

**MD SB 590\_NWLC testimony\_APerino.pdf**

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February 16, 2024

*Hon. William C. Smith, Jr., Chair*  
*Hon. Jeff Waldstreicher, Vice Chair*  
*Senate Judicial Proceedings Committee*  
*2 East Miller Senate Office Building*  
*Annapolis, MD 21401*

*\*Submitted via online portal*

**RE: National Women’s Law Center’s Support of SB 590/HB 1397, Equal Opportunity for All Marylanders Act**

Dear Chairperson Smith and members of the Senate Judicial Proceedings Committee:

The National Women’s Law Center (NWLC)<sup>1</sup> writes to support Maryland Senate Bill 590 (“SB 590”) and House Bill 1397 (“HB 1397”), which will provide important clarity and consistency across all aspects of Maryland law, ensuring Marylanders have robust protection from discrimination in all aspects of life. NWLC supports strong antidiscrimination laws as a key tool in the fight for gender justice. By ensuring clarity and uniformity in nondiscrimination protections across the Maryland Code, SB 590 will ensure key institutions of public life are equally accessible to all marginalized populations, including women, people of color, and LGBTQI+ people.

Robust nondiscrimination laws are fundamental to combating the profound political, social, economic, and dignitary harms of sex discrimination. Women have long been excluded from core institutions and denied opportunities—especially LGBTQI+ women and women of color. *All* women and girls are safer and freer when they can learn, work, travel, and vote without facing bias, harassment, and discrimination.

**The General Assembly Should Act to Remedy Perceived Gaps in Civil Rights Law Following the Maryland Supreme Court’s Harmful Decision in *John Doe v. CRS***

The Maryland Supreme Court wrongly decided *John Doe v. Catholic Relief Services*, when it interpreted the nondiscrimination provisions of the Maryland Fair Employment Practices

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<sup>1</sup> NWLC fights for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. We use the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us—especially those who face multiple forms of discrimination, including women of color, LGBTQI+ people, and low-income women and families. We believe that ending all forms of sex-based discrimination and harassment is crucial to protecting the opportunities of all women and girls.

Act (“MFEPA”) and the Maryland Equal Pay for Equal Work Act (“MEPEWA”).<sup>2</sup> Among other things, the Court erroneously held:

- (a) Because the MEPEWA enumerated sex and gender identity as protected grounds, the Maryland General Assembly therefore intended to *omit* protection against sexual orientation discrimination, and MEPEWA’s ban on sex discrimination does not cover sexual orientation discrimination.
- (b) Because the MFEPA provides protection for covered employees against discrimination based on sex, sexual orientation, and gender identity, a Maryland law protection against sex discrimination does *not* imply protection against discrimination based on sexual orientation or based on transgender status/gender identity.

This regressive decision presents a significant risk of harm to all communities that experience sex discrimination: women and girls, LGBTQI+ people, everyone who is pregnant and parenting, and all individuals who do not conform to narrow sex stereotypes. Among existing Maryland statutes, there is no consistency in the language enumerating protected classes of people. Under the logic of *CRS*, Marylanders may be legally subjected to discrimination in one area of their life while the *same* discrimination is prohibited in another area of life.

The patchwork of protections left after this decision means Maryland law is less protective than federal law. In 2020, the Supreme Court held that Title VII’s prohibition on sex discrimination protects LGBTQI+ workers, because there is no way to discriminate against LGBTQI+ individuals without also engaging in sex discrimination.<sup>3</sup> The Maryland General Assembly must take this moment to ensure Maryland law provides equal or greater recourse to individuals who experience any form of sex discrimination—whether that discrimination is based on sexual orientation or gender identity.

Maryland has a strong and compelling interest in preventing discrimination based on protected characteristics, including sex and LGBTQI+ status. The misguided Maryland Supreme Court decision, effectively unraveling and weakening protections against sex discrimination in many parts of the Maryland Code, cannot be allowed to continue in effect. Enacting SB 590/HB 1397 will add necessary clarity and consistency to antidiscrimination statutes, and communicate clearly that Maryland law offers no license to discriminate.

