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TESTIMONY IN SUPPORT OF HB 1429/SB 0662
Protecting the Admissibility of Creative Expression (PACE Act)

Thank you for consideration of HB 1429 and SB 0662. This legislation provides that the creative expression of a criminal defendant or juvenile respondent is not admissible against the defendant or respondent unless the court makes certain findings and defines "creative expression" as the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols.

Maryland Volunteer Lawyers for the Arts (MdVLA) is a non-profit legal services provider dedicated to protecting Maryland artists' legal rights. Through the help of our professionally trained network of lawyers and in-house staff, MdVLA provides pro bono legal referrals, educates artists on the law, and pursues impact litigation, most often related to First Amendment issues.

MdVLA supports this bill because it is imperative that we give artists the freedom to create art without fear of unreasonable prosecution. Recent instances of prosecution utilizing lyrics, specifically hip-hop lyrics, as evidence have made it clear that restrictions that temper racial and cultural biases are necessary. A uniform test for the courts that takes into account all mediums of artistic expression and narrows the scope of admissibility to lyrics that (1) are literal rather than figurative; (2) refer to both the specific facts of the offense and a disputed issue of fact and (3) provide probative value that cannot be gleaned through other means allows for a regimented and transparent analysis of creative expression as potential evidence.

It is essential to pass the bill this year, as Maryland does not want to continue as a jurisprudential outlier on this issue. Case law like *Montague v. State*,¹ where the Court of Appeals held that rap lyric evidence is admissible when the lyrics bear a close nexus to the details of an alleged crime, needs to be properly qualified and narrowed through the proposed legislation.

For these reasons, I ask for a FAVORABLE REPORT on HB 1429 and SB 0662.

Sincerely,

Adam Holofcener
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¹ 244 Md. App. 24, 222 A.3d 197 (2019), aff'd, 471 Md. 657, 243 A.3d 546 (2020).