IN THE SUPREME COURT OF MARYLAND

Misc. No. 17, September Term 2024

SCM-MISC-017-2024

ESTAFANY MARTINEZ

Appellant,

v.

AMAZON.COM SERVICES, LLC

Appellee,

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

BRIEF OF AMICI CURIAE

THE NATIONAL RETAIL FEDERATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE MARYLAND CHAMBER OF COMMERCE, THE NATIONAL ASSOCIATION OF MANUFACTURERS, THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC. AND THE MARYLAND RETAILERS ASSOCIATION

IN SUPPORT OF APPELLEE, AMAZON.COM SERVICES, LLC

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INTRODUCTION

Amici curiae The National Retail Federation ("NRF"), The Chamber of Commerce of the United States of America ("U.S. Chamber"), The Maryland Chamber of Commerce ("Maryland Chamber"), The National Association of Manufacturers ("NAM"), the National Federation of Independent Business, Inc. ("NFIB") and The Maryland Retailers Association ("MRA") (together, "Amici") submit this brief in support of Defendant-Appellee Amazon.com Services, LLC ("Amazon").[1] NRF, U.S. Chamber, Maryland Chamber, NAM, NFIB and MRA write to assist the Court in understanding the potential unanticipated and uncontemplated impact a ruling in favor of the employee Plaintiff-Appellant will have on a wide array of businesses and industries across Maryland.

In arguing against application of the doctrine of *de minimis non curat lex* ("the law does not concern itself with trifles") to Maryland's Wage Laws,[2] Appellant seeks an omnibus ruling that would subject businesses and retailers of all sorts, including small and nascent business owners, to an impossible and inflexible standard of recording time spent in any work-adjacent activity to the millisecond. Such a ruling would open a floodgate of class and collective action litigation against all employers in Maryland, all against a nebulous standard of when, precisely, the moment of compensable working time begins and ends (i.e., the exact time that an employee is "required by an employer to be on premises," as per COMAR 9.12.41.10).

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[1] No person or entity other than the Amici, their members, or their counsel authored the amici curiae brief, in whole or in part, or were paid, in whole or in part, for its preparation.

[2] This brief refers to the Maryland Wage and Hour Law ("MWHL"), Md. Code Ann., Lab. & Empl. ("LE") §§ 3-401 to 3-431 and the Mayland Wage Payment and Collection Law ("MWPCL"), LE §§ 3-501 to 3-509 collectively as the "Maryland Wage Laws."

If the Court holds that the *de minimis* doctrine does not apply to the Maryland Wage Laws, Appellee could be subjected to liability not because it directed employees to engage in any off-the-clock work, but merely because some of its employees voluntarily chose to bring personal, non-work-related items into its facilities, and thus voluntarily subjected themselves to post-shift security screenings. Requiring that an employer compensate individuals for individual choices rooted in personal convenience is not the law, nor is it a tenable standard.

STATEMENT OF INTEREST OF AMICI CURAE

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs—or 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. NRF and the employers it represents therefore have a compelling interest in the question certified to this Court for decision. As the industry umbrella group, NRF periodically submits amicus curiae briefs in cases raising significant legal issues, including employment law issues, which are important to the retail industry at large, and particularly to NRF's members.

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to

represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.[3]

Founded in 1968, the Maryland Chamber is the leading voice for business in Maryland. It is a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic health and growth for Maryland businesses, employees, and families. As such, the Maryland Chamber represents the interests of the state's business community before the General Assembly, Executive Branch, and the courts. In fulfilling that duty, the Maryland Chamber regularly files amicus briefs in cases that raise material concerns to Maryland's business community.[4]

The NAM is the largest manufacturing association in the United States, representing 14,000 manufacturers of all sizes, in every industrial sector and in all 50 states. Manufacturing employs nearly 13 million people across the country, contributing $2.93 trillion annually to the U.S. economy. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.[5]