### **Marylanders Need Legal Remedies Against All Types of Sex Discrimination in All Aspects of Life**

Women, especially LGBTQI+ women and women of color, have suffered from longstanding discrimination in all aspects of public life, from school and work to healthcare, transportation, public office, and far more. For generations, states such as Maryland were

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<sup>2</sup> *Doe v. Catholic Relief Servs.*, 484 Md. 640 (Aug. 2023).

<sup>3</sup> *Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020).

authorized to “withhold from women opportunities accorded to men” for any reason at all.<sup>4</sup> Maryland and other states treated a married man and woman as “a single, male-dominated legal entity.”<sup>5</sup> Political, economic, and dignitary inequality for women was enforced by federal and state courts—for example, when the U.S. Supreme Court sanctioned laws that restricted work hours for women based on the stereotype that women are naturally unsuited for independence, saying “woman has always been dependent upon man... [and] is not an equal competitor with her brother.”<sup>6</sup>

Sex discrimination continues to harm Maryland residents today. In the workplace, 40% of women report having experienced at least one form sex discrimination.<sup>7</sup> In the Fourth Circuit, which governs Maryland, NWLC recently supported a successful challenge to a school policy requiring girls to wear skirts based on the sexist stereotype that girls are “‘fragile vessels’ deserving of ‘gentle’ treatment by boys.”<sup>8</sup> Queer and transgender women, as well as women of color, are additionally vulnerable due to intersecting forms of oppression. For example, research shows that most LGBTQ students are not safe in Maryland high schools—in 2021, 53% of LGBTQ high schoolers in Maryland reported being harassed or assaulted at school based on sexual orientation, 50% for their gender expression, and 47% for their gender.<sup>9</sup> Across all Maryland law enforcement agencies reporting hate crime statistics, hate crimes have steadily risen from 2020-2022, with dramatic increases in anti-LGBTQI+ hate crimes, and racist hate crime reports more than tripling.<sup>10</sup> Strong antidiscrimination laws are essential to mitigate the harms of ongoing discrimination and protect women, people of color, and LGBTQI+ individuals’ access to education, housing, employment, and other core aspects of the public sphere.

## **Conclusion**

The National Women’s Law Center supports strong antidiscrimination laws to ensure full and equal inclusion of women, girls, people of color, and all LGBTQI+ people in all aspects of public life. For the reasons above, we urge this committee to favorably report the Equal Opportunity for All Marylanders Act.

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<sup>4</sup> *US v. Virginia*, 518 U.S. 515, 531 (1996).

<sup>5</sup> *Obergefell v. Hodges*, 576 U.S. 644, 660 (2015).

<sup>6</sup> *Muller v. Oregon*, 208 U.S. 412, 421-22 (1908).

<sup>7</sup> Paychex, Employment and Discrimination: Exploring the Climate of Workplace Discrimination from 1997 to 2018 (Aug. 1, 2019), <https://bit.ly/3QxmwOW>.

<sup>8</sup> *Peltier v. Charter Day Sch.*, 37 F.4th104, 112 (4th Cir. 2022); see also “Challenge to ‘Skirts-Required’ Dress Code Policy,” NWLC, Jul. 13, 2020, available at <https://nwlc.org/resource/challenge-to-skirts-required-dress-code-policy-peltier-et-al-v-charter-day-school-inc-et-al/>.

<sup>9</sup> “School Climate for LGBTQ+ Students in Maryland,” GLSEN 2021 National School Climate Survey State Snapshot, Feb. 2023 available at <https://maps.glsen.org/state-research-snapshots/>.

<sup>10</sup> U.S. Dept. of Justice, 2022 Hate Crime Statistics for Maryland, last visited Feb. 15, 2024, available at <https://www.justice.gov/hatecrimes/state-data/maryland#stats-md>.

