

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Health and Government Operations Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 699
State and Local Government – Proof of Vaccination for Employees
and Applicants for Employment – Prohibition (Vaccination by
Choice Act)
DATE: February 15, 2023
(3/6)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 699. This bill explicitly applies to all three branches of Maryland government and prohibits them from requiring employees or applicants for employment to provide proof of vaccination as a condition of employment.

Current law recognizes that the Judiciary has broad authority to set its own personnel policies, which may include vaccination requirements.

Md. Code Ann., State Pers. & Pens. § 2-201 provides:
Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State government is governed by the laws and personnel policies and procedures applicable in that branch.

Accordingly, this bill, if enacted, would undermine existing statutory law by unnecessarily attempting to encroach on the Judiciary’s authority to establish its own personnel policies.

The bill conflicts with the Maryland State Constitution’s clear recognition of the separation of powers between the branches of government. Article 8 of the Maryland Constitution’s Declaration of Rights recognizes “[t]hat 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 Justice of the Supreme Court administrative authority over Judicial Branch. Workplace health is an administrative matter that falls squarely within the Chief Justice’s constitutional duties.

Unlike the other policies to which the Judiciary is subject and which do not impose on judicial functions, the proposed legislation would impose on the Judiciary's day-to-day functioning and therefore it runs afoul of the separation of powers. In acknowledging the limited powers of the legislative branch to impose authority on the judicial branch, the Supreme Court in *Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 699 (1981) stated:

There can be no doubt, however, that the deferential respect accorded the legislative branch by the judicial must neither undermine nor dilute the fundamental authority and responsibility vested in the judiciary to carry out its constitutionally required function, an aspect of which, as we have seen, is the supervision of practicing attorneys. Nonetheless, the flexibility that inheres in the separation of powers doctrine allows for some limited exertion of legislative authority. As a consequence of this elasticity, we have 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[.]

By prohibiting the Judiciary from being able to regulate personnel matters, the legislature exceeds its permissible "limited exertion of legislative authority . . . to aid the courts in the performance of their judicial function." Instead, the proposed legislation "dilutes the fundamental authority and responsibility vested in the Judiciary to carry out its constitutionally required function." The administration of justice includes ensuring that those in Judiciary courthouses and offices are in safe working environments. The Judiciary differs from both the Legislative and Executive branches of government and arguably has far more direct engagement with the public, often in small offices or courtroom. Accordingly, the Judiciary should be able to make personnel policies to ensure that both staff and the public are in a safe environment, and therefore should have the ability to determine what is necessary to make those spaces safe which may include vaccine requirements. This proposed legislation takes away the Judiciary's discretion in this regard.

cc. Hon. Matthew Morgan
Judicial Council
Legislative Committee
Kelley O'Connor