NFIB is the nation's leading small business association, representing hundreds of thousands of small and independent businesses nationwide, ranging from sole

[3] About the U.S. Chamber of Commerce | U.S. Chamber of Commerce (*last visited* Jan. 26, 2025).
[4] What We Do — Advancing Businesses & Communities in Maryland (*last visited* Feb. 13, 2024).
[5] About the NAM - NAM (*last visited* Jan. 26, 2025)

proprietorships to firms with hundreds of employees, and spanning all industries and sectors. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. As part of this mission, NFIB ensures that judges are aware of the far-reaching consequences of their decisions that affect the small business community.[6]

MRA consists of thousands of retailers across Maryland. As the retail community's major trade association in Maryland, MRA is a diverse and broad-based organization covering all segments of the retail industry. MRA advocates for the interests of the retail community in the legislature, in the regulatory agencies, and in the courts.[7]

Amici have a substantial interest in the outcome of this case to ensure their members are subject to workplace laws and regulations that are both fair and practicable. The *de minimis* doctrine, which allows employers flexibility to overlook insubstantial or insignificant periods of time beyond scheduled working hours which are not regular or easy to record, is a critical component of the framework provided for by the Maryland Wage Laws and its regulations. It provides necessary allowances for businesses to operate efficiently without being burdened by the administrative complexities of tracking every nanosecond of employee activity.

Because many of the Amici's members are employers in the U.S. and Maryland, they have been and will continue to be the subject of class and collective action lawsuits,

[6] About NFIB - NFIB (*last visited* Jan. 29, 2025).
[7] Who We Are - Maryland Retailers Association (*last visited* Feb. 13, 2024).

as well as those brought by individuals, involving claims that employees were not paid for time spent on an employer's premises undergoing brief post-shift security screening processes. Accordingly, the Amici and their members have a strong interest in whether the seconds spent on these activities are found to be *de minimis* under Maryland's Wage Laws.

Assisting with the development of a regulatory environment that is both clear and in conformance with the law is a central component of the Amici's respective missions. To that end, the Amici advocate for the interpretation of laws in a way that fosters a fair and equitable workplace. Accordingly, the Amici respectfully request the opportunity to file the enclosed amici brief for the Court's consideration. This amici brief is intended to provide the Court with practical ramifications of the question certified for review and how the decision on that issue would impact a wide range of industries.

SUMMARY OF ARGUMENT

Appellant contends that the short seconds employees spend in post-shift security screenings constitute compensable work time. As Appellant would have it, this Court would fashion an inflexible rule that every single second (or, perhaps, even a smaller unit of time) must be accounted for, by all employers throughout the State, regardless of size, sophistication or resources. This would leave businesses—in particular, the many thousands of small businesses throughout Maryland—with the impossible task of tracking to the second or split-second when an employee's day starts and ends. For instance, must an employee be paid for the seconds it takes to unlock an employer's front door? To badge though a secured exterior door? To walk from the employer's entrance to the time clock? Would a timeclock that rounds to the nearest minute—or second—be a *prima facie*

violation of Maryland law? These are, at best, work-adjacent activities of fleeting duration and not readily trackable; moreover, they have long been non-compensable under federal law. To now find that Maryland law offers no leeway in this regard would be a draconian result.

This Court's recent decision in *Amaya, v. DGS Construction, LLC*, 479 Md. 515, 278 A.3d 1216 (2022), ensures that employees are appropriately protected and compensated for time in which they are "required by the employer" to be engaged in work activities, as set forth in Maryland law. The *de minimis* doctrine dovetails with *Amaya*, in that it protects employers from trivial moments for which employers cannot practically account, such that the two work harmoniously together to ensure that employees are properly paid while employers are not subjected to serious penalties of minor variances in time where workplace practicalities do not allow for a to-the-second recording of employee activity.

