

Adam Holofcener_MdVLA_Written Testimony_SB 1001.pd

Uploaded by: Adam Holofcener

Position: FAV



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Serving the Maryland Arts Community Since 1985

Chair Smith, and Honorable Members of the Judicial Proceedings Committee, my name is Adam Holofcener and I am the Executive Director of Maryland Volunteer Lawyers for the Arts, a non-profit legal services organization that provides access to pro bono attorney services and education to Maryland creatives. I testify here today in support of SB 1001, the Protecting the Admissibility of Creative Expression Act. I have had the fortune of practicing law and advocating on behalf of artist clients for over the past decade. While I primarily work with artists on their corporate and intellectual property issues, I have also participated in litigation related to criminal law and the arts. For example, I was co-counsel in *Soderberg v. Carrion*, in which we successfully argued that Maryland Criminal Procedure § 1-201 unconstitutionally limited the rights of all Marylanders, including my documentary filmmaker clients, from rebroadcasting the state created recordings from trial court criminal proceedings. Additionally, I have been teaching on issues related to hip-hop lyrics and evidence in my Art and Media Law course at the University of Maryland School of Law for several years.

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I include those aspects of my professional experience to say that I understand what it means to balance the interests of Maryland artists and their art with the objectives of the criminal justice system. In this particular instance, the PACE Act is required in order to more fairly re-balance the interests at play in this context. While we believe it is important that the PACE Act covers all modes of creative expression, we acknowledge the specific context animating this legislation: hip-hop and rap lyrics being disproportionately and improperly used against Black defendants. The legal and social science work done in this area by individuals like Andrea Dennis, Erik Nielson, Jack Lerner, Charis Kubrin, as well as countless others, has made plain the need for sound and measured legislative re-correction in this area. To be clear, this is not about tipping the scale in favor of artists so that they may use their creative expression to subvert the tenets of criminal law. It is about creating balance so that our most creative and vulnerable do not fall victim to an unjust and racist application of evidence law.

I have seen such victims in my own practice. Shortly after I moved back to my hometown of Baltimore in 2014, to begin work at Maryland Volunteer Lawyers for the Arts, a journalist friend alerted me to a story of then up and coming local rapper Young Moose, AKA Kevron Evans, that squarely intersected art and the law. Law enforcement officers used the literal content of Moose's songs and music videos as evidence to seek a warrant against Moose. By doing so, Moose ended up entangled in the criminal justice system, missing out on his opportunity to take advantage of the viral success he had recently obtained.

Through his art, Young Moose told the stories of his neighborhood. He raps the gestalt of East Baltimore and the combination of his words and delivery resonated throughout the city. As is unsurprising, the experience of Moose and his community members, those victims of white supremacy, redlining, mass incarceration, police brutality and so much more, reasonably led Moose to feature standard tropes of the Streets in his songs and music videos. Drugs, guns, and pain. But, a troubadour like Moose does more than just play acting reality, he also tells the news. Moose would alert his fellow community members to the actions of certain corrupt police officers, like Detective Daniel Hersl, who brutalized Moose and his fellow East Baltimoreans.

That same Detective Daniel Hersl was one of the officers who used Moose's art against him in criminal proceedings, ruining Moose's life and career. That same Daniel Hersl that Moose name checked as a crooked cop in 2014 ended up being the same Daniel Hersl who was a member of the notorious Gun Trace Task Force. There is a deep and tragic irony here that the only parts of Moose's music that should have been taken literally, those describing the illegal actions of Daniel Hersl, were notably the only parts of Moose's work that weren't considered at all.

This case gives us an opportunity to truly understand the reasonable scope of the PACE Act. Detective Daniel Hersl did not have evidence to show that Moose intended for the generalized tropes in his artwork to be taken literally. Therefore, under the PACE Act, those aspects of Moose's work would be inadmissible. To draw an analogy from copyright law, if a storyteller from East Baltimore is trying to conjure a scene of the grittier aspects of their community then certain generalized tropes, or

scenes a faire, are *required* to set the scene; therefore, one cannot claim either protection or infringement of said scene setting tropes. Similarly, such scenes a faire would not be eligible for admissibility under the PACE Act given their generalized character. However, if a work includes such specificity as to transcend mere scenes a faire, giving such details that take you from a generalized tableaux into a real encounter, one with names, dates, locations, descriptions, etc. then not only would copyright take hold, but so would admissibility of a creative work under the PACE Act.

