We believe the police are keeping the circumstances of Freddie's death secret until they develop a version of events that will absolve them of all responsibility," Murphy said. "However, his family and the citizens of Baltimore deserve to know the real truth; and we will not stop until we get justice for Freddie." Also, an attorney for the Gray family released a statement saying Mr. Gray's spine was 80 percent severed.

¹ Natalie Sherman, Chris Kaltenbach, and Colin Campbell, *Freddie Gray dies a week after being injured during arrest*, BALTIMORE SUN, April 19, 2015, <http://www.baltimoresun.com/news/Maryland/crime/blog/bs-md-freddie-gray-20150419-story.html#page=1>.

BPD held another news conference on April 21, 2015, where BPD officials stated Gray repeatedly asked for medical care and did not receive it during the arrest that preceded his death.² The protests continued on April 21, 2015, and were held at the BPD police headquarters and City Hall in downtown Baltimore City. The same day, the Baltimore Sun published an article regarding the arrest documents for Mr. Gray. Also on April 21, 2015, the U.S. Justice Department spokesman announced that it "has officially opened this matter and is gathering information to determine whether any prosecutable civil rights violations occurred."

On Wednesday, April 22, 2015, the Baltimore Sun published a story on the identities of the Officers involved while a fourth straight day of protests continued. In attendance were leaders from the Baltimore chapter of the NAACP and the Baltimore City chapter of the Southern Christian Leadership Conference.³ Also on April 22, 2015, the Baltimore Sun reported that "Police announce in a news release that five of the six officers involved in Freddie Gray's arrest have provided statements to investigators," and that "four officers voluntarily gave recorded statements the night of the incident."

On Thursday, April 23, 2015, Police Commissioner Anthony W. Batts met with representatives of the protesters and Gray's family, expressing his sympathy and updating them on the investigation. Also on April 23, 2015, Governor Hogan sent 32 State Troopers to Baltimore City as the protests intensified. BPD cancelled leave for its officers, "to ensure

² Justin Fenton and Jessica Anderson, *Freddie Gray repeatedly asked for medical care, police said Monday*, BALTIMORE SUN, April 20, 2015, <http://www.baltimoresun.com/news/Maryland/crime/blog/bs-md-ci-freddie-gray-arrest-documents-20150420-story.html>.

³ Amy Davis, *Freddie Gray death sparks City Hall protest*, BALTIMORE SUN, <http://www.baltimoresun.com/news/bal-freddie-gray-death-sparks-city-hall-protest-20150420-premiumvideo.html>.

adequate coverage of the City" and Baltimore City permitted City Employees to leave work early to reduce traffic congestion.

On Friday, April 24, 2015, BPD stated publicly that the Officers involved in Freddie Gray's arrest had made mistakes. "We know he was not buckled in the transportation wagon as he should have been. No excuses from me. Period," Batts said. "We know our police employees failed to get him medical attention in a timely manner multiple times." Also reported that day was that civil rights groups were calling on Governor Larry Hogan to help resolve a fractured relationship between Baltimore residents and the police department. The groups, which include the ACLU and the NAACP, asked the governor to address some of the broader problems the Freddie Gray case highlighted about poverty, police brutality and inequality.

On Saturday, April 25, 2015, hundreds of people marched peacefully for hours until about 6:30 p.m., when violence broke out in downtown Baltimore. Police cruisers were smashed, store and restaurant windows were shattered and convenience stores were looted. At least a dozen people were arrested.

Following the funeral of Mr. Gray on April 27, 2015, Baltimore City exploded in massive and widespread civil unrest including: protesting, violence, destruction of property, burning, looting, assaults on police and other citizens, closures of businesses, schools, government operations, and other disruptive occurrences around the City of Baltimore. A state of emergency was declared and the Governor of Maryland enlisted the help of the National Guard and Maryland State Police to restore order. Police and other first responders were brought in from other counties within Maryland and other states to assist with the massive civil unrest that was occurring. A 10 p.m. curfew was imposed and citizens were not permitted to be in public areas beyond the curfew time unless they were returning from work or seeking medical attention.

The following week made Baltimore City resemble Baghdad and Kabul in its appearance. Thousands of police officers and National Guard troops occupied the City. Armored vehicles, Humvees, and soldiers lined the streets in the Inner Harbor, in front of City Hall, and other locations throughout the City. Officers from New Jersey, Pennsylvania, and Washington D.C. could be seen on the streets around the City augmenting the forces of the Maryland Military Department, State Police, county police departments and BPD officers. The curfew that was imposed caused many businesses to lose money. On a nightly basis, police had stand-offs with large groups of protestors around the City. This was most noticeable in the area at Pennsylvania Avenue & North Avenue where most of the media was positioned to capture enforcement of the 10 p.m. curfew. Media from all over the United States swarmed to Baltimore City to cover the Freddie Gray story and the unrest in Baltimore that was developing in front of America's eyes. Elected officials and community leaders were featured in the news both locally and nationally constantly giving information regarding the unrest, the on-going investigation, opinions on various legal and social topics as well as the potential prosecution of the Officers involved in the arrest and transport of Mr. Gray.

On Friday, May 1, 2015, one day after BPD completed its investigation, the six Officers who make up the defendants in this case were charged by State's Attorney Marilyn Mosby. In a public news conference televised nationally, Ms. Mosby read what appeared to be the Statement of Probable Cause that charged the Officers with everything from misconduct in office to murder in the second degree. Ms. Mosby stated publicly that the Officers "failed to establish probable cause for Mr. Gray's arrest as no crime had been committed by Mr. Gray." She went on to state that Mr. Gray's arrest was illegal. She stated that the blade found on Mr. Gray "was not a switchblade and is lawful under Maryland law." She stated numerous times that, contrary to a

BPD general order, Mr. Gray was not secured by a seatbelt while in the transport wagon. Ms. Mosby stated that "Mr. Gray suffered a severe and critical neck injury as a result of being handcuffed, shackled by his feet, and unrestrained inside of the BPD wagon." Ms. Mosby stated that although Mr. Gray asked for medical assistance on multiple occasions, no assistance was summoned by the Officers. Ms. Mosby further detailed that the manner of Mr. Gray's death was ruled a homicide by the Office of the Chief Medical Examiner and the cause of death was the failure to restrain Mr. Gray in a seatbelt. Ms. Mosby then went on to recount each individual charge against each individual officer. She then stated,

To the people of Baltimore and the demonstrators across America, I heard your call for "no justice, no peace." Your peace is sincerely needed as I work to deliver justice on behalf of this young man. To those that are angry, hurt, or have their own experiences of injustice at the hands of police officers, I urge you to channel the energy peacefully as we prosecute this case. I have heard your calls for "no justice, no peace." However, your peace is sincerely needed as I work to deliver justice on behalf of Freddie Gray ... Last, but certainly not least, to the youth of this City. I will seek justice on your behalf. This is a moment, this is your moment. Let's ensure that we have peaceful and productive rallies that will develop structural and systemic changes for generations to come. You're at the forefront of this cause. And as young people, our time is now.

On May 21, 2015, the Officers involved in the arrest and transport of Mr. Gray were subsequently charged by way of indictment. State's Attorney Mosby held a press conference to announce the indictment of all six Officers.

The Officers file this Motion with the suggestion under oath that they cannot receive a fair and impartial trial in the City of Baltimore. The right to a fair and impartial trial includes the right to be tried by evidence in a courtroom with a jury free from outside influences, passions, and prejudices.

The Right To Trial By An Impartial Jury

"That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People." MD CONST. DECL. OF RIGHTS art. 20.⁴ "Despite that grandiose verbiage, the common law necessity for trial in the county of the commission of a crime is not a fundamental right or requirement." *Smith v. State*, 116 Md. App. 43, 54 n.5 (1997).

"The Sixth Amendment secures to criminal defendants the right to trial by an impartial jury." *Skilling v. United States*, 561 U.S. 358, 377 (2010). The Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. CONST. amend. VI.

Article 21 of the Maryland Declaration of Rights also provides the right to a trial by an impartial jury. Article 21 of the Maryland Declaration of Rights is construed in *pari materia* with the Sixth Amendment of the United States Constitution. *Grandison v. State*, 425 Md. 34 (2012).

"The theory of our [trial] system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Skilling*, 561 U.S. at 379 (internal citations omitted) (internal

⁴ The relationship between the Declaration of Rights and the Maryland Constitution has been fully explained by Maryland's appellate courts. "The Declaration of Rights is an enumeration of abstract principles, (or designed to be so,) and the Constitution the practical application of those principles, modified by the exigencies of the time or circumstances of the country." *Lodowski v. State*, 302 Md. 691, 705 (1985), *vacated on other grounds Maryland v. Lodowski*, 475 U.S. 1078 (1986).

quotations omitted). The United States Supreme Court has previously observed that "no man's life, liberty or property [should] be forfeited as criminal punishment for violation of [a] law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power." *Chambers v. State of Florida*, 309 U.S. 227, 236–37 (1940).

History and Development of Removal Provisions in Maryland

"From ancient times the power of a court to grant a change of venue has been recognized by the common law of England as a means of promoting justice by getting rid of local prejudices which might be supposed to operate detrimentally to the rights or interests of a party litigant if the case were tried in the county of the venue." *Heslop v. State*, 202 Md. 123, 126 (1953). "In Maryland the right of removal has been considered so essential to the administration of justice that it has been incorporated in the organic law of the State for [over two centuries]." *Heslop*, 202 Md. at 126.

In January 1805, the Legislature passed an Act proposing an Amendment to the Constitution of 1776 that, *inter alia*, gave courts discretion to remove criminal cases where any party suggested in writing that a fair and impartial trial could not be had in the court in which the case was pending. The Act was later confirmed, and a discretionary right of removal in all criminal cases became part of the Maryland Constitution. The Constitutional Convention of 1851 revised this provision by eliminating the discretionary aspect and gave the right of removal to the defendant in every criminal case. Reports of gross abuse of the unlimited removal right led the Constitutional Convention of 1864 to return the power of removal to the court's discretion, and the Constitution was amended to so provide. The rule was again changed by the Constitutional Convention of 1867, removing once more the court's discretion and making the right automatic. In 1874, the Legislature, again hearing reports of abuse of the unlimited removal right, proposed an Amendment to the 1867 Constitution to provide automatic removal only in those cases where the crime was punishable by death. This Amendment was ratified by the Maryland voters in 1875....

Pantazes v. State, 376 Md. 661, 675–76 (2003), quoting *Redman*, 363 Md. 298, 306–07 (citations and footnote omitted). "The right reached its current form following the 1874 constitutional amendment ratified by Maryland voters in 1875." *Pantazes*, 376 Md. at 676.

The Constitution of Maryland today provides, in relevant part:

In all other cases of presentment or indictment, and in all suits or actions at law or issues from the Orphans' Court pending in any of the courts of law in this State which have jurisdiction over the cause or case, in addition to the suggestion in writing of either of the parties to the cause or case that the party cannot have a fair and impartial trial in the court in which the cause or case may be pending, it shall be necessary for the party making the suggestion to make it *satisfactorily appear to the court that the suggestion is true, OR that there is reasonable ground for the same*; and thereupon the *court shall order* and direct the record of the proceedings in the cause or case to be transmitted to some other court, having jurisdiction in the cause or case, for trial. The right of removal also shall exist on suggestion in a cause or case in which all the judges of the court may be disqualified under the provisions of this Constitution to sit. The court to which the record of proceedings in such suit or action, issue, presentment or indictment is transmitted, shall hear and determine that cause or case in the same manner as if it had been originally instituted in that Court. The General Assembly shall modify the existing law as may be necessary to regulate and give force to this provision.

Md. CONST. art. IV, § 8 (emphasis supplied).

To effectuate the removal provisions of the Maryland Constitution, Maryland Rule 4-254 provides, in relevant part,

When a defendant is not eligible for the death penalty and either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court *shall order* that the action be transferred for trial to another court having jurisdiction only *if the court is satisfied that the suggestion is true OR that there is reasonable ground for it*. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A party who has obtained one removal may obtain further removal pursuant to this section.

Md. Rule 4-254(b)(2).

Taken together, the constitutional provision and Maryland Rule dictate that the party seeking removal demonstrate to the court that either (1) it is true that they cannot receive a fair and impartial trial in the current venue OR (2) that there exists reasonable grounds to believe that

the party cannot receive a fair and impartial trial in the current venue. The basic question concerning removal "whether there is a reasonable ground to believe the allegation that the moving party cannot receive a fair and impartial trial in the county in which the action is pending -- is a mixed question of law and fact concerning a constitutional right." *Dinkins v. Grimes*, 201 Md. App. 344, 363 (2011), *cert. denied*, 424 Md. 282 (2012) (quoting *Hoffman v. Stamper*, 155 Md. App. 247, 284 (2004), *aff'd in part and rev'd in part*, 385 Md. 1 (2005)).

"The party seeking removal bears the burden to show that he or she has been prejudiced by adverse publicity and that the *voir dire* examination . . . will not be adequate to assure a fair and impartial trial by jury." *Id.* (internal citations omitted) (internal quotations omitted). "Whether a case should be removed is a decision that rests within the sound discretion of the trial court." *Pantazes*, 376 Md. at 675 (citing *Shreffler v. Morris*, 262 Md. 161, 165 (1971)). However, "[t]he responsibility for passing on a claim for change of venue . . . because of prejudicial pretrial publicity calls for the exercise of the highest order of sound judicial discretion" by the trial court. *Ehrlichman v. Sirica*, 419 U.S. 1310, 1312 (1974). "***Widespread bias in the community can make a change of venue constitutionally required.***" *McCleskey v. Kemp*, 481 U.S. 279, 309 n.30 (1987) (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)). The "refusal to grant a motion for change of venue may constitute a violation of due process." *Brecheen v. Oklahoma*, 485 U.S. 909, 910 (1988); *Rideau v. Louisiana*, 373 U.S. 723 (1963).

This discretionary determination on the part of the trial court is consistent with Maryland's constitutional and statutory framework for removal. A trial judge is vested with discretion to determine whether the defendants can receive a fair and impartial jury. However, once a trial court determines that reasonable grounds exist to suggest that the defendants cannot receive a fair trial, removal becomes mandatory. Both the Maryland Constitution and the

Maryland Rule explicitly provide that, if it is found that there are reasonable grounds to believe that defendants cannot have a fair and impartial trial, the "court *shall* order and direct the record of the proceedings in the cause or case to be transmitted to some other court."⁵ Md. CONST. art. IV, §8; Md. Rule 4-254(b)(2) (emphasis supplied).

Further, it appears that any Circuit Court judge who may rule that removal is appropriate has the option to follow the case to the county to which the case is directed. In *Johnson v. State*, the Court of Appeals stated that "the right of removal does not carry with it the right to have a different judge preside at the trial." 258 Md. 597, 603 (1970), *sentence vacated on other grounds, Johnson v. Maryland*, 408 U.S. 937 (1972). The Court of Appeals has, on multiple occasions, approved of the practice of leaving to the judge's discretion to decide whether they wish to sit on the case once it is removed. *Johnson*, 258 Md. at 602–04; *Chappell Chemical & Fertilizer Co. v. Sulphur Mines Co. of Virginia*, 85 Md. 684 (1897).

Maryland Precedent Applying the Constitutional Removal Provisions

Maryland's appellate courts have had a number of occasions to interpret and apply the provisions relating to removal in Maryland. In *Dinkins v. Grimes*, the Court of Special Appeals upheld a Baltimore City Circuit Court judge's decision to remove the case from Baltimore City to Howard County. 201 Md. App. 344 (2011). *Dinkins*, a civil case, applied Maryland's constitutional removal provision to a set of facts similar to, but much more temperate than the facts and circumstances presented before this Honorable Court.

In *Dinkins*, Baltimore City Police Officers were defendants to a complaint which included a number of counts including false imprisonment, battery and assault. The case

⁵ "It is now a familiar principle of statutory construction in this State that use of the word 'shall' is presumed mandatory unless its context would indicate otherwise." *Moss v. Director, Patuxent Institution*, 279 Md. 561, 564–65 (1977) (citations omitted); *Burch v. State*, 358 Md. 278 (2000).

involved the arrest of a seven-year-old boy, Gerald Dinkins, for sitting on a dirt-bike and the subsequent arrest of his mother Lakisa Dinkins. The case alleged that both arrests were illegal and that the Officers involved used excessive force. It was also alleged that Ms. Dinkins' arrest was in retaliation for her public criticism of the police in regard to her son's arrest. The case was highly publicized and sparked public demonstrations and numerous publicly reported remarks from city officials and community leaders. The case was "portrayed as a symbol of deteriorating police/community relations and Gerald [Dinkins] was described as traumatized and a victim of a civil rights violation." *Id.* at 364.

In *Dinkins*, the Court of Special Appeals held that the publicity regarding the case was "pervasive, negative, continuing and prejudicial," and that due to the "City-unique source of continuing local resentment" there was *reasonable ground* to believe that the defendants could not receive a fair trial in Baltimore City, even with the assistance of *voir dire*. Specifically, the Court held that the trial court's decision for removal was based on "extensive negative publicity" and that "waiting for *voir dire* would not be appropriate in light of the statements made by high ranking officials and because 'there were demonstrations held in the City demanding that the Defendants be terminated and prosecuted.'" *Id.* at 365. The court rejected the argument that prejudice could not be cured by moving the case to Howard County due to the same media outlets serving both jurisdictions. The court noted that a jury outside the jurisdiction "would not have been as affected by statements of public officials from another jurisdiction or the community reaction in the city." *Id.*

The Court of Special Appeals also addressed the subject of removal in *Worthen v. State*, in which it held that the trial judge abused his discretion in denying the Defendant's request for removal. 42 Md. App. 20 (1979). In *Worthen*, the defendant was charged with statutory child

abuse, assault and battery. Prior to his trial, the defendant requested a change of venue for his case due to a series of articles regarding child abuse published in "The Enterprise." *Id.* at 23. At that time, "The Enterprise" was "Southern Maryland's Leading Weekly." Notably, the first article under the headline, "It Does Happen Here," recited in bold print the facts of a pending case presumably taken from an arrest report. *Id.* Although the defendant's name was not used in the report, it was clear that "the facts indicated could have been none other than this case." *Id.* at 23.