The case here epitomizes this issue: employees voluntarily submit to a security screening by bringing personal property into Amazon's facilities, despite Amazon providing lockers outside of the screening area to avoid this process. Moreover, Amazon offers a buffet of screening options for employee screenings on exit aimed at expediting this process, including an express lane where no screening is conducted for employees with no personal properties. There is a simple inequity in requiring Amazon to pay employees for such voluntary screening time where it is so fleeting, with the record indicating that such time regularly takes but a few seconds (if it takes any time at all). But more to the point, it is unclear where "working time" begins and ends absent *de minimis* protection:

must employers pay employees for swiping at turnstiles to enter a parking garage? To turn a door handle to enter an office building? The time at issue here is no different: it is *de minimis* and not productive work, and there is no reasonably practical way to track it. In this regard, the *de minimis* doctrine protects employers from being subjected to an impossible task of tracking employee time to the millisecond.

Appellant's response is that Amazon can afford to implement advanced time-tracking systems and security screening processes to track time to the smallest increment. Even assuming Amazon may have the resources to do so, it would be unreasonable to hold every Maryland employer to that standard; indeed, small retailers far outnumber companies like Amazon, but have nowhere near its resources. Eliminating a *de minimis* exception will only ensure that small businesses are incapable of complying with an inflexible rule that makes them a target for nuisance litigation over seconds of time. This is not the purpose of the Maryland Wage Laws.

ARGUMENT

I. The *De Minimis* Rule Is in Harmony with This Court's Decision in *Amaya*

The Court should find the *de minimis* rule is viable with respect to wage claims asserted under Maryland law. This is because the *de minimis* rule works harmoniously with the Court's prior decision in *Amaya, v. DGS Construction, LLC*, 479 Md. 515, 278 A.3d 1216 (2022), to protect the interests of both employees and employers; taken together, *Amaya* ensures that employees will be paid for time when "required" to be working by an employer, while the *de minimis* exception acts as a counterpoint to protect employers from

trivial, fleeting or ambiguous moments of time that, absent the *de minimis* rule, could trigger mandatory compensation.

As the United States Court of Appeals for the Fourth Circuit stated in *Perez v. Mountaire Farms, Inc.* – which Amici respectfully submit this Court should follow – the *de minimis* doctrine generally considers three factors: "(1) the practical difficulty the employer would encounter in recording the additional time; (2) the total amount of compensable time; and (3) the regularity of the additional work." 650 F.3d 350, 373 (4th Cir. 2011).

These three factors counsel that the post-shift security screenings at issue here—and, more broadly, that small instances of work-adjacent time—are *de minimis* and not compensable. If an employee must unlock his employer's door to enter the premises, are the few seconds spent turning a key compensable? If an employee walks from a store entrance to a back-office to clock in, is that short walk compensable? Or, in this case, if any employee voluntarily chooses to undergo a brief security screening, is that paid time? In each of these instances, the logical conclusion of *Amaya* may be that an employer could be required to pay for these fleeting seconds, notwithstanding that no productive work is being performed and—for most employers, at least—there is no practical way to track that time.

The *de minimis* rule counterbalances *Amaya*'s potential severity, in that it protects employers from a rigid standard of near strict liability for brief seconds of work-adjacent activity engaged in by employees. Absent this protection, employers face an impossible burden to track every millisecond of employee movement in their facilities, which is simply

not realistic or feasible, and for many would require massive infrastructure investments, such as altering physical layouts in order to move timeclocks to an employer's entrance, purchasing new time clocks, modifying policies, and a myriad of other changes which could be prohibitively expensive and impractical.

This type of micro-managing of time is neither realistic nor practical for the thousands of small employers throughout Maryland; indeed, the only realistic outcome will be a bevy of class litigation over second discrepancies in employee timekeeping, with no tangible impact on the employees (but a significant windfall to the plaintiffs' bar). This is not an advisable outcome, and the *de minimis* rule provides a check to this harsh reality, while allowing *Amaya* to protect workers' interests.