Please reach out to Anya Marino, Director for LGBTQI+ Equality, and Auden Perino Senior Counsel at the National Women's Law Center ([amarino@nwlc.org](mailto:amarino@nwlc.org); [aperino@nwlc.org](mailto:aperino@nwlc.org)), if you have questions.

Thank you,

National Women's Law Center

**Testimony in Support of SB 590\_HB1397 (1).pdf**

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Position: FAV

## Testimony in Support of SB 590 / HB 1397

Human Relations - Discrimination - Protected Characteristics (Equal Opportunity for All Marylanders Act) || Maryland Senate Judicial Proceedings Committee || February 16, 2024

To Chair Smith, Vice-chair Waldstriecker, and the Members of the Senate Judicial Proceedings Committee,

**We write in strong support of the Equal Opportunity for All Marylanders Act (SB590 / HB1397).** This bill is a response to the Maryland Supreme Court's August 2023 decision [John Doe v. CRS](#) in which the Court held, among other things, that:

(1) because sex, sexual orientation, and gender identity have been individually enumerated in the Maryland Fair Employment Practices Act (MFEPA), those terms each provide separate and distinct protections for covered employees—so under Maryland law, a protection based on sex does not imply a protection based on sexual orientation or gender identity; and

(2) because sexual orientation was not specifically included in the Maryland Equal Pay for Equal Work Act (MEPEWA), but sex and gender identity were included, then the legislature purposefully meant to omit sexual orientation discrimination, and protections for sexual orientation cannot be implied from MEPEWA's ban on sex discrimination.

This interpretation of Maryland state law is directly at odds with how similar federal law concerning sex-based discrimination is understood, especially in light of the US Supreme Court's decision in [Bostock v. Clayton County](#). In that 2020 case, Justice Gorsuch wrote for the majority that it is impossible to discriminate against someone because of their sexual orientation or gender identity without simultaneously discriminating against them because of their sex.<sup>1</sup> However, according to the Maryland Supreme Court's decision, *Bostock's* logic does not apply in the same way to those terms as they are used in Maryland state law.

Put another way: despite SCOTUS's *Bostock* decision, *John Doe v. CRS* means that Maryland state law prohibitions on sex discrimination do not extend any implied prohibitions for sexual orientation or gender identity discrimination. The Court said that any additional protections must instead be specifically enumerated in every antidiscrimination clause in state law. Make no mistake, this is a massively consequential decision for Maryland law that reaches far past the specific legal questions concerning sexual orientation discrimination that spawned the case. It has huge implications for all existing and future Maryland antidiscrimination laws, and every category protected by them—extending beyond sex, sexual orientation, and gender identity to impact protections for race, religion, disability, color, creed, and all others.

The core issue this bill addresses is articulated in footnote 14 of the decision, where the Court says “The General Assembly’s practice, as we understand it, has been to specifically identify the categories it intends to protect in antidiscrimination statutes. As CRS points out, the

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<sup>1</sup>From the [Oyez summary of Bostock](#): “Discrimination on the basis of homosexuality or transgender status requires an employer to intentionally treat employees differently because of their sex—the very practice Title VII prohibits in all manifestations.”

General Assembly has explicitly included sexual orientation as a protected category (as well as sex and gender identity) in multiple statutes over the past decade.” The Court attached the footnote to the following: “Adding sexual orientation as a protected category in MEPEWA will require similar legislative action.”

The Court’s analysis is equally applicable to every other protected category not specifically enumerated in each antidiscrimination clause in state law, and for every new antidiscrimination clause to be introduced in future legislative sessions. The case boils down to this: if any protected category is not specifically included in a given antidiscrimination clause, Marylanders belonging to that protected category are not protected by the clause. Because of its far reaching impacts, this decision is a clear mandate for the General Assembly to take swift, comprehensive corrective action to remedy the significant gaps in Maryland’s antidiscrimination laws that were created by the Court’s decision. **Failure to do so exposes all Marylanders—especially the most marginalized—to harmful discrimination without any legal recourse.**

After *John Doe v. CRS*, there are many statutory protections from discrimination that were previously assumed to be in force but are now rendered nonexistent. As the Court itself demonstrates with footnote 14, the impacts of *John Doe v. CRS* extend far beyond MEPEWA and MFEPA. The *Doe* case focused on those employment law statutes as they apply to LGBTQIA+ Marylanders, but the logic of the Court’s holding clearly applies to every other antidiscrimination clause in state law and to every protected category therein.