Included in the article was the defendant's statement "that he disciplined the child... that the child was throwing a temper tantrum, so he struck the child with his hand on the child's buttocks." *Id.* at 24. The succeeding articles addressed "various, often emotional, aspects of the crime of child abuse and the ways it should be handled as seen by others quoted in the media." *Id.* at 25. Specifically, one article quoted the County Coordinator as saying, "most people's reaction is to want to put them in jail." *Id.*

During the jury selection in *Worthen*, the trial court found that 19 of the remaining panel members, after others had been struck for cause, had read The Enterprise articles. *Id.* at 30. These remaining jurors assured the court that it would not prevent them from reaching a fair and impartial verdict. However, in addition to the *voir dire* specifically directed to the article, the trial court asked the jurors "Do any of you disapprove of physical discipline in the rearing of children?" Juror Number 24 replied that he did, although when asked if it would prevent him from reaching a fair and impartial verdict, he responded that he "would like to think not." *Id.* at 30. The trial court seated this juror. *Id.* at 31.

The Court of Special Appeals held that although it is "not required for the jurors to be totally ignorant of the facts and issues involved," this case in particular provided "a questionable

atmosphere, with a lingering (if unlikely) possibility of preconceived opinions toward those who administer corporal punishment to children being harbored by jury panel members.” *Id.* at 45, citing *Irvin v. Dowd*, 366 U.S. 717, 722–23 (1961). The Court noted that since one juror noted his “philosophical opposition to any corporal punishment and eight of the other persons admitted exposure to the reportorial editorializing that had singled out appellant’s case and indicated his prior offense, such indication itself could have helped to associate subconsciously appellant’s case with that initially reported.” 42 Md. App. at 46. Specifically the court found that “those exposed to the potential inflammation, evidence of repeated offenses becomes all the more harmfully indicative of guilty, not only properly through the “‘intent’-to-abuse channel, but more likely through the ‘bad man’ theory, or a leopard who can’t change his spots.” *Id.* The Court ultimately found that since the judge failed to keep out other questionable evidence which clearly linked the appellant to the articles, he abused his discretion by denying the removal. 42 Md. App. 20, 46.

The Court of Special Appeals again addressed removal in *Garland v. State*, where it held that the trial court erred in granting a removal upon suggestion by the prosecutor despite “vigorous objection” by the appellant. 34 Md. App. 258, 258 (1976). Although, the Court found that removal was not warranted in the case, the holding is instructive in this matter as the Court found that had the appellant requested the removal, it may have been appropriate. 34 Md. App. 258 (1976). In *Garland*, the appellant was indicted in Baltimore City for murder and unlawful use of a handgun, and the State over “vigorous objection” from the appellant requested, and was granted, removal to Montgomery County. *Id.* at 258.

The *Garland* case involved the shooting of a police officer and was “fraught with racial overtones” as the victim officer was a white male, while the appellant was a black male. 34 Md.

App. 258, 260. The State in their request for removal provided twenty-eight exhibits regarding the pretrial publicity of the case. *Id.* at 261. The shooting received “significant, but not excessive press coverage” during a five-day period in which articles appeared in several local newspapers and were “of moderate tone and length and were not particularly prominently displayed.” *Id.* at 261. Photographs of the victim, his widow and his orphaned child were produced in reports. *Id.* at 262. Statements were made by several political officials regarding the case including the Governor, who called for a reinstatement of the death penalty in view of the police killing and the head of the Fraternal Order of Police who called “for a crackdown on police killers.” *Id.* Community leaders also were covered speaking out regarding the case, one in particular “called for an investigation as to why judges are ‘soft’ on police killers.” Stories covered and released information regarding appellant’s prior criminal record. The press covered the appellant’s hospital examination of “which tended strongly to negate his claims of having suffered physical harm at the hands of the police.” *Id.* The publicity for the case concluded just five days after the shooting occurred. The only additional publicity for the case came five months later in conjunction with Fallen Heroes Day, which honored fallen officers including the victim in the case. *Id.* at 263. However, as with most of the initial publicity the court found that it “could only have enhanced the prosecution’s chances of success, not injured them.” *Id.*

The Court of Special Appeals held that upon “thorough examination” of the exhibits produced by the State they were immaterial to their request but would “have been very relevant if they had been filed by the appellant in a motion for removal.” *Id.* The Court went on to say that the State “camouflaged their own lack of any substantial evidence of pretrial publicity running against their interests by surrounding it with substantial evidence of pretrial publicity running against the interests of the appellant.” *Id.* The Court ultimately held that the majority of

the publicity regarding the case was in favor of the State, and although the evidence may have supported removal had the appellant made the suggestion, removal was not appropriate in the case because the State failed to make an adequate showing that they would not have received a fair trial in city court.

When deciding issues of removal in Maryland under its own Constitution and Rules, Maryland's appellate courts have applied many of the principles outlined by the United States Supreme Court in its opinions. One area that has not been explored directly by Maryland's appellate courts is the presumption of prejudice which constitutionally mandates removal pursuant to due process. To explore that, we must look to Supreme Court precedent.

United States Supreme Court Precedent Applying Constitutional Removal Principles

The Supreme Court has also had the occasion to review cases in which a change of venue was warranted, finding removal was consistent with the Due Process Clause of the Fourteenth Amendment. In a number of cases, the high Court examined the factors relevant to whether a case was properly removed or properly remained in its original venue.

The most recent pronouncement from the Supreme Court on the subject of removal was *Skilling v. United States*, 561 U.S. 358 (2010). *Skilling* reiterated the framework under which a presumption of prejudice arises in a case making removal mandatory under principles of due process. Although the *Skilling* Court found that removal was not necessary in that case, the Court's analysis provides guidance to lower courts as to when removal is required.

Jeffrey Skilling was former Chief Executive at Enron prior to its collapse. He was prosecuted for deceiving investors about "Enron's true financial performance" through the manipulation of financial reports. *Skilling*, 561 U.S. at 368–69. Skilling moved for a change of venue, alleging that prejudicial pre-trial publicity and hostility towards him "poisoned" potential

jurors in Houston. *Id.* The trial court denied the change of venue request because "media coverage, on the whole, had been objective and unemotional, and the facts of the case were neither heinous nor sensational." *Id.* at 371.

The Supreme Court reviewed its own cases where a "***presumption of prejudice***" can arise from pretrial publicity and reiterated that the "*presumption of prejudice* ... attends only the extreme case." *Skilling*, 561 U.S. 380–81. The Supreme Court looked at the relative "size and characteristics of the community in which the crime occurred," whether "blatantly prejudicial information" has been publicized that potential jurors "could not reasonably be expected to shut from sight," and finally the time that elapsed between the alleged criminal activity and the trial. *Id.* at 381–84. Because *Skilling's* case had "little in common" with the cases where the Court approved of a "***presumption of prejudice***," the Supreme Court affirmed the denial of the motion to remove the case. *Id.* at 384.

In *Sheppard v. Maxwell*, the Court reviewed a federal habeas corpus petition questioning whether the defendant was deprived a fair trial in his conviction for the second-degree murder of his wife. *Sheppard v. Maxwell*, 384 U.S. 333 (1966). On July 4, 1954, Marilyn Sheppard, the appellant's wife was found bludgeoned to death in her and the appellant's shared lakeshore home. *Id.* at 336. The appellant, Dr. Samuel Sheppard, was the one who found his wife, and he recounted the facts of the night to the authorities. *Id.*

Despite his claims, Dr. Sheppard became the prime suspect in the murder in what soon led to a public outcry against him. The coroner was reported as saying "it is evident the doctor did this, so let's go get the confession out of him." *Id.* at 337. The publicity continued leading up to his July 28 arrest including headlines such as "Doctor Balks at Lie Test: Retells Story," "Getting away with murder," Kerr (Captain of the Cleveland Police) Urges Sheppard's Arrest."

“Now proved under oath to be a liar, still free to go about his business,” “Why Isn't Sam Sheppard in Jail?” *Id.* at 338–41. Following his arrest, the press coverage only continued to grow and worsen, including reports of evidence, testimony, and other false information regarding the case that was never entered into evidence during his eventual trial. *Id.* at 342.

In reviewing whether or not Dr. Sheppard’s right to Due Process under the Fourteenth Amendment was violated, the Supreme Court held that Sheppard was in fact denied a fair trial for, among other reasons, the trial court’s failure to grant his request to change venue. In Sheppard, the court found that:

For months the virulent publicity about Sheppard and the murder had made the case notorious. Charges and countercharges were aired in the news media besides those for which Sheppard was called to trial. In addition, only three months before trial, Sheppard was examined for more than five hours without counsel during a three-day inquest which ended in a public brawl. The inquest was televised live from a high school gymnasium seating hundreds of people.

Id. at 354.

The court also found that “much of the material printed or broadcast during the trial was never heard from the witness stand.” *Id.* at 356. The Court ultimately held that when “there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity.” *Id.* at 362.

In *Irvin v. Dowd*, the Supreme Court again had occasion to review a habeas corpus to test the validity of a conviction for murder by a jury which was not impartial according to constitutional standards. 366 U.S. 717 (1961). In *Irvin*, six murders were committed in the vicinity of Evansville, Indiana, two in December of 1954 and four in March 1955. The crimes were intensively covered by the news media in the locality. When the petitioner was arrested, both the Prosecutor of Vanderburgh County and the Evansville police officials issued press

releases, which were greatly publicized, stating that the petitioner had confessed to the six murders. *Id.* at 720. Petitioner immediately requested a change of venue which was granted; however, the case was moved to nearby Gibson County. The Petitioner sought an additional change of venue to a county “sufficiently removed from the Evansville locality that a fair trial would not be prejudiced.” The motion was denied. The trial began and the *voir dire* examination lasted for four weeks in which the petitioner filed two additional motions for change of venue, all were subsequently denied. *Id.*

The Court found that “the build-up of prejudice was clear and convincing” in the petitioner’s case. *Id.* at 725. The change of venue from Gibson county stated that the petitioner’s case had become the “cause celebre of this small community- so much so that curbstome opinions, not only as to petitioner’s guilt but even as to what punishment he should receive were solicited and recorded on the public streets by a roving reporter, and later broadcast over the local stations.” *Id.* The exhibits produced included newspaper headlines, articles, cartoons and pictures that were unleashed during the seven months preceding petitioner’s trial. The stories “revealed details of petitioner's background, including a reference to crimes committed when a juvenile, his convictions for arson almost twenty years previously, for burglary and by a court-martial on AWOL charges during the war.” *Id.* at 726. The headlines included allegations that the petitioner was identified in a police lineup, that he took a lie detector test, and that he had been placed at the scene of the crime. *Id.* at 725. The stories described the petitioner as the “confessed slayer of six,” alleging that he had confessed to the murders and that “he offered to plead guilty in exchange for a sentence of 99 years.” *Id.*

During the *voir dire* process, the panel was made of up 430 potential jurors, 268 of which the court excused for cause for having fixed opinions as to petitioner’s guilt. *Id.* at 727. “An

examination of the 2,783-page voir dire record shows that 370 prospective jurors or almost 90% of those examined on the point entertained some opinion as to guilt—ranging in intensity from mere suspicion to absolute certainty.”⁶ Several potential jurors even stated that if “they were in the accused's place in the dock and he in theirs on the jury with their opinions, they would not want him on a jury.” *Id.* at 726.

The Supreme Court in the end held that in *Irvin* “the ‘pattern of deep and bitter prejudice’ shown to be present throughout the community, was clearly reflected in the sum total of the voir dire examination of a majority of the jurors finally placed in the jury box.” *Id.* at 726–27. *Cf. Stroble v. State of California*, 343 U.S. 181 (1952). The Court further held that the press in *Irvin* was clearly biased against the petitioner, unleashing a barrage of inflammatory newspaper headlines, articles, cartoons and pictures for six or seven months preceding the trial and that his judgment was in violation of the Constitution of the United States. *Irvin*, 366 U.S. at 728.

Applying the constitutional provisions applicable to removal and the cases interpreting them leads to the inescapable conclusion that removal is required and appropriate in this case. The Officers in this case cannot receive fair and impartial trials in Baltimore City.

Argument

OFFICERS GOODSON, MILLER, NERO, PORTER, RICE, AND WHITE CANNOT RECEIVE FAIR AND IMPARTIAL TRIALS IN THE CITY OF BALTIMORE. THIS CASE PRESENTS THE CLASSIC CASE OF "PRESUMED PREJUDICE" OUTLINED BY THE UNITED STATES SUPREME COURT WHICH COMPELS REMOVAL. FURTHER, REMOVAL IS APPROPRIATE UNDER MARYLAND'S CONSTITUTIONAL AND STATUTORY FRAMEWORK AS THE VOIR DIRE PROCESS WOULD BE COMPLETELY INEFFECTIVE FOR SECURING THESE OFFICERS FAIR AND IMPARTIAL TRIALS.

⁶ 10 members of the panel were never asked whether or not they had any opinion. 366 U.S. 717, 727.

A review of the constitutional provisions and cases interpreting them with respect to removal will show that it strains credulity to suggest that 12 fair jurors, or worse - 12 fair jurors and alternates for each of the six Officers charged, could be seated in Baltimore City for the Defendant-Officers in this case. Every citizen of Baltimore was impacted by the events surrounding the arrest and death of Freddie Gray and every potential juror would bring their passions and prejudices relating to the events with them to the Courtroom.

I. REMOVAL OF THESE MATTERS IS REQUIRED AS A PRESUMPTION OF PREJUDICE EXISTS IN THIS CASE AND THE OFFICERS CANNOT RECEIVE A FAIR TRIAL IN BALTIMORE CITY CONSISTENT WITH PRECEDENT OF THE UNITED STATES SUPREME COURT.

Under *Skilling v. U.S.*, 561 U.S. 358 (2010), the Supreme Court looks at three factors to determine if there is a presumption of prejudice and whether removal is mandated. The three factors are 1) the relative size and characteristics of the community; 2) whether "blatantly prejudicial information" has been publicized that potential jurors "could not reasonably be expected to shut from sight;" and 3) the time that elapses between the alleged criminal activity and the trial. *Skilling*, 561 U.S. at 381–84.

A. The Size and Characteristics of Baltimore City Support the Presumption of Prejudice and Removal is Required in this Case.

The Supreme Court "has emphasized in prior decisions the size and characteristics of the community in which the crime occurred." *Id.* at 382 (emphasis added). The overall population of the city is not the only determinant factor. *Id.* Instead, an analysis of the "individuals eligible for jury duty" is more appropriate for measuring the size of the community. *Id.* In *Rideau*, a murder was committed in Calcasieu Parish with 150,000 people eligible for the jury pool. *Rideau*, 373 U.S. 723 (1963). The Court felt that "anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in

a very real sense was Rideau's trial—at which he pleaded guilty to murder.” *Id.* at 726.

In contrast, the court in *Skilling* held that the overwhelming size of the potential jury pool in Houston prevented *Skilling* from reaching the presumption of prejudice standard. *Skilling*, 561 U.S. at 382. At the time of trial, “more than 4.5 million individuals eligible for jury duty resided in the Houston area.” *Id.* This statistic made Houston the fourth most populous city in the nation. *Id.* “Given this large, diverse pool of potential jurors, the suggestion that 12 impartial individuals could not be empaneled is hard to sustain.” *See Mu'Min v. Virginia*, 500 U.S. 415, 429 (1991) (potential for prejudice mitigated by the size of the “metropolitan Washington [D.C.] statistical area, which has a population of over 3 million, and in which, unfortunately, hundreds of murders are committed each year”); *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1044 (1991) (plurality opinion) (reduced likelihood of prejudice where venire was drawn from a pool of over 600,000 individuals).

Baltimore City is a city with a geographic area of approximately 80-plus square miles.⁷ According to the United States Census, the population estimate for Baltimore City was 622,793 residents out of the estimated 5,976,407 total residents of the State of Maryland.⁸ In other words, approximately ten percent of Maryland's residents live in Baltimore City. The estimated number of white residents of Baltimore City in 2013 was 31.6 % while African-Americans made up 63.3% of the population, with the remaining five percent being made up of Asian, Hispanic or other.⁹ The median household income in Baltimore City, from 2009-2013, was \$41,385

⁷ THE UNITED STATES CENSUS BUREAU, STATE AND COUNTY QUICKFACTS, BALTIMORE CITY (2015), available at <http://quickfacts.census.gov/qfd/states/24/24510.html>.

⁸ *Id.*

⁹ *Id.*

compared to \$73,538 for the rest of the State of Maryland.¹⁰ In Baltimore City, 48.3% of individuals own their homes, while 67.6% in the State of Maryland, outside of Baltimore City.¹¹

Out of the 622,793 residents of Baltimore City, it is estimated that approximately twenty-one percent are under the age of 18 and disqualified from jury service.¹² That leaves approximately 492,000 residents over the age of 18. According to the Maryland State Board of Elections there are approximately 325,643 registered voters who reside in the City of Baltimore.¹³ According to former Administrative Judge Marcella Holland (Retired), Approximately 800 juries are empanelled in the Circuit Court for Baltimore City each calendar year.¹⁴ To accomplish this rather demanding jury trial pace, approximately 244,000 jury duty summonses are sent to potential jurors each year.¹⁵ Because jurors are called "like clockwork" every year¹⁶ on approximately the same date, it would be logical to conclude that the total number of eligible jurors in Baltimore City lies somewhere around the 244,000 mark or slightly higher.¹⁷ Confirming this fact was the Administrative Office of the Courts in Maryland. According to the Administrative Office of the Courts, the current number of eligible jurors in

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ MARYLAND STATE BOARD OF ELECTIONS, ACTIVE VOTERS ON THE PRECINCT REGISTER - BY COUNTY, 2014 GUBERNATORIAL ELECTION, *available at* http://www.elections.state.md.us/press_room/2014_stats/PrecinctRegisterCounts_ByCounty.pdf.