II. There Is No Legal Obligation to Permit Employees to Bring Personal Items on an Employer's Premises, and Amazon Should Not Be Punished for Providing This Benefit to Its Employees.

The instant dispute is a prime example as to the import of the *de minimis* doctrine. As a threshold matter, there is no constitutional or statutory mandate that employees be allowed to bring personal belongings to work, nor has Appellant ever identified any authority to this end. In other words, employees have no entitlement to bring personal items into the workplace, and if they do so, this is done solely with the permission of their employer. States have rejected attempts by employees to force allowance of personal items in the workplace. As explained by the California Supreme Court: "it is uncontroverted that [an employer] may impose reasonable restrictions on the size, shape, or number of bags that its employees may bring to work, and that it may require employees to store their personal belongings in offsite locations, such as lockers or break room". *Frlekin v. Apple*

Inc., 8 Cal. 5th 1038, 1053 n.5 (2020) (in which the California Supreme Court recognized that an employer could prohibit an employee from bringing personal items into the workplace); *see also Anderson v. Pilgrim's Pride Corp.*, 147 F. Supp. 2d 556, 561 (E.D. Tx. Apr. 5, 2001) (where employees voluntarily opted to don and doff dust masks, such was "not work" because it was not employer-required but a matter of personal choice), *aff'd*, 44 F. App'x 652 (5th Cir. 2002). This absence of legal entitlement underscores that Amazon is not legally required to permit such items and should not be penalized for offering this benefit to its employees.

Nevertheless, Amazon provided its employees with the optional benefit of bringing in personal items to its facility, should they so choose. As there is no legal mandate requiring employees to be allowed to do so, this was a voluntary offering by Amazon to its employees. However, as a corollary, if employees decide to bring in personal items onto the production floor, Amazon must ensure that its own interests are protected, namely that employees do not engage in theft.

To accomplish this, Amazon implemented security screenings of a sort, while simultaneously using all reasonable efforts to ensure that the time spent undergoing security screenings was minimized, and functionally nonexistent for employees who chose not to bring items into work. Specifically, Amazon provided streamlined security procedures via (1) an express lane, where employees would just walk through under metal detectors, if they chose not to bring any items to the floor; (2) a divestment lane, where employees could slide small items on a ramp while walking through the metal detector, with virtually no break in stride; and (3) a bag scan lane, where employees could place a

bag on a conveyor while the employee walked through the metal detector.[8] Employees typically spent a matter of seconds, and no longer than a minute or two, going through these screening processes.[9]

Amazon further provided its employees with the opportunity to leave their personal belongings in lockers supplied by Amazon outside the security screening area, and further encouraged employees to do so, including through workplace posters explaining how employees could minimize any screening time.[10] These processes demonstrate that Amazon's procedures were well-designed to balance employee benefits with risk management, minimizing wait times and disruptions to employees.

In sum, Amazon allows employees to bring personal items into the workplace and provides lockers for employees to store those items without the need for any security screenings. Amazon merely sets a reasonable limit: if employees wish to bring personal items onto the production floor—where such items are not needed to perform duties and, in many instances, the use of such items may actually be prohibited, such as cell phones—they must agree to participate in a security screening when leaving. This policy is a balanced approach that respects employees' needs while maintaining workplace security and efficiency. But, despite Amazon's best efforts to (i) accommodate employees' desire to bring personal items into its facility and (ii) limit screening time and provide exceptions

[8] *See Defendant-Appellee's Motion for Summary Judgment*, Dkt. 43, pp. 3-4.
[9] Putative class members have reported passing through security takes 1-10 seconds and generally that security would take a minute or less. *See Memorandum of Law in Opposition to Plaintiff's Motion for Class Certification*, Dkt. 50, Nuccio Decl. Ex. 4, ¶4; Ex. 6, ¶5; Ex. 7, ¶5; Ex. 8, ¶5; Ex. 10, ¶4; Ex. 12, ¶5; Ex. 13, ¶7; Ex. 15, ¶5; Nuccio Decl. Ex. 3, ¶5; Ex. 4, ¶5; Ex. 5, ¶5; Ex. 9, ¶5; Ex. 11, ¶4; Ex. 14, ¶¶ 5-6; Ex. 16, ¶7.
[10] *See Memorandum of Law in Opposition to Plaintiff's Motion for Class Certification*, Dkt. 50, pp. 5-6.

