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Testimony of FreeState Justice -- IN SUPPORT OF HOUSE BILL 602

To the Honorable Chair Wilson, Vice Chair Crosby, esteemed House Economic Matters committee members:

FreeState Justice—Maryland's LGBTQ+ pro-bono legal services and policy advocacy organization—emphatically supports the concept behind HB602. Nobody should be discriminated against in the workplace because of their sexual orientation.

However, we have some serious concerns with the limited scope of the bill. This legislation was drafted as a response to *John Doe v. CRS*, decided by the Maryland Supreme Court this past August, which weakened the statutory protections afforded to Marylanders under every state-level antidiscrimination clause. **HB602 does not go far enough to fix the problems created by the case.**

In footnote 14 of the decision, the court said "The General Assembly's practice, as we understand it, has been to specifically identify the categories it intends to protect in antidiscrimination statutes." In a nutshell, the court held that if a protected category of individual is not specifically enumerated in a given antidiscrimination clause, the omitted category does not get the protections of the clause, even if they are protected elsewhere.

Though the case was filed because of alleged sexual orientation discrimination in the workplace, the *Doe* ruling is applicable to every single protected category currently enumerated anywhere in state law, and to all antidiscrimination language proposed in future sessions.

We conducted a survey of antidiscrimination clauses and found that the enumerations of protected classes are extremely inconsistent-- not just for sex, sexual orientation, and gender identity, but also disability, religious belief, and race, among others. Under *John Doe v. CRS*, these inconsistencies mean that there are now significant holes in the antidiscrimination framework within state law. **While HB602 plugs one hole created by the decision, it does not at all come close to remedying the significant problem in our antidiscrimination laws created by *John Doe v. CRS*.**

We have been calling on the General Assembly to take swift and comprehensive action to rectify this far-reaching decision. Marylanders are CURRENTLY without legal protections for many forms of discrimination, leaving them exposed to serious harms with no state-level legal recourse. The burden of this discrimination will fall on the most marginalized, who we know have the fewest resources to respond.

Absent a comprehensive response, any other current or future piecemeal attempts to remedy *Doe* like HB602 will only perpetuate the problem of patchwork antidiscrimination language that the decision created. HB1397/SB590, coming before this committee on March 6, attempts to provide the comprehensive solution *Doe* demands. **Without HB1397/SB590, all 6 million Marylanders' legal shield from discrimination will continue to have significant holes in it—HB602 does not fix that problem.**

The General Assembly must ensure that all people in every protected category are not subject to discrimination based on their protected characteristics in any context. **We are favorable on HB602 because we believe nobody should be discriminated in employment because of their sexual orientation, but it is imperative to realize HB602 will not solve the problems that *Doe V. CRS* created—only a comprehensive legislative response will.**