¹⁴ MARYLAND JUDICIARY, OFFICE OF COMMUNICATIONS AND PUBLIC AFFAIRS, "BALTIMORE CITY CIRCUIT COURT LAUNCHES NEW JURY MANAGEMENT SYSTEM," *available at* <http://www.courts.state.md.us/media/news/2012/pr20120208.html>.

¹⁵ Art Buist, *Changes In Baltimore City Jury Selection Process*, WYPR, <http://programs.wypr.org/news/changes-baltimore-city-jury-selection-process>.

¹⁶ Tricia Bishop, *Baltimore tries new jury software to increase attendance*, BALTIMORE SUN, March 31, 2012, http://articles.baltimoresun.com/2012-03-31/news/bs-md-ci-jury-system-20120331_1_juror-appreciation-week-jury-duty-software.

¹⁷ This appears accurate if one looks at the number of registered voters and subtracts the individuals exempt or disqualified from jury service included members of the armed forces, of the Maryland National Guard, the Maryland National Air Guard, individuals over 70, and those others statutorily disqualified.

Baltimore City as of May 19, 2015, is 276,029. However, as of 2012, only twenty-seven percent of jurors summonsed (approximately 74,527) actually reported for duty.¹⁸ Although the current number of no-shows for jury service is unknown, one could logically place the number of eligible jurors for trial somewhere between the minimum who appear (74,527) and the maximum number of eligible jurors (276,029). This is the population that is central in determining the size of a jurisdiction for the analysis of whether a presumption of prejudice exists. This potential jury pool is entirely consistent with the size and characteristics of the communities in which the Supreme Court has found and applied the presumption of prejudice.

B. Blatantly Prejudicial Information has been Publicized that Potential Jurors Cannot be Reasonably Expected to Disregard Supports the Presumption of Prejudice Requiring Removal.

The second prong includes an examination of the information dispersed to the potential jury pool. *Id.* “The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.” *Patterson v. People of State of Colorado ex rel. Attorney Gen. of State of Colorado*, 205 U.S. 454, 462 (1907).

The Tenth Circuit has recognized that, “[w]hen publicity is about the event, rather than directed at individual defendants, this may lessen any prejudicial impact.” *U.S. v. Hueftle*, 687 F.2d 1305, 1310 (10th Cir. 1982). In addition, *Skilling* stated, “news stories about Enron did not present the kind of *vivid, unforgettable information*, we have recognized as particularly likely to produce prejudice, and Houston’s size and diversity diluted the media’s impact.” *Skilling*, 561 U.S. at 384.

¹⁸ *Id.*

In the case before this Honorable Court, most publicity was highly critical to the Defendants, including statements made by high-ranking public officials. There were multiple demonstrations held in the city, demanding that the Defendants be terminated and prosecuted. Violent riots were directed at the Baltimore City Police Department as a symbolic extension of the Defendants. These incidents resulted in approximately 130 injured officers,¹⁹ one of whom suffered critical injuries.²⁰ Subsequent press releases relating to a Federal investigation into the Baltimore City Police Department requested by Baltimore's Mayor, Stephanie Rawlings-Blake, "to seek out any persistent patterns of misconduct, focusing on such areas as excessive force, discriminatory policing, and improper stops, searches or arrests"²¹ have blurred the line between the Defendants and the police department as a whole, so that the negative and hostile implications toward the department have become inseparably enmeshed with those against the Defendants. In fact, in its very headline to her press release, the Mayor expressly indicates that *the pool of fact-finders (the "community") has no or damaged trust in police, and thus, pars pro toto, the defendant officers, involuntarily supporting Defendants' belief that it is reasonable to believe that voir dire will not provide adequate measures to permit an impartial trial in Baltimore City.* Again, this mirrors the holding in *Dinkins*, where the Court of Special Appeals found that the demonstrations by themselves represented a "City-unique source of

¹⁹ Staff Reports, *About 130 officers injured during Baltimore riots released from hospital*, BALTIMORE SUN, May 6, 2015, <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-officer-injuries-20150505-story.html>.

²⁰ CBS/AP, *Baltimore riots leave 20 police officers hurt, one person critical*, CBS NEWS, April 28, 2015, <http://www.cbsnews.com/news/baltimore-riots-leave-20-police-officers-hurt-one-person-critical/>.

²¹ BALTIMORE CITY PRESS RELEASE, MAYOR RAWLINGS-BLAKE REQUESTS FEDERAL INVESTIGATION OF BALTIMORE POLICE DEPARTMENT; PATTERN-OR-PRACTICE INVESTIGATION WILL SEEK TO REBUILD COMMUNITY TRUST WITH POLICE, MAY 6, 2015, *available at* <http://content.govdelivery.com/accounts/MDBALT/bulletins/102ee01>.

continuing local resentment” and held that “[t]here were demonstrations held in the City demanding that the Defendants be terminated and prosecuted. This finding of a City-unique source of continuing local resentment is a reasonable ground to believe that appellants could not receive a fair trial in Baltimore City even with the assistance of voir dire.” *Dinkins*, 201 Md. App. at 365 (emphasis supplied).

In the days and weeks that followed Mr. Gray’s arrest and death, local politicians and activists were outspoken regarding the incident during press conferences, demonstrations, and social media posts. Their public comments and statements continued following the State’s Attorney charging of the Officers. Major players in the media frenzy regarding the case included the Mayor of Baltimore City, Stephanie Rawlings-Blake, the Police Commissioner, Anthony Batts, Members of the Baltimore City Council, Local Delegates, and the Baltimore City State’s Attorney, Marilyn Mosby. In addition to political officials, community activists, spiritual and organizational leaders not only spoke out regarding the Freddie Gray case but also held rallies, encouraged protests, and spoke during Mr. Gray’s televised funeral. The statements made by countless public figures ranged in both substance and length but all maintained the same message “Justice for Freddy Gray.”

In the Freddie Gray case, some of the most egregiously prejudicial public statements made by city officials were issued by Baltimore City State’s Attorney Marilyn Mosby. Ms. Mosby’s status as both an attorney and the city’s chief prosecutor invest her statements to the public with the highest degree of credibility, and, hence, must be held to a higher standard than those made by other city officials. After remaining silent following the initial arrest and death of Freddie Gray, on May 1, 2015, Ms. Mosby held a press conference. During that conference, Ms. Mosby announced that charges had been filed against all six Officers involved in Mr. Gray’s

death. In an unprecedented move, Mosby read verbatim the entire statement of probable cause and charging documents filed against the Officers to a large crowd of Baltimore citizens. Both local and national media covered this press conference. All forms of social media covered the press conference with live tweets and posts quoting Mosby's words and comments regarding the case.²² The *Washington Post*, on the same day, posted the following summary of Ms. Mosby's talking points:

Police officers "illegally arrested" Gray after making eye contact with him on April 12. The pocket knife subsequently found in Gray's pocket "was not a switchblade and is lawful under Maryland law." Gray was shackled at his ankles, handcuffed behind his back and placed in the back of the police wagon on his stomach unrestrained. There were many stops of that wagon. Many requests by Gray for medical assistance that started almost immediately upon his arrest. All were ignored. By the time they arrived at the police station more than an hour later, Gray was unresponsive and "in cardiac arrest." Mosby announced that Gray's death was ruled a homicide and that she was filing criminal charges against the six officers involved. A cheer could be heard in the distance on television.²³

Mayor Rawlings-Blake criticized the events surrounding Freddie Gray's death and the Officers involved. Rawlings-Blake told the *Baltimore Sun* that she was "very determined to get to the bottom of this incident and to hold those who need to be held accountable." Regarding the police department's internal review of the incident, she stated that "we can't just depend on – as the attorney for Mr. Gray says, you know – the police looking into the police. And we don't depend on that."²⁴

²² Ms. Mosby's own Twitter account indicates that she has 36,600 followers as of May 21, 2015. Marilyn J. Mosby, @MarilynMosbyEsq., TWITTER, <https://twitter.com/marilynmosbyesq>.

²³ Jonathan Capehart, *Marilyn Mosby's amazing press conference*, WASHINGTON POST, May 1, 2015, <http://www.washingtonpost.com/blogs/post-partisan/wp/2015/05/01/marilyn-mosbys-amazing-press-conference/>.

²⁴ Yvonne Wegner, *Rawlings-Blake reaffirms 'independent eye' to investigate Freddie Gray Death*, BALTIMORE SUN, April 20, 2015, <http://www.baltimoresun.com/news/maryland/politics/blog/bal-baltimore-mayor-stephanie->

Mayor Rawlings-Blake also engaged in public discussion via her Twitter account. (As of May 21, 2015, the Mayor has 63,900 “Followers”.) On April 29, 2015, at 1:19 PM, she published a photo of herself and members of Mr. Gray’s family, over the “Tweet”: “Honored and blessed to stand with the family of Freddie Gray to call for justice and for peace. We are #OneBaltimore”.²⁵ On April 30, 2015, at 8:20 AM, she broadcast: “The family of Mr. Gray wants answers. I want answers. Our entire city deserves answers. We will remain vigilant on this path to justice.”²⁶ Mayor Rawlings-Blake’s statements became more prejudicial following the State’s Attorney filing charges against the Officers as she told reporters she was “sickened and heartbroken” after hearing the statement of charges read by the State’s Attorney in a press conference. Speaking to the crowd following the State’s Attorney’s announcement, she stated that she told the Police Commissioner to immediately suspend without pay all of the Officers involved.²⁷ Mayor Rawlings-Blake promised the citizens of Baltimore that “there will be justice for Mr. Gray, there will be justice for his family and there will be justice for the people of Baltimore.” The Mayor warned those “who wish to engage in brutality, misconduct, racism and corruption, let me be clear: there is no place in the Baltimore police force for you.”²⁸

On April 24, 2015, twelve days following Mr. Gray’s initial arrest Commissioner Batts held a press conference in which he released details into the investigation of Gray’s arrest and

rawlingsblake-reaffirms-independent-eyes-to-investigate-freddie-gray-death-20150420-story.html.

²⁵ Mayor Rawlings-Blake, @MayorSRB, TWITTER, <https://twitter.com/MayorSRB/status/593510047381999616>.

²⁶ @MayorSRB, <https://twitter.com/MayorSRB/status/593797062447210496>.

²⁷ Michael Dresser, *Mayor says she is ‘sickened, heartbroken,’ by alleged conduct of officers in Freddie Gray case*, BALTIMORE SUN, May 1, 2014, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-freddie-gray-srb-reaction-0502-20150501-story.html>.

²⁸ *Mayor Stephanie Rawlings-Blake: There will be justice for Mr. Gray*, WBALTV11, May 1, 2015, <http://www.wbalTV.com/news/mayor-stephanie-rawlingsblake-there-will-be-justice-for-mr-gray/32706444>.

subsequent death. During the press conference Deputy Police Commissioner Kevin Davis stated that Freddie Gray was stopped after a foot pursuit and “should have received medical attention at the scene of his arrest.” Deputy Davis provided detailed information regarding the transportation of Gray following his arrest and the different stops made during that trip. Davis also added that “a witness said the man [Gray] was yelling and indicated he was having difficulty breathing.” Commissioner Batts told reporters that “we know he was not buckled in the transportation vehicle as he should have been, no excuses for that period.” He went on to say that “we know our police employees failed to get him medical attention in a timely manner multiple times.” Batts completed his statement by ensuring that “if someone harmed Freddie Gray we are going to have to prosecute him.”²⁹

In a second press conference held on April 30, 2015, the day before charges were filed in this case, Batts discussed the completion of the police investigation into the case and turnover of that information to the State’s Attorney. During the press conference Batts communicated the “sense of urgency” that was dedicated to this case in leading the investigation and said that the information recovered had been turned over the State’s Attorney to do with it what they felt appropriate. The conference also gave new details into the matter including additional evidence that had been found regarding extra stops that were made in the transportation of Gray and video evidence of those stops.³⁰

Mr. Gray’s funeral occurred on Monday April 27, 2015 at the New Shiloh Baptist Church. After the funeral, riots erupted throughout Baltimore City. Vehicles were being set on

²⁹ Ed Payne, Steve Almasy, Michael Pearson, *Police: We failed to get Freddie Gray timely medical care after arrest*, CNN, April 24, 2015, <http://www.cnn.com/2015/04/24/us/baltimore-freddie-gray-death/>.

³⁰ *News conference: Commissioner Batts on Freddie Gray case*, WBALTV 11, April 30, 2015, <http://www.wbaltv.com/news/batts-weve-turned-gray-case-over-to-state-attorney/32660530>.

fire, cinder blocks were thrown at police, and stores were looted across the city. In response to threats of a “purge” on social media, Mondawmin Mall closed at 2:15 p.m.³¹ Police, in riot gear, blockaded many nearby streets and shut down the Mondawmin Metro stop.³² Shortly after schools finished classes for the day, mayhem ensued as looters sieged upon Mondawmin Mall.³³ The chaos continued as rioters looted a CVS drug store before it caught fire.³⁴ Rioters proceeded to cut the fire hose as firefighters battled the blaze.³⁵ Another fire erupted at a large senior center under construction at the intersection of Chester and Gay streets.³⁶ Coupled with the damage to businesses, city officials reported nearly *150 vehicle fires and more than 60 structure fires*.³⁷ Defendants have provided maps within the appendix to show where the fires and rioting occurred throughout the entire the City of Baltimore.

The city's economic development arm, the Baltimore Development Corp., has released an estimate of damage to 350 businesses, totaling about \$9 million.³⁸ City officials claim the \$9 million figure is only a fraction of the total amount of the damage and economic impact.³⁹ “Dozens of businesses from Penn North to Mount Vernon were ransacked after their doors and

³¹ WMAR Staff, *Concerns over violence leads to area closings in Baltimore*, WMAR ABC-2, April 28, 2015, <http://www.abc2news.com/news/region/baltimore-city/university-of-maryland-baltimore-closing-early>.

³² *Id.*

³³ Scott Dance, *Riots erupt across West Baltimore, downtown*, BALTIMORE SUN, April 27, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bal-university-of-baltimore-closes-amid-high-school-purge-threat-20150427-story.html#page=1>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Yvonne Wenger, *One estimate of business damage from Baltimore riot estimated at \$9M, total cost unknown*, BALTIMORE SUN, May 13, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-damage-estimate-20150513-story.html>.

³⁹ *Id.*

windows were broken.”⁴⁰ Many onlookers of the cleanup effort described the mall as a “disaster zone or a war zone.”⁴¹

On April 27, 2015, Governor Hogan declared a State of Emergency as the violence spread throughout the city.⁴² Baltimore Mayor, Stephanie Rawlings-Blake issues a city-wide curfew effective on April 28, 2015, beginning at 10:00 p.m. through 5:00 a.m. The curfew applied to *all* citizens.^{43 44} The curfew inflicted further economic damage to the city as many bars and restaurants decided to close because of the mandatory weeklong curfew.⁴⁵

Freddie Gray and the subsequent Baltimore Riots were covered by the media twenty-four hours a day for several days. The media broadcasts were worldwide. On May 1, 2015, State’s Attorney, Marilyn Mosby, announced charges against the defendants.⁴⁶ The prejudicial information that any potential juror in Baltimore City surely observed supports that a presumption of prejudice exists in this case.

C. The Short Time Period Between the Alleged Crime(s) and the Initiation of the Prosecution and Trial(s) Supports the Presumption of Prejudice Requiring Removal.

The Supreme Court has previously asserted:

⁴⁰ Carrie Wells, Luke Broadwater and Jeff Barker, *Businesses vow to rebuild after blow to Baltimore’s economy*, BALTIMORE SUN, April 28, 2015, <http://www.baltimoresun.com/business/bs-bz-riot-impact-to-business-20150428-story.html>.

⁴¹ *Id.*

⁴² *Id.*

⁴³ WUSA 9 Staff, *What you need to know about the Baltimore curfew*, WUSA9, April 28, 2015, <http://www.wusa9.com/story/news/local/maryland/2015/04/28/baltimore-curfew-rules-regulations/26545683/>.

⁴⁴ CITY OF BALTIMORE, EMERGENCY CURFEW, April 28, 2015, *available at* <http://www.baltimorecity.gov/emergency-curfew-20150427>.

⁴⁵ *Id.*

⁴⁶ Jayne Miller, *6 Baltimore police officers suspended in Freddie Gray case*, WBAL-TV, April 20, 2015, <http://www.wbal.com/news/charging-documents-freddie-gray-ran-from-police/32468120>.

Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.

Irvin v. Dowd, 366 U.S. 717, 724–25, (1961).

While the Supreme Court has not determined a set amount of time needed between the crime and trial, the Court has stressed its importance as “[t]he passage of time is a great healer.” *Id.* In *Irvin*, the Court observed that it was during the six or seven months immediately preceding trial that “a barrage of newspaper headlines, articles, cartoons and pictures was unleashed against [the defendant].” *Id.* In *Patton v. Yount*, 467 U.S. 1025, 1032 (1984), the Court felt the separation of *four years* between the trial and the alleged crime was “at a time when prejudicial publicity was greatly diminished and community sentiment had softened.”

The Supreme Court followed this pattern in *Skilling*, with “over *four years elapsed* between Enron's bankruptcy and Skilling's trial.” *Skilling*, 561 U.S. at 383 (emphasis supplied). Even though reporters continued to cover the Enron scandal, “the decibel level of media attention diminished somewhat in the years following Enron's collapse.” *Id.* In *Rideau*, prejudicial information being distributed only months before trial, made impartiality impossible. *Rideau*, 373 U.S. 723.

Clearly, the expedited nature of these proceedings fits more in line with the timeframe in *Rideau* and *Irvin*, rather than *Skilling*. These alleged crimes occurred only weeks prior to charging and will be only a few months before the trials. They will still most certainly be viewed as within the “barrage of newspaper headlines, articles, cartoons and pictures [that were] unleashed against [the defendants].” *Irvin*, 366 U.S. at 724–25.

The Freddie Gray case carries with it the presumption of prejudice that the Supreme Court has found and applied in its precedent. The relative size and characteristics of the

community, the prejudicial information publicized, and the time between the events and expected trial dates all support that the presumption of prejudice has attached.

First, the eligible jury pool is quite small compared to the cases where no presumption has been found and is analogous to where the presumption has been found. Baltimore City does not have the number of registered jurors that could make finding a fair and impartial jury possible like in the case cited above.