To be clear, I do not believe that the PACE Act takes a tool out of the prosecutor's tool box. The PACE Act merely requires that evidence in the form of creative expression, the work of our troubadours and storytellers, work that both empirically and colloquially is known to not be taken as mere autobiography, must be truly probative in order to be admissible. We know that prosecutors work toward just results, not those sought by members of the Gun Trace Task Force; therefore, we believe that the measured language of the PACE Act adequately rebalances those interests between artists and law enforcement. And so, I respectfully request that the committee vote favorably on SB 1001.

Adewale Oduye Response to Criminal Procedure.pdf

Uploaded by: Adewale Oduye, JD, MBA

Position: FAV

Adewale Oduye Response to Criminal Procedure - Evidence - Protecting the Admissibility of Creative Expression (PACE Act)

As a former Los Angeles prosecutor with 12 years of experience in the largest local prosecutorial agency in the nation—the Los Angeles County District Attorney's Office—I fully support the PACE Act's provision to protect the admissibility of a criminal defendant or juvenile respondent's creative expression. During my time as a prosecutor, I witnessed firsthand how systemic biases and racial disparities often influence criminal proceedings. Creative expression, when used by a defendant or respondent, should not be weaponized to support prosecutorial claims without proper context or understanding. The PACE Act ensures that creative works are not taken out of context or used to unjustly portray a defendant in a negative light, allowing the justice system to focus on the facts of a case rather than misguided interpretations of self-expression. This approach aligns with my ongoing advocacy for fairer, more equitable systems—where justice is not clouded by stereotypes or biases. The inclusion of such protections is necessary for true justice to be served, especially for marginalized communities who are disproportionately affected by these biases. Creative expression should never become a tool for unjust criminalization but rather a means of empowerment and a reflection of one's humanity, which is something we must all strive to protect in our legal systems.

Adewale Oduye, Esq. Comment.pdf

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Adewale Oduye, Esq. Comment: Criminal Procedure - Evidence - Protecting the Admissibility of Creative Expression (PACE Act)

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2025-03-07 SB 1001 Office of Public Defender (FAV)

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Position: FAV



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DEPUTY PUBLIC DEFENDER

MELISSA ROTHSTEIN
CHIEF OF EXTERNAL AFFAIRS

ELIZABETH HILLIARD
DIRECTOR OF GOVERNMENT RELATIONS

POSITION ON PROPOSED LEGISLATION

TO: The Honorable William C. Smith, Chair, Judicial Proceedings Committee

BILL: SB 1001 – Criminal Procedure – Evidence – Protecting the Admissibility of Creative Expression (PACE Act)

FROM: Hannibal Kemerer, Chief of Staff, Maryland Office of the Public Defender

POSITION: Favorable

DATE: March 11, 2025

The Maryland Office of the Public Defender (“OPD”) urges the Judicial Proceedings Committee to issue a favorable report on Senate Bill 1001, Senator Mautz’s legislation to limit the use of creative expression in adult criminal or juvenile proceedings except in limited circumstances. Under the bill, in order for the creative expression to be admissible, the trial court must find by “clear and convincing”¹ evidence that “(1)(i) the defendant or respondent intended the creative expression to be literal, rather than figurative or fictional; **or** (ii) if the creative expression is derivative, the defendant intended to adopt the literal meaning of the creative expression as their own; (2) the creative expression refers to the specific facts of the alleged offense; (3) the creative expression is relevant to a disputed issue of fact; **and** (4) the creative expression has probative value that cannot be provided by other admissible evidence.”²

We support SB 1001 as a suitable and strong effort to codify the common law test laid out by the Maryland Court of Appeals in *Montague v. State of Maryland*³ and *Hannah v. State of Maryland*,⁴ two decisions evaluating the admissibility of rap lyrics in criminal cases. If enacted, the rule codified in SB 1001 would protect our clients’ First Amendment rights to free expression, while also permitting prosecutors to admit the creative expression in a trial against the artist *if* there’s a strong *temporal* and *factual nexus* between the crime charged and the creative expression. It would not, however, permit the wholesale introduction of prejudicial and irrelevant creative

¹ Such evidence is less than that required to prove a matter “beyond a reasonable doubt” but greater than a mere “preponderance of the evidence.” Maryland courts have determined that the “clear and convincing” standard of evidence is “necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with ‘a significant deprivation of liberty’ or ‘stigma.’” *Coleman v. Anne Arundel County Police Dept.*, 369 Md. 108, 145 (quoting *Santosky v. Kramer*, 455 U.S. 745, 756-57 (1982)).