to same, Appellant seeks to hold Appellee liable for time that employees spent undergoing security screenings. Under a strict reading of *Amaya*, and without the benefit of the *de minimis* doctrine, Amazon faces potential liability for providing a benefit to employees that it was not obligated to offer, and which employees took advantage of with the full understanding that they would be required to undergo a security screening. A ruling by this Court that concludes employers must pay for screenings under these circumstances will not only place employers in untenable positions, but it will also harm employees, as employers may entirely prohibit such items in any work area. There is no reason to reduce employee privileges and employer flexibility over trifles of time.

For three reasons, these facts highlight the importance of the *de minimis* doctrine for Maryland employers. First, Maryland regulations provide that an employer should not be liable for *de minimis* amounts of time spent undergoing pre- or post-shift activities that result from an employee's personal choice that is not employer-directed. Under COMAR 9.12.41.10, compensable "Hours of work" include, in relevant part, "time during a workweek that an individual employed by an employer is ***required*** by the employer to be on the employer's premises, on duty, or at a prescribed workplace." *Id*. (emphasis added). Thus, the question of whether an employee is "required by the employer" to engage in certain conduct is at issue, and here Amazon did not "require" anything of employees; they could forego screening if they chose, provided they did not voluntarily bring personal items into work.

Courts have recognized that where an employee engages in *de minimis* activity that is not employer-directed, such activity is generally not compensable. By way of example,

while sitting on the Second Circuit, now-U.S. Supreme Court Justice Sotomayor confronted a similar issue in *Singh v. City of New York*, 524 F.3d 361, 371 n.9 (2d Cir. 2008), which involved claims under the Fair Labor Standards Act ("FLSA"). There, Justice Sotomayor found, among other things, that an employer could not be liable for *de minimis* variations in travel time as a "result of [the employee's] idiosyncratic behavior," that "is not time spent necessarily and primarily for his employer's benefit." *Id.* Specifically, Justice Sotomayor considered whether certain New York City employees could recover under the FLSA for the difference between their "ordinary and additional commuting time." *Id.* at 364. Among other things, Justice Sotomayor specifically considered the issue of employee choice in this process, noting that differences in walk time attributable to, *inter alia*, carrying heavy documents or getting on the wrong train, were not time that could be attributable to the employer since they related to employee actions that involved non-work-related decisions by the employees which resulted in increased commute time. *Id.*

The same analysis applies here: whether employees spend time in security screenings, and if so, how much time they spend in those screenings, turns on employees' individualized decisions regarding whether to bring personal items to work at all, whether to store those items in lockers or take them onto the production floor, what type of screening is required for the items an employee may choose to take onto the production floor, and whether there is any delay caused by the screening. These are facts and circumstances that can vary day-to-day and depend entirely on idiosyncratic employee choices.

Second, Amazon has taken all possibly reasonable steps to ensure that screening time is limited—i.e., *de minimis*—and, for those employees who use the "express" lane, is no more time consuming than walking through a doorway. As set forth above, Amazon went out of its way to provide multiple options to employees to expedite screenings, including providing free-of-charge lockers outside of the screening areas where employees could leave any personal items to avoid screening, and also educated employees on how to minimize their time in the screening lines. Given that employees could functionally avoid any screening time, it is inequitable to find that Maryland businesses should be subject to a strict liability standard that does not excuse even a few seconds of screening time.

