

CANDACE MCLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

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 602
Before the Senate Finance Committee
March 21, 2024

House Bill 602 will ensure that discrimination in employment based on sexual orientation is prohibited by Maryland law. On behalf of the Civil Rights Division of the Office of the Attorney General, I am pleased to support House Bill 602.

In August of 2023, the Maryland Supreme Court decided *Doe v. Catholic Relief Services*, 300 A. 3d 116. 484 Md. 640 (2023). *Doe* was brought by an employee of Catholic Relief Services alleging employment discrimination when the organization denied health care coverage to his same sex partner on the same terms as persons who were married to a person of the opposite sex. 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. The Supreme Court reasoned that because the legislature had expressly referenced sexual orientation in other statutes, but did not in these laws, it must have intended to exclude sexual orientation from protection.¹ The *Doe* decision stands in contrast to *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 of the Civil Rights Act. This Bill will address the gap in the law created by the *Doe* decision.

¹ Prior to the *Doe* decision it was widely understood that “sex” included “sexual orientation” for the purposes of these statute. See, eg, Sexual Orientation education materials from the Department of Budget and Management; <https://dbm.maryland.gov/eo/Documents/EEOBrochures/Brochure-SexualOrientation-8.2020.pdf>.

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.

Discrimination against persons because of their sexual orientation remains a serious problem. In 2022, in a national survey, half of LGBT adults reported some form of workplace discrimination or harassment.² State policy has long stood against this discrimination. The General Assembly has enacted a wide range of laws to prohibit sexual orientation discrimination dating back to the enactment of the Anti-Discrimination Act of 2001 and the Governor’s 2007 Executive Order.³ The decision in *Doe* makes these employment protection laws an outlier and inconsistent with the long-expressed values of the State.

² 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/>.

³ Executive Order 01.01.2007.16; <https://dbm.maryland.gov/employees/documents/policies/eocodefairpractices.pdf>