



Appropriations Committee
Hearing: Tuesday, January 24, 2023, 1:00 pm

Dear Chair Barnes and Members of the Appropriations Committee,

As the President of the Board of Trustees of the Walters Art Gallery, Inc., I urge you to review this testimony, respectfully submitted, and to reject House Bill 116, “Trustees of the Walters Art Gallery - Collective Bargaining,” filed by Delegate Robbyn Lewis. From my perspective, it fails—in two separate but equally important ways—because of the vague language used in declaring “the museum is a unit and instrumentality of the state and the city.”

The trustees of a nonprofit organization are responsible for governance of the organization; in this case, we are the fiduciaries for the assets of the self-perpetuating entity known as Trustees of the Walters Art Gallery, Inc. Our role is not to make day-to-day management decisions such as those that relate to labor relations issues—these decisions fall to our director, Julia Marciari-Alexander, and her senior leadership team. Rather our role is to provide oversight of her work, and ensure the financial and operational health of the organization and to safeguard its resources.

Thus **the vague language of the bill** is immediately a problem as a fiduciary concern for the Trustees. Were the Maryland General Assembly to pass a bill declaring that “the museum is a unit and instrumentality of the state and the city,” this language could be construed as a government taking of the privately-owned assets of the Trustees without due process, which would **violate the Takings Clauses of the 5th and 14th Amendments of the U.S. Constitution, as well as Section 40 of the Maryland Constitution.**

Members of the Committee may not be aware that while the museum operates in five buildings in Baltimore, only three of those buildings are owned by the City of Baltimore; the other two (which comprise the majority of the total square footage) are private property, owned by the Trustees of the Walters Art Gallery, Inc. Of the museum’s extensive collections, while two thirds are derived from Henry Walters’ original bequest to the City of Baltimore, one third are private property that have been subsequently acquired by the Trustees of the Walters Art Gallery, Inc., either through purchase or gift. And the museum has two endowments that provide essential operating support to the museum: one endowment is comprised of the ongoing investments given by Henry Walters’ bequest to the City of Baltimore; the other, which is more than twice as large, consists of funds privately raised and managed by the Trustees of the Walters Art Gallery, Inc., as fiduciaries of the museum, which is, again, private property.

A law that simply declares a private entity to be a unit and instrumentality of the State and City is exceptionally—and likely unconstitutionally—vague. Such designation is interpreted differently and has different meanings under a variety of state and federal laws (e.g., Internal Revenue Code, Maryland Public Information Act, National Labor Relations Act). The failure of HB 116 to provide any more detail demonstrates that it has carelessly left itself open to the interpretation that it is intended to constitute an unlawful declaration that the non-City-owned assets of the museum will, by fiat, become the property of the City or the State.

Such a declaration would almost certainly require legal action from the Trustees as the museum's fiduciaries to protect the museum's private property from an unlawful government taking. To state the obvious, triggering such legal action would in no way advance what we understand to be the core purpose of HB 116: supporting employee efforts to form a union at the Walters Art Museum, which, again, the museum respects. Instead, it would entangle the museum, the State of Maryland, and potentially the City of Baltimore, in an unnecessary legal dispute.

At the same time, the bill's failure to define the term "unit and instrumentality of the State and the City" also **immediately raises concerns because of the Supremacy Clause of the U.S. Constitution, under which federal law preempts state law.** In this case, the preamble of HB 116 makes clear that its purpose relates to union organizing. However, the vagueness of HB 116, alluded to above, cannot be cured by declaring the museum a unit or instrumentality of the State and City for purposes of labor relations.

The State of Maryland lacks the authority to do so because the authority to make that determination rests exclusively with the federal government. In the seminal Supreme Court case, *NLRB v. Nat. Gas Util. Dist. of Hawkins County*, the Supreme Court affirmed that, "Federal, rather than state, law governs the determination, under §2(2) [of the National Labor Relations Act], whether an entity created under state law is a 'political subdivision' of the State, and therefore not an 'employer' subject to the [National Labor Relations] Act." The issue of the scope of jurisdiction of the National Labor Relations Board (NLRB) rests exclusively with the NLRB and federal courts rather than state legislatures. Furthermore, the *Maryland Legislator's Handbook, Volume I* (2022) acknowledges (page 12) that "[u]nder the principle of enumerated powers in the federal system, certain powers have been delegated to the national government by the U.S. Constitution. State legislatures may not adopt laws that conflict with this delegation of sovereignty."

In other words, the General Assembly has no role to play in the determination of, and no authority to declare, whether an entity is or is not a unit or instrumentality of a city, county, or state government for purposes of labor relations. Under the test mandated by the Supreme Court and consistently applied by the NLRB, the Walters Art Museum is unquestionably within the jurisdiction of the NLRB: the Walters was *created* by the bequest of Henry Walters and *gifted* to the City of Baltimore, and the Board of Trustees is *self-appointing* and *self-perpetuating* rather than being *responsible to any public officials or the general electorate*, and neither the State nor City have significant operating or budgeting control over the museum.

Then there is the fact that HB 116 **violates existing Section 33 of the Maryland Constitution**, which prohibits the General Assembly from passing a "Special Law," for any case, for which provision has been made, by an existing General Law. In this case, HB 116 constitutes a Special Law under every single factor considered by the Maryland Supreme Court because (1) it is clearly intended to benefit a small group of individuals (non-supervisory employees of the Walters Art Museum, and perhaps even a smaller group of fewer than twenty security guards who would not be certified in the same group as non-guards under the applicable federal law) rather than an entire class and no other individuals or entities could benefit from the Bill; (2) both the Trustees of the Walters Art Gallery, Inc. and the employees of the museum are specifically named in HB 116; (3) the effect of HB 116 would be to bestow a benefit and burden upon the named parties; (4) the individuals receiving special advantages sought them from the

Legislature; (5) the public does not benefit because the museum employees already have the right to unionize and the law would greatly diminish the museum's ability to serve the public, as it is required by law to do; and (6) HB 116 is arbitrary and lacks a reasonable basis other than to offer special benefits to a select few individuals because there is no State problem that it solves.

Finally, I want to state plainly that there is nothing preventing Walters employees who wish to form a union from taking the steps necessary to do so. The museum's director has been consistent and clear about this and we, the Trustees, agree with and support the museum's employees' rights to consider forming a union. Recognizing that many members of this body share our belief in and respect for the rights of workers everywhere to form unions and negotiate collectively for their welfare, we understand the human motivations behind HB 116.

However, for all of the reasons outlined above, we urge this Committee not to support this bill, which will not accomplish the goal of supporting unionization at the Walters Art Museum. Instead, we believe this bill sends the wrong message in nearly every way—while also risking a potentially embarrassing (and unnecessary) instance of federal intervention to assert jurisdiction.

Guy E. Flynn
President, Board of Trustees
The Walters Art Museum