Third, the time at issue here is the essence of *de minimis* time, as it satisfies each of the requirements of *Perez,* 650 F.3d at 373: (i) it is brief, as record evidence shows that these screenings typically are seconds long; (ii) it would be nearly impossible to track, as an employer will not know day-to-day whether an employee will choose to bring personal items onto the production floor, and when they do, it is unclear precisely when a security check starts—is it in line, at the screening itself, etc.—or even what time would be maintained for someone in the "express line" who undergoes no screening; and (iii) it is irregular in occurrence, in that employees can voluntary forego this screening by storing their personal items in lockers outside the production floor and using the express lane. While the duration of any screening itself is not even regular, it can vary significantly between the three security lanes at issue.

Moreover, given that employees are not performing productive work during the screenings, it is unclear precisely for what time Amazon should, allegedly, be paying these

employees—is it while they are being screened? When they get in a screening line (if there is one)? Do "express lane" employees need to be paid for the split-second spent walking under a metal detector and, if so, how does one track this?[11] And if one were to track this time, such as by installing timeclocks at each end of the screening process, would this not just create more time as employees are required to clock in and out before and after a screening?

These issues—the necessary imperfections in timekeeping and day-to-day variances in employee activity—are precisely what the U.S. Supreme Court sought to remedy nearly eighty years ago in *Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 692 (1946), when it first applied the *de minimis* doctrine to the FLSA. There, the Supreme Court rejected the notion that employers may be held strictly liable for minor periods of uncompensated time; as explained, the workweek must be "computed in light of the realities of the industrial world" and, thus,

> [w]hen the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such ***trifles may be disregarded***. ***Split-second absurdities are not justified by the actualities of working conditions*** or by the policy of the Fair Labor Standards Act. It is ***only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved.***

Id. at 692 (emphasis added). Courts have since consistently recognized the wisdom of *Anderson*, explaining that there are, by necessity, instances of time that may occur which

[11] Notably, in *Huerta v. CSI Elec. Contractors*, the California Supreme Court recently held that work rules that provide for an orderly and safe workplace do not convert walk time into work time. *See Huerta v. CSI Elec. Contractors*, 15 Cal. 5th 908, 928-930 (2024).

an employer cannot feasibly track, or which are so trivial as to be capable of being disregarded. A few examples include:

- The few seconds daily that employees took to put on glasses, a hard hat and ear plugs. *See Sandifer v. U.S. Steel Corp.*, 678 F.3d 590 (7th Cir. 2012), *aff'd* 134 S. Ct. 870 (2014);

- The one minute that call center employees spend to log onto or off a computer before clocking in or out. *See Corbin v. Time Warner Entm't-Advance/ Newhouse P'ship*, 821 F.3d 1069, 1082 (9th Cir. 2016);

- Time spent traveling to terminals or applying equipment requirements was *de minimis* "especially given that the time expended would amount to mere seconds or minutes." *Porter v. Kraft Foods Glob., Inc.*, No. 4-12-0258, 2012 WL 7051311, at *¶46 (Ill. App. Ct. Dec. 10, 2012);

- Time spent by in-home service technicians logging into handheld computers, carrying them to their vans, plugging them into their vans, and then carrying them back and plugging them in at home, which would take, in aggregate, more than a "minute or so." *See Chambers v. Sears Roebuck & Co.*, 793 F. Supp. 2d 938, 956 (S.D. Tex. 2010); and

- Added time spent by corrections officers in transporting canine unit dogs to and from home to work, which required "some degree of time and effort" beyond an ordinary commute, but which was "so negligible as to be *de minimis* and therefore not compensable." *Andrews v. Dubois*, 888 F. Supp. 213, 219 (D. Mass. 1995); *see also Aiken v. City of Memphis*, 190 F.3d 753 (6th Cir. 1999) (additional time involved with transporting and caring for canine officers was *de minimis*).