² See Proposed Section 10-926(b)(1), *et seq.*

³ 471 Md. 657 (2020).

⁴ 420 Md. 339 (2011).

expression that has nothing to do with the underlying crime alleged. That saving grace will serve to ensure that our clients are not improperly prejudiced in a proceeding against them by the introduction of creative expression consistent with their First Amendment rights. In short, SB 1001 protects both due process and freedom of speech rights while also permitting the introduction of relevant evidence.

For these reasons, we urge the Judiciary Committee to favorably report SB 1001.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

Authored by: Hannibal Kemerer, Chief of Staff, 6 St. Paul Street, Baltimore, MD 21202.

Recording Academy - Maryland HB. 1346 - SB. 1001 S

Uploaded by: Montana Miller

Position: FAV



March 7, 2025

Support for HB. 1346 (Amprey) / SB. 1001 (Mautz), the PACE Act

AN ACT to amend the criminal procedure law, in relation to rules of evidence concerning the admissibility of evidence of a defendant's creative expression.

The Recording Academy ("Academy") is the leading organization representing thousands of individual music makers, including many artists, songwriters, and music producers in Maryland. Together, we whole-heartedly endorse and support **HB. 1346/SB. 1001, the Protecting Admissibility of Creative Expression (PACE) Act** introduced by Delegate Marlon Amprey and Senator Johnny Mautz. The PACE Act will make Maryland a national leader in protecting artistic and creative expression, with only two other states passing similar legislation to date.

Maryland has long been a source of musical inspiration and creativity from the legendary jazz of Billie Holiday to today's hip hop stars like Cordae and Logic. As an industry, music contributes \$1.4 billion to the state's GDP and supports more than 20,000 jobs. However, as the industry continues to blossom, courtrooms in Maryland are threatening to stifle creativity and artistic expression. In recent years, musical works have been used as evidence in criminal proceedings in Maryland, with prosecutors often claiming that aggressive or violent lyrics are indicative of an accused artist's actual behavior.

The PACE Act is a fair solution that addresses this growing prosecutorial trend by ensuring that music, literature, film, and other works of creative expression remain properly protected by the First Amendment. Specifically, the bill establishes an important balance by declaring that a defendant's creative or artistic works may not be used as evidence in a criminal matter unless it is determined by the court to be relevant, and thereby admissible. To overcome a presumption of inadmissibility a prosecutor must demonstrate that:

1. The defendant or respondent intended the creative expression to be literal, rather than figurative or fictional.
2. If the creative expression is derivative, the defendant intended to adopt the literal meaning of the creative expression as their own.
3. The creative expression refers to the specific facts of the alleged offense.
4. The creative expression is relevant to a disputed issue of fact.
5. The creative expression has a distinct probative value that cannot be provided by other admissible evidence.

The PACE Act does not prohibit the use of relevant lyrics in a criminal trial but will instead implement safeguards to ensure that all artists are able to express themselves freely without fear of reprisal from the justice system simply because of the content of their art or because of biases against their chosen art form.

To date, researchers and legal scholars have seen this practice apply, almost exclusively, to hip hop and rap. And while the legislation applies to any and every genre of music, one cannot ignore the detrimental impact the existing practice has had on Black and Brown artists practicing their craft. The imagery used in hip hop that reflects the real-world experiences of these artists have too often been used to bias juries in criminal proceedings. We know Johnny Cash did not shoot a man in Reno just to watch him die, but the same creative license is not afforded to hip hop artists.

The PACE Act (HB. 1346/SB. 1001) represents a crucial step in protecting the creative community and allowing the creative arts to continue to flourish in Maryland. The Academy urges your support.

Respectfully,

A handwritten signature in dark ink, appearing to read "T. Dupler", with a stylized flourish extending from the end.

