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May 1, 2025

The Honorable Wes Moore
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401
Delivered via email

RE: House Bill 1222 — “Public Safety – Immigration Enforcement (Maryland Values Act)”

Dear Governor Moore:

We hereby approve for constitutionality and legal sufficiency House Bill 1222, “Public Safety – Immigration Enforcement (Maryland Values Act).” We write to explain how two portions of the Maryland Values Act can be implemented to avoid potential conflict with federal law or constitutional violations.

First, the Maryland Values Act imposes certain duties on some State and local government employees and officials. It requires public schools, public libraries, and certain units of the executive branch of State or local government that operate at a “sensitive location”¹ to “deny access” to any portion of the sensitive location not accessible to the public to any individual who is seeking access “for the purpose of enforcing federal immigration law” unless: (1) the individual presents a valid warrant issued by a federal

¹ House Bill 1222 defines “sensitive location” as a public school, a public library, a health care facility operated by a unit of State or local government, a facility operated by the Comptroller, a courthouse, or “any other location” that provides certain State-funded services or “as determined by the Attorney General, requires special consideration for immigration enforcement activities.” State Government Article, § 6-111(a)(4).

court, or (2) exigent circumstances exist. Proposed Criminal Procedural Article (“CP”), § 2-104.2(b)(2). The bill also directs the Office of the Attorney General to develop and publish guidance to inform the public and State agencies about certain topics related to immigration enforcement activities and sensitive locations, including complying with existing legal obligations. Proposed State Government Article (“SG”), § 6-111(b). Under the bill, public schools, public libraries, and units of the executive branch of State or local government that operate at a sensitive location must implement policies consistent with the Attorney General’s guidance by October 1, 2025. SG § 6-111(d).

Federal law criminalizes the corrupt obstruction of official proceedings or the administration of law, and also prohibits forcibly assaulting, resisting, opposing, impeding, intimidating, or interfering with federal employees or officials who are engaged in the performance of official duties. *See* 18 U.S.C. § 111; 18 U.S.C. § 1505; 18 U.S.C. § 1512(c)(2). If the Maryland Values Act’s “deny access” requirement is read to require State and local employees or officials to actively or forcibly resist, block, or prevent federal immigration agents from gaining unauthorized access to non-public areas in sensitive locations, there is a risk that an employee attempting to comply with the bill might violate federal criminal law. *See United States v. Joseph*, 26 F.4th 528, 531, 534 (1st Cir. 2022) (involving federal criminal charges against a state district court judge who allegedly affirmatively assisted an individual subject to a warrant of removal with evading an ICE agent waiting in the courthouse lobby).

To avoid a potential conflict with federal law, it is our view that the bill’s requirement to “deny access” should reasonably be interpreted to mean that State and local government officials or employees must not grant immigration enforcement officials permission to enter the non-public sensitive locations, nor assist them in doing so. As the United States Supreme Court has recognized, the Tenth Amendment prevents the federal government from compelling state or local officials to enforce federal law. *See Printz v. United States*, 521 U.S. 898, 935 (1997). In our view, this principle also permits states to limit state and local officials’ cooperation in immigration enforcement. *See United States v. California*, 921 F.3d 865, 889-91 (9th Cir. 2019) (explaining that the federal government “could not require California’s cooperation [in enforcing immigration laws] without running afoul of the Tenth Amendment”). The Attorney General guidance required by the bill can also assist State and local government agencies in implementing the “deny access” requirement in a way that avoids potential violations of federal law.

Second, the Maryland Values Act requires each “governmental entity,” in consultation with the Department of Information Technology, to develop and publish procedures that “prevent the sale and redisclosure of personal records and geolocation data provided or made available by the governmental entity in a way that harms the privacy of

residents of the State.”² SG § 10-1702(a). There is no First Amendment right to access government data. *See Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978) (plurality opinion) (“There is no constitutional right to have access to particular government information, or to require openness from the bureaucracy.”). But First Amendment rights are implicated when statutes restrict the use or disclosure of such data, especially if the limitations are content- or speaker-based. *Barnicki v. Vopper*, 532 U.S. 514, 527 (2001) (“[I]f the acts of ‘disclosing’ and ‘publishing’ information do not constitute speech, it is hard to imagine what does fall within that category”) (citation and internal quotation marks omitted). Although the Maryland Values Act itself imposes no restrictions on the use or disclosure of personal records or geolocation data, the procedures resulting from the bill’s implementation presumably would, and thus could implicate speech.

The procedures required by the bill may limit or condition access to government-held information in order to advance important State interests without violating the First Amendment. *See Los Angeles Police Dep’t v. United Reporting Pub. Corp.*, 528 U.S. 32, 35, 40 (1999) (holding that California law prohibiting address information obtained from police records from being used to sell a product or service did not facially violate the First Amendment because it was “a law regulating access to information in the hands of the police department,” not a prohibition on a speaker from conveying information that the speaker already possesses); *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 573 (2011) (acknowledging that a state could likely protect privacy interests by completely restricting the sale or disclosure of pharmacy records except for “in only a few narrow and well-justified circumstances”). However, any adopted procedures must not discriminate against certain viewpoints or messages, must be tailored to advance the State’s pertinent interests, and must otherwise comply with free speech protections in the First Amendment of the U.S. Constitution and Article 40 of the Maryland Declaration of Rights. *See Fusaro v. Cogan*, 930 F.3d 241, 262 (4th Cir. 2019) (acknowledging that “when the government is not compelled to provide a particular benefit, it may place limits on access to that benefit,” even some content-based limitations, “as long as those limits do not cross a constitutional red line,” e.g., viewpoint discrimination). Thus, it is our view that the bill itself does not violate the First Amendment and any potential constitutional issues in implementation may be addressed while the required procedures are developed.

² The bill requires the procedures to address several considerations, including without limitation, possible contractual limitations on the sale or redisclosure of personal records, privacy threats posed by data brokers, and the risk that personal records or geolocation data may be used for purposes other than the purpose for which the information was collected, as well as considerations necessary to protect State residents’ privacy, discourage the development of a secondary commercial market for personal records or geolocation data, and limit persons from selling or redisclosing personal records or geolocation data received from a governmental entity. SG § 10-1702(b).

Accordingly, it is our view that House Bill 1222 is not clearly unconstitutional,³ and it is possible to implement the bill's requirements in a way that avoids violating federal law and constitutional free speech protections.

Sincerely,

A handwritten signature in black ink, appearing to read "AGB Brown". The signature is fluid and cursive, with the first part being a stylized "AGB" and the last part being "Brown".

Anthony G. Brown

AGB/NRB/kd

cc: The Honorable Susan C. Lee
Jeremy Baker
Victoria L. Gruber

³ We apply a “not clearly unconstitutional” standard of review in the bill review process. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).