Thus, the decision’s impacts are especially significant everywhere there are inconsistent or omitted statutory protections for sex, sexual orientation, gender identity, race, disability, religion, color, creed, and any other protected category currently in existence or yet to be added to state law. To understand the scope of the problem, we surveyed Maryland law as it existed in fall 2023 to understand how the terms for protected categories had been used across the state’s antidiscrimination clauses. We confirmed that the language in these clauses is not consistent between the statutes as to which protected categories are enumerated in the many antidiscrimination clauses. As demonstrated by *John Doe v. CRS*, the inconsistent statutory language means that there are significant holes in existing protections which leave Marylanders vulnerable to many forms of discrimination in many different circumstances.

The Equal Opportunity for All Marylanders Act is built from our survey and attempts to comprehensively plug the holes in Maryland’s antidiscrimination laws created by the state Supreme Court’s decision. The proposed Act makes existing antidiscrimination clauses consistent across state law to ensure that all Marylanders are given the most robust protections possible.<sup>2</sup> Absent this comprehensive update, Marylanders will continue to be exposed to discrimination while future piecemeal attempts to remedy *Doe* perpetuate the very problems with the language of our statutory protections that the decision revealed.

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<sup>2</sup> It’s also important to note that *John Doe v. CRS* also impacts all new bills moving forward— any proposed antidiscrimination language must now be careful to specifically and consistently enumerate every protected category intended to be covered, otherwise the new language will suffer from the same deficiencies this proposed Act aims to fix, leaving Marylanders unprotected from discrimination.



Unfortunately, we know that it is all too common for Marylanders to experience harmful discrimination in many forms and in many contexts. This discrimination causes lasting pain and ruins lives. It is not difficult to find news stories and data-driven reports from governments and institutions demonstrating this fact, and Marylanders continue to bring lawsuit after lawsuit attempting to remedy the harms they suffer as they experience many different forms of discrimination.

Without the Equal Opportunity for All Marylanders Act, people who are victims of discrimination currently have an incomplete patchwork of protections under state law. Their legal shield from discrimination has significant holes in it. We fear that, barring a comprehensive response from the General Assembly, the problems created by *Doe* leave Marylanders with inadequate options for seeking judicial recourse when they suffer harmful discrimination.

In the wake of *John Doe v. CRS*, Marylanders deserve a careful, comprehensive update to our antidiscrimination protections. The General Assembly must ensure that all people in every protected category are not subject to prejudicial discrimination and bias based on their protected characteristics in any context. The Equal Opportunity for All Marylanders Act attempts to do just that, and **for all these reasons we urge this committee to give it a favorable report.**

Respectfully submitted,

Advance Maryland  
Disability Rights Maryland  
Economic Action Maryland  
The Episcopal Diocese of Maryland  
FreeState Justice\*\*  
Maryland Center on Economic Policy  
National Women's Law Center  
Public Justice Center  
Rev. Emily E. Ewing, Delaware-Maryland Synod, Evangelical Lutheran Church in America

\*parties are listed in alphabetical order\*

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**SB 590 - WLCMD - FAV.pdf**

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BILL NO: Senate Bill 590  
TITLE: Human Relations – Discrimination – Protected Characteristics (Equal Opportunity for All Marylanders Act)  
COMMITTEE: Judicial Proceedings  
HEARING DATE: February 16, 2024  
POSITION: **SUPPORT**

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The Women’s Law Center of Maryland (WLC) is a non-profit legal services and advocacy organization dedicated to ensuring the physical safety, economic security and bodily autonomy of women in Maryland. While our direct representation projects are limited to primarily survivors of domestic violence, our advocacy is in support of gender justice, because all people are entitled to access to justice, equality and autonomy. This legislation, The Equal Opportunity for All Marylanders Act, will ensure that all people in our State will not be discriminated based on sexual orientation, gender identity, race, religious beliefs, marital status and disability.

