



January 21, 2025

Maryland Senate
Energy, Education, and the Environment Committee
Room 2 West Wing
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401-1911

Re: Maryland Senate Bill 234 (Homeless Shelter Certification)

Dear Chairperson Feldman and Members of the Committee:

Alliance Defending Freedom (ADF) is one of the leading Christian law firms committed to protecting religious freedom, free speech, marriage and the family, parental rights, and the sanctity of life. It is one of the nation's most respected and successful United States Supreme Court advocates, playing various roles in 74 Supreme Court victories. Since 2011, ADF has represented parties in 15 victories at the Supreme Court. These victories have been on behalf of pastors, churches, religious organizations, college students, family-owned businesses, pro-life pregnancy centers, and many others.

In addition, ADF routinely provides legal analysis of proposed legislation and its impact on constitutionally protected freedoms. The purpose of this letter is to share our concerns about the legality of Senate Bill 234, pertaining to the certification of homeless shelters.

Under S.B. 234, “[a]n operator of a homeless shelter may not deny admission or services to any homeless individual because of the individual’s . . . sexual orientation [or] gender identity.” *See* S.B. 234, § 1 (to be codified at Md. Code Ann. Housing & Community Development § 6-1405(D)).

Many religious individuals and organizations hold faith-informed views about marriage, sexuality, and the distinction between the sexes. They believe that marriage is an exclusive union between one man and one woman. They believe that sexual relations outside such a marriage are impermissible. They believe that God created humanity male and female, and that presenting as the opposite sex or attempting to somehow change to the opposite sex is morally problematic.

These views may also be shared by secular shelters that recognize the biological distinctions between females and males and want to ensure that females using their facilities are not forced to share intimate spaces with males.

Although both faith-based and secular homeless shelters provide services to all, shelters holding such religious or biologically-based views may not be able to comply in good conscience with potential interpretations of § 6-1405(D). For example, a shelter for women might be unwilling to permit a man to share sleeping space with women (many of whom may have been subjected to physical and sexual abuse by men), even if he identifies as a woman. [*See Downtown Hope Center v. Municipality of Anchorage*](#), No. 3:21-cv-00155 (D. Alas. filed Jun. 20, 2021).

Along the same lines, a co-ed shelter might assign individuals to showers, locker rooms, and restrooms based on biological sex rather than gender identity. And many individuals and organizations hold that their convictions prevent them from using pronouns that are inconsistent with an individual's biological sex. Finally, some shelters reserve sleeping facilities for married couples to opposite-sex couples.

Some courts and administrative enforcement officials have taken the erroneous view that bans on gender identity and sexual orientation discrimination forbid individuals and organizations from living out these sincerely held convictions. It is reasonable to be concerned that the Department of Housing and Community Development and Maryland courts might interpret the language of S.B. 234 in this fashion. If they do, they will be violating the constitutional rights of those who follow their beliefs on these issues. *See, e.g., Vlaming v. West Point Sch. Bd.*, 895 S.E.2d 705 (Va. 2023). *See also 303 Creative v. Elenis*, 600 U.S. 570 (2023); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617 (2018).

Accordingly, we respectfully recommend that the Committee (1) insert language permitting shelters to maintain separate sleeping quarters, restrooms, showers, and changing facilities, (2) add a robust religious exemption that ensures religious nonprofits are free both to employ those who share their religious beliefs and to operate consistent with those beliefs, and (3) add protections for the free speech of shelters and their organizations. Doing so would avoid constitutional violations and protect fundamental freedoms of speech and religious exercise for these religious organizations.

We also note that the General Assembly enacted S.B. 1107 just last year. In its original form, S.B. 1107 was substantially similar to S.B. 234. However, the bill was significantly amended before adoption, requiring the Department of Housing and Community Development to undertake a study on the establishment of a homeless shelter licensing program. S.B. 1107 requires that the study report its findings and

recommendations to the Assistant Secretary of the Department's Homeless Solutions Division.

The Department of Housing and Community Development very recently completed "[Maryland Homeless Shelter Certification Recommendations Phase 1 Report](#)" pursuant to S.B. 1107. The report indicates that the Department will undertake "Phase 2" from January to April, conducting "in-depth focus groups, interviews, and surveys on the Phase 1 Report findings and recommendations."

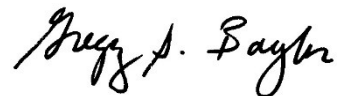
The report further states that "[t]his process will include an opportunity for every homeless shelter in the state to proactively self-assess and report to DHCD how specific Phase 1 Report recommendations would impact the operation of their specific program model and facility." It declares that "DHCD will utilize feedback collected during Phase 2 to subsequently update and republish this report with revised recommendations."

Given the tentative nature of the Phase 1 report and DCHD's stated intention to undertake significant additional efforts to fulfill its obligations under S.B. 1107, it would be premature to enact S.B. 234 at this time.

We respectfully request that the Committee take these concerns into account as it considers the bill.

Thank you in advance for your consideration.

Respectfully,

A handwritten signature in black ink, reading "Gregory S. Baylor". The signature is written in a cursive, flowing style.

Gregory S. Baylor
Senior Counsel