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April 18, 2007

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

Re: Senate Bill 606 and House Bill 876

Dear Governor O'Malley:

We have reviewed and hereby approve the constitutionality and legal sufficiency of Senate Bill 606 and House Bill 876, identical bills, which make human trafficking a State criminal offense. Because the federal government has also passed legislation addressing human trafficking, we examined whether the bills are preempted. It is our opinion that they are not preempted.

Federal legislation addressing human trafficking include the Trafficking Victims Protection Act of 2000, Pub. L. 106-386 and the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193. Neither of these acts contains an express preemption clause, but federal law can implicitly override state law "when the scope of a statute indicates that Congress intended federal law to occupy a field exclusively, or when state law is in actual conflict with federal law." *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63-64 (2002)(citations omitted).

Criminal law is an area traditionally left to the States. The Supreme Court has explained that "we start with the assumption that the historic police powers of the States were not to be superceded...unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). In addition, conflict preemption occurs when the State law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Volt Info. Science, Inc. V. Bd.*

of Trustees of the Leland Stanford Junior University, 489 U.S. 468, 477 (1989).

The Honorable Martin J. O'Malley

Page 2

April 18, 2007

Federal legislation addressing human trafficking provided protections and assistance for victims of trafficking, expanded activities of the United States on an international level to prevent trafficking at the outset, and created new offenses and penalties for human trafficking. Nothing in Senate Bill 606 and House Bill 876 create a conflict with the federal law. In fact, federal legislation contemplates that the federal government work with state and local authorities to combat "this deeply troubling, violent and often hidden crime." See Dept. of Justice Press Release, Jan. 31, 2007. To help States enact legislation criminalizing human trafficking, the Department of Justice has made available a model State law. At the end of 2006, 27 other States have adopted anti-trafficking laws. See Patrick McGee, "Human-trafficking bills would toughen law," *Ft. Worth Star-Telegram*, April 5, 2007.

Nor do the bills present any conflict with federal immigration law by making it a crime to obtain labor services with, among other things, the threat to destroy, conceal, remove, confiscate, or possess "any immigration or government identification document with intent to harm the immigration status of another person."¹ "Power to regulate immigration is unquestionably exclusively a federal power. But the Court has never held that every State enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted by this constitutional power, whether latent or exercised." *DeCanas v. Bica*, 424 U.S. 351, 354-355 (1976). "[T]he fact that aliens are the subject of a State statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id.* at 355.

For these reasons, it is our view that Senate Bill 606 and House Bill 876 are not preempted by federal law.

Sincerely,

/s/

¹Under the bills that provision "does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions."

Douglas F. Gansler
Attorney General

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