Todd Dupler
Chief Advocacy & Public Policy Officer
Recording Academy

SB1001 - In Favor (Free Our Art).pdf

Uploaded by: Philip Walotsky

Position: FAV



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

SB 1001_FAV_Amanuel .pdf

Uploaded by: Yanet Amanuel

Position: FAV



Testimony for the Senate Judicial Proceedings Committee

March 11th, 2025

SB 1001- Criminal Procedure - Evidence - Protecting the Admissibility of Creative Expression (PACE Act)

YANET AMANUEL
PUBLIC POLICY
DIRECTOR

FAVORABLE

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GENERAL COUNSEL

The ACLU of Maryland urges support for SB 1001, which seeks to create needed guidelines on the admissibility of creative expression-based evidence in criminal proceedings. SB 1001 reinforces the legal protections guaranteed to all Marylanders by the First Amendment.

One of the primary legal issues SB 1001 addresses is the interpretation and relevance of creative expression, such as rap lyrics, in criminal proceedings. There is inherent ambiguity and subjectivity involved in interpreting artistic works, especially those rooted in cultural contexts such as rap music.¹ Without clear guidelines and criteria for assessing the intent and relevance of creative expression, there is a risk of misinterpretation and prejudice against defendants.

Another issue that SB 1001 combats is the potential for creative expression to be misused as evidence of guilt or criminal behavior. Throughout the country, and more importantly the state of Maryland, rap lyrics have been introduced as evidence in criminal trials to portray defendants as violent or dangerous individuals, without proper consideration of the artistic nature of the expression or the context in which it was created.² As recently as 2021, the Maryland Court of Appeals ruled rap lyrics against a defendant admissible, which ultimately led to a 50-year prison sentence for the defendant.³ SB 1001

¹https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2023-winter/lyrics-limine-rap-music-and-criminal-prosecutions/#52

² *Id.*

³Kutner, B. (2021, January 2). *Maryland Appeals Court allows rap lyrics to be used in murder trial*. Court House News. Retrieved March 7, 2025, from <https://www.courthousenews.com/maryland-appeals-court-allows-rap-lyrics-to-be-used-in-murder-trial/>

seeks to address this issue by requiring the court to make specific findings regarding the intent, relevance, and probative value of creative expression before admitting it as evidence. If there is no probative value to be gleaned from the creative expression in regard to the facts of the matter before the court, the evidence should not be admissible.

On First Amendment grounds, allowing instances of creative expression, such as rap lyrics, to be used against defendants in criminal proceedings could have a chilling effect on artistic expression, particularly within marginalized communities where rap music serves as a form of cultural expression and social commentary. The Maryland Court of Appeals has admitted as much with regard to rap lyrics and the “prejudicial effect that often accompanies their admission.” *Hannah v. State*, 420 Md. at 339. SB 1001 is needed in this state to ensure that the First Amendment right to creative expression is not infringed upon by our criminal justice system.

For these reasons we urge a favorable report on SB 1001.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

2025 SB1001 Testimony Against 2025-03-11.pdf

Uploaded by: Alan Lang

Position: UNF

Testimony Against SB1001

Honorable Senators

Please enter an unfavorable report against SB1001.

I am against

- Establishing 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;
- establishing that the creative expression of a defendant or respondent is admissible in juvenile proceedings for certain purposes; and
- defining 'creative expression' to mean the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols.

Maryland has enough problems with juvenile crime without making more excuses for their actions. Maryland should not alter the Maryland Rules of Evidence and make them less stringent than the Federal Rules of Evidence. All relevant evidence should remain admissible.

So please enter an unfavorable report against SB1001

Alan Lang
45 Marys Mount Road
Harwood, MD 20776
Legislative District 30B
410-336-9745
Alanlang1@verizon.net

March 11, 2025

MSAA UNF

Uploaded by: Caron Watkins

Position: UNF



Maryland State's Attorneys' Association

3300 North Ridge Road, Suite 185

Ellicott City, Maryland 21043

410-203-9881

FAX 410-203-9891

Rich Gibson
President

Steven I. Kroll
Coordinator

DATE: **March 10, 2025**

BILL NUMBER: **SB 1001**

POSITION: **Unfavorable**

The Maryland State's Attorneys' Association (MSAA) opposes Senate Bill 1001 and urges this Committee to issue an unfavorable report.

Animated by the perception that irrelevant rap lyrics penned by criminal defendants are routinely admitted against them in criminal proceedings, SB 1001 restricts the admissibility of relevant evidence if it qualifies as “creative expression.” The restrictions in the bill, however, are unnecessary, given the guardrails already established by the Supreme Court of Maryland in *Montague v. State*, 471 Md. 657 (2020), to prevent precisely the type of abuses that the bill’s proponents are concerned about. The State is already required to prove that the creative expression bears a “close nexus” to the offense – in essence, rapping about the specific crime – in order to overcome the danger of unfair prejudice. This is a significant burden, given what the Supreme Court of Maryland, in these cases, calls the “inherent prejudicial effect” of rap lyrics. *Id.* at 687.