The Women’s Law Center of Maryland supports SB 590. Certain laws in Maryland do not include these specific characteristics where there is a need for protection from discrimination. The Women’s Law Center believes that discrimination based on these characteristics undermine an individual’s rights and perpetuates systemic inequalities. These additional protections will help address discrimination in many areas, including education, housing, criminal law, commercial law, courts, education, health and health occupations and, labor and employment.

*The Women’s Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.*

**SB590\_Lam\_WrittenTestimony.pdf**

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Finance Committee

Executive Nominations Committee

Joint Committee on Ending Homelessness

*Senate Chair*

Joint Audit and Evaluation Committee

Joint Committee on Fair Practices and  
State Personnel Oversight

*Chair*

Howard County Senate Delegation

*Secretary*

Asian-American & Pacific-Islander Caucus

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**SB590: Human Relations - Discrimination - Protected Characteristics (Equal Opportunity for All Marylanders Act)**

**What SB590 Does:**

- This bill updates anti-discrimination provisions throughout Maryland code to include all protected classes, consistent with the Maryland Supreme Court's finding in *Doe v. CRS*
- While it addresses a myriad of sections of law, the goal of the bill is simple: ensure that all protected classes will be protected in law, as was the intent of the General Assembly when passing these laws
- The attached chart includes a brief summary of each section and the protected classes added to that section

**Why SB590 is Needed:**

- In *Doe v. CRS*, the Supreme Court of Maryland stated: "The General Assembly's practice, as we understand it, has been to specifically identify categories it intends to protect in antidiscrimination statutes."<sup>1</sup>
- Currently, Maryland's antidiscrimination statutes are a patchwork of inclusion; many statutes leave out one or more protected classes.
- Given this statement, it is essential to update our antidiscrimination statutes to adhere to the Maryland Supreme Court's standards; otherwise, we risk leaving vulnerable Marylanders without a state claim for discrimination.
- Without SB590, it is uncertain if a claimant will be able to seek protection in our antidiscrimination statutes if their protected class is not specifically enumerated. This is a huge gap in our safeguards.

<sup>1</sup> [Doe v. Catholic Relief Servs., 484 Md. 640, 644](#). Page 21 of pdf.

