Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401-1699

Joseph M. Getty
Chief Judge

March 2, 2022

The Honorable Paul G. Pinsky
Maryland Senate
Miller Senate Office Building, 2 West Wing
11 Bladen St.
Annapolis, MD 21401

The Honorable Shane E. Pendergrass
Maryland General Assembly
Taylor House Office Building, Room 241
6 Bladen St.
Annapolis, MD 21401

Dear Senator Pinsky and Delegate Pendergrass:

I write to you concerning several bills that seek to impose cybersecurity requirements on the Judicial Branch. These bills include:

- **HB0005/SB0107** – This bill would modify Title 10, Subtitle 13 of the State Government Article to apply to the Legislative and Judicial branches, in addition to the Executive Branch, and would require each employee of each unit of State government to complete a cybersecurity training program certified by the Maryland Department of Information Technology ("DOIT").

- **HB0419/SB0390**, **HB1202/SB0754**, and **HB1346/SB0812**, and **SB 0780** – These bills would renumber Title 3A of the State Finance and Procurement Article as Title 3.5, and would add a requirement in it that, if it uses the DOIT telecommunication and computer network, the Judicial Branch must certify annually to DOIT that it is in compliance with DOIT's minimum security standards.

Article 8 of the Maryland Constitution's Declaration of Rights states: "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

In addition, Article IV, § 18 of the Maryland Constitution grants to the Chief Judge of the Court of Appeals administrative authority over Judicial Branch: "The Chief Judge of the Court of Appeals shall be the administrative head of the Judicial system of the State." Information technology practices, including cybersecurity measures, used by Maryland courts to carry out core judicial functions are administrative matters that fall squarely within the Chief Judge's constitutional duties.

The proposed legislation would infringe on the Judiciary's day-to-day functioning and therefore run afoul of the separation of powers requirement. The Court of Appeals has acquiesced to legislative efforts "augment[ing] the ability of the courts to carry out their constitutional responsibilities" in very narrow circumstances—when "at the most, there was but a minimal intrusion" on inherent powers of the Judicial Branch. *Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 698 (1981). Though the separation of powers requirement is not absolute, legislative action should support courts rather than impose on their ability to function. *Id.* at 699. ("[T]he flexibility that inheres in the separation of powers doctrine allows for some limited exertion of legislative authority. As a consequence of this elasticity, [the Court of Appeals has] recognized, first, that the General Assembly may act pursuant to its police or other legitimate power to aid the courts in the performance of their judicial functions[.]").

Legislation that imposes DOIT-controlled cybersecurity training or reporting requirements on the Judiciary exceeds the permissible "limited exertion of legislative authority . . . to aid the courts in the performance of their judicial function." *Id.* at 699. Instead, the proposed legislation "dilutes the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function." *Id.* Moreover, these bills far exceed the requirements of any existing statute by attempting to infringe on the Judicial Branch's administrative authority over its own information technology practices. Specifically, these bills seek to modify and extend to the Judiciary provisions of Title 10, Subtitle 13 of the State Government Article and Title 3A of the State Finance and Procurement Article, both of which clearly do not apply to the Judicial Branch.

The efficient administration of justice in Maryland requires various information technology systems in courtrooms, clerks' offices, and Judiciary administrative offices. The Judiciary must maintain administrative control over its information technology practices, including decisions about network and data security, in order to carry out the judicial function. The Judiciary already has its own information technology department (Judicial Information Services, "JIS") which has thorough cybersecurity systems and safeguards in place, including quarterly cybersecurity training for all Judiciary employees. In addition, JIS already regularly collaborates with DOIT as to network and data security.

Accordingly, I believe that these bills impermissibly infringe upon the authority constitutionally vested in the Judicial Branch as a co-equal branch of State government.

Very truly yours,

Joseph M. Getty
Chief Judge
Court of Appeals of Maryland