



January 1, 2020

Patricia S. Connor, Clerk
Lewis F. Powell Jr. Courthouse & Annex
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: *Maryland Shall Issue, Inc. v. Hogan*, No. 18-2474 (4th Cir.).

Dear Ms. Connor:

Pursuant to Rule 28(j), plaintiffs-appellants respectfully submit this letter to bring to the Court's attention the *en banc* decision in *Manning v. Cadwell*, 930 F.3d 264 (4th Cir. 2019), decided after briefing in this case. In *Manning*, this Court held that "the term 'habitual drunkard' [in a Virginia statute] specifies no standard of conduct [and was] thus unconstitutionally vague." (930 F.3d at 278). In so holding, the *en banc* Court rejected the Virginia's attempt to defend the dismissal of the complaint on grounds of standing, stating that "[t]he question of whether Plaintiffs' conduct clearly falls within the grasp of [the State's] scheme *necessarily requires an evaluation of the merits of that vagueness challenge* as applied to these plaintiffs." (930 F.3d at 278 n.12) (emphasis added). While the *en banc* Court was divided on other issues, there was no dissent from that standing holding.

The Court's rejection of the State's standing argument in *Manning* supports plaintiffs' argument that the district court in this case improperly *sua sponte* dismissed plaintiffs' vagueness claim on grounds of standing. Br. of Appellants at 12-30; Reply 19-26. *Manning* holds that in order to assess a plaintiff's standing on a vagueness challenge, court must inquire into the merits of the claim itself. The district court did not do so here and thus erred in dismissing the vagueness claim on grounds of standing. For the reasons stated in the briefs, plaintiffs in this case are entitled to prevail on the merits on that vagueness challenge as applied to them. The Court should so hold.

We would appreciate it if your Office would distribute this letter to the Court. This case is currently set for oral argument on January 29, 2020.¹

¹ Counsel hereby certifies that the body of this letter contains 282 words and is thus compliant with the 350 word limit imposed by Rule 28(j).

Sincerely,

/s/

Mark W. Pennak
Counsel for Plaintiffs-Appellants
cc: All Counsel via ECF service.