Section	What the Section Does	Protected Classes Added by SB590
<p>Article – Commercial Law            Section 11–102(e), 12–113(a), 12–305(a), 12–503(b)(1), 12–603, 12–702, and 12–704(1)</p>	<p><u>11-102</u>: Defines discriminatory boycott  <u>12-113</u>: States that a lender may not discriminated in lending  <u>12-305</u>: Disallowing licensees from granting or denying a loan on a discriminatory basis  <u>12-503</u>: Disallowing sellers and financial institutions from discrimination  <u>12-603</u>: Disallowing sellers or sales finance companies from discriminating against a buyer  <u>12-702</u>: States the General Assembly’s intent to insure that credit is fairly available.  <u>12-704</u>: Prohibits a creditor from discriminating against applicants</p>	<p><u>11-102</u>: <b>SEXUAL ORIENTATION, DISABILITY, GENDER IDENTITY</b>  <u>12-113</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b>  <u>12-305</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b>  <u>12-503</u>: <b>RACE, SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b>  <u>12-603</u>: <b>RACE, SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b>  <u>12-702</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b>  <u>12-704</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY,</b></p>
<p>Article – Courts and Judicial Proceedings            Section 5–106(p) and 8–102(b)</p>	<p><u>5-106</u>: Relates to prosecution based on wage discrimination.  <u>8-102</u>: Prohibits discrimination from jury service based on listed characteristics.</p>	<p><u>5-106</u>: <b>SEXUAL ORIENTATION, RELIGIOUS BELIEFS, GENDER IDENTITY, RACE, OR DISABILITY</b>  <u>8-102</u>: <b>SEXUAL ORIENTATION, OR GENDER IDENTITY.</b></p>
<p>Article – Criminal Law            Section 2–207(c), 3–209(b), 10–304, and 10–305</p>	<p><u>2-207</u>: The discovery of or belief about a person does not mitigate the crime of murder to manslaughter.  <u>3-209</u>: The discovery of or belief about a person is not a defense to assault.  <u>10-304</u>: Hate crime statute  <u>10-305</u>: A person may not deface certain property based on listed characteristics.</p>	<p><u>2-207</u>: <b>RELIGIOUS BELIEFS, DISABILITY</b>  <u>3-209</u>: <b>RELIGIOUS BELIEFS, DISABILITY</b>  <u>10-304</u>: <b>SEX</b>  <u>10-305</u>: <b>SEX</b></p>
<p>Article – Education Section            6–104(b), 7–128(c), 23–605(a)(2), and 23–806(a)(3)(iii)</p>	<p><u>6-104</u>: Prohibits discrimination of public school employees.</p>	<p><u>6-104</u>: <b>GENDER IDENTITY</b>  <u>7-128</u>: <b>SEX, SEXUAL ORIENTATION, GENDER IDENTITY</b></p>

	<p><u>7-128</u>: Ensures students are enrolled in the next most rigorous subject.</p> <p><u>23-605</u>: Prohibits employee organizations from discrimination</p> <p><u>23-806</u>: Related to 23-605</p>	<p><u>23-605</u>: <b>SEX, DISABILITY, MARITAL STATUS, SEXUAL ORIENTATION</b></p> <p><u>23-806</u>: <b>SEX, SEXUAL ORIENTATION, GENDER IDENTITY</b></p>
<p>Article – Health – General Section 19–408(b), 19–710(h), and 19–725(a)</p>	<p><u>19-408</u>: Prohibits home health agencies from discriminating</p> <p><u>19-710</u>: Prohibits unfair termination of contracts for home healthcare</p> <p><u>19-725</u>: Prohibits HMOs from discriminating based on protected characteristics</p>	<p><u>19-408</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY, RACE</b></p> <p><u>19-710</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY</b></p> <p><u>19-725</u>: <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY</b></p>
<p>Article – Health Occupations Section 14–5F–10(c) and 19–311(15)</p>	<p><u>14–5F–10(c)</u>: Prohibits Health Occupations board from discriminating against applicants.</p> <p><u>19–311(15)</u>: Prohibits refusal of professional services.</p>	<p><u>14–5F–10(c)</u>: <b>DISABILITY</b></p> <p><u>19–311(15)</u>: <b>SEX, GENDER IDENTITY</b></p>
<p>Article – Housing and Community Development Section 16–305</p>	<p><u>16-305</u>: Prohibits employee organizations from discrimination</p>	<p><u>16-305</u>: <b>SEX, GENDER IDENTITY</b></p>
<p>Article – Human Services Section 8–707(b)(1)(viii)</p>	<p><u>8–707</u>: Prohibits discrimination in childcare facilities</p>	<p><u>8–707</u>: <b>GENDER IDENTITY</b></p>
<p>Article – Insurance Section 15–112(h)(1) and 27–910(b)</p>	<p><u>15–112</u>: Prohibits health insurance carriers from denying participation in its provider panel.</p> <p><u>27–910</u>: Prohibits discrimination in care provided to enrollees.</p>	<p><b>SEX, SEXUAL ORIENTATION, GENDER IDENTITY</b></p>
<p>Article – Labor and Employment Section 3–304 and 3–307(a)(1)</p>	<p><u>3-304</u>: Prohibits providing less favorable employment opportunities</p> <p><u>3-307</u>: Correlates with 3-304</p>	<p><b>RACE, RELIGIOUS BELIEFS, SEX, GENDER IDENTITY, SEXUAL ORIENTATION</b></p>
<p>Article – Land Use Section 16–204 and 16–304(b)</p>	<p><u>16-204</u>: Prohibits employee organizations in the National Capital Park and Planning</p>	<p><u>16-204</u>: <b>SEX, GENDER IDENTITY</b></p>

