



Testimony for the House Judiciary Committee
January 16, 2020

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HB 5 Crimes – Hate Crimes – Use of an Item or a Symbol to Threaten or Intimidate

SUPPORT

The ACLU of Maryland supports HB 5, which prohibits a person from affixing, erecting, or placing a noose or swastika on another's property without authorization, with the intent to threaten or intimidate any person or group of people.

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It is undeniable that marginalized people and groups continue to be targets of violence, threats, and acts of intimidation. In 2018, there were multiple news reports of nooses and swastikas being placed across Maryland. Efforts to prevent and remedy this egregious conduct are appropriate as long as they are consistent with the First Amendment.

HB 5 does not violate the Constitution, because it addresses only unprotected speech and is viewpoint neutral.

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HB 5 criminalizes true threats, which are not constitutionally protected speech. The First Amendment does not protect true threats, which directly threaten individuals, and may include the use of nonverbal symbols, such as a noose or swastika. True threats are statements "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Virginia v. Black, 538 U.S. 343, 344 (2003). In Virginia v. Black, the U.S. Supreme Court upheld Virginia's ban on cross burning with the intent to intimidate, holding that the statute did not run afoul of the First Amendment because "[t]he person who burns a cross directed at a particular person often is making a serious threat." Id., at 357.

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Similarly, because HB 5 criminalizes conduct that intends to "threaten or intimidate," it criminalizes true threats, and does not run afoul of the Constitution here.

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HB 5 is viewpoint neutral.

The First Amendment does not protect laws that discriminate against viewpoint. Previous attempts by other jurisdictions to criminalize threatening conduct have been struck down because they targeted particular groups for protection, and were therefore viewpoint discriminatory. For example, a Minnesota ordinance prohibiting cross burnings and other displays was found viewpoint discriminatory, and thus unconstitutional, because it specifically prohibited targeting people on the basis of race, color, religion, or gender. R.A.V. v. St. Paul, 505 U.S. 377 (1992). Here, HB 5 addresses conduct targeting "any person or group of persons." The bill does not single out any particular group, and is therefore viewpoint neutral and constitutional.

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For the foregoing reasons, we urge a favorable report on HB 5

