HANSEL LAW, PC
TRIAL AND APPELLATE COUNSEL

KRISTEN M. MACK
Attorney at Law

2514 North Charles Street
Baltimore, Maryland 21218
www.hansellaw.com

Direct Dial: 301-461-1040
Facsimile: 443-451-8606
kmack@hansellaw.com

NO KINGS ACT (SB0346/HB0332) POSITION PAPER: FAVORABLE *WITH AMENDMENTS*

These bills are meant to allow civil rights lawyers like us to protect Marylanders from ICE atrocities by permitting the type of remedy in State law that the US Supreme Court has recently denied in federal courts. With a few small changes, we can achieve this lofty and important goal, but ***the bills as worded will unintentionally strike an unbearable blow to Maryland civil rights law***.

For the first time in the history of Maryland (or any other state so far as we are aware), these bills – as currently worded – would enshrine the federal "qualified immunity" doctrine in the state code. "Qualified immunity" is an odious doctrine borne of racism; it was first adopted to deny relief to Freedom Riders during the civil rights movement. This doctrine, which has never been recognized or adopted by the Maryland General Assembly, immunizes even the most vile unconstitutional misconduct unless a plaintiff can show that virtually the exact wrongdoing has been previously ruled unconstitutional.

The diverse, bipartisan coalition of organizations opposed to qualified immunity includes the American Civil Liberties Union, the NAACP, the Civil Rights Corps, the Drug Policy Alliance, the Leadership Conference on Civil and Human Rights, the Cato Institute, the Institute for Justice, Americans for Prosperity, the Constitutional Accountability Center and the Law Enforcement Action Partnership. Even Ben and Jerry, of ice cream fame, have campaigned tirelessly against qualified immunity (QI).

Enshrining QI in Maryland law is particularly dangerous because new scholarship and research has revealed that federal civil rights statutes were never intended to permit immunity. This Harvard journal article published just this month demonstrates why qualified immunity should be struck down in federal court: https://journals.law.harvard.edu/jlpp/wp-content/uploads/sites/90/2026/01/49.Nelson_Jaicomo.pdf. If the new effort to strike down QI based on this scholarship is successful, but Maryland has statutorily adopted QI in the meantime, we will have set civil rights remedies in the State back by decades.

***The fix is simple*: replace any reference to qualified immunity with language reserving "any defense of immunity otherwise applicable at the time the action hereunder accrues."** This amended language preserves the current status quo, while permitting future challenges to qualified immunity in state and federal courts. Equally importantly, Maryland should avoid giving any credence to this racist doctrine.

There are a few other technical fixes to better marry the bills to existing Maryland law. These include: 1) exempting these claims from the damages cap in Courts and Judicial

Proceedings Article 11-108 (this change keeps the claim in line with federal law where there is no such cap and is necessary for the deterrent effect of the bills to be truly realized); 2) clarifying that these bills do not alter or amend the existing statutory schemes for governmental liability under the state and local government tort claims acts; and 3) a severability clause to strengthen the statute against any challenges.

All of these changes, which we urge the General Assembly to *please* adopt, are reflected in the edited bill draft below. Thank you for continuing the crucial fight for our rights and our Constitution!

Article – Courts and Judicial Proceedings

16 SUBTITLE 27. ACTION FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS.

17 3–2701.

18 IN THIS SUBTITLE, "LAW" INCLUDES:

19 (1) THE U.S. CONSTITUTION;

20 (2) THE MARYLAND DECLARATION OF RIGHTS;

1 (3) THE MARYLAND CONSTITUTION;

2 (4) THE LAWS OF THE UNITED STATES; AND

3 (5) THE LAWS OF MARYLAND.

4 3–2702.

5 (A) (1) AN AGGRIEVED PARTY MAY BRING AN ACTION AGAINST AN

6 INDIVIDUAL WHO, UNDER COLOR OF LAW, DEPRIVES THE AGGRIEVED PARTY OR

7 CAUSES OR ALLOWS THE AGGRIEVED PARTY TO BE DEPRIVED OF A RIGHT, A

8 PRIVILEGE, OR AN IMMUNITY SECURED BY THE U.S. CONSTITUTION.

9 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN AN ACTION

10 UNDER THIS SECTION, AN AGGRIEVED PARTY MAY SEEK DAMAGES AND

11 DECLARATORY AND INJUNCTIVE RELIEF.

12 (3) IN AN ACTION UNDER THIS SECTION AGAINST A JUDICIAL

13 OFFICER, INJUNCTIVE RELIEF IS AVAILABLE ONLY IF A DECLARATORY JUDGMENT

14 IS VIOLATED OR DECLARATORY RELIEF IS UNAVAILABLE.

~~15 (B) (1) A DEFENDANT IN AN ACTION UNDER THIS SECTION MAY ASSERT A~~

~~16 DEFENSE OF ABSOLUTE OR QUALIFIED IMMUNITY TO THE SAME EXTENT AS A~~

~~17 PERSON SUED UNDER 42 U.S.C. § 1983 UNDER LIKE CIRCUMSTANCES.~~

(B~~2~~) THIS SECTION MAY NOT BE CONSTRUED TO WAIVE OR ABROGATE ANY DEFENSE OF ~~SOVEREIGN~~ IMMUNITY OTHERWISE APPLICABLE AT THE TIME THE ACTION HEREUNDER ACCRUES~~AVAILABLE~~.

(C) THIS SECTION MAY NOT BE CONSTRUED TO ABROGATE: (1) ANY LOCAL GOVERNMENT LIABILITY UNDER COMMON LAW OR MARYLAND STATUTE FOR THE ACTIONS OF LOCAL GOVERNMENT EMPLOYEES, OR

(2) ANY STATUTORY WAIVER OF ANY DEFENSE, INCLUDING IMMUNITY.

(D) SECTION 11-108 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE SHALL NOT APPLY TO AN ACTION UNDER THIS SECTION.

(E~~C~~) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A COURT MAY AWARD REASONABLE FEES AND COSTS, INCLUDING ATTORNEY'S FEES AND EXPERT WITNESS FEES, TO A PREVAILING PLAINTIFF UNDER THIS SECTION.

(2) A COURT MAY NOT AWARD FEES OR COSTS UNDER THIS SECTION AGAINST A JUDICIAL OFFICER UNLESS THE JUDICIAL OFFICER ACTED CLEARLY IN EXCESS OF THE JUDICIAL OFFICER'S JURISDICTION.

(F~~D~~) AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 3 YEARS AFTER THE CAUSE OF ACTION ACCRUES.

– (G) THIS SECTION SHOULD BE INTERPRETED IN FAVOR OF PROVIDING A REMEDY TO THE GREATEST EXTENT PERMITTED UNDER THE UNITED STATES CONSTITUTION BUT IF ANY PROVISION OF THIS SECTION OR THE APPLICATION OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THIS SECTION AND THE APPLICATION OF THE PROVISION TO ANY OTHER PERSON OR CIRCUMSTANCE SHALL NOT BE AFFECTED BY THAT INVALIDATION.

Very truly yours,
HANSEL LAW, PC

Kristen M. Mack