Second, the blatantly prejudicial information publicized would be impossible to ignore for potential jurors. The statements of political leaders, community leaders, community activists and cries from the public demanding justice for Freddie Gray. The jurors watched on the news (or in person) their community burning, vehicles being smashed and set on fire, riots erupting around the city, businesses being vandalized and looted. The potential jurors also witnessed a phenomenon that will likely occur during trial. That is, every time a decision in the Freddie Gray case had to be made, a large demonstration was scheduled outside of the applicable venue. It started at BPD Western District police station after the initial arrest and death of Mr. Gray. The demonstrations went to City Hall and in front of BPD police headquarters while the investigation commenced. The demonstrations moved to the State's Attorney's Office once the decision to charge the Officers was pending. There was a large crowd gathered outside of central booking when the Officers were arrested and went through the booking process. There is every reason to believe that the protestors threatening "NO JUSTICE, NO PEACE!" will be present in front of the court house as proceedings progress in this matter. Further, to have jurors - Baltimore City residents - have to make a decision in this case when they observe such a spectacle would be unfair and wholly improper in this case.

Lastly, the time that has elapsed has not permitted the type of healing and reconciliation in the community that would be needed to dampen the effects of the events surrounding this case. The arrest of Freddie Gray is still replayed on news, social media, and is still fresh in the minds of Baltimore City residents. The prosecution was initiated immediately and very publicly after the police investigation was completed and the trials will be very close in time to the events and aftermath of Freddie Gray's arrest and death. This makes it all the more likely that a fair and impartial jury panel will not be found.

Based on the relative size and characteristics of Baltimore City, the prejudicial information that has penetrated every form of online, printed, and broadcast media, and the short time between the alleged crimes and trial(s), the presumption of prejudice prevents the Officers in this case from receiving fair trials. It is for these reasons that removal is constitutionally mandated in this case and the Officers respectfully move this Honorable Court to remove their cases out of Baltimore City.

II. EVEN ASSUMING, *ARGUENDO*, THIS HONORABLE COURT FINDS THAT THE PRESUMPTION OF PREJUDICE IS INAPPLICABLE, REMOVAL IS STILL APPROPRIATE UNDER MARYLAND'S CONSTITUTIONAL AND STATUTORY FRAMEWORK.

The Maryland Court of Special Appeals, in *Dinkins v. Grimes*, 201 Md. App. 344, 357 (2011) held unequivocally that “[d]ue process requires that all parties receive a trial by *an impartial trier of fact free from outside influences*.” (Emphasis added).

This judicial mandate echoes the Supreme Court’s holding in *Skilling v. United States*, 561 U.S. 358, 377 (2010), “that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by outside influence, whether of private talk or public print.” (Emphasis added). And of course, it is merely a recent restatement of that cornerstone of the American justice system, that “no man’s life, liberty or property [should] be

forfeited as criminal punishment for violation of [a] law until there has been a charge fairly made and *fairly tried in a public tribunal free of prejudice, passion, excitement, and tyrannical power.*”

Chambers v. State of Florida, 309 U.S. 227, 236–37 (1940) (emphasis supplied).

In Maryland, the removal of both civil and criminal cases for such undue outside influences and local prejudice is governed by two provisions: Article IV, § 8 (c) of the Maryland Constitution and Md. Rule 4-254. Section 8 (c) of Article IV of the Constitution provides:

in all suits or actions at law . . . pending in any of the courts of law in this State which have jurisdiction over the cause or case, in addition to the suggestion in writing of either of the parties to the cause or case that the party cannot have a fair and impartial trial in the court in which the cause or case may be pending, it shall be necessary for the party making the suggestion to make it satisfactorily appear to the court that the suggestion is true, or that there is reasonable ground for the same; and thereupon the court shall order and direct the record of the proceedings in the cause or case to be transmitted to some other court, having jurisdiction in the cause or case, for trial.

Md. CONST. Art. IV, § 8 (c) (emphasis supplied).

To effectuate the removal provisions of the Maryland Constitution, Maryland Rule 4-254 provides, in relevant part,

When a defendant is not eligible for the death penalty and either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court *shall order* that the action be transferred for trial to another court having jurisdiction only *if the court is satisfied that the suggestion is true OR that there is reasonable ground for it*. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A party who has obtained one removal may obtain further removal pursuant to this section.

Md. Rule 4-254(b)(2).

In *Hoffman v. Stamper*, 155 Md. App. 247, 284 (2004), *aff'd in part and rev'd in part*, 385 Md. 1 (2005), the Maryland Court of Special Appeals elaborated that the reasonability of grounds is subject to a threshold analysis by the court: “The threshold question for the circuit court on a motion for removal—whether there is reasonable ground to believe the allegation that

the moving party cannot receive a fair and impartial trial in the county in which the action is pending—is a mixed question of law and fact concerning a constitutional right.

In a removal proceeding, the party seeking removal “bears the burden to show that he or she has been prejudiced by adverse publicity and that the *voir dire* examination . . . will not be adequate to assure . . . a fair and impartial trial by jury.” *Id.*, at 284–85. In addition, the defendant “must show not only that there has been publicity about this case but also that there is reason to believe that the publicity about him will prejudice his rights.” *Id.* at 287. (Emphasis added).

The publicity about the Freddie Gray case has been pervasive, negative, continuing and prejudicial—including but by no means limited to the numerous examples provided in the Appendix of Defendants’ motion. The accounts and commentary are specific to the case and the Officers involved.⁴⁷ As in *Dinkins*, “[t]heir actions spurred demonstrations, denunciations and demands for a City boycott, all duly reported in the media. High-ranking public officials, including their ultimate employer, the Mayor, criticized the Officers’ conduct; and community activists called for their ouster, sometimes in the most fiery of terms . . . In various accounts, the arrests were portrayed as a symbol of deteriorating police/community relations and . . . described . . . [as] a civil rights violation.” *Dinkins*, 201 Md. App. at 364.

In the case before this Honorable Court, as discussed *supra*, most publicity was highly critical, if not hostile, to the Defendants, including statements made by high-ranking public officials. There were multiple demonstrations held in the city, demanding that the Defendants be terminated and prosecuted. Violent riots were directed at the Baltimore City Police Department as a symbolic extension of the Defendants. These incidents resulted in approximately 130 injured

⁴⁷ The media has additionally published (very negatively and at length) details of an alleged incident in Carroll County involving Lt. Brian Rice.

Officers, one of whom suffered critical injuries.⁴⁸ Subsequent press releases relating to a Federal investigation into the Baltimore City Police Department requested by Baltimore's Mayor, Stephanie Rawlings-Blake "to seek out any persistent patterns of misconduct, focusing on such areas as excessive force, discriminatory policing, and improper stops, searches or arrests"⁴⁹ have blurred the line between the Defendants and the police department as a whole, so that the negative and hostile implications toward the department have become inseparably enmeshed with those against the Defendants. In fact, in its very headline to her press release, the Mayor expressly indicates that *the pool of fact-finders (the "community") has no or damaged trust in police, and thus, pars pro toto, the defendant officers, involuntarily supporting Defendants' belief that it is reasonable to believe that voir dire will not provide adequate measures to permit an impartial trial in Baltimore City.* Again, this mirrors the holding in *Dinkins*, where the Court of Special Appeals found that the demonstrations by themselves represented a "City-unique source of continuing local resentment" and held that "[t]here were demonstrations held in the City demanding that the Defendants be terminated and prosecuted. This finding of a City-unique source of continuing local resentment is a reasonable ground to believe that appellants could not receive a fair trial in Baltimore City even with the assistance of voir dire." *Dinkins*, 708–709. (Emphasis added).

⁴⁸ Staff Reports, *About 130 officers injured during Baltimore riots released from hospital*, BALTIMORE SUN, May 6, 2015, <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-ci-officer-injuries-20150505-story.html>.

⁴⁹ BALTIMORE CITY PRESS RELEASE, MAYOR RAWLINGS-BLAKE REQUESTS FEDERAL INVESTIGATION OF BALTIMORE POLICE DEPARTMENT; PATTERN-OR-PRACTICE INVESTIGATION WILL SEEK TO REBUILD COMMUNITY TRUST WITH POLICE, MAY 6, 2015, *available at* <http://content.govdelivery.com/accounts/MDBALT/bulletins/102ee01>.

“THERE WILL BE JUSTICE FOR FREDDIE GRAY”

A. Prejudicial Effect of Statements and Promises Made by Public Figures

In *Dinkins*, 201 Md. App. 344 (2011), the Court of Special Appeals upheld the trial court’s finding that removal was warranted in part due to the fact “high ranking public officials criticized the officers’ [appellees] conduct and community activists called for their ouster, sometimes in public the most fiery of terms.” *Id.* at 364. The Court held that statements made by local officials and community activists that are so prejudicial as to lead to “extensive negative publicity” can render a trial in that jurisdiction so unfair that even with the assistance of *voir dire* a defendant cannot receive a fair trial and removal is warranted.

Other jurisdictions have addressed the issue of statements of public figures and political motives being a factor in whether or not a change of venue is warranted in a matter. *Unger v. Cauchon*, 118 Wash. App. 165 (2003) (Holding that factors a trial court must consider in a change of venue request includes any connection of government officials with release of publicity); *National Collegiate Athletic Ass’n v. Tarkanian*, 113 Nev. 610 (1997) (Holding that a factor to determine if venue should be transferred includes the existence of political overtones in the case); *Olson v. North Dakota Dist. Court, Richland County, Third Judicial Dist.*, 271 NW2d 574 (1978) (Holding that factors to be considered by a trial court in its determination of whether pretrial publicity has had such a prejudicial effect on a criminal defendant as to justify change of venue include whether prosecution was responsible for objectionable materials being publicized or if it emanated from independent sources).

In the days and weeks that followed Mr. Gray’s arrest and death, local politicians and activists were outspoken regarding the incident during press conferences, demonstrations, social media posts. Their public comments and statements continued following the State’s Attorney charging the Officers involved. Major players in the media frenzy regarding the case included

the Mayor of Baltimore City, Stephanie Rawlings-Blake, the Police Commissioner, Anthony Batts, Members of the Baltimore City Council, Local Delegates, and the Baltimore City State's Attorney, Marilyn Mosby. In addition to political officials, community activists, spiritual and organizational leaders not only spoke out regarding the Freddie Gray case but also held rallies, encouraged protests, and spoke during Mr. Gray's televised funeral. The statements made by the countless public figures ranged in both substance and length but all maintained the same message "Justice for Freddy Gray."

(1) Prejudicial Statements Publicized by the Mayor, Stephanie Rawlings-Blake

In *Attorney Grievance Comm'n v. Gansler*, 377 Md. 656 (2003), the Court of Appeals specifically addressed the subject of unfair pretrial prejudice arising from statements of public officials when it held that a prosecutor's public comments regarding a case would improperly influence potential jurors. The holding in *Gansler* extends to other government officials and also to community leaders, as they are vested with similar inherent authority that may or is likely to have unfair prejudicial influence on an accused's trial.

Since its onset, the Freddie Gray matter sparked community outrage and public discontent with not only the police but the city administration. As a result, public officials throughout the jurisdiction spoke out publicly on the matter. Mayor Rawlings-Blake was at the forefront of the media coverage conducting interviews, press conferences and releasing statements regarding the arrest and death of Freddie Gray, the protests and riots following his death and, ultimately, the criminal charges against the Officers.

In *Dinkins*, the trial court was especially troubled with the fact that the Chief Executive of the jurisdiction continued to make public statements regarding the case. *Dinkins*, 201 Md. App. at 355. The city's mayor at the time, Sheila Dixon, was quoted as stating "it is clear to me that

the arrest was wrong, that the officers on the scene should not have arrested the child, and on behalf of the City of Baltimore, I apologize to the boy and his parents.” Similarly, in the matter at hand, Mayor Rawlings-Blake criticized the events surrounding Freddie Gray’s death and the Officers involved. Rawlings-Blake told the *Baltimore Sun* that she was “very determined to get to the bottom of this incident and to hold those who need to be held accountable.” Regarding the police department’s internal review of the incident, she stated that “we can’t just depend on – as the attorney for Mr. Gray says, you know – the police looking into the police. And we don’t depend on that.”⁵⁰ Mayor Rawlings-Blake also stated on national television, “If, with the nation watching, three black women at three different levels can’t get justice and healing for this community, you tell me where we’re going to get it in our country?”⁵¹

Mayor Rawlings-Blake also engaged in public discussion via her Twitter account. (As of May 21, 2015, the Mayor has 63,900 “Followers”.) On April 29, 2015, at 1:19 PM, she published a photo of herself and members of Mr. Gray’s family, over the “Tweet”: “Honored and blessed to stand with the family of Freddie Gray to call for justice and for peace. We are #OneBaltimore.”⁵² On April 30, 2015, at 8:20 AM, she broadcast: “The family of Mr. Gray wants answers. I want answers. Our entire city deserves answers. We will remain vigilant on this path to justice.”⁵³ Mayor Rawlings-Blake’s statements became more prejudicial following the

⁵⁰ Yvonne Wegner, *Rawlings-Blake reaffirms ‘independent eye’ to investigate Freddie Gray Death*, BALTIMORE SUN, April 20, 2015, <http://www.baltimoresun.com/news/maryland/politics/blog/bal-baltimore-mayor-stephanie-rawlingsblake-reaffirms-independent-eyes-to-investigate-freddie-gray-death-20150420-story.html>.

⁵¹ Amanda Sakuma, *Black women front and center of power in Baltimore’s aftermath*, MSNBC, May 5, 2015, <http://www.msnbc.com/msnbc/black-women-baltimore-aftermath>.

⁵² Mayor Rawlings-Blake, @MayorSRB, TWITTER, <https://twitter.com/MayorSRB/status/593510047381999616>.

⁵³ @MayorSRB, <https://twitter.com/MayorSRB/status/593797062447210496>.

State's Attorney filing charges against the Officers as she told reporters she was "sickened and heartbroken" after hearing the statement of charges read by the State's Attorney in a press conference. Speaking to the crowd following the State's Attorney's announcement, she stated that she told the Police Commissioner to immediately suspend without pay all of the Officers involved.⁵⁴ Mayor Rawlings-Blake promised the citizens of Baltimore that "there will be justice for Mr. Gray, there will be justice for his family and there will be justice for the people of Baltimore." The Mayor warned those "who wish to engage in brutality, misconduct, racism and corruption, let me be clear: there is no place in the Baltimore police force for you."⁵⁵ It is clear that the statements made by the Mayor of Baltimore City in this case not only mirror, but indeed surpass, those made in by Mayor Dixon in *Dinkins*, both in view of their flagrant partisanship, their intended and indeed targeted populism, and their devastating prejudicial effect on the public.

(2) Prejudicial Statements Publicized by Police Commissioner Anthony Batts

In *Dinkins*, not only did Mayor Dixon criticize the defendant-officers, but Baltimore City Police Commissioner, Leonard Hamm, also was quoted in the press saying there was "no way to justify" the actions in the officers of the case. *Dinkins*, at 352. Commissioner Hamm promised the citizens of Baltimore an internal investigation into the officers in the matter. *Id.*, at 353. In a local newspaper, Hamm stated that "on the surface, police behavior seems totally unacceptable, with the leadership to blame." *Id.*, at 353. In the Freddie Gray case, the current Baltimore City

⁵⁴ Michael Dresser, *Mayor says she is 'sickened, heartbroken,' by alleged conduct of officers in Freddie Gray case*, BALTIMORE SUN, May 1, 2014, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-freddie-gray-srb-reaction-0502-20150501-story.html>.

⁵⁵ *Mayor Stephanie Rawlings-Blake: There will be justice for Mr. Gray*, WBALTV11, May 1, 2015, <http://www.wbaltv.com/news/mayor-stephanie-rawlingsblake-there-will-be-justice-for-mr-gray/32706444>.

Police Commissioner, Anthony Batts, has also spoken out well beyond anything that was said in by Commissioner Hamm in *Dinkins*.

On April 24, 2015, twelve days following Mr. Gray's initial arrest, Commissioner Batts held a press conference in which he released details into the investigation of Gray's arrest and subsequent death. During the press conference Deputy Police Commissioner Kevin Davis stated that Freddie Gray was stopped after a foot pursuit and "should have received medical attention at the scene of his arrest." Deputy Davis provided detailed information regarding the transportation of Gray following his arrest and the different stops made during that trip. Davis also added that "a witness said the man [Gray] was yelling and indicated he was having difficulty breathing." Commissioner Batts told reporters "we know he was not buckled in the transportation vehicle as he should have been, no excuses for that period." He went on to say that "we know our police employees failed to get him medical attention in a timely manner multiple times." Batts completed his statement by ensuring that "if someone harmed Freddie Gray we are going to have to prosecute him."⁵⁶

In a second press conference held on April 30, 2015, the day before charges were filed in this case, Batts discussed the completion of the police investigation into the case and turnover of that information to the State's Attorney. During the press conference, Batts communicated the "sense of urgency" that was dedicated to this case in leading the investigation and said that the information recovered had been turned over the State's Attorney to do with it what they felt appropriate. The conference also gave new details into the matter including additional evidence

⁵⁶ Ed Payne, Steve Almasy, Michael Pearson, *Police: We failed to get Freddie Gray timely medical care after arrest*, CNN, April 24, 2015, <http://www.cnn.com/2015/04/24/us/baltimore-freddie-gray-death/>.

that had been found regarding extra stops that were made in the transportation of Gray and video evidence of those stops.⁵⁷

Through the Baltimore Police Twitter account⁵⁸ (127,000 Followers), the Commissioner, on May 2, 2015, publicized a youtube.com video⁵⁹ of his press conference. He repeatedly emphasized “police misconduct,” specifically relating to the Officers in this case. Commissioner Batts not only condemned the actions of the Officers in this matter, as did Commissioner Hamm in the *Dinkins* case, but also explicitly stated they acted inappropriately in the way they handled Mr. Gray’s arrest and alleged request for medical attention. The statements made by Batts regarding this incident are both prejudicial in nature and directly released information regarding the facts of the case that may not be accurate or admissible during a trial in this matter, thereby far exceeding the factual prejudice caused in the *Dinkins* case and warranting removal from the City of Baltimore.

