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May 7, 2026

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

RE: *Senate Bill 426, “Public Information Act – Divorce Records”*

Dear Governor Moore:

I have reviewed Senate Bill 426, “Public Information Act – Divorce Records,” and hereby approve it for constitutionality and legal sufficiency. Although the bill is not clearly unconstitutional,¹ as addressed below, it presents significant First Amendment concerns if read expansively to apply to judicial court records pertaining to divorce proceedings.

Description of Senate Bill 426

Senate Bill 426 amends the Maryland Public Information Act (“PIA”) to require that custodians under the PIA deny access to most records pertaining to divorce proceedings. The restricted categories include applications for divorce, financial records submitted during the proceeding, divorce settlement records, and custody orders. The bill exempts final divorce decrees, which must remain available for public inspection. A custodian must also provide divorce-related records to an applicant who is a person in interest (such as a party to the case), an attorney representing a person in interest, or a person authorized by court order to inspect the records.

Maryland Supreme Court Rules Governing Access to Judicial Records.

As a threshold matter, it is unclear whether Senate Bill 426 effectively restricts access to the specified court records (rather than records held by a non-judicial agency) because the PIA generally defers to the rules of the Maryland Supreme Court. As the Court has explained, “the PIA explicitly defers...[to] rules adopted by the [Maryland Supreme Court].” *Admin. Office of the*

¹ We apply a “not clearly unconstitutional” standard of review for bill review. 71 *Opinions of the Attorney General* 266, 272 n.11 (1986).

Courts v. Abell Foundation, 480 Md. 63, 70 (2022) (citing General Provisions Article (“GP”), § 4-304).²

Access to court records is governed by the Maryland Rules on Access to Judicial Records in Title 16, Chapter 900. Under those Rules, “[j]udicial records are presumed to be open to the public for inspection,” and the custodian of a judicial record must permit inspection in accordance with Rules 16-922 through 16-924, “[e]xcept as otherwise provided by the Rules in this Chapter or by other applicable law.” Md. Rule 16-904(a).

The reference to “other applicable law” in Rule 16-904(a) appears to recognize that enacted legislation may displace the Rule. *See also* Md. Const., Art. IV, § 18(a) (providing that Maryland Rules have the force of law until modified by the Supreme Court “or otherwise by law”). However, the PIA generally does not supersede the Rules because of the default rule that the PIA itself defers to other law. Consistent with that understanding, the Rules provide that custodians of judicial records must deny inspection of a record if inspection would be contrary to a statute enacted by the General Assembly “*other than the PIA*.” Md. Rule 16-911 (emphasis added). Thus, although the General Assembly may have the power to enact legislation that supersedes the Maryland Rules, we would customarily look for a clearer statement before concluding that a PIA provision has that effect.

Taken together, these authorities cast doubt on whether Senate Bill 426, by itself, curtails public access to the judicial records it targets (rather than, for example, judicial records also held in possession of a non-judicial agency subject to the PIA). Although the legislative history suggests that the General Assembly assumed the new exemption applies to court records, it is not clear whether that is the case. Rather, because (1) the Maryland Supreme Court’s constitutional rule-making power governs access to court records, (2) the General Assembly has provided that the PIA defers to other law and (3) the Court has already made clear that its Rules supersede contrary provisions in the PIA, the existing Rules governing access to judicial records may likely continue to control despite Senate Bill 426.

Senate Bill 426 Raises Significant First Amendment Concerns.

Another reason to interpret Senate Bill 426 as not applying to court records is to avoid a “constitutional confrontation.” *Harrison-Solomon v. State*, 442 Md. 254, 287 (2015) (explaining that the Court “will construe a statute to avoid conflict with the Constitution whenever it is reasonably possible to do so, even to the extent of applying a judicial gloss to interpretation that skirts a constitutional confrontation”). Here, the bill’s near-blanket restriction on access to divorce judicial records implicates the First Amendment right of public access to judicial proceedings.³ It is well established that “the public and press have a qualified right of access to judicial documents

² *See also* GP § 4-301(a)(2)(iii) (stating that “a custodian shall deny inspection of a public record or any part of a public record if the inspection would be contrary to the rules adopted by the Supreme Court of Maryland”).

³ Article 40 of the Declaration of Rights provides that “[t]he liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege.”

and records filed in civil and criminal proceedings.” *Doe v. Public Citizen*, 749 F.3d 246, 256 (4th Cir. 2014). That right derives from two independent sources: the common law and the First Amendment. *Va. Dep’t of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004). The First Amendment right of access extends to judicial records that have historically been open to the press and public and where public access plays a significant positive role in the functioning of the particular process. *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 326 (4th Cir. 2021). Because the right is “firmly embedded in the First Amendment, ‘it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.’” *State v. Cottman Transmission Sys., Inc.*, 75 Md. App. 647, 657 (1988) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)).

Senate Bill 426 is difficult to reconcile with the narrow-tailoring requirement. Rather than identifying, with particularity, which categories of divorce-related records warrant protection and the specific interests supporting each restriction, the bill imposes a blanket prohibition on disclosure of all “record[s] pertaining to a divorce proceeding.” Read literally, that formulation could sweep in docket entries, case captions, and even the bare fact of a case’s existence despite permitting access to divorce decrees. The justifications offered in committee testimony compounded this constitutional problem by inverting the governing standard: supporters argued that no compelling reason for public access had been shown, rather than identifying a compelling governmental interest in secrecy. Instead, though, the First Amendment analysis runs in the opposite direction—the burden falls on the government to justify closure, not on the public to justify access. For these reasons, if enacted and read broadly, Senate Bill 426 faces a significant risk of a successful constitutional challenge.⁴

In summary, Senate Bill 426 attempts to restrict access to certain divorce-related court records through the PIA. But with limited exceptions, judicial records are governed exclusively by the Maryland Rules on Access to Judicial Records, not the PIA. This raises questions as to whether the bill, as a matter of statutory interpretation, would apply to judicial records. Interpreting the bill to apply only to non-judicial records avoids the First Amendment problem that would arise from broadly restricting access to a category of judicial records that have traditionally been open to public access. Regardless, significant and understandable confusion will be created for the public because virtually all judicial records pertaining to divorce proceedings are rendered not publicly available by Senate Bill 426.

⁴ The Maryland-Delaware-DC Press Association opposed the bill.

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To conclude, the Judiciary may well interpret the bill, if enacted, not to apply to judicial records. Still, although Senate Bill 426 presents interpretative difficulties and may create confusion for the public if enacted, it is not clearly unconstitutional.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Anthony G. Brown

cc: The Honorable Susan C. Lee, Secretary of State
Jeremy Baker, Chief Legislative Officer
Victoria L. Gruber, Executive Director of DLS