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**Testimony for the House Appropriations Committee  
March 13, 2018**

**HB 1788 – Public Ethics Law – Official Duties – Violations of Law**

**SUPPORT**

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The American Civil Liberties Union of Maryland (ACLU) supports HB 1788, which provides an added layer of protection for certain current and prospective employees in state government by providing an enforcement mechanism for government agencies that discriminate in employment decisions.

Since 2007, Maryland law has prohibited the Governor’s Appointments Office from intruding in the hiring, firing and promotions of certain “at-will” employees within state departments.<sup>1</sup> At-will hires work for the state at a grade 18 or above in the Maryland employment scale.<sup>2</sup>

However, it has recently come to our attention that the Governor’s Appointment Office has been involved in the hiring of at-will, non-political employees.<sup>3</sup> It is reported that some of these individuals were required to complete a form on the Appointment’s Office website<sup>4</sup> that is reserved for political appointees to boards and commissions. The form asks a number of questions related to politics,

<sup>1</sup> Md. Code Ann., State Government, §8–3A–01.

<sup>2</sup> See The Washington Post, *Maryland bill addresses questions about state hiring policy* (March 9, 2018), available at [https://www.washingtonpost.com/local/maryland-bill-addresses-questions-about-state-hiring-policy/2018/03/09/339e6342-23da-11e8-946c-9420060cb7bd\\_story.html?utm\\_term=.e89a8a69421f](https://www.washingtonpost.com/local/maryland-bill-addresses-questions-about-state-hiring-policy/2018/03/09/339e6342-23da-11e8-946c-9420060cb7bd_story.html?utm_term=.e89a8a69421f) (“[a] physician or pathologist at the Office of the Chief Medical Examiner, for example, would be above grade 18... Those positions are considered at-will, but not necessarily under the hiring purview of the Governor’s Appointments Office.”)

<sup>3</sup> See The Washington Post, *Maryland bill addresses questions about state hiring policy* (March 9, 2018), available at [https://www.washingtonpost.com/local/maryland-bill-addresses-questions-about-state-hiring-policy/2018/03/09/339e6342-23da-11e8-946c-9420060cb7bd\\_story.html?utm\\_term=.e89a8a69421f](https://www.washingtonpost.com/local/maryland-bill-addresses-questions-about-state-hiring-policy/2018/03/09/339e6342-23da-11e8-946c-9420060cb7bd_story.html?utm_term=.e89a8a69421f) (reporting that a 2017 email from the Maryland Department of Health detailed “a new process for at-will hiring, with a greater emphasis on using the Governor’s Appointments Office”).

<sup>4</sup> See <https://govapps.md.gov/appointments/apply/>.

political views, and highly-sensitive information, including 1) links to all social media profiles; 2) names of all organizations on whose behalf the individual has lobbied; 3) groups or individuals who would oppose the individual's appointment; 4) whether the individual has been identified, in last 5 years, in person or by organizational membership, with any controversial issue; 5) every time in last 5 years the individual submitted his or her views to the news media or any governmental body on a controversial issue; 6) anything in the individual's life that would cause controversy for you or the governor; 7) every organization, club, or association that the individual has been affiliated with in the last 5 years. Not only would asking these questions of at-will, non-political employees or prospective employees be a violation of the 2007 law,<sup>5</sup> it would also be a clear violation of First Amendment law.<sup>6</sup> Considering these violations are ongoing and potentially escalating, the 2007 law did not provide sufficient remedies to violations of the law, thus leaving the government open to continued discriminatory hiring practices. HB 1788 add this layer of protection by enabling the State Ethics Commission to investigate claims of the Governor's Appointments Office involvement in the hiring and promotions of state employees.<sup>7</sup>

It is clear the 2007 inadequately addresses the problem of politicizing the hiring of non-policymaking, non-political appointees. HB 1788 helps to address this problem.

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<sup>5</sup> Md. Code Ann., State Government, §8-3A-01.

<sup>6</sup>The First Amendment to the United States Constitution and Article 40 of the Maryland Declaration of Rights generally protects the right of citizens to engage in political speech and activities. U.S.C.A. Const. Amends. 1; Md. Const., Art. 40; *Branti v. Finkel*, 445 U.S. 507, 100 S. Ct. 1287, 63 L. Ed. 2d 574 (1980) (holding that the policymaker or confidential employee exception to the prohibition against patronage dismissals depended not on the employment position's job title but on "whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved"); *O'Hare Truck Serv. v. City of Northlake*, 518 U.S. 712, 717 (1996) (The government ordinarily may not base employment decisions upon an employee's exercise of First Amendment rights).

<sup>7</sup> A letter from the Attorney General's office states that "[i]t is inconsistent with State law for an agency to broadly delegate all appointment authority to the Appointments Office." Op. Atty. Gen. Md., Aug. 11, 2017.