Indeed, even states with traditionally employee-friendly postures have maintained the *de minimis* exception. For example, the California Supreme Court has kept the *de minimis* doctrine under state law, even if recognizing that its *de minimis* exception was narrower than that provided for under the FLSA. *See Troester v. Starbucks Corp.*, 421 P. 3d 1114 (Cal. 2018) (holding that while the federal FLSA *de minimis* standard would not apply, California nonetheless maintained a *de minimis* standard, if more limited than under

the FLSA).[12] *See also Mitchell v. JCG Indus.*, 745 F.3d 837, 845 (7th Cir. 2014) ("[T]he *de minimis* rule is alive and well in Illinois's law of employee compensation."). Moreover, states have applied this doctrine even when it is not expressly found under any state statute or other governing authority. *See, e.g., England v. Advance Stores Co.,* 263 F.R.D. 423, 444-45 (W.D. Ky. 2009) (finding the *de minimis* defense has been recognized in the common law of Kentucky and stating that reliance on the FLSA and the *de minimis* doctrine "does no violence to the intent of the Kentucky Wages and Hours Act"); *United Food & Commer. Workers Union, Local 1473 v. Hormel Foods Corp.*, 367 Wis. 2d 131, 162-165 (applying the *de minimis* doctrine to state wage and hour claims "[d]espite the lack of Wisconsin case law or state statutory guidance with regard to the de minimis doctrine in the instant.").

The record evidence here reflects that Appellant and members of the putative class spent nominal time in security checks, and then only by virtue of their choosing to do so by bringing personal property into Amazon's facility. For those who opted not to bring personal items into work, their exit screening was no different than walking through an ordinary doorway—they passed through a metal detector and continued on without breaking stride. Moreover, the time spent in screenings occurred after the workday, when employees had ceased performing work-related activities for Amazon. In other words, the

[12] Notably, the concurring opinions in *Troester v. Starbucks Corp.* suggest that an employer does not need to pay for brief seconds of time. *See Troester v. Starbucks Corp.*, 421 P. 3d 1114, 1125-1126 (Cal. 2018) (Cuellar, J., concurring) ("I write separately to emphasize that our opinion today is both principled and practical: It protects workers from being denied compensation for minutes they regularly spend on work-related tasks, but does not consign employers or their workers to measure every last morsel of employees' time."); *See also id*. at 1130 (Kruger, J., & Grimes, J., concurring) ("But the law also recognizes that there may be some periods of time that are so brief, irregular of occurrence, or difficult to accurately measure or estimate, that it would neither be reasonable to require the employer to account for them nor sensible to devote judicial resources to litigating over them.").

screening time was merely part of a typical exit that employees underwent and, for many, was no different than walking out of an unchecked facility.

Indeed, absent the *de minimis* exception, it becomes unclear where an employee's compensable day starts where the employer has even the most modest of security procedures. The modern workplace includes a multitude of activities which, absent the *de minimis* exception, and with *Amaya's* strong edict regarding employer control, could possibly be compensable, like: (i) swiping or waving a card at a turnstile in an office building; (ii) swiping into an employer's parking garage entrance; (iii) punching in a code to access an employer's premises; (iv) flashing a badge as an employee walks by a security guard or pulls into a parking lot; and (v) pressing a finger on a scanner (or having eyes or palms scanned). Taken to its logical conclusion, Appellant would make employers in all industries liable for split-second activities – a scheme specifically denounced by the Supreme Court in *Anderson*. Indeed, taken to the conclusion that Appellant pursues, absent the *de minimis* doctrine, a time clock that rounds to the nearest minute or second—as most do—would be inherently problematic, since there is necessarily some *de minimis* time lost in any rounding activity, which is obviously an absurd result.

Respectfully, the facts here militate precisely why the *de minimis* doctrine is essential, namely to ensure that Maryland law comports with the practical realities of a functional workplace. To be clear, the proposition is not that employees should be unpaid for working time, but that it is impractical to track every millisecond of employee activity, particularly where they involve work-adjacent activities like the post-work activities at

issue here. Given this, some flexibility is necessary to avoid the unfair, harsh results to employers and associated litigation over trivial matters.

