



Testimony for the Judicial Proceedings Committee

SB 662- Criminal Procedure - Evidence - Protecting the Admissibility of Creative Expression (PACE Act)

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FAVORABLE

GREG BROWN
PUBLIC POLICY COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

MAIN OFFICE
& MAILING ADDRESS
3600 CLIPPER MILL ROAD
SUITE 200
BALTIMORE, MD 21211
T/410-889-8555
or 240-274-5295
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
COREY STOTTLEMYER
PRESIDENT

DANA VICKERS SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

The ACLU of Maryland urges support for SB662, which seeks to create needed guidelines on the admissibility of creative expression based evidence in criminal proceedings. SB662 reinforces the legal protections guaranteed to all Marylanders by the First Amendment.

One of the primary legal issues SB662 addresses is the interpretation and relevance of creative expression, such as rap lyrics, in criminal proceedings. There is inherent ambiguity and subjectivity involved in interpreting artistic works, especially those rooted in cultural contexts such as rap music.¹ Without clear guidelines and criteria for assessing the intent and relevance of creative expression, there is a risk of misinterpretation and prejudice against defendants.

Another issue that SB662 combats is the potential for creative expression to be misused as evidence of guilt or criminal behavior. Throughout the country, and more importantly the state of Maryland, rap lyrics have been introduced as evidence in criminal trials to portray defendants as violent or dangerous individuals, without proper consideration of the artistic nature of the expression or the context in which it was created. *Id.* As recently as 2021, the Maryland Court of Appeals ruled rap lyrics against a defendant admissible, which ultimately led to a 50 year prison sentence for the defendant.² SB662 seeks to address this issue by requiring the court to make specific findings regarding the intent, relevance, and probative value of

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https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2023-winter/lyrics-limine-rap-music-and-criminal-prosecutions/#52

² <https://www.courthousenews.com/maryland-appeals-court-allows-rap-lyrics-to-be-used-in-murder-trial/>

creative expression before admitting it as evidence. If there is no probative value to be gleaned from the creative expression in regards to the facts of the matter before the court, the evidence should not be admissible.

On First Amendment grounds, allowing instances of creative expression, such as rap lyrics, to be used against defendants in criminal proceedings could have a chilling effect on artistic expression, particularly within marginalized communities where rap music serves as a form of cultural expression and social commentary. The Maryland Court of Appeals has admitted as much with regard to rap lyrics and the “prejudicial effect that often accompanies their admission.” *Hannah v. State*, 420 Md. at 339. SB662 is needed in this state to ensure that the First Amendment right to creative expression is not infringed upon by our criminal justice system.

For these reasons we urge a favorable report on SB662.



GREGORY BROWN
PUBLIC POLICY
COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

3600 CLIPPER MILL
ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838

WWW.ACLU-MD.ORG

OFFICERS AND
DIRECTORS
HOMAYRA ZIAD
PRESIDENT

DANA VICKERS
SHELLEY
EXECUTIVE DIRECTOR

ANDREW FREEMAN
GENERAL COUNSEL

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

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