	Commission from discrimination <u>16-304</u> : Organization's contracts may not discriminate.	<u>16-304</u> : <b>SEX, SEXUAL ORIENTATION, GENDER IDENTITY</b>
Article – Public Utilities Section 7–507(h)(1) and 18–204	<u>7–507</u> : Prohibits electricity suppliers from discriminating against customers. <u>18–204</u> : Prohibits discrimination by an employee organization	<u>7–507</u> : <b>GENDER IDENTITY, DISABILITY, SEXUAL ORIENTATION</b> <u>18–204</u> : <b>SEX, GENDER IDENTITY</b>
Article – Real Property 6 Section 8A–801(b)	<u>8A–801</u> : Prohibiting discrimination in mobile home parks.	<u>8A–801</u> : <b>SEXUAL ORIENTATION, GENDER IDENTITY</b>
Article – State Finance and Procurement Section 13–219(c)(1), 19–101(a), 19–102, 19–103(j)(1), 19–114, and 19–115	These sections govern nondiscrimination in state procurement	<u>13-219</u> : <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY</b> <u>19-101-19-115</u> : <b>GENDER IDENTITY</b>
Article – Tax – Property 16 Section 8–214(a)	<u>8-214</u> : Prohibits country clubs and golf courses from discriminating against members.	<u>8-214</u> : <b>SEXUAL ORIENTATION, GENDER IDENTITY, DISABILITY</b>



**CRD Testimony SB 590.pdf**

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**Testimony of Jonathan M. Smith, Chief of the Civil Rights Division**  
**In Support of Senate Bill 590**  
**Before the Committee on Judicial Proceedings**  
**February 16, 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 Senate Bill 590.

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

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<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.

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<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 passage of Senate Bill 590.

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<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](#)

**SB590support testimony.pdf**

Uploaded by: Ken Phelps Jr

Position: FAV



Testimony in Support of SB 590  
Human Relations - Discrimination - Protected Characteristics (Equal  
Opportunity for All Marylanders Act)

**\*\*FAVORABLE\*\***

**TO:** Senator William C. Smith, Chair, Senator Jeff Waldstreicher, Vice Chair and the members of the Senate Judicial Proceedings Committee

**FROM:** Rev. Linda K. Boyd, Co-Chair, Maryland Episcopal Public Policy Network, Diocese of Maryland

**DATE:** February 16, 2024

With an estimated 2.3 million members, the Episcopal Church is open and welcoming of the LGBTQ+ community. Unlike the Worldwide Anglican Communion, of which it is a part, the Episcopal Church does not condemn homosexuality. Among its statements of belief, the Episcopal Church includes, “In Jesus, we find that the nature of God is love, and through baptism, we share in his victory over sin and death.” They further emphasize, “We strive to love our neighbors as ourselves and respect the dignity of every person.” In 1976, both the House of Deputies and House of Bishops voted for a fully inclusive Episcopal Church, stating, “homosexual persons are children of God who have a full and equal claim with all other persons upon the love, acceptance, and pastoral concern and care of the church.” Canon law includes “gender identity or expression” in its list of persons who are assured full access to the ministry of the church. The law further specifies that administrative forms must include options for both preferred and legal names, and for gender identity and pronoun preference.

The Episcopal Diocese of Maryland follows the stance taken by the National Church and strongly believes that every human being is a child of God regardless of gender identity or expression.

We respectfully request a favorable report.