III. Advancements in Technology Do Not Obviate the Necessity of the *De Minimis* Doctrine

While certainly technology has progressed since the U.S. Supreme Court's decision in *Anderson*, the advances do not make the *de minimis* rule less critical now than in the past. Even with advancements, tracking employee time to the second or millisecond is not reasonably practical, nor are the types of infrastructure investments necessary to do so accessible to or affordable by the vast majority of Maryland's employers[13]—in particular, its many thousands of small businesses. Maryland's employers should not be forced to incur burdensome infrastructure and technology costs under threat of litigation, merely so that they may capture a few additional seconds of non-productive worker activity. Again, this is the practical reality that *Anderson* cautions against.

Initially, while timekeeping systems may allow for more accurate timekeeping than those used in *Anderson* in 1946, this does not mean that an employer can practically capture *de minimis* amounts of time in an employee's day. Indeed, as noted above, in the absence of the *de minimis* doctrine, an employer is obligated to capture all time during which it arguably exercises control over an employee, which could include time before an employee

[13] *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 698 (1946) (emphasizing the importance of considering the broader implications of legal decisions on various industries) ("In interpreting 'workweek' as applied to the industries of America, it is important to consider the term as applicable not merely to large and organized industries where activities may be formalized and easily measured on a split-second basis. The term must be applied equally to the hundreds of thousands of small businesses and small plants employing less than 200, and often less than 50 workers, where the recording of occasional minutes of preliminary activities and walking time would be highly impractical and the penalties of liquidated damages for a neglect to do so would be unreasonable. Such a universal requirement of recording would lead to innumerable unnecessary minor controversies between employers and employees.").

clocks in—such as walking to the clock-in station, entering the work location, or even the seconds that the employee spends clocking in. Likewise, neither Appellant nor Maryland law makes clear what the appropriate unit of time must be used to measure employee work activities—is it a minute? A second? Absent this clarity, any rounding by a timekeeping system—even if to the second—will result in some degree of time that is not accounted for and create a technical *de minimis* violation. Simply put, it is not practically feasible, even with more advanced technology, to capture every second of the day.

This leads to the further point that eliminating the *de minimis* doctrine will result in increased investments in timekeeping and related infrastructure to employers. This is a significant cost to bear. Most employers cannot endure a massive infrastructure investment, and in seeking to eliminate the *de minimis* rule, Appellant ignores the further erosion of razor thin margins for small businesses with some form of mandated increase in technological capacity. It is simply inequitable to require employers—mostly small businesses—to replace existing, functional timekeeping systems in which they have already poured their hard-earned capital with new or modified systems.

In short, although this case concerns Amazon, whether the *de minimis* doctrine applies to Maryland Wage Laws should not be dictated by what Amazon can do, as its resources and sophistication are in an entirely different stratosphere than those of typical employers (although it is not clear from the record that Amazon could have recorded the time at issue in any reasonably effective manner). The axiom is that bad facts make bad law, and the facts here are "bad," in that Amazon's capabilities are not reasonably reflective of that of the vast majority of employers. As such, the Court is encouraged to consider,

when reaching its decision on *de minimis* time, to consider not just Amazon, but the broader implications to all Maryland employers and to uphold the established principles of the *de minimis* doctrine in the context of compensable time.

CONCLUSION

For these reasons herein, NRF, U.S. Chamber, Maryland Chamber, NAM, NFIB and MRA respectfully submit this amici brief to highlight the importance of this Court's decision on thousands of businesses in Maryland across various industries and to advocate for a fair and practical resolution that supports their continued success and growth.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,139 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 14, 2025, a copy of the foregoing Brief of Amici Curiae in Support of Appellees was served on all counsel of record via the MDEC File and Serve Module, and that pursuant to Rule 8-502(c), two copies of each will be mailed first class on February 14, 2025 to the following:

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