

Written Testimony of
Todd Dupler
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before the
Maryland Senate Judicial Proceedings Committee
in
Support for SB. 662 (Charles)

Chair Smith, Vice Chair Waldstreicher and members of the Committee,

My name is Todd Dupler, I am the Chief Advocacy and Public Policy Officer for the Recording Academy ("Academy"). The Academy is the leading organization representing over 20,000 individual music makers, including many artists, songwriters, and producers in Maryland. Over the past several years, the Academy has worked closely with industry leaders, legal scholars, and criminal justice reform activists to introduce and pass legislation to protect artistic and creative expression at the state and federal levels. Today, I testify whole-heartedly in **support** of the **Protecting the Admissibility of Creative Evidence (PACE) Act (S.B. 662)** introduced by Senator Charles.

By passing the PACE Act, Maryland will become a leader in protecting creators, joining California (2022) and Louisiana (2023) as states with laws to limit the use of creative expression in criminal trials.

Maryland has long been a place of musical inspiration and creativity from the legendary jazz of Billie Holiday to today's hip hop stars like Cordae and Logic; as an industry, music contributes \$1.4 billion to the state's GDP and supports more than 20,000 jobs. However, as the industry continues to blossom, courtrooms in Maryland are threatening to stifle creativity and artistic expression of Maryland's creative community. In recent years, Maryland has seen the use of musical works as being admitted as "evidence" in criminal proceedings often claiming that aggressive or violent lyrics are indicative of an accused artist's actual behavior.

The PACE Act is a fair solution that addresses this growing prosecutorial trend by ensuring that music, literature, film, and other works of creative expression remain properly protected by the First Amendment. Specifically, the bill establishes an important balance by declaring that a defendant's creative or artistic works may not be used as evidence in a criminal matter unless it is determined by the court to be relevant, and thereby admissible.

To overcome a presumption of inadmissibility a prosecutor must demonstrate that:

1. The defendant or respondent intended the creative expression to be literal, rather than figurative or fictional.
2. If the creative expression is derivative, the defendant intended to adopt the literal meaning of the creative expression as their own.
3. The creative expression refers to the specific facts of the alleged offense.
4. The creative expression is relevant to a disputed issue of fact.

5. The creative expression has a distinct probative value that cannot be provided by other admissible evidence.

To put it plainly, the PACE Act does not prohibit the use of relevant, admissible lyrics in a criminal trial, but instead will implement safeguards to ensure that all artists are able to express themselves freely without fear of reprisal from the justice system simply because of the content of their art or because of biases against their chosen art form.

To date, researchers and legal scholars have seen this practice apply, nearly exclusively, to hip hop and rap. And while the legislation applies to any and every genre of music, one cannot ignore the particularly detrimental impact the existing practice has had on certain Black and Brown artists practicing their craft. The imagery used in hip hop that reflects the real-world experiences of these artists have too often been used to bias juries in criminal proceedings. We know Johnny Cash did not shoot a man in Reno just to watch him die, but the same creative license is not being afforded to Black rap artists.

The PACE Act represents an important step in protecting the creative community and allowing the creative arts to continue to be made and flourish in Maryland.

I urge you to vote favorably on S.B. 662.

Thank you.