(3) Prejudicial Statements Publicized by Elected Officials

Both Rawlings-Blake and Commissioner Batts were by no means the only high ranking public officials who spoke out regarding the facts of Freddie Gray’s death and the charges in this matter. An article in the Baltimore Sun discussing local leaders coming together to seek justice for Freddie Gray quoted several local senators and delegates regarding their views on the situation. State Senator Joan Carter Conway, a Baltimore Democrat told reporters "I think there should be a civil rights investigation" of the police following the Freddie Gray death. She went on to say, "there's just too many deaths and too many violent incidents during arrests. Something

⁵⁷ *News conference: Commissioner Batts on Freddie Gray case*, WBALTV 11, April 30, 2015, <http://www.wbalte.com/news/batts-weve-turned-gray-case-over-to-state-attorney/32660530>.

⁵⁸ Baltimore Police, @BaltimorePolice, TWITTER, <https://twitter.com/baltimorepolice>.

⁵⁹ Baltimore Police, *05/02/15 Press Conference 7:45 PM*, YOUTUBE (May 2, 2015), <https://www.youtube.com/watch?v=mxQEOQH5HC0&feature=youtu.be>.

is wrong. The police officers need more than sensitivity training." Delegate Curt Anderson, chairman of Baltimore's House delegation, said there are too many questions about what happened to Gray to call for any specific additional action now. Anderson continued to state "a man is dead who was not dead an hour prior to being encountered by the police." Senator Lisa Gladden, another Baltimore Democrat, said "civil rights investigations trigger the sort of systemic changes that are badly needed in Baltimore. Community meetings allowing residents to vent during the collaborative review process are not enough. We need something more than this. We need real change in the city of Baltimore and the way in which police officers engage with the community," Gladden said.⁶⁰

In addition to the State Senators and Delegates, the local representatives voiced their opinions regarding the Freddie Gray case as well. The Baltimore City Council is made up of representatives from all fourteen districts of the city and overseen by the Council President Bernard "Jack" Young, most of which publicly spoke out regarding the Freddie Gray case. In particular, some councilman took to social media to express their thoughts regarding the Gray case and the current events in Baltimore. Councilman Eric Costello, councilman for the Eleventh District of the city stated on his Facebook page in regard to the riots and the pending curfew that "the recent events and particularly the past week have changed Baltimore City." Councilman James Kraft of District One posted an article onto his Facebook page from Rolling Stone.com called "Another Corpse, Another Excuse" regarding deaths of caused as a result of police

⁶⁰ Doug Donovan and Mark Puente, *Some local leaders call for Justice Department to probe Freddie Gray death*, BALTIMORE SUN, April 20, 2015, <http://www.baltimoresun.com/news/maryland/investigations/bs-md-gray-doj-review-20150420-story.html>.

actions. The tagline for the post was “And now Freddie Gray” and showed a picture two t-shirts one with the quote “Black Lives Matter” and the other with a stop sign with the words “Killing Us” written underneath.⁶¹ Councilwoman Helen Holton of the Eighth District said in an interview with NPR on May 2, 2015, the day after the Officers in this matter were charged, that “today is a day of celebration to find that police officers are being charged in crimes having to do with the death of a black man.”⁶²

City Council President Young, who has spoken out regarding police brutality in the past, wrote a letter to Maryland Governor Larry Hogan requesting that the Maryland Attorney General be called upon to conduct an independent investigation into the death of Freddie Gray.⁶³ The letter which was quoted in *The Baltimore Sun* stated that “residents of Baltimore and the broader nation are increasingly frustrated by the scant details surfacing around the mysterious death of Mr. Freddie Gray.” Young asked for “a complete and speedy accounting of the events that led to Mr. Gray’s death in order to provide his family and or citizens with much needed answers.”

Probably the most vocal of the City Council regarding the Freddie Gray matter has been and continues to be councilman for the Seventh District (and husband of the State’s Attorney), Nick Mosby. Mosby’s district is home to the Gilmore Projects, the location of Freddie Gray’s arrest, and became the epicenter of the protests and riots. Mosby has given numerous TV and radio interviews regarding the facts and events of Freddie Gray’s arrest and death and the events leading up to the Officers in this matter being charged.

⁶¹ Councilman Kraft has since removed this post from his Facebook page.

⁶² *Councilwoman: Police can get a fair trial in Baltimore*, National Public Radio (May 2, 2015), available at <http://www.npr.org/2015/05/02/403766851/councilwoman-police-can-get-a-fair-trial-in-baltimore>.

⁶³ Doug Donovan, *Young calls for Maryland Attorney General probe of Freddie Gray’s death* BALTIMORE SUN, April 21, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-gray-council-president-20150421-story.html>.

In an interview on April 20th, 2015, Mosby, when asked by one reporter what he believed the citizens of his district wanted, told reporters that they “want to know why he was chased, why he was arrested and they want to know the events that took place after the cuffs were placed on him.” He continued to say that he believed “the community wants to be part of the process” and that he is “not going to rest until we have a positive outcome.”⁶⁴

In addition to interviews with reporters, Mosby has been not only leading and taking part in peaceful demonstrations and protests regarding Justice for Freddie Gray, but was also out in the street giving interviews during the worst of some of the riots. In an interview on April 25, 2015, he told reporters he was “excited about the young folks who are exercising their right of voice, exercising showing their frustration” and that it was “critically important they stay productive” in regard to the demonstrations expected to go on throughout the city that day demanding justice for Freddie Gray.⁶⁵ He went on to tell the reporter that later that day he was planning on joining the demonstrations and would be at the start of the protest at Gilmore and will come toward City Hall. When asked during that interview about his views on the Freddie Gray case he told the reporter:

the point that we are at today the problem has been that in the initial situation when he was chased, detained and arrested and charged people want to know the specific information, why he was arrested, when he laid in the hospital and when he passed away people want to know all the answers and when you start this process out with that it grows with distrust and skepticism about the process and I think that is where we are with the trust. We have to do a better job.

In an article on NPR.org, Councilman Mosby is seen as bursting “into the national spotlight” after the on-camera exchange with a Fox News Reporter during the riots. The same

⁶⁴ ABC 2 News – WMAR, *Baltimore City Councilman Nick Mosby wants answers for death of Freddie Gray*, YOUTUBE (April 20, 2015) https://www.youtube.com/watch?v=ZHUKcG_chHs.

⁶⁵ *Nick Mosby on Freddie Gray Case*, WBALTV11, April 25, 2015, <http://www.wbaltv.com/news/nick-mosby-on-freddie-gray-case/32569896>.

article noted the amount of time Mosby spent in front of the cameras in the week leading up to the charges being filed against the Officers in this case. Gene Demby, of NPR, believes Mosby to becoming “something of a folk hero” for his video exchanges regarding this case and the notes how one has drawn more than 4 million views.⁶⁶ It is clear that the status of Mosby’s “rising star” position in the community has an extremely influential effect of the citizens not only of his district but those of all Baltimore City residents. Although some may say this status has had a positive effect on the citizens of Baltimore City, his statements regarding the request for accountability in this case he has also had a prejudicial effect on the potential jury pool in this case which will no doubt prevent the Officers from receiving a fair trial in Baltimore City.

(4) Prejudicial Statements Publicized by the State’s Attorney, Marilyn Mosby

The *Gansler Court* held that a prosecutor’s public comments regarding a case would improperly influence potential jurors. Although the issue in *Gansler* was whether or not the attorney in the matter had violated the Maryland Rules of Professional Conduct, whereas here the argument concerns removal, the case is still instructive as the court held that:

Comments by prosecuting attorneys, in particular, have inherent authority of the government and are more likely to influence the public. When such seemingly credible information reaches the ears or eyes of the public, the jury pool may become contaminated, greatly diminishing the court’s ability to assemble an impartial jury. The defendant’s right to a fair trial, thus, may be comprised.

Gansler, 377 Md. at 676.

In the Freddie Gray case, some of the most egregiously prejudicial public statements made by city officials were issued by Baltimore City State’s Attorney, Marilyn Mosby. Ms. Mosby’s status as both an attorney and the City’s chief prosecutor invest her statements to the

⁶⁶ Gene Demby, *Councilman’s Star Rises Fast Amid Baltimore Unrest*, NATIONAL PUBLIC RADIO, April 30, 2015, <http://www.npr.org/sections/codeswitch/2015/04/30/403382265/councilmans-star-rises-fast-amid-baltimore-unrest>.

public with the highest degree of credibility, and, hence, must be held to a higher standard than those made by other city officials. After remaining silent following the initial arrest and death of Freddie Gray, on May 1, 2015, Ms. Mosby held a press conference. During that conference, Ms. Mosby announced that charges had been filed against all six Officers involved in Mr. Gray's death. In an unprecedented move, Mosby read verbatim the statement of probable cause and charging documents filed against the Officers to a large crowd of Baltimore citizens. Similar to *Worthern*, where the media "recited in bold print the facts of the pending case presumably taken from an arrest report," Ms. Mosby in bold words recited the facts of this case directly from the arrest report not just to the media but to a crowd of thousands of potential jurors. *Worthern v. State*, 42 Md. App. 20, 23 (1979).

Both local and national media covered this press conference. All forms of social media covered the press conference with live tweets and posts quoting Mosby's words and comments regarding the case.⁶⁷ The *Washington Post*, on the same day, posted the following summary of Ms. Mosby's talking points:

Police officers "illegally arrested" Gray after making eye contact with him on April 12. The pocket knife subsequently found in Gray's pocket "was not a switchblade and is lawful under Maryland law." Gray was shackled at his ankles, handcuffed behind his back and placed in the back of the police wagon on his stomach unrestrained. There were many stops of that wagon. Many requests by Gray for medical assistance that started almost immediately upon his arrest. All were ignored. By the time they arrived at the police station more than an hour later, Gray was unresponsive and "in cardiac arrest." Mosby announced that Gray's death was ruled a homicide and that she was filing criminal charges against the six officers involved. A cheer could be heard in the distance on television.⁶⁸

⁶⁷ Marilyn J. Mosby, @MarilynMosbyEsq., TWITTER, <https://twitter.com/marilynmosbyesq>.

⁶⁸ Jonathan Capehart, *Marilyn Mosby's amazing press conference*, WASHINGTON POST, May 1, 2015, <http://www.washingtonpost.com/blogs/post-partisan/wp/2015/05/01/marilyn-mosbys-amazing-press-conference/>.

The same paper characterized her performance as a “stunning, detailed narrative of extensive police misconduct in the latest of several cases nationwide.”⁶⁹ Ms. Mosby’s statement proffered legal conclusions regarding the legality of Gray’s arrest to the public. It included medical conclusions regarding where the fatal injury occurred, as well as the manner and cause of death. Finally, the statement of facts read at the press conference included factual and legal conclusions based on hearsay statements that may be inaccurate or inadmissible at trial.⁷⁰

Both the Court of Appeals and Court of Special Appeals have addressed unfair prejudice inflicted upon a defendant’s trial when a prosecutor makes statements to the public. *Dinkins*, *supra*, most closely resembles the Freddie Gray matter in that that it involved an alleged overreaching of police officers, an alleged illegal arrest (in *Dinkins*, of a seven-year-old boy), and defendants composed of members of the Baltimore City Police Department. The City’s State’s Attorney at the time, like Ms. Mosby, also proffered legal conclusions to the press under the guise of a press conference. In *Dinkins*, the Court of Special Appeals pointed out that “WJZ–TV reported without attribution that the City State’s Attorney ‘personally reviewed the case [against Gerald Dinkins] and called it legally insufficient, fueling claims by the family that the arrest was retaliation for the embarrassing arrest of a seven year old.’” *Dinkins*, at 353.

⁶⁹ Lori Aratani, Paul Duggan and Dan Morse, *Six officers charged in death of Freddie Gray*, WASHINGTON POST, May 1, 2015, http://www.washingtonpost.com/local/overnight-calm-in-baltimore-as-tensions-remain-and-protests-expected/2015/05/01/00e07e7a-efe6-11e4-8666-a1d756d0218e_story.html.

⁷⁰ Ms. Mosby also thanked the Baltimore City Sheriff’s Office for their assistance in the independent investigation conducted by her office. To the extent that any Deputy Sheriff is called to testify in this case, it could cause the jury to give greater weight to their testimony since the Sheriff’s Office also will be acting as the protectors of the jury during trial. *See State v. Kelley*, 192 W. Va. 124, 451 S.E.2d 425 (1994).

The Court of Appeals in *Gansler* held that attorney making a publicized, out-of-court statement about a defendant's case can may "taint the proceedings" and:

attorneys occupy a special role as participants in the criminal justice system, and, as a result, the public may view their speech as authoritative and reliable. Attorneys involved in a particular case have greater access to information through discovery, the ability to converse privately with knowledgeable witnesses, and an enhanced understanding of the circumstances and issues. Their unique role and extensive access to information lends a degree of credibility to their speech that an ordinary citizen's speech may not usually possess.

Gansler, 377 Md. at 656.

Both courts and legislatures have limited "extrajudicial attorney speech to preserve a fair trial." *Id.* In Maryland, attorneys' statements are limited by the Maryland Rules of Professional Conduct. Specifically, MRPC 3.6 prohibits attorneys from making "an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding." (Emphasis supplied).

Although Ms. Mosby's statement may be covered by the "public record" umbrella when it comes to potential violations of the Maryland Rules of Professional Conduct, it is clear that any reasonable attorney would or should know that, by providing the statement of facts to a large crowd of potential jurors and media, this would materially prejudice the proceeding. In *Gansler*, the Court of Appeals held that it was a violation of MRPC 3.6 when the Montgomery County State's Attorney told the press his opinion of the defendant's guilt. *Gansler*, 377 Md. at 656. Surpassing the prejudice in *Gansler*, Ms. Mosby expressed her belief that the Officers in the case were guilty during the press conference. She publicly stated that she was fighting for the same cause as the citizens of Baltimore City—to "get justice for Freddie Gray." In addition, she expressly aligned herself with the populist slogans of protestors and demonstrators:

To the people of Baltimore and the demonstrators across America, I heard your call for “no justice, no peace.” Your peace is sincerely needed as I work to deliver justice on behalf of this young man. To the youth of this city, I will seek justice on your behalf. This is a moment, this is your moment. Let’s ensure that we have peaceful and productive rallies that will develop structural and systemic changes for generations to come. You’re at the forefront of this cause. And as young people, *our* time is now.

Following the well-received rhetoric of her speech, the crowd, consisting mostly of local Baltimore citizens and potential jurors, erupted with cheers and expressed amazement over Ms. Mosby's announcement. The effect of Ms. Mosby's speech was felt throughout the city. When interviewed, one citizen, Ciara Ford of Baltimore, stated both she hoped the Officers would be convicted and believed that the protests in the city made a difference in ensuring that authorities took the case seriously, "If we had kept quiet, I don't think they would have prosecuted."⁷¹

In a matter of mere moments, Mosby's speech elevated her to celebrity status not just among the citizens of Baltimore City but around the nation and globe. Within minutes of the conclusion of her press conference reporters from around the country were calling her “an instant political sensation.”⁷² In an article posted prior to the press conference but updated moments after, Ben Mathis-Lilley on slate.com opined that “Mosby now becomes a, perhaps the, focal figure in the biggest ongoing news story in the United States, and the content and delivery of her speech announcing the charges –as well as her star-on-the-rise backstory–suggest she is eager for the challenge.” The article concluded with the words “Marilyn Mosby's time is now.” Other reporters called Mosby “The Prosecutor Who Could Save Baltimore” and the “Objectively

⁷¹ CBS/AP, *Prosecutor charges 6 Baltimore officers in Freddie Gray's Death*, CBS, May 1, 2015, <http://www.cbsnews.com/news/baltimore-officers-face-second-degree-murder-manslaughter-assault-charges-in-death-of-freddie-gray>.

⁷² Ben Mathis-Lilley, *Baltimore State's Attorney Marilyn Mosby Is an Instant Political Sensation*, SLATE, May 1, 2015, http://www.slate.com/blogs/the_slated/2015/05/01/marilyn_mosby_video_background_footage_biography_on_prosecutor.html.

Badass Attorney Running the Freddie Gray Investigation.” An article in The Dailey Beast, Michael Daly, shared Mosby’s background and upbringing praising her career and quick rise to political power. The article goes as far to call both her and her husband, Councilman Nick Mosby, “a seed of hope for Baltimore.”⁷³ The Huffington Post said that Mosby had “emerged as the voice that so many in Baltimore needed to hear.”⁷⁴ It is clear the instant celebrity status of Mosby, like her husband, only further shows how her voice and actions have a clear influence over the citizens of Baltimore City. The potential jury pool to which the Officers now stand to be judged by have and will continue to be effected by the statements she has made and continue to make to the press and public far exceed the necessary prejudice to grant removal in this matter.

(5) Prejudicial Statements Publicized by Community Activists

City officials were joined in their cause to bring justice to Freddie Gray and his family by numerous civic leaders and local activists. In Baltimore City, following the arrest and subsequent death of Freddie Gray, a multitude of persons with leadership roles in their respective communities joined in various forms of activism, speeches, marches, town hall meetings, and demonstrations. Community organizations throughout the city rallied and held press conferences in the pursuit of justice for Freddie Gray.

In *Dinkins*, both religious and community organizations held rallies and protests in a “call for justice” for Gerard [appellant]. *Dinkins*, 201 Md. at 352. One church leader was quoted in the news saying “Gerard is a symbol for broader problems, and the situation is an indication of

⁷³ Michael Daly, *The Prosecutor Who Could Save Baltimore*, THE DAILY BEAST, May 1, 2015, <http://www.thedailybeast.com/articles/2015/04/30/can-this-prosecutor-save-baltimore.html>.

