

**Testimony in Support of HB 469** Employment Discrimination - Exceptions - Religious Activities of Religious Employers || Maryland House Economic Matters Committee || February 14, 2024

Chair Wilson, Vice-chair Crosby, and the Members of the House Economic Matters Committee:

We write in strong support of HB469. In August 2023, the Maryland Supreme Court issued its ruling in [John Doe v. CRS](#), which expanded the scope of the existing religious exemption from Maryland's employment discrimination laws. Under the Maryland Fair Employment Practices Act (MFEPA), religious employers need not abide by employment antidiscrimination provisions "with respect to the employment of individuals of a particular religion, sexual orientation, or gender identity" if that employee "perform[s] work connected with the activities of the religious entity."

As the law was previously understood, religious employers could only discriminate against certain employees who occupied a "ministerial" position. A "ministerial" employee is responsible for teaching or proselytizing the faith in their hired role with the religious employer. This prior understanding of Maryland law was in line with the US Constitution's ministerial exception to similar federal employment laws, which strikes the appropriate balance between the right of religious employers to hire personnel in accordance with their faith practices and the right of employees to be free from discrimination on account of their protected characteristics. The First Amendment's implied ministerial exception "precludes application of [anti-discrimination] legislation to claims concerning the employment relationship between a religious institution and its ministers." *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188 (2012). The federal constitutional exception "applies to any employee whose primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship." *Archdiocese of Wash. v. Moersen*, 399 Md. 637, 644 (2007) (internal quotation marks and citation omitted)

However, in *John Doe v. CRS*, the Maryland Supreme Court held that Maryland's discrimination exception is applicable to any employee whose duties "directly further the core mission or missions of the religious entity," regardless of whether those duties are secular or religious. This interpretation represents a significant shift in our understanding of the religious exception as it was intended by the General Assembly during previous legislative updates to MFEPA. By the Court's own admission, the new understanding is also much broader than the exception provided by the US Constitution. Rather than simply affirming that religious institutions have the discretion to hire who they want for their priests, imams, chaplains, rabbis, ministers, religious educators, and others responsible for teaching and carrying out the faith, the Maryland Supreme Court's ruling allows a religious employer to discriminate against anyone whose work in some way directly furthers the core mission of the institution. To quote the Court: "As we see it, the narrowest reasonable reading of this language is that, in order for the exemption to apply, the employee's duties must directly further the core mission(s) – religious or secular, or both – of the religious entity."

In practice, this exception could now apply to almost everyone working for any religious employer, like a religiously affiliated hospital or charitable organization, regardless of whether they are a "minister" of the faith. Under MFEPA after the *Doe v. CRS* decision, religious employers can discriminate against people for their religion, sexual orientation, or gender identity in every role "connected with the activities of the religious entity." This includes data entry staff like Mr. Doe, to fundraising and development personnel, to administrative support whose secular work in some way directly furthers an entity's core mission. So long as an employee's work directly furthers a core mission of the religious entity when considering all the circumstances, even a nurse, secretary, or photographer could be subject to employment discrimination by a religious entity and have no state level legal protection or recourse due to the broadened MFEPA exception.

HB 469 simply brings the existing exemption to Maryland's employment discrimination laws back in line with the federal constitution. All the bill does is clarify that the MFEPA exception for religious employers is only applicable to employees whose work is connected to the entity's "religious activities," rather than to all of an entity's "activities" as is the language of current law-- language which the Doe Court said "encompasses a religious organization's secular ventures." Under HB469, religious employers will still have the right under Maryland law to choose their ministers, teachers, and other employees whose work is to carry out the "religious activities of the entity" in accordance with their particular beliefs. The Doe court even alluded to the fact that inserting the word "religious" before "activities" in the current MFEPA exception would make it "arguably coextensive with, or at least closely related to, the First Amendment ministerial exception."

HB469 protects individual Marylanders' statutory rights to be free from employment discrimination and works in conjunction with our state constitution's guarantee in Article 36 that Marylanders' civil rights shall not be injured "under color of religion." HB 469 thus codifies the appropriate federal Constitutional balance between a religious employer's right to practice their faith through employment decisions. HB 469 is a necessary step to clarify the General Assembly's intent, balance the interests of religious employers and their protected employees, and ensure that Maryland's public policy goals of eliminating workplace discrimination are fully realized.

For these reasons we urge you to give HB469 a favorable report.

Respectfully submitted,

ACLU of Maryland

Advance Maryland

Disability Rights Maryland

FreeState Justice

Public Justice Center

Rev. Emily E. Ewing, Delaware-Maryland Synod, Evangelical Lutheran Church in America