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Secular Maryland

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February 16, 2024

**SB 590 - FAV**

Human Relations - Discrimination - Protected Characteristics (Equal Opportunity for All Marylanders Act)

Dear Chair William C. Smith Jr, Vice-Chair Jeff Waldstreicher, and Members of the Judicial Proceedings Committee,

Invidious discrimination hurts us as a society, it divides people and impedes people from realizing their potential. There should be no discrimination based on religious beliefs resulting in paying lower wages, reducing employment opportunities, mitigating a murder conviction penalty, or excusing a criminal assault. This bill providing more legal protections against discrimination based on religious beliefs is welcome. Secular Maryland favors firm protections against invidious discrimination for both employment and criminal convictions.

Mathew Goldstein  
3838 Early Glow Ln  
Bowie, MD

**SB0590-JPR-SUPP.pdf**

Uploaded by: Nina Themelis

Position: FAV



**BRANDON M. SCOTT**  
MAYOR

*Office of Government Relations  
88 State Circle  
Annapolis, Maryland 21401*

**SB0590**

February 16, 2024

**TO:** Members of the Judicial Proceedings Committee

**FROM:** Nina Themelis, Director of the Mayor's Office of Government Relations

**RE:** Senate Bill 590 – Human Relations – Discrimination – Protected Characteristics (Equal Opportunity for All Marylanders Act)

**POSITION: SUPPORT**

Chair Smith, Vice Chair Waldstreicher, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) **supports** Senate Bill (SB) 590.

SB 590 adds to existing Articles Commercial Law, Courts and Judicial Proceedings, Criminal Law, Education, Health – General, Health Occupations, Housing and Community Development, Human Services, Insurance, Land Use, Public Utilities, Real Property, State Finance and Procurement, Tax – Property, and Labor and Employment to include prohibitions on discrimination based on sexual orientation, gender identity, race, religious beliefs, marital status, and disability; and generally relating to prohibitions against discrimination based on protected characteristics.

The Baltimore City Department of Human Resources (BCDHR)'s testimony is specifically regarding Article – Labor and Employment Section 3–304 and 3–307(a)(1). The current language prohibits wage and less favorable employment opportunities discrimination based on sex or gender identity. This bill expands wage and less favorable employment opportunities discrimination prohibitions for employers by adding race, religious beliefs, sex, gender identity, or sexual orientation.

The bill requires that people are paid equally for equal work. It expands for affected employees who wish to bring an action against their employer for injunctive relief by adding sexual orientation, race, and disability to the list of protective characteristics for situations where an employer knew or reasonably should have known that the employer's action violated § 3–304. It also expands for affected employees to recover the difference between the wages paid to affected employees and the wages paid to other employees of another sex, sexual orientation, gender identity, or race, or who do not have a disability who do the same type work and an additional equal amount as liquidated damages for if an employer knew or reasonably should have known that the employer's action violated § 3–304.

Title VII and The Equal Pay Act make it illegal to discriminate based on sex in pay and benefits. Therefore, someone with an Equal Pay Act claim may also have a claim under Title VII. The Age Discrimination in

Employment Act of 1967 and the Americans with Disability Act prohibit compensation discrimination based on race, color, religion, sex, national origin, age, or disability.

The City of Baltimore already protects against discrimination in **all aspects of employment**, including recruitment, hiring, termination, discipline, transfers, training and career development, work assignments, promotions and demotions, **compensation**, benefits administration, and all other terms and conditions of employment without regard to such factors as race, color, age, national origin, ancestry, marital status, sexual orientation, gender, religion, veteran status, physical or mental disability, genetic information, gender identity or expression or any other status protected by law.

This bill offers further protections against wage and less favorable employment discrimination. Enacting this law would further protect employees from discrimination in these areas of employment. City of Baltimore employees who believe their rights to equal employment have been violated under the new law addition would be able to file a Charge of Discrimination.

For these reasons, the BCA respectfully requests a **favorable** report on SB 590.