⁷⁴ Jennifer Bendery, *Who Is This Objectively Badass Attorney Running The Freddie Gray Investigation?*, HUFFINGTON POST, May 3, 2015, http://www.huffingtonpost.com/2015/05/01/marilyn-mosby-freddie-gray_n_7190384.html.

an ongoing problem in the black community.” *Id.* “Rev Anthony Evans of the National Black Church Initiative, an African American religious organization called for a ‘boycott’ of Baltimore by all religious conventions to protest the child’s arrest.” *Id.*

The cries for justice in *Dinkins* are both echoed and amplified in the present matter, as religious leaders reached out to their communities for justice for Freddie Gray. Pastor Ted Sutton, a youth minister with the Ministers of Defense and the Maryland Church of God and Christ, helped co-sponsor demonstrations and told the *Baltimore Sun* that he and other organizers expected crowds from out of town.⁷⁵ Other religious groups held press conferences, at one the Interdenominational Ministerial Alliance of Baltimore, the Rev. Alvin Gwynn Sr., the head of the church group called for the resignation of city Police Commissioner Anthony Batts.

Rev. Cortly "C.D." Witherspoon, president of the Baltimore chapter of the Southern Christian Leadership Conference (“SLCL”), told reporters for the *Baltimore Sun* he was drafting a letter to call for a civil rights investigation into the matter. Rev. Witherspoon and his congregation also hired an independent investigator to look into Gray's death. During numerous rallies and demonstrations, members chanted the familiar “No justice, no peace” refrain that has echoed across the city since the 25-year-old Gray suffered a spinal injury last month. Witherspoon told one crowd “this is an uprising,” “people are standing up and for the first time are saying enough is enough and meaning it.” At another rally, Witherspoon stood on the street corner where Gray was arrested and told the crowd “We're here to fight for justice for Freddie

⁷⁵ Jessica Anderson, *Group organizing weekend event predicts a 'wave' of demonstrators*, BALTIMORE SUN, April 25, 2015, <http://www.baltimoresun.com/news/maryland/bs-md-gray-events-20150424-story.html>.

Gray." He emphasized that Baltimore residents had no faith in the ability of city police to investigate themselves and officers had not asked local residents about Gray's death.⁷⁶

Rev. Jamal Bryant, the Baltimore pastor who delivered the eulogy at Freddie Gray's funeral is by far one of the most influential men in the Baltimore City community and has been the most vocal in his pursuit for justice for Freddie Gray and others like him. Bryant, the pastor of The Empowerment Temple, in an interview with CNN on April 22, Bryant told correspondents:

The whole community came out and began asking questions, they didn't turn a blind eye. Now a week out and police still have not filled out in the police report, probable cause. People are righteously in indignation and upset as they should be, because they feel like their community has been swept under the rug. The incident took place four blocks away from the police station, the time lapse that is unaccountable is inexcusable from the police commissioner and from the mayor of Baltimore. As of tonight at 5pm the entire community, the real city, is coming out to show that we are really upset about what is taking place. The video shows the initial arrest and then two blocks away from that they took Freddie gray out of paddy wagon, they said to readjust his cuffs, they put him back in and then we have a lapse of time. **Nowhere in the history of respiratory issues has anybody from an asthma attack had their spine severed by 80% it wasn't because of breathing it is because of malfeasance and all 6 of those officers be put on paid vacation is a further slap in the face if not a spit in the face to say that black lives really don't matter**, that I'm going to pay you while we are still investigating. Then to add insult to injury the police yesterday claimed that Mr. Gray had a knife on him, and what is not said is that he had a pocket knife in his pocket, that it was not seen and he was not wielding it towards officers or anyone. They had absolutely no reason what the congressmen said last weekend in the statehouse 'it is hunting season for black men in America' and that's why there is a moral outrage. Just as blue bell ice cream is contaminated the police force in America is contaminated.⁷⁷

In an impassioned eulogy during Gray's funeral at New Shiloh Baptist Church on the city's west side, Bryant told the thousands who packed the church that "with everything that

⁷⁶ Ian Simpson, *Rights Group To Probe Baltimore Man's Death, Cites No Confidence In Police*, HUFFINGTON POST, April 23, 2015, http://www.huffingtonpost.com/2015/04/23/freddie-gray-death-invest_n_7131164.html.

⁷⁷ Network News, *Pastor Jamal Bryant talks Freddie Gray on CNN*, YOUTUBE (April 22, 2015) <https://www.youtube.com/watch?v=WGXfAcPAz2A>.

we've been through, ain't no way you can sit here and be silent in the face of injustice." Bryant ended Gray's eulogy with a "No Justice, No Peace" chant. He later spent the rest of the day urging calm among those out participating in the demonstrations and causing harm on the city. Bryant was asking people to just go home and told the demonstrators that "violence and justice never go together in the same sentence."⁷⁸

Similar to the call for a "boycott of Baltimore" in the *Dinkins* case, civic leaders in Baltimore called for a "shutdown" of the city following Freddie Gray's death.⁷⁹ *Dinkins*, at 353. At a press conference Friday, April 24, 2015, the day before the first of the riots in Baltimore broke out, at the Western District police station, Malik Z. Shabazz, president of Black Lawyers for Justice, called for a "shutdown" of the city if Officers involved in Gray's arrest are not charged.⁸⁰ "We are here because of Freddie Gray. We are here because there have been no arrests made," said Shabazz. He told the media that "the people are demanding immediate arrests, immediate end to the protracted investigation, and immediate end to the stonewalling." Shabazz was quoted on WBAL-TV that "things will change on Saturday, and the struggle will be amplified," "for those that are planning civil disobedience ... I will not be trying to stop them."⁸¹

⁷⁸ Eun Kyung Kim, *Baltimore pastor who eulogized Freddie Gray: 'Violence and justice never go together,'* TODAY, April 28, 2015, <http://www.today.com/news/baltimore-protests-pastor-who-eulogized-freddie-gray-says-violence-justice-t17856>.

⁷⁹ Ed Payne, Steve Almasy, Michael Pearson, *Police: We failed to get Freddie Gray timely medical care after arrest,* CNN, April 24, 2015, <http://www.cnn.com/2015/04/24/us/baltimore-freddie-gray-death/>.

⁸⁰ Jessica Anderson, *Group organizing weekend event predicts a 'wave' of demonstrators,* BALTIMORE SUN, April 25, 2015, <http://www.baltimoresun.com/news/maryland/bs-md-gray-events-20150424-story.html>.

⁸¹ Ed Adamczyk and Doug Ware, *Rally over Freddie Gray aims to 'shut down' Baltimore on Saturday,* UPI, April 25, 2015, http://www.upi.com/Top_News/US/2015/04/25/Rally-over-Freddie-Gray-aims-to-shut-down-Baltimore-on-Saturday/1451429872081/.

(6) Prejudicial Statements Publicized by the NAACP

During the unrest caused by the *Dinkins* case, the NAACP was by far the most involved and outspoken organization calling for justice. In consideration of the decision to remove the case in *Dinkins*, the court noted that the local NAACP in one account reiterated “that Dinkins’ arrest ‘was retaliation for Dinkins taking her objects to her son’s arrest public.’” One story even quoted the head of the NAACP that ‘if they want a war, they’ll have a war.’” *Dinkins*, 201 Md. App. 352–53. The Baltimore branch president called for an emergency meeting in which he told members that the arrest of Gerard was their “Rosa Parks incident.” A local paper stated that at that meeting, which was attended by both the mayor and the police commissioner, one leader asked the commissioner “how can these officers still have badges after arresting a child? *They are thugs in uniforms.*” (Emphasis supplied). *Dinkins*, 201 Md. App. at 353.

Eight years later, in the same city, fighting for a similar cause, the NAACP is again at the head of the call to justice in the present matter. Since the passing of Mr. Gray, the NAACP has held press conferences and released numerous statements regarding the case. Members and leaders at the NAACP were and continue to be instrumental in organization demonstrations and bringing together local leaders and citizens to fight for the cause of Justice for Freddie Gray.

On April 20, 2015, just a day after Mr. Gray’s death, the NAACP called their first press conference. The NAACP president released a statement saying in part that “the people of Baltimore deserve answers and the NAACP will not stop until a full and thorough investigation into Mr. Gray’s death is conducted and justice is served. We are doubling down in our efforts to seek comprehensive criminal justice reform.” On April 28, 2015, a second press conference was held to discuss the incidents that led to the “tragic death of Freddie Gray.” At that conference, Maryland NAACP State Conference President said that “the NAACP will use every tool in its

advocacy arsenal to bring about justice in cases where unarmed individuals are killed by police.”⁸² Tessa Hill-Aston, branch president of the Baltimore chapter of the NAACP discussed the opening of a new local office closer to the community in which the incident took place.

Hill-Austin also joined other leaders in the call for a federal probe into the case and told *Baltimore Sun* reporters that “extra scrutiny from the Justice Department is important because the police do not have a good record of investigating each other.”⁸³ On May 1, 2015, the date that the Officers were charged, the NAACP released yet another statement regarding the case. Gerald Stansbury, the Maryland State Conference President said: “The Maryland State conference of the NAACP is pleased that the justice system has moved swiftly to address the tragedy of Freddy Gray's untimely and unnecessary demise. This is a step towards due process for the family of Freddie Gray and the community. We hope that the actions taken by the State Attorney Mosby and Baltimore officials serve as an example for other states and for other ‘Freddie Grays’ around the country.”⁸⁴

The calls for justice and influential statements made to the community from the NAACP have continued for over a month as this case has progressed both through the media and now the court system. Most recently in a letter to the president of the local Fraternal Order of Police (“FOP”), Gene Ryan, regarding their request to have the State’s Attorney for Baltimore City removed from this case due to potential conflicts of interest. Hill-Aston and other “concerned

⁸² NAACP HOLDS PRESS CONFERENCE TO DISCUSS DEATH OF FREDDIE GRAY AND ANNOUNCE SATELLITE OFFICE, NAACP, April 28, 2015, *available at* <http://www.naacp.org/press/entry/naacp-holds-press-conference-to-discuss-death-of-freddie-gray-announce-new>.

⁸³ Mark Puente and Doug Donovan, *Justice Department opens probe into death of Freddie Gray*, BALTIMORE SUN, April 21, 2015, <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-gray-federal-probe-20150421-story.html#page=1>.

⁸⁴ NAACP STATEMENT ON CHARGES AGAINST OFFICERS IN FREDDIE GRAY’S DEATH, NAACP, May 1, 2015, *available at* <http://www.naacp.org/press/entry/naacp-statement-on-charges-against-officers-in-freddie-grays-death>.

leaders” discussed their opinions in regard to this and the FOP’s actions in regard to this case. The letter, which was published on the NAACP’s website accused the FOP’s actions as “a clear threat to the African American leadership of our city, as well as to the citizens of the city as a whole.” The letter continued to say that the FOP made “borderline racist statements that you know will provoke negative perceptions in the minds of those in full support of law enforcement in order to tear down the fabric of our elected leadership in Baltimore and only further deepen the racial divide within our city.” Although the letter is addressed to the FOP in general and not the individual Officers involved in this matter, the letter begins with discussing the actions of “six of *your* officers who have been charged with various crimes due to their handling of a 25-year old Freddie Gray who died a week after his arrest.” The publicized letter unfairly continues to inflame racial tensions between citizens and law enforcement which taints the potential jury.

The statements made by the high ranking officials and local activists in Baltimore City enumerated in this argument are but a fraction of those made since April 12, 2015, the day Freddie Gray was arrested. As the case proceeds, prejudicial statements have not subsided nor have they slowed down as they continue to influence the citizens and jury pool of the city. Prejudicial statements by high public officials both in person and through their social media presence continue to be reported throughout the media. The reverberations of the numerous demonstrations, the riots and violent transgressions perpetrated by protesters against innocent citizens have had such a pervasive effect as to saturate the Baltimore City community so that no officer in this case could be afforded a fair trial in front of a Baltimore City jury, even with the assistance of *voir dire*.

According to *Hoffman v. Stamper*, the threshold test for the “mixed question of law and fact concerning a constitutional right” such as the defendants’ right to a fair trial without undue

outside influences is “whether there is reasonable ground to believe the allegation that the moving party cannot receive a fair and impartial trial in the county in which the action [is] pending.” *Hoffman v. Stamper*, 155 Md. App. 247, 281, 284 (2004) *aff’d in part, rev’d in part and remanded*, 385 Md. 1 (2005). In the matter at bar, the question of whether there is “reasonable ground to believe” that defendants’ legitimate fears must be answered in the affirmative. Not only do the facts parallel those in *Dinkins*, where the Court of Special Appeals upheld the trial court’s finding that removal was warranted in part due to the fact “high ranking public officials criticized the officers’ [appellees] conduct and community activists called for their ouster, sometimes in public the most fiery of terms.” 201 Md. App. at 364. Indeed, they exceed them both in frequency and volume so as to undoubtedly lead to “extensive negative publicity” that can render a trial in Baltimore City unfair.

BALTIMORE CITY-UNIQUE UNREST

B. Continuing Local Resentment Demonstrated by Baltimore Residents

In *Dinkins*, 201 Md. App. 344 (2011), the Court of Special Appeals upheld the trial court’s finding that removal was warranted not just due to the prejudicial statements made by public officials but also due to a “City-unique source of continuing local resentment.” The Court ruled that the local resentment was “a reasonable ground to believe that appellants could not receive a fair trial in Baltimore City even with the assistance of *voir dire*.” *Id.* From the moment Freddie Gray was arrested on April 12, 2015, a state of civil unrest began to emerge in Baltimore City. The arrest, which was caught on a video from a witness’ cell phone was broadcast throughout the city through local media and sparked the beginning of what would become one of the most turbulent times in Baltimore City’s history. As news of Freddie Gray’s death was released, the disorder and discontent among Baltimore citizens grew to new heights.

As previously discussed, protests on behalf of Freddie Gray started almost immediately following his arrest and the release of the video of him being arrested. The protests turned to destruction on April 25, 2015 when an initial peaceful protest, “gave way to scattered chaos,” due to protestors smashing downtown storefront windows, and throwing rocks and bottles at police cruisers.⁸⁵ Both the protests and the ensuing riots, although different in their nature and effect on the community, still had a common cause and purpose, “Justice for Freddie Gray.”

The message of the protestors, which were mainly Baltimore City residents, was seen not only through their actions and words, but through the statements marked in large bold print on signs they carried as they marched. Some signs were a simple request for justice such as “Justice for Freddie Gray,” “Fight for Freddie” and the popular slogan “No Justice No Peace.” Others requested answers stating “What happened to Freddie?” Some rang with tones of a need for civil rights stating, “Freddie Did Not Die in Vain, Civil Rights Today” and “The Power is Ours.” One protester identified with Freddie Gray holding a sign that stated simply, “I Am Freddie Gray.” One sign mocked the Baltimore City Police and the alleged “rough ride” given to Freddie Gray following his arrest stating, “BCPD You’re in for a Rough Ride.” The most powerful and extreme of the signs included the ones directly addressed to the Baltimore City Police demanding that they “End Police Terror Now” and “Stop Killing our Brothers” and “Stop Killing our Fathers.” The commanding signs asserted “Stop Killer Cops” and “Blue Silence Equals Violence.” Finally, there were those that specifically called for a conviction of the individual Officers involved stating “Convict the 6” and “Indict Killer Cops.”⁸⁶

⁸⁵ Sheryl Gay Stolberg and Stephen Baybock, *Scenes of Chaos in Baltimore as Thousands Protest Freddie Gray’s Death*, NY TIMES, April 25, 2015, <http://www.nytimes.com/2015/04/26/us/baltimore-crowd-swells-in-protest-of-freddie-grays-death.html>.

⁸⁶ Photos from Protests and Demonstrations Photos.

In addition to their words printed on the protest signs, Baltimore City residents spoke out regarding their feelings on the Freddie Gray matter and the ensuing protests and riots. The day prior to Freddie Gray's funeral, Baltimore residents were out in front of the northern Baltimore funeral home during Gray's wake. Cars sounded their horns in support as demonstrators shouted, "Honk for Freddie!" One resident, Caira Byrd, was one of the peaceful protesters at the demonstration and she said "Everybody was hurting. It was painful. We as black people, we've been going through this for a long time."⁸⁷ In her interview, which was published on youtube.com Ms. Byrd went on to say "Freddie Gray he died for a change, so right now we're hurting, this is the only way we can show people we're hurting we don't want this to go unnoticed, we don't want this just swept under the rug, we don't want just suspended without pay or suspended for six months, that's not justice at all."⁸⁸ Another resident at the demonstration, Diamond Scott, said she was protesting for a better future for her son and said that "I want justice, that's it."⁸⁹

In a video posted on theguardian.com, interviewing neighbors of Freddie Gray from the area that was the most impacted by the riots one woman told reporters "this is like a nightmare, this is out of control." Another told the cameras "what happened to Freddie is what's been happening in Baltimore for so long." In the same video one man said "we just want justice, it's

⁸⁷ Jasmine Wright, *Riots erupt in Baltimore as thousands Mourn Freddie Gray*, PBS, April 27, 2015, <http://www.pbs.org/newshour/rundown/thousands-mourn-freddie-gray-call-justice-baltimore/>.

⁸⁸ PBS Newshour, *'Everybody was hurting:' Protestors mourn Freddie Gray*, YOUTUBE (Apr. 27, 2015) <https://www.youtube.com/watch?v=TOvJbPA53AA>.

⁸⁹ Jasmine Wright, *Riots erupt in Baltimore as thousands Mourn Freddie Gray*, PBS, April 27, 2015, <http://www.pbs.org/newshour/rundown/thousands-mourn-freddie-gray-call-justice-baltimore/>.

not about the cops it's not about the media, and we just want justice for Freddie and others who might have lost their lives dealing with police brutality.”⁹⁰

CBS news had an occasion to interview one of the protesters who had just been released from central booking regarding his arrest the night before for a curfew violation. Joseph Kent, who had become somewhat famous with the community due to his on-screen arrest and speaking out to the media regarding the case, told CBS news that his arrest would not stop him from going back out again that night in support of the protests. Kent believed that “it's about what's right and what's wrong for our people and what's actually going on, and it's not going to be ignored the simple fact and police brutality it's still happening and it's a pattern.” The interview concluded with Kent stating that people can no longer “let the police push people around.”⁹¹

CBS also went out into the community the day following the worst of the riots to interview some of the local residents who were most impacted by the riots. One woman stated that although she was not ok with the destruction of the city she believed “it's needed its needed because it's about time that people understand what we go through in Baltimore.” Another man told reporters that “the community has been neglected for a long time, what you see is frustrated people.”⁹² These statements and interviews given although a small sample size of the opinions and outlooks of the citizens of Baltimore City show an overwhelming sense of unrest among the population of the city that would make finding a fair and impartial jury in this matter impossible even with the help of *voir dire*.