Concerns that prosecutors are either regularly seeking introduction, or are able to easily introduce, unrelated rap lyrics to establish that the defendant has a propensity to commit violence (based on a misunderstanding of the creative and cultural history of the genre) simply aren’t grounded in the actual reality of criminal practice in Maryland. The Supreme Court of Maryland has already prohibited that – “rap lyrics that include ‘only general references glorifying violence’ . . . should be excluded because their ‘minimal probative value . . . is far outweighed by [their] unfair prejudicial impact’ as propensity evidence.” *Id.* at 687 (quoting *State v. Cheesboro*, 346 S.C. 526, 552 S.E.2d 300 (2001)).

MSAA urges this Committee to consider whether the evidence SB 1001 excludes is something that should be kept from judges and juries – in *Montague*, the defendant rapped specific details about his crime, and included a warning to potential witnesses who might be inclined to testify against him. *Id.* at 692-94. Had he said these words to someone else instead of rapping them, they would have been admissible – there is no reason to treat these two statements differently, as the Supreme Court of Maryland found after a thorough analysis.



Importantly, however, SB 1001 goes further than simply codifying the admissibility analysis from *Montague*. The language of the bill directly impairs the truth-seeking function of our adjudicatory process by withholding relevant and otherwise admissible evidence from the consideration of the finder of fact if there is any other evidence that goes to the same point. By requiring that “creative expression” has unique probative value prior to its admission, the bill creates a functionally insurmountable evidentiary threshold that applies to significantly more evidence than appears at first glance.

Imagine a “selfie” taken by a defendant, holding the murder weapon and standing over the victim. The defendant adds a filter and uploads the photo to their Instagram account. According to SB 1001, there is now a “creative expression” – the defendant used creativity or imagination in choosing the filter (arguably, the filter isn’t even necessary – the defendant used creativity and imagination in choosing the framing and angle of their photograph) – so, assuming the other requirements in the bill are met, the State must prove that the expression “has probative value that cannot be provided by other admissible evidence.” If there is other admissible evidence that is probative, and relevant to the point for which the State is seeking admission of this evidence (regardless of how tenuous or unpersuasive that other evidence is), then the photograph – compelling and probative evidence – is not coming in.

SB 1001 will apply in more routine contexts, as well, including routine police interviews. Arranging words, using creativity, could arguably constitute “creative expression” within the meaning of the statute. Does the bill exclude a confession simply because it includes a rhetorical device? Can a defendant sing their confession in the interrogation room to ensure its inadmissibility in court? This bill says that, potentially, the answer is yes, so long as there is any other evidence that would, or could, establish the same point, regardless of how compelling or believable that other evidence is on that point.

The defendant in *Montague* was already under the impression that rapping his confession would shield it from admissibility – at the end of the phone call where he raps the lyrics, an individual on the other end of the phone call warns him about including such details, and he says “I’m Gucci. It’s a rap. F—k they can do for—about a rap?” *Montague*, 471 Md. at 671. SB 1001 would make Mr. Montague’s misapprehension a reality in Maryland courts, a reality which should not come to pass. MSAA urges an unfavorable report.

SB 1001_HoCoSAO-Unfavorable_PACE Act 3.7.25.pdf

Uploaded by: Rich Gibson

Position: UNF



SENATE BILL 1001

RICH GIBSON, HOWARD COUNTY STATE'S ATTORNEY

Criminal Procedure - Evidence - Protecting the Admissibility of Creative Expression (PACE Act)

POSITION: UNFAVORABLE FOR SB 1001

March 7, 2025

My name is Rich Gibson, I am the State's Attorney for Howard County and the President of the Maryland State's Attorneys' Association (hereinafter MSA). I have been a prosecutor for twenty years and I am writing today to request an unfavorable report for Senate Bill 1001.

There is nothing unjust about holding individuals accountable for their criminal actions. Public safety is jeopardized when we impose artificial barriers that shield wrongdoers from the consequences of their choices. Senate Bill 1001 seeks to do just that—making it more difficult to use evidence created by an alleged perpetrator against them in court. This bill does not serve justice; rather, it obstructs the pursuit of truth and accountability.

