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Testimony of FreeState Justice – FAV. W/ AMENDMENTS FOR HOUSE BILL 1177

To the Honorable Chair Peña-Melnyk, Vice Chair Cullison, esteemed Health and Government Operations committee members:

FreeState Justice—Maryland's LGBTQ+ pro-bono legal services and policy advocacy organization—HB 1177. We strongly support this bill's articulation of rights for subscribers to continuing care communities.

However, we have some concerns with the scope of the antidiscrimination language found within the bill. In *John Doe v. CRS*, decided by the Maryland Supreme Court this past August, the Court weakened the statutory protections afforded to Marylanders under every state-level antidiscrimination clause. 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 *Doe* case was filed because of alleged sexual orientation discrimination in the workplace, the ruling is applicable to every single protected category currently enumerated anywhere in state law, and to all antidiscrimination language proposed in future sessions.

As written, the antidiscrimination clause in the bill states at section 10-451 (E)(2) that "A PROVIDER SHALL ... PROVIDE THE BENEFITS OF LIVING IN CONTINUING CARE IN A RETIREMENT COMMUNITY AND ENFORCE RULES FOR LIVING IN CONTINUING CARE IN A RETIREMENT COMMUNITY WITHOUT PREJUDICE, REGARDLESS OF THE SUBSCRIBER'S AGE, GENDER, SEXUAL ORIENTATION, RELIGION, RACE, ECONOMIC STATUS, PROFESSIONAL BACKGROUND, POLITICAL AFFILIATION, ADVOCACY OF ISSUES IN THE RETIREMENT COMMUNITY, OR INVOLVEMENT IN A RESIDENT ASSOCIATION."

HB1177 thus does not include sex, disability, or gender identity in its protected classes, and as a result of the *Doe v. CRS* case, Marylanders in continuing care communities would be left vulnerable to bias due to sex, disability, and gender identity contrary to the spirit of the bill.

Therefore, we urge the committee to amend the bill and add the missing protected classes (and any other classes it sees fit to include). The General Assembly must ensure that all people in every protected category are not subject to any form of discrimination based on their protected characteristics in any context. **We are favorable on HB1177 but suggest these amendments because we believe nobody should be discriminated because of their sex, disability, or gender identity, or any other traditionally protected class.**

Respectfully submitted,

Camila Reynolds-Dominguez