⁹⁰ Mae Ryan and Oliver Laughland, *Freddie Gray's neighbors react to riots 'This is like a nightmare,'* THE GUARDIAN, April 30, 2015, <http://www.theguardian.com/us-news/video/2015/apr/30/freddie-gray-neighbors-baltimore-video>.

⁹¹ *Baltimore protester Joseph Kent speaks out for first time after arrest*, CBS NEWS, April 30, 2015, <http://www.cbsnews.com/videos/baltimore-protester-joseph-kent-speaks-for-first-time-after-arrest/>.

⁹² *Real Talk: What Baltimore Residents Think of the Unrest*, CBS NEWS, April 28, 2015, <http://www.cbsnews.com/videos/real-talk-what-baltimore-residents-think-of-the-unrest/>.

"NO BUSINESS AS USUAL"
C. Financial Impact on Baltimore City

Protestors in Baltimore vowed at the end of April 2015 to shut down the City of Baltimore, chanting "No Business as Usual!" *App'x, Washington Post, 4/26/2015*. On Saturday, April 25, 2015, Baltimore City experienced "hours of unrest that led to damaged police cars, the trashing of three crowded outdoor bar patios near Orioles Park at Camden Yards and fights that followed six hours of peaceful protest." *App'x, The Washington Post, 4/26/2015*. "[F]rightened spectators had to navigate angry demonstrators and police in riot gear before the game and were held after the last inning until police "were absolutely sure it was safe for them to depart." *App'x, Washington Post, 4/26/2015*. "The scene was one of chaos, with bags and purses stolen, fistfights between protesters and baseball fans, and people scattering in panic before the crowd moved on to attack police cars on another street. One man threw a trash can through the back window of a squad car; a teen used an orange street cone to shatter the windshield of another." *Washington Post, 4/26/2015*. There were also overnight clashes around the Western District Police Station "where protesters threw rocks and bricks at officers." *App'x, Washington Post, 4/26/2015*.

On April 27, 2015, when word of a "purge" was circulated around Baltimore City, the demonstrations became extremely violent and destructive with fires being set all over the city, businesses were being broken into and looted, vehicles being broken into and set afire, and violent clashes with police. A State of Emergency was declared, a curfew of 10 p.m. put into effect and multiple agencies responded to Baltimore City including the Maryland State Police and Maryland National Guard.

"The extent of the rioting's economic impact may not be known for some time, but some worried it could be significant, affecting everything from lost wages to consumer confidence and

tourism." *App'x, Baltimore Sun 4/28/2015*. "Dozens of businesses from Penn North to Mount Vernon were ransacked after their doors and windows were broken." *App'x, Baltimore Sun 4/28/2015*. "Mayor Stephanie Rawlings-Blake noted that in some cases, the businesses damaged were ones that residents had fought hard to lure, including the Target at Mondawmin." *Baltimore Sun 4/28/2015*. "Piles of broken glass and debris lay at every entrance to the mall, and many stores inside were damaged. Rawlings-Blake, who toured the mall Tuesday morning, said looters went after "high-dollar" items and did not hit every store." *App'x, Baltimore Sun 4/28/2015*. "Many bars and restaurants -- and even the Horseshoe Casino Baltimore -- opted to close because of the mandatory weeklong curfew of 10 p.m." *App'x, Baltimore Sun 4/28/2015*. "With a curfew, you will do more damage financially to our bars & restaurants than rioters will do,' wrote Liam Flynn, owner of Liam Fynn's Ale House on North Avenue." *App'x, Baltimore Sun 4/28/2015*. "Two conventions scheduled for [the week of protests], the American Heart Association and Door and Hardware Institute, were canceled. The hardware convention had been expected to draw 2,000 people to the city, while the heart association was expected to bring another 300." *App'x, Baltimore Sun 4/28/2015*. "Their job is gone, said Tess Hill-Aston, president of the Baltimore City NAACP ... Somebody's mother or somebody's sister or somebody's brother who worked at these stores, now they're unemployed." *App'x, Baltimore Sun 4/28/2015*.

"Among 350 businesses identified by city officials as damaged in two nights of rioting were drugstores and grocers considered the lifeblood of some of Baltimore's poorest areas." *App'x, Arcamax Business News, May 13, 2015*. "Small businesses in particular serve as the 'backbone' of today's inner-city neighborhoods, said Robert Blum, director of Urban Health Institute at Johns Hopkins University's Bloomberg School of Public Health. 'They're the corner

drugstores, the corner food markets, and these really are the core service structures of the neighborhoods." *App'x, Arcamax Business News*, May 13, 2015. Five CVS stores closed due to heavy damage including the widely publicized store set ablaze in the vicinity of North Avenue and Pennsylvania Avenue. *App'x, CNN Money* 4/28/2015.

"Dozens broke into Mondawmin Mall ... Some drove off with armfuls of clothing and boxes of store goods. Portions of the Metro system were shut down, and streets were closed as police set up perimeters around entire neighborhoods. Many downtown employers and attractions closed early Monday afternoon. Some, including the T. Rowe Price office tower on Pratt Street, planned to stay closed Tuesday ... A CVS store on Pennsylvania Avenue was looted and then set aflame ... A Save-a-Lot in Bolton Hill was vandalized ... As afternoon turned to evening, looting spread along Howard and Centre streets. A group of people destroyed property around North and Fulton avenues, police said, and a car was set on fire at North Avenue and Pulaski Street ... Fires continued to break out into Monday night." *App'x, Baltimore Sun*, 4/27/2015.

"As looters and arsonists roamed parts of her city on Monday afternoon, Baltimore Mayor Stephanie Rawlings-Blake bemoaned that "thugs" were senselessly destroying neighborhoods that took generations to build up. They are tearing down businesses, tearing down or destroying property - things we know will impact our community for years." *App'x, The Fiscal Times* 4/29/155.

Mayor Stephanie Rawlings-Blake cancelled a fundraiser planned for the Hippodrome Theatre, where "[t]ickets for the event ranged from \$500 to \$6,000." *App'x, Baltimore Sun*, 4/24/2015. It was stated "7-Eleven says 4 of its 12 Baltimore stores were damaged -- and one

looted -- in demonstrations but that all but one have reopened." *App'x Jeff Barker, Twitter* 5/14/2015.

The Orioles issued a press release on April 28, 2015, stating the April 29, 2015 game against the Chicago White Sox will begin at 2:05 p.m. and will be "closed to the public." The press release also stated that the "Orioles will also play their three-game series against the Tampa Bay Rays, scheduled for May 1-3, at Tropicana Field in St. Petersburg, Fla while serving as the home team." The press release also discussed the fact that two games were postponed on April 27 and April 28, 2015.

Other institutions that closed as a result of the rioting and protesting were the Baltimore Museum of Art, the Walters Art Museum, The Baltimore Museum of Industry, The National Aquarium, the American Visionary Art Museum, the Charles Theater, and Port Discovery. *App'x Baltimore Sun, 5/3/2015.*

"It will take some time before Baltimore gets a handle on the full extent of the tens of millions of dollars of damage caused by the rioting and looting." *App'x, The Fiscal Times* 4/29/2015. However preliminary estimates from the Small Business Administration put the destruction "at \$9 million for about 285 businesses damaged during the recent unrest in Baltimore -- which officials say is only a fraction of what the total will be for the damage and economic impact." *App'x, Baltimore Sun, 5/13/2015.* This does not include the ripple effects throughout the City of Baltimore, but only speaks to the physical destruction of the businesses. Baltimore City officials estimated the number of damaged businesses at the higher number of 350. *App'x, Baltimore Sun, 5/13/2015.* "Many of the damaged businesses have limited or no insurance coverage, according to the [Business Development Corp.]. Some of the most severely

damaged businesses remain closed, and some of the owners have no source of income." *App'x, Baltimore Sun* 5/13/2015.⁹³

"[A]cademic research into the economic impacts of the 1960s riots across the country, which show significant declines in property values in cities that experienced serious violence, even after controlling for other long-term trends, such as migration to the suburbs and loss of manufacturing jobs. For African-Americans, the loss in the value of their homes was particularly pronounced." *App'x, Baltimore Sun, Business* 5/1/2015.

"Superficially, Baltimore is going to snap right back ... On the surface, everything will appear to be back to normal. But from an economic, revenue and tax perspective, it was a tremendous hit that will only be felt in the next five years" said Jonathan Murray, "a financial adviser at UBS Financial Services in Hunt Valley. *App'x, Baltimore Sun*, May 5, 2015. Kurt Schmoke said the economic impact is "serious" and will have "ripple effect for quite a while" the "future impact" is hard to predict.⁹⁴

The impact of businesses damaged, looted, closed, or otherwise affected by the curfew is significant and the massive volume of businesses affected is not yet clear. The employees of those businesses and their families have been astronomically impacted. Although closures at major sporting, entertainment, restaurants, pharmacies, and other business venues had an impact on people who live outside the City of Baltimore, the residents who work and depend on this business were affected more deeply and personally than those from the outside. Where someone from outside of Maryland may not have been able to see the Orioles play and experienced inconvenience, the businesses around Camden Yards, their employees, vendors and residents

⁹³ Further, the unrest cost the city at least \$20 million in overtime, city-owned property damage and repaying other jurisdictions for outside assistance. *Baltimore Sun*, May 26, 2015.

⁹⁴ *Former Baltimore Mayor: Economic impact serious*, CNBC, April 28, 2015, <http://www.nbcnews.com/video/cnbc/57301821#57301821>.

were impacted personally and financially. The number of Baltimore City residents that would be on any potential jury pool that were personally affected, or that had families or close friends affected would render the *voir dire* and jury selection process useless. As the United States Supreme Court cautioned, "no man's life, liberty or property [should] be forfeited as criminal punishment for violation of [a]law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power." *Chambers*, 309 U.S. at 236–37. The economic devastation to Baltimore City makes a "public tribunal free of prejudice, passion or excitement" an impossible task in this case. The entire reason d'aitre for a change of venue is "promoting justice by getting rid of local prejudices," which cannot be done in Baltimore City. *See Heslop v. State*, 202 Md. at 126.

Dinkins, a case where the public outcry and publicity were mild in comparison to the Freddie Gray case, found that removal was necessary for the police officers to receive a fair trial. If *Dinkins* was "a symbol of deteriorating police/community relations" requiring removal, the Freddie Gray case is the reality for which *Dinkins* portended. As the Court of Special Appeals found in *Worthen*, if a case provides "a questionable atmosphere" with a "possibility of preconceived opinions" toward the defendants or the damage that the defendant's actions led to, a trial court could very well abuse its discretion in denying a defendant's removal request. *Worthen*, 42 Md. App. at 35. In fact, this case is so extreme, it rises to the level explored by the Supreme Court in *Skilling* where a "presumption of prejudice" arises. 561 U.S. 358. The City was affected economically, the pre-trial publicity has been blatantly prejudicial, and a reasonable juror could not be expected to forget the economic impact this case may have had on themselves, their families, their neighbors, and their friends while deliberating as to the guilt of the six Officers charged in this case.

"WE NEED 12 PEOPLE HERE TO SHOW UP FOR FREDDIE"

D. Why Voir Dire Cannot Protect a Fair and Impartial Trial

It is yet to be determined whether the trial of the six Officers accused in this case will be joined as one or separated into multiple trials. That answer will depend upon the evidence the State intends to introduce and other considerations that are difficult to predict at this point in time. If the State wishes to use any statements of any of the Officers, including any of their reports, the trial will surely be broken into multiple trials. If this were to be the case, this court would need to identify, not just 12, but approximately 200 individuals who would survive the strikes for cause and who could be fair and impartial. This is a task that would get exponentially more difficult as the trials progressed.

For six defendants with six trials, 72 jurors would be required to be seated in the box. If the court seats three alternates per trial, it would amount to 18 alternate jurors seated in the six trials. With the jurors and alternates seated, that would require 90 fair and impartial jurors seated in the trials.

In addition, Maryland Rule 4-313 will permit 10 peremptory challenges for the Officer driving the transport van with 5 peremptory challenges for the State. The remainder of the cases will have four peremptory challenges for each Officer and the State. That means there will be 55 strikes available for the parties for the main jury panel. Maryland Rule 4-313 also permits two strikes for the defense for each alternate and one strike for the prosecution for each alternate. This would mean that 55 fair and impartial jurors could be stricken during the use of peremptory strikes while seating the jury and 54 fair and impartial jurors could be stricken while seating the alternates. To survive *voir dire* and jury selection and to successfully begin the trials of these

Officers, there would need to be 199 fair and impartial jurors identified that survived strikes for cause after the *voir dire* process.

Notably, if this Court were to take each individual trial and wait until jury selection to determine whether a fair and impartial jury can be found, the publicity - as each trial progresses - will make that accomplishment exponentially more difficult. It is reasonable to believe that the coverage of any one of the trials in this case will garner tremendous publicity and public sentiment, and will cause the next trial in line to be that much more prejudiced.

The Supreme Court held in *Irvin*, that “the ‘pattern of deep and bitter prejudice’ shown to be present throughout the community, was clearly reflected in the sum total of the voir dire examination of a majority of the jurors finally placed in the jury box.” *Irvin v. Dowd*, 366 U.S. 717, 727. *Cf. Stroble v. State of California*, 343 U.S. 181. That is exactly what will happen in this case as *voir dire* will be ineffective for identifying fair and impartial jurors.

Moreover, if removal occurs in some of the Officers' cases, and not in others, public perception of the judiciary will dwindle and the confidence that "justice" is occurring will be lost. This could occur if the pre-trial publicity and public demonstrations increase as the trials progress or if two separate judges are making the all-important decision as to whether due process requires removal of the case. Public confidence in the judiciary and the appearance of fairness and justice is vital to our justice system and communities, particularly in a case where fairness and justice are being called into question before the case begins.

Another issue that is likely to present itself during *voir dire* is the large number of Baltimore City residents that these six Officers have collectively arrested or have had negative interaction with over the course of their careers. Those people who were arrested and their family members, friends or close acquaintances may already know who these Officers are and

harbor ill feelings towards these Officers. A simple search of the Maryland Judiciary Case Search lists these Officers as witnesses collectively in over 1,400 cases. This does not include the family, friends, witnesses or victims who may have formed negative opinions of these Officers in the cases found. This also does not include the countless others who may have had interaction with these Officers for issues that did not result in charges being filed and who harbor ill-will towards one or more of them.

Further, there is a movement within Baltimore City to get young men registered to vote so that they can get on the jury to convict the Officers. When people gathered in front of Baltimore City Hall to celebrate the arrest of the six Officers, "people began to merge voter registration calls with demands for justice in the Gray case."⁹⁵ "A woman with a microphone called upon the crowd to register to vote so that they could serve on the jury that would decide the fate of those officers."⁹⁶ "We need 12 people here to show up for Freddie, she said."⁹⁷

More startling, Fox 45 aired a town-hall meeting in Baltimore City where community leaders were advocating for young people in the community to register to vote so that they can get on the jury and convict the six Officers.⁹⁸ This is alarming that an infiltration of the potential jury pool with biased individuals is being advocated in public.

⁹⁵ Maggie Ybarra, *Lawyers see possible reductions of charges for officers in death of Gray*, WASHINGTON TIMES, May 4, 2015, <http://www.washingtontimes.com/news/2015/may/4/freddie-gray-lawyers-see-possible-reductions-of-ch/?page=all>.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ At the 1:07:50 mark in the video, Baltimore Youth Commission leader Ralikh Hayes discusses how he has been helping to coordinate massive voter registration campaigns in Baltimore City in order to have people on juries who will convict the Defendant Officers and "get justice for Freddie Gray." *Baltimore: Moving Forward*, FOX 45 BALTIMORE, APRIL 28, 2015, <http://www.foxbaltimore.com/news/features/your-voice/stories/131651-Baltimore-Moving-Forward-.shtml#.VWTJVTBzGe>.

Project Reach posted an article online that states, "To celebrate Freddie Gray's life and the many young lives lost through the act of violence over the last year since Juneteenth 2014. We at PROJECT R.E.A.C.H. Inc., [are] organizing a Young People and Poor People "Black Lives Matter" Voter Registration and Criminal Justice Campaign!"⁹⁹ They encouraged churches and schools to set up voter registration booths at their facilities.

In an article written by D. Watkins, an author that has had work published by a number of mainstream media outlets, he discuss the importance of registering to vote to seek justice for Freddie Gray. He starts off with comments he heard on the street like "We did it, yo! We got them cop bitches, they goin' down!" followed by "Fuck yeah! We got 'em! We really got 'em!"¹⁰⁰ The author recounts a discussion with his cousin from Baltimore,

I told him that celebrating the charges was cool; however, we still did not receive justice for Freddie Gray and the thousands of other victims of police brutality. "It's almost impossible to convict a cop in America," I say, thinking about the laundry list of police officers who beat cases as fast as Ali in his prime. "How cops be winning all the time?" he asked. "Well, in Baltimore and many other places in America, you have to register to vote in order to sit on a jury. So many of us don't vote because we been through the system or don't trust it, meaning that these cops could get a jury full of cop lovers who could care less about our community."¹⁰¹

The author's conversation ended when the author "told [his cousin] to get out there and spread the word about how important it is to register to vote."¹⁰²

⁹⁹ Richbrenfl@msn.com, *2015 Juneteenth Freddie Gray Voter Registration and Criminal Justice Campaign*, PROJECT R.E.A.C.H. INC., May 3, 2015, <http://www.projectreachinc.com/apps/blog/entries/show/43284640-2015-juneteenth-freddie-gray-voter-registration-and-criminal-justice-campaign>.

