Testimony - Maryland House Bill 1356
Maryland Employee Civic Activity and Lawful Expression Protection Act
Favorable
Government, Labor, and Elections Committee
March 3, 2026
Law Professors of Labor, Employment, and Constitutional Law

Honorable Chair Wells, Vice Chair Kerr, and Members of the Committee:

We write in support of House Bill 1356. We offer this testimony in our capacity as law professors and experts of labor and employment law and constitutional law. The views expressed are our own.

I. The Bill Furthers Maryland's Important Interests in Protecting Workers' Rights

House Bill 1356 advances a core and longstanding state interest: ensuring that workers are free from coercion and retaliation in the exercise of their lawful civic and political rights. Employment is not merely a contractual exchange. It is a relationship characterized by substantial power asymmetry. Employers possess the authority to terminate, discipline, demote, and otherwise materially affect an employee's livelihood. When that authority is used to compel political conformity or punish lawful civic engagement, the consequences extend beyond the workplace and into the democratic sphere.[1] HB 1356 addresses that risk in a measured and familiar way. It does not regulate speech content. It does not forbid employer expression. Instead, it prohibits adverse employment action taken because an employee engages in lawful civic or political activity—or refuses to participate in employer-favored political messaging.

States have long exercised their police power to prohibit retaliatory employment practices. Anti-retaliation provisions are central features of civil rights statutes, wage-and-hour laws, whistleblower protections, and workplace safety regimes. Title VII of the Civil Rights Act of 1964, for example, broadly protects "opposition" to discriminatory practices. 42 U.S.C. § 2000e-3(a); *see also* Md. Stat. § 20-606(f) (protecting whistleblowing and other opposition to discriminatory practices). States across the nation have laws protecting employees from retaliation for political and civil activity, expression, and affiliation, with some such laws dating back to the 1860s. *See, e.g.*, S.C. Stat. § 16-17-500 (first enacted in 1868 and prohibiting termination of employment "because of political opinions or the exercise of political rights"); Cal. Lab. Code § 1101 (enacted 1915, prohibiting retaliation against employees for political activity or affiliation); citations collected in Eugene Volokh, *Private Employees' Speech and Political Activity*, 16 Tex. Rev. L. & Pol. 295 (2012). HB 1356 fits squarely within that tradition. It sets a minimum labor standard designed to protect workers from coercive uses of economic power in matters of conscience and public participation. In so doing, it strengthens workplace fairness and democratic governance, both of which are indisputable state interests.

[1] For discussion of the prevalence and dangers of these dynamics, see Elizabeth Anderson, *Private Government* (2017) and Alexander Hertel-Fernandez, *Politics at Work* (2018).

II. The Bill Furthers First Amendment Values and Is Consistent with First Amendment Doctrine

HB 1356 advances, rather than undermines, First Amendment principles. The First Amendment protects not only the right to speak but also the freedom of belief and the right to refrain from compelled participation in ideological expression.

This bill does not silence employers. Employers remain entirely free to express their views on political, civic, or union-related matters. They may communicate their positions through meetings, written materials, or other channels. What they may not do is impose discipline or other adverse consequences on employees for declining to participate in or endorse those views. As such, the bill regulates retaliatory conduct, not speech. *See United States v. O'Brien*, 391 U.S. 367, 376 (1968) ("We cannot accept the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea"). Consistent with First Amendment doctrine, it does not restrict viewpoints, nor does it single out particular positions for suppression. It bars employer retaliation in order to protect employees' political speech, beliefs, and association, and protects employees from being compelled—under threat of economic penalty—to engage in expressive activity. It is consistent with settled First Amendment doctrine allowing states to restrict compelled audition in settings, such as homes, public transit, and hospitals where the hearer cannot walk away from unwanted speech. *Rowan v. United States Post Office*, 397 U.S. 728 (1970); *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *Frisby v. Schultz*, 487 U.S. 474 (1988).

Indeed, far from burdening speech, the bill enhances the integrity of public discourse by ensuring that participation in political life is voluntary rather than coerced. That is fully consistent with the First Amendment's central purpose of safeguarding free speech and independent democratic choice and enabling public participation in democratic governance. *See N.Y. Times v. Sullivan*, 376 U.S. 254, 273–80 (1964); *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

III. The Bill Is Consistent with Labor and Employment Law Doctrine

Finally, HB 1356 is consistent with established labor and employment law principles. The Supreme Court has long recognized that states may enact generally applicable employment standards—including anti-retaliation protections—without running afoul of federal labor law preemption. *See Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724 (1985); *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1 (1987). HB 1356 functions as a neutral minimum labor standard governing employer conduct within the employment relationship. It operates independently of federal labor law.

The Supreme Court has held that, in most circumstances, states may not regulate conduct that is protected or prohibited or arguably protected or prohibited by the National Labor Relations Act, *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959), nor may they regulate conduct that Congress "left 'to be controlled by the free play of economic forces.'" *Machinists v. Wisconsin Employment Rel. Comm'n,* 427 U.S. 132, 140 (1976). This bill does neither. It does not regulate union organizing tactics, collective bargaining processes, or protected concerted activity. It also does not prohibit employer speech, protected by Section 8(c) of the NLRA. 29 U.S.C. § 158 (c). It simply prevents employers from retaliating against employees for lawful civic or political choices. Moreover, as discussed above in Section I, the bill advances

state interests in protecting residents from employer retaliation for lawful political speech, which are "deeply rooted in local feeling and responsibility." *Garmon*, 35 U.S. 243-44. *See also Sears, Roebuck & Co. v. Carpenters,* 436 U.S. 180, 183, 188-89 (1978) (noting that "inflexible application of [preemption] doctrine is to be avoided, especially where the State has a substantial interest… that does not threaten undue interference with the federal regulatory scheme" (quoting *Farmer v. Carpenters*, 430 U.S. 290, 296–97 (1977))); *Vaca v. Sipes*, 386 U.S. 171, 180 (1967) (emphasizing that preemption depends on the nature of the interests in question and the effect on national labor policy).

IV. Conclusion

House Bill 1356 reflects a balanced and constitutionally sound approach to protecting workers' civic autonomy. It preserves employers' speech rights while protecting employee conscience and rights of democratic participation. The bill falls squarely within Maryland's longstanding authority to prohibit retaliatory and coercive employment practices.

For these reasons, we respectfully urge the Committee to report the bill favorably. Thank you for your consideration.

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