Let me be clear: Prosecutors do not seek to stifle creative expression. Our sole aim is to ensure that those who violate the law are held responsible.

Creativity is not a crime—but committing a crime is.

Maryland's Supreme Court has already addressed this issue in *Montague v. State*, establishing a fair and rigorous framework for determining when creative expression, such as song lyrics, may be admissible in court. Under this ruling:

- Lyrics are admissible only if they have a direct and specific connection to an alleged crime, serving as proof of involvement rather than mere artistic expression.
- Even when that threshold is met, a judge must still determine that the probative value of the evidence outweighs any potential prejudice.
- If admitted, the jury—not the government—determines what weight, if any, to give that evidence.

This is not a theoretical issue. In Howard County, a defendant was charged with shooting at two people, killing one. While awaiting trial, he recorded a rap song describing the crime in detail, in stark contrast to his statements to police, in which he denied handling a firearm at all. The ability to present this self-created evidence in court helped us secure justice for the victim and the community.

What injustice does this bill seek to remedy? More importantly, **what injustices will this bill create?** Are we truly prepared to make it easier for violent offenders to evade responsibility simply because they choose to document their crimes through artistic mediums? Where is the evidence that Maryland has wrongfully convicted anyone based solely on their creative expression? **This is a solution in search of a problem.**

Worse yet, Senate Bill 1001 not only fails to address an actual issue, it actively creates new problems that threaten public safety. It would weaken prosecutors' ability to present relevant, self-incriminating evidence in cases where perpetrators voluntarily produce it. In doing so, it would tip the scales of justice in favor of those who harm others, rather than protecting victims and communities.

For these reasons, **the Maryland State's Attorneys' Association strongly urges an unfavorable report for Senate Bill 1001.**

SB 1001 Criminal Procedure - Evidence - Protecting

Uploaded by: Scott Shellenberger

Position: UNF

Bill Number: SB 1001

Scott D. Shellenberger, State's Attorney for Baltimore County

Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF SENATE BILL 662
CRIMINAL PROCEDURE – EVIDENCE – PROTECTING THE ADMISSIBILITY OF
CREATIVE EXPRESSION

I write in opposition to Senate Bill 1001 that limits the admissibility of creative expression evidence. In today's world of prosecution of criminal cases the use of social media is very prevalent whether it is Facebook, Snapchat, Instagram, etc.

Detectives and prosecutors are constantly scanning these sites for evidence to support the identity of a criminal and possible intents behind their actions. For instance the news is filled with judicial rulings on the admissibility of lyrics to help prove a criminal case.

Senate Bill 1001 is unnecessary. In order to be admissible a defense attorney can object and a judge must rule that the item is relevant and linked to an issue in the case.

Maryland Courts have begun to address the standards necessary to authenticate social media evidence. In *Griffin v State*, 419 MD 343.(2011) the Court of Appeals emphasized the need to prove evidence was not done by others. In *Sublet v State*, 442 MD 632(2015) the court used the reasonable Juror Standard to determine admissibility.

To the defendant on trial, these judicial standards have stood the test of time concerning admissibility and will continue to do so even as new forms of expression emerge.

I urge an unfavorable report.

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Position: UNF

HON. STACY A. MAYER
CIRCUIT COURT
JUDGE
BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 1001
Criminal Procedure – Evidence – Protecting the Admissibility of
Creative Expression (PACE Act)
DATE: February 19, 2025
(3/11)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 1001. This bill would provide that in any criminal proceeding or juvenile proceeding, the “creative expression” of a defendant or respondent is not admissible against the defendant/respondent unless the court finds, by clear and convincing evidence, certain things.

The Judiciary recognizes the bill’s attempt to respond legislatively to the Supreme Court of Maryland’s decision in *Montague v. State*, 471 Md. 657 (2019), and takes no position on the stated intent to protect the admissibility of creative expression. That policy prerogative is appropriately reserved for the legislature. The Judiciary would note that the bill appears to cover all expression that is not literal, which could include common use of analogies and metaphors, and preclude all manner of statement from admission – more than songs, poems, and artistic expression. A litigant may raise the issue of admissibility of any analogy or metaphor thereby requiring an additional evidentiary hearing, which would delay trials on their merits.

cc. Hon. Johnny Mautz
Judicial Council

Legislative Committee
Kelley O'Connor