¹⁰⁰ D. Watkins, *Dangling a bit of justice doesn't make us equal: What's next in Baltimore*, SLATE, May 5, 2015, http://www.salon.com/2015/05/05/dangling_a_bit_of_justice_doesnt_make_us_equal_whats_next_in_baltimore/.

¹⁰¹ *Id.*

¹⁰² *Id.*

This is another reason that the *voir dire* process will be ineffective in securing the Officers in this case fair and impartial trials. It is impossible to protect against individuals who have already formed opinions as to guilt deliberately infiltrating the jury pool in order to secure convictions against the Officers to win "Justice for Freddie Gray." No matter how exhaustive the *voir dire* propounded, it will be impossible to ferret out the bias and resentment of those prospective jury members who choose to hide their deeply held prejudices to get onto the jury.

III. ANTICIPATED RESPONSE FROM THE STATE AND CASES DISTINGUISHABLE FROM THE FREDDIE GRAY CASE

The State on at least two occasions, has quite surprisingly argued that one press conference on May 13, 2015, held by the Vanguard Society, and a pre-trial motion filed by the defense has influenced the grand jury and any potential petit jury that could be empaneled in the case. The State argues that the press conference, which did not discuss any facts of the case and was not covered live, "influence[d] the Grand Jury as well as potential petit jurors in this case to the detriment of the State's right to a fair trial." See State's Motion for Issuance of Order Barring Extrajudicial Statements. The State goes on to argue that "[t]he efforts by defense counsel will have the necessary effect of undermining both the State's right to present its investigation to a fair and impartial Grand Jury in this matter and tainting the pool of potential jurors who may ultimately decide this case in a court of law." See State's Motion for Issuance of Order Barring Extrajudicial Statements.

Further, the State argues in its opposition to Defendants' Motion to Dismiss or Recuse the Baltimore City State's Attorney's Office that one of the reasons for filing of the motion is to "taint the grand jury and potential petit jury pool." See Office of the State's Attorney for Baltimore City's Opposition to Defendants' Joint Motion to Dismiss and in the Alternative for Recusal of the Baltimore City State's Attorney's Office at 1. The State goes on to argue that the

Defendants' motion is "harsh rhetoric designed to generate negative pre-trial publicity about the prosecutors in order to taint the grand jury and petit jury pool." See Office of the State's Attorney for Baltimore City's Opposition to Defendants' Joint Motion to Dismiss and in the Alternative for Recusal of the Baltimore City State's Attorney's Office at 2. Clearly the State believes that any potential jurors in Baltimore are easily swayed.

Surely, if the State believes that one press conference and one pre-trial motion has tainted the State's right to a fair trial, it must concede that the around-the-clock coverage by broadcast news, newspapers, blogs, social media and other media outlets of the arrest, transport, funeral, investigation, charging and everything else related to the Freddie Gray matter outlined within this motion certainly requires removal in this case. For the State now to claim otherwise would either mean it was being completely disingenuous in its motions previously filed with the court, or that the prosecutors consider there to be a double-standard for the right to a fair trial that exists between prosecutors and defendants.

Further, to the extent that the State would rely upon any other trials like the Beltway Sniper, Boston Bombing or Enron cases that occurred where removal was found to have been appropriately denied, that reliance would be unavailing in this case due to the Baltimore City-unique characteristics of this case. This case is materially different from cases like the D.C. Beltway sniper case, the Boston bombing or Enron executives on trial for financial crimes.

A. The Beltway Sniper.

For 22 days in October of 2002, John Allen Muhammad and accomplice Lee Boyd Malvo, terrorized Montgomery County, Maryland. Together, the two men murdered six people in the State of Maryland by targeting and shooting them with a rifle. But the terror was not limited to Montgomery County. Their crime spree extended into Prince George's County, Maryland, Washington, D.C., and Virginia.

In 2003, Muhammad was convicted in the Commonwealth of Virginia of murder and subsequently sentenced to death. Muhammed was then extradited to face trial in Maryland. In May of 2006, four years after the events leading to charges, a jury convicted Muhammad of six counts of first-degree murder. The Montgomery County Circuit Court sentenced Muhammad to six life terms to be served without parole. *See State v. Muhammad*, 102676 (Montgomery County Circuit Court 2005) (“The Beltway Sniper Case”).

The Beltway Sniper case received national attention.¹⁰³ For those 22 days in October of 2002, the terror of Muhammad and Malvo gripped the greater Washington, D.C. area. The general public had no indication of where "the sniper" would attack next. Details of the case appeared on national television and national news.¹⁰⁴

Following his convictions, John Allen Muhammad appealed to the Court of Special Appeals, in which he raised nine grounds of error. *See Muhammad v. State*, 177 Md. App. 188 (2007). One of those grounds was that removal was improperly denied in his case. *Id.* at 299.

Muhammad claimed that the circuit court erred in not removing the case to another jurisdiction due to the national attention that the case received. *Id.* Muhammad’s argument failed for two reasons: 1) his motion was untimely and Judge Ryan properly denied it; and 2) because his case was a non-capital case, it was not subject to automatic removal. *Id.*

Judge Ryan stated on the record:

I believe we're going to find, we're going to find jurors who will be fair and impartial to try the case. I know there's been a lot of publicity, and we're going to go into that as when we start questioning the individual jurors, what they know and what they believe and have they formed an opinion that is unchangeable or not. ***This is a big community. If this was a smaller community, you would be***

¹⁰³ *DC Area Sniper Fast Facts*, CNN, November 4, 2014, <http://www.cnn.com/2013/11/04/us/dc-area-sniper-fast-facts/>.

¹⁰⁴ *Muhammad v. State*, 177 Md. App. 188, 303 (2007).

more likely to have your case removed, but there's almost a million people who live in this community, and we're going to get a lot of people from different backgrounds. We're going to find people in this county who can be fair and impartial and will be fair and impartial who will base their decision in your case solely upon the evidence they hear in the courtroom and without regard to what they've read about it, heard about it, seen. We're going to find impartial people.

Muhammad, 177 Md. App. at 303 (emphasis supplied).

Voir dire took four days. *Id.* at 302. After the jury was selected, Muhammad accepted the panel without exercising any of his available strikes. *Id.* Muhammad moved to dismiss the jury as “tainted,” and that motion was denied. *Id.* Judge Ryan stated, “I believe each of the jurors was questioned carefully. Each juror has told us, and each juror was under oath, that they would be able to decide this case based only on the evidence received in the courtroom without regard to whatever they heard or read about in this case outside of the courtroom. And I believe them.” *Id.* at 303.

Muhammad’s argument to dismiss the jury rested not on whether they could render a fair verdict, but rather on the fact that the case had received nationwide attention. *Id.* The Court of Appeals agreed that there had been massive publicity on the case, but also noted that “*three and one-half years had gone by.*” *Id.* (Emphasis supplied).

The Supreme Court and the Maryland Court of Appeals have addressed widespread media coverage holding:

It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his

impression or opinion and render a verdict based on the evidence presented in court.

Simms v. State, 49 Md. App. 515, 520 (1981).

Muhammad's case captivated a nation. So too did the Baltimore riots. But aside from the mass media exposure, there are major differences between the two cases. Muhammad's case did not warrant removal. This case does.

The case before this Honorable Court is comparable to *Muhammad v. State*, only in the regard that it has impacted tens of thousands of citizens and received global attention through mass media. Because of the mass media exposure in this case; it is important to draw the Courts' attention to several distinguishing factors, that when considered, warrant removal where it did not in *Muhammad*.

First, unlike *Muhammad* who filed his removal motion *pro se* on the eleventh hour prior to trial, all defendants in this case are represented by counsel and the case is still in its infancy within the judicial process making this a timely motion.

Muhammad took it upon himself to discharge his counsel and forge ahead with his own defense. In doing so, not only was his motion for removal untimely, but it was also based solely on the fact of the pretrial media exposure to the case. *Muhammad v. State*, 177 Md. App. 188, 303 (2007). This case is more than just pretrial media exposure. This case has quite literally affected every single person that resides in Baltimore City and who could be a potential juror. Everyone in Baltimore City was affected by the curfew alone. Moreover, Freddie Gray is a household name and the defendants have already been convicted by the court of popular opinion.

Second, this case is new and still fresh in the minds of the community. Muhammad's trial was three and a half years after the incident. The media continues to highlight the Freddie Gray case – almost on a daily basis. Marilyn Mosby has been placed on a throne and continues to

enjoy the spotlight. Mosby was literally under the spotlight during the Prince concert held for Freddie Gray at the Royal Farms Arena on May 10, 2015,¹⁰⁵ when Prince invited her onto the stage. Mosby has been elevated to celebrity status by major musicians, which only serves to reinforce her public position taken that the Officers are guilty. As each week goes by, this case is not dissipating in the minds of the community. The community is still recovering from the violence and destruction which occurred in April of 2015; it will take years before Baltimore will be fully recovered.

Third, this case has literally affected every single citizen in Baltimore City. The curfew order stated, “The night-time curfew applies for *all citizens* (with exceptions of emergency personnel and those commuting to and from work for essential functions, including students traveling to/from classes).”¹⁰⁶

John Muhammad affected each citizen in the greater Washington, D.C. area - albeit indirectly by fear. In the Freddie Gray case, each citizen of the city of Baltimore was directly impacted by the curfew imposed by the Mayor. Each citizen had to be home by 10:00 p.m. for five days straight or risk arrest. Citizens and businesses alike suffered because of the restrictions imposed by the curfew.

In the *Muhammad* case, Judge Ryan held that Muhammad affected roughly 1 million people in Montgomery County, Maryland. *Muhammad*, 177 Md. App. at 303. Judge Ryan further stated that if the community was smaller, removal would likely be granted. *Id.* The 2014

¹⁰⁵ Jessica Anderson, *Marilyn Mosby appears on stage at Prince concert*, BALTIMORE SUN, May 11, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-mosby-on-stage-20150511-story.html>.

¹⁰⁶ CITY OF BALTIMORE, EMERGENCY CURFEW, April 28, 2015, *available at* <http://www.baltimorecity.gov/emergency-curfew-20150427> (emphasis supplied).

census states that Baltimore City's population is about 622,793 people,¹⁰⁷ which is significantly less than Montgomery County. Further, according to the Administrative Office of the Courts, Baltimore City has a potential jury pool of approximately 275,000 people. Add to that that, historically, as few as 27 % of jurors summonsed actually show up for duty.¹⁰⁸

Any reliance by the State on the *Muhammad* case would be unavailing in this case. There are too many marked differences between the events, media coverage, effect that the two cases had to the potential jury pool, and the number of jurors that may be required.

B. The Boston Bomber.

On April 15, 2013, two bombs exploded at the finish line of the Boston Marathon.¹⁰⁹ Three spectators were killed and more than 260 injured.¹¹⁰ Following the bombing, a four-day manhunt for the suspects ensued. The FBI identified two suspects: Tamerlan Tsarnaev and Dzhokar Tsarnaev.¹¹¹ Tamerlan was wounded by police during a shootout and eventually died from his injuries. Dzhokar was eventually apprehended after a citizen found him hiding in a boat parked in a back yard.¹¹²

The Boston bombing received national media attention beginning from the time the bombs went off on April 15, 2013, to the time Dzhokar was sentenced to die on May 15, 2015. Dzhokar, through counsel, filed three motions for a change of venue, all of which were denied by the United States District Court sitting in Massachusetts.

¹⁰⁷ THE UNITED STATES CENSUS BUREAU, STATE AND COUNTY QUICKFACTS, BALTIMORE CITY (2015), available at <http://quickfacts.census.gov/qfd/states/24/24510.html>.

¹⁰⁸ Tricia Bishop, *Baltimore tries new jury software to increase attendance*, BALTIMORE SUN, March 31, 2012, http://articles.baltimoresun.com/2012-03-31/news/bs-md-ci-jury-system-20120331_1_juror-appreciation-week-jury-duty-software.

¹⁰⁹ *Boston Marathon Bombings*, HISTORY, <http://www.history.com/topics/boston-marathon-bombings> (last visited May 26, 2015).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

In his brief, Dzhokar argued that the entire city of Boston had been affected by the bombing of the Boston Marathon.¹¹³ This was based not only on the global coverage of the news media outlets, but also on the fact that the Boston Marathon is “the most iconic sporting event in the city.”¹¹⁴

In fact, “Boston Strong,” became a rallying cry of the Boston population.¹¹⁵ The case of the Boston Bomber united the greater Boston region and infected the population with bias against the defendant. Likewise, Baltimore rallied around the calls of “Baltimore Strong” and “Black Lives Matter.” The citizens of Baltimore celebrated in jubilation when Ms. Mosby charged the Officers in this case.¹¹⁶

Dzhokar’s Motion calls upon the court to draw the same inferences and analysis from the Oklahoma City Bombing case in 1996.¹¹⁷ *See U.S. v. McVeigh*, 918 F. Supp. 1467 (W.D.Okla. 1996). The court in the *McVeigh* case did grant a change of venue.

Timothy McVeigh, in 1996, detonated a bomb in downtown Oklahoma City. The case received extensive pretrial publicity. The entire Oklahoma community was pulled together through reports of how the bombing affected the entire state and how individual stories of grief and recovery effected individuals.¹¹⁸ In *McVeigh*, the strong emotional community response warranted removal.¹¹⁹

¹¹³ Defendant’s Memorandum in Support of Second Motion for Change of Venue. *United States v. Tsarnaev*, Case. 13CR10200GAO (D. Mass. Dec. 1, 2014).

¹¹⁴ *Id.* at 8.

¹¹⁵ *Id.* at 12.

¹¹⁶ *Baltimore crowds celebrate tough charges against police*, ZEENEWS INDIA, May 2, 2015, http://zeenews.india.com/news/world/baltimore-crowds-celebrate-tough-charges-against-police_1588537.html.

¹¹⁷ Defendant’s Memorandum in Support of Second Motion for Change of Venue. *United States v. Tsarnaev*, Case. 13CR10200GAO (D. Mass. Dec. 1, 2014).

¹¹⁸ *Id.* at 12.

¹¹⁹ *Id.*

The Boston Bomber case affected every citizen in Boston emotionally. But the court did not grant removal. The Boston Bomber killed four people and wounded approximately 264 others. Surely, the citizens in and around Boston were touched in some way – a bomb detonated in their backyard. But no specific law was passed by the government which mandated that the citizen of Boston change their daily lives to accommodate the commotion. The major difference between Boston and this case, is that quite literally, this case has affected each and every citizen of Baltimore.

Further, the Boston bombing case was a federal case which would draw jurors from the entire federal district, not just Boston proper. The Boston District Court draws its jurors from all of eastern Massachusetts including the counties of Essex, Middlesex, Suffolk, Norfolk, Bristol, Plymouth, Barnstable, Dukes, and Nantucket.¹²⁰ According to U.S. Census data, the jury pool of that federal district is drawn from a population of over five million people.¹²¹ It should be also brought to this Court's attention that no appeal has yet been decided in that case, where the venue may in fact become an appellate issue.

Not only has each citizen who is eligible for jury duty been emotionally affected, seen the news and media coverage, but each and every citizen was forced to abide by the city-wide curfew. If one did not comply with the curfew, they would be subject to arrest. Everyone, every man, woman, and child in Baltimore City, knows about this case, and was forced to somehow adjust their daily lives because of this case.

¹²⁰ UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, IMPORTANT INSTRUCTIONS FOR COMPLETING THE JUROR QUALIFICATION FORM, *available at* www.mad.uscourts.gov/jurors/pdf/jmsquesb.pdf.

¹²¹ THE UNITED STATES CENSUS BUREAU, STATE AND COUNTY QUICKFACTS (2015), *available at* www.census.gov/quickfacts/ (Search by county in search bar at top of page).

The differences in the Boston Bomber case are too great to give any precedential value on the question of removal. The number of people directly affected, the potential number of jurors needed for six trials instead of just one, and the size and makeup of the jurisdictions are too dissimilar to make any logical comparison of the two cases.

C. Enron & Jeffrey Skilling

The distinguishing characteristics of *Skilling* have been discussed throughout this Memorandum and need not be re-analyzed here. To summarize the distinguishing characteristics of *Skilling*, there was one trial with one defendant, the population from which the jury is drawn was 4.5 million, the news coverage did not contain graphic and unforgettable images like in Baltimore, and the trial occurred over four years after the alleged crime. This, as the Supreme Court discussed, made finding a potential jury possible in that case.

In the Freddie Gray case, there are potentially six trials where the population of the jury pool is somewhere between the 74,527 that historically show up and the maximum number of 276,029 people. The images and statements by public figures broadcast over the news repeatedly burned the images of these events into the minds of the potential jurors which makes it more likely that any potential juror will bring those images with them to the courtroom. Finally, the trials are following the alleged crime(s) with little to no "healing" time in between. All of these factors make the Freddie Gray case materially different than *Skilling*.

Any reliance by the State on any of the distinguished cases above would be unavailing in this case. The circumstances surrounding the Freddie Gray case are Baltimore City - "Unique" and there are more many factors discussed above than just the volume of press coverage that make finding a fair and impartial jury in Baltimore City impossible.

CONCLUSION

Defendants cannot receive fair and impartial trial(s) in this matter due to the extensive and prejudicial publicity, civil unrest, public comments made by elected officials, public demonstrations, rioting, looting, fires, curfew restrictions, disruption to the infrastructures of business, transportation, education, courts and medical facilities, arrests made as a result of the unrest, widespread prejudicial social media reporting, and the occupation of Baltimore City by outside agencies - including the Maryland National Guard. A presumption of prejudice outlined by the United States Supreme Court exists in this case. Further, Maryland's constitutional and statutory framework makes removal appropriate in this case. Any effort through the *voir dire* process to seat six fair and impartial juries for these Baltimore City Police Officers would be futile given the fact that the events surrounding this case have impacted every citizen of Baltimore. It is for these reasons that Defendants ask for this Honorable Court for removal of this matter.

WHEREFORE, Defendants, Officers Caesar Goodson, Garrett Miller, Edward Nero, William Porter, Brian Rice, and Alicia White, through their respective undersigned counsel, hereby respectfully move this Honorable Court to remove the trial of this case from the Circuit Court for Baltimore City to another county within the State of Maryland for trial.

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