

**CANDACE McLAREN LANHAM**  
*Chief Deputy Attorney General*



**CHRISTIAN E. BARRERA**  
*Chief Operating Officer*

**CAROLYN A. QUATTROCKI**  
*Deputy Attorney General*

**ZENITA WICKHAM HURLEY**  
*Chief, Equity, Policy, and Engagement*

**LEONARD HOWIE**  
*Deputy Attorney General*

**ANTHONY G. BROWN**  
*Attorney General*

**PETER V. BERNS**  
*General Counsel*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.  
(410) 576-7036

WRITER'S DIRECT DIAL NO  
(410) 576-7844

**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division**  
**In Support of House Bill 1397**  
**Before the Committee on Judicial Proceedings**  
**March 6, 2024**

Discrimination based on race, disability, sexual orientation, gender identity, and religious belief continues to far too often limit the ability of all Maryland residents to fully participate in society, receive equal treatment and services, and enjoy the benefits of opportunity. Senate Bill 590 fills gaps in Maryland's anti-discrimination laws to ensure that the statutes reflect these protected classes in a consistent way. On behalf of the Office of the Attorney General of Maryland, I offer this testimony in support of House Bill 1397.

Maryland is one of the most racially diverse states in the nation and the most diverse state on the East Coast.<sup>1</sup> Only three states have more racial and ethnic diversity than Maryland. More than four percent of Marylanders identify as LGBT<sup>2</sup> and nearly eight per cent of Marylanders under the age of 65 have a disability.<sup>3</sup> Religious beliefs are important to a large percentage of Marylanders and there is a diversity of religions practiced in the State.<sup>4</sup> Protections against

---

<sup>1</sup> Racial and Ethnic Diversity in the United States: 2010 Census and 2020 Census, <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>.

<sup>2</sup> <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=24#density>

<sup>3</sup> See, United States Census, <https://www.census.gov/quickfacts/fact/table/MD/PST045222>.

<sup>4</sup> Religious Landscape in Maryland, Pew Research Center; <https://www.pewresearch.org/religion/religious-landscape-study/state/maryland/>

discrimination on the basis of race, disability, sexual orientation, gender identity, and religious beliefs will impact a very large portion of the Maryland population.

Maryland has promulgated a robust series of anti-discrimination laws that appear in various provisions of the code. As a result of the year of enactment, or the circumstances or conditions that led to the passage of the law, the protected classes of individuals varies from statute-to-statute. This Bill will reconcile these differences and provide uniform protection across the Maryland Code.

In addition, the Bill will clarify that sexual orientation and gender identity are protected categories. In *Doe v. Catholic Relief Services*, 300 A. 3d 116. 484 Md. 640 (2023) the Maryland Supreme Court held that the term “sex” does not apply to sexual orientation in the Maryland Fair Employment Practices Act or the Maryland Equal Pay Act. Unlike the decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020), in which the United States Supreme Court held that sexual orientation discrimination is prohibited sex discrimination under Title VII, the Maryland Supreme Court found that, because the General Assembly used “sex” and “sexual orientation” in other statutes, when it only used “sex” it must have intended to exclude sexual orientation. This Bill will address the gap in the law created by the *John Doe* decision.

These changes to the law will not affect the “ministerial exemption” to the antidiscrimination provisions of Maryland law and recognized by the Maryland and United States Supreme Courts. The category of ministerial exemption covers employees “who will personify [the entities] beliefs.” See, e.g., *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct 2049 (2020) (Teacher in religious school with breast cancer not protected from dismissal by ADA because she was covered by the ministerial exemption.) In *Doe v. Catholic Relief Services* the Maryland Supreme found that the statutory exemption in Maryland law for religious institutions “applies with respect to claims by employees who perform duties that directly further the core mission(s) of the religious entity.” Id at 676.

The inclusion of gender identity as a protected class will address a particularly pernicious form of discrimination. More than half of transgender people surveyed report discrimination each year. Moreover, the national climate regarding transgender rights is harmful and impacting the safety and mental health of the majority of transgender people.<sup>5</sup> This legislation will ensure that legal protections are in place in Maryland to guarantee equal access to public life and respect the humanity and dignity of people who are transgender.

---

<sup>5</sup> Center for American Progress, *Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022*; <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>

Finally, in several places the bill will change “sexual preference” to “sexual orientation.” This change will remove the term “sexual preference” from the code, which is outdated and offensive.<sup>6</sup>

For these reasons, we urge a favorable report on House Bill 1397.

---

<sup>6</sup> See, e.g. Merriam Webster Dictionary: “The term *sexual preference* as used to refer to sexual orientation is widely considered offensive in its implied suggestion that a person can choose who they are sexually or romantically attracted to.” [Sexual preference Definition & Meaning - Merriam-Webster](#)