



To: Chairman Will Smith and Members of the Maryland Senate Judicial Proceedings Committee

From: Phil Walotsky, Executive Director of Free Our Art

March 7, 2025

Dear Chairman Smith and Judicial Proceedings Committee Members,

I write to express strong support for SB1001, also known as the PACE Act, on behalf of Free Our Art. This bill is a deeply reasonable, common-sense piece of legislation that sets appropriate guidelines for admissibility of First Amendment-protected creative works, and addresses a growing crisis in the improper admission and use of artistic expression as evidence in criminal proceedings. We are grateful to Sen. Mautz for putting it forward for your consideration.

As background on our organization, Free Our Art is a non-profit created to protect First Amendment creative freedoms for all artists. It counts numerous allied organizations across arts advocacy and creative industry organizations including The Recording Academy, SAG-AFTRA, Warner Music Group, the Recording Industry Association of America (RIAA), Songwriters of North America, PEN America, Americans for the Arts, Black Music Action Coalition, Black Entertainment Television (BET), Music Artists Coalition, Artists Rights Alliance, and Artists at Risk Connection.

If enacted, the PACE Act would strike a vital balance between public safety and First Amendment freedoms while safeguarding all forms of creative expression. Despite clear First Amendment protections, creative expression is being presented as a literal confession in courtrooms with increasing and concerning frequency, particularly in cases involving hip-hop lyrics. It is a real concern to our organization and many of our allies that the precedent of increasingly aggressive and frequent use in these scenarios creates grave risks for other genres and art forms. The PACE Act is therefore a necessary step in preserving art and constitutional protections while still allowing the admissibility of such evidence when warranted.

Importantly, the PACE Act is not a ban on admitting creative expression as evidence in criminal cases, but instead establishes guardrails that only ask prosecutors to pass a threshold in pre-trial hearings. In providing clear guidance and a single standard to aid judges, prosecutors, and police in navigating a messy area of law that is First Amendment-protected, the Act would

create no added burden for the judiciary, especially because pre-trial evidentiary hearings already occur in all cases and prosecutors already make arguments along the lines of the existing “probative vs. prejudicial” standard. The Act would simply adjust the standard on which lawyers present arguments and judges make rulings to better align with First Amendment principles. Unfortunately, research in 2019 by scholars at Arizona State School of Law who looked at 160 cases involving admission of creative expression found that judges frequently fail to make required exclusions of evidence in these cases.

The need for action is urgent as there is a genuine and growing crisis due to new technologies for creating, sharing, and searching for creative works. While this practice has existed for decades, it has exploded in popularity among prosecutors in recent years. This issue is especially pertinent in Maryland as the PACE Act codifies key elements of a Maryland Court of Appeals decision (*Maryland vs. Montague*) that addressed the fair use of creative expression in a trial. Given that numerous cases across the country have recently been overturned on appeal for the improper admission of creative expression as evidence – three in the past 12 months in Texas, Georgia, and Tennessee – the need for a clear and consistent standard is evident. Additionally, similar legislation protecting creative expression has been passed in California and Louisiana and is pending in Georgia, Missouri, and New York. Notably, the New York Senate has already passed this language, the Georgia House Non-Civil Judiciary Committee passed this bill unanimously with minor revisions, and Missouri’s House and Senate bills are both bipartisan sponsored. It should also be noted the accompanying House bill in Maryland this year (HB1346) is sponsored by Democrat Delegate Marlon Amprey. At a time of division in America, this type of common-sense legislation brings Americans together to stand for our most sacred rights.

No matter your taste in art, criminalizing creative expression and setting this precedent creates many risks and opens the door to unintended consequences. Free Our Art strongly urges the passage of this critical legislation. We appreciate the time and commitment to addressing this pressing issue and look forward to your support of the PACE Act.

With appreciation,

Phil Walotsky
Executive Director, Free Our Art