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February 7, 2022

The Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

Testimony of FreeState Justice

IN SUPPORT OF

SB377: Marriage Records – Name Change

To the Honorable Chair William C. Smith, Jr., Vice Chair Jeff Waldstreicher, and esteemed members of the Judicial Proceedings Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

FreeState Justice's identity documents practice, which centers on helping transgender Marylanders obtain legal name changes and update their identity documents, is a cornerstone of our legal advocacy work. Over the past decade, FreeState Justice and our panel of pro bono attorneys has helped hundreds of trans Marylanders update their identity documents.

Having accurate and affirming identity documents is critical to navigating through our world. Being forced to present inaccurate ID that outs you as transgender can lead to awkward, tense, and ultimately unsafe situations. You never know how someone will react when they realize you are trans, or how others around you

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who overhear will respond. ID that outs you as trans can also contribute to discrimination in employment, housing, and other areas.

We write today in support of Senate Bill 377, which builds on the important legislation Maryland has adopted over the past decade to allow transgender Marylanders to update their identity documents by creating a procedure for Marylanders who have changed their names—whether they are transgender or not—to update their names on their marriage certificates, something for which there is no established process under current law.

While they are used less frequently as ID documents than driver's licenses or birth certificates, marriage records are required on a routine basis and in a variety of circumstances to establish that a spousal relationship exists. Marriage certificates are, for instance, often required by employers and by government agencies when establishing benefits eligibility, e.g., for health insurance.

Without updated marriage certificates, transgender Marylanders are required to out themselves or their partners, these interactions an opportunity for discrimination. Employers, landlords, school officials, and others often start acting differently once they realize the individual—or their spouse—is transgender.

Unfortunately, there is currently no official or standardized procedure for issuing new marriage certificates after a party to the marriage has transitioned or even simply changed their name. This lack of a procedure leads to significant confusion, not only among transgender Marylanders seeking to update their marriage certificates, but also among county clerks asked to do so.

Transgender Marylanders who have tried to update their marriage certificates are routinely told that doing so is impossible. County clerks have even been known to tell people that the only way to do it is to get divorced and then remarry, an astonishing suggestion that flies in the face of Maryland's public policies in favor of both marriage and judicial economy. (It is also unclear that a couple attempting to divorce under these circumstances would have grounds to do so under state law.)

In limited cases, Maryland courts have issued one-off orders to county clerks to issue a new marriage certificate. There is, however, no statute, court rule, or even appellate case governing that process, and both the general public and the county clerks are largely unaware that this is an option at all. Even if it were well-publicized, however, it is not clear why transgender Marylanders should be required to obtain two separate court orders to update their marriage certificates, and judicial economy argues in favor of a single unified process.

FreeState Justice strongly believes there should be a process for obtaining an updated marriage certificate that does not out one of the parties as transgender without their consent. By creating a process whereby transgender individuals can update their marriage, Senate Bill 377 would protect the privacy and safety of trans Marylanders and their families, reduce the likelihood that they will be exposed to unnecessary discrimination and violence, and create a standardized system for the county clerks.

For these reasons, FreeState Justice urges a favorable report on Senate Bill 377.