

Chair Bartlett and Honorable Members of the Judiciary 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 HB 687, the Protecting Artists' 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.

I say this 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, 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.

But, Moose's case is apt for more than just demonstrating how unscrupulous law enforcement officers and prosecutors maliciously promote unsubstantiated evidence against defendants. This case also gives us an opportunity to truly understand the 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 should 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 toolbox. The PACE Act merely requires that evidence in the form of a 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 HB 687.