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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

SB0581: Action for Change of Name – Waiver of Publication Requirement

To the Chair, Vice Chair, and esteemed members of the Judicial Proceedings Committee:

FreeState Justice is a legal advocacy organization that seeks to improve the lives of low-income LGBTQ+ Marylanders, as well as advocate on issues affecting the broader LGBTQ+ community in Maryland. As part of this mission, FreeState Justice represents dozens, if not hundreds, of LGBTQ+ clients each year on matters relating to their sexual orientation or gender identity.

FreeState Justice's identity documents practice, which includes assisting transgender clients with obtaining name changes under Maryland Rule 15-901, is a cornerstone of our work. Since 2012, FreeState Justice and our panel of pro bono attorneys has helped over 450 transgender Marylanders change their names. For many of our clients, obtaining a court order confirming their name of common use is critical for being able to navigate the world safely and with the dignity of being their authentic selves.

Unfortunately, the publication requirement under Rule 15-901(e) imposes a substantial burden on the ability of transgender Marylanders to change their names. It is often all-too-easy to infer a person's transgender status from a published notice, especially when the individual is changing from, e.g., a traditionally feminine name to a traditionally masculine name, or vice-versa. And, because papers may post these legal notices online, they can become a permanent

FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

digital scarlet letter outing their transgender status to anyone capable of a google search.

Many of FreeState Justice's clients are understandably concerned about their transgender status becoming public, which would out them to those who may be inclined to discriminate against or inflict harm on them because of it, including employers, coworkers, landlords, neighbors, teachers, classmates, and even unsupportive or hostile family members.

People who are transgender are routinely targeted for discrimination, harassment, and physical and sexual assault. According to the 2015 U.S. Trans Survey, a survey conducted in 2015 that is the most comprehensive survey of the United States transgender community to date, over half of respondents who held a job in the past year indicated that they had to hide their transgender status at work to avoid discrimination in the past year, and over 20% reported firing or other employment-related mistreatment at work in the past year because they were transgender.¹ Thirty percent of all respondents reported that they had experienced housing discrimination or homelessness in the past year because of their transgender status.² Large percentages of transgender people report being subjected to harassment and even physical assault when their transgender status is made known at work, in educational settings, and in places of public accommodation.³ By literally publicizing their transgender status, Rule 15-901(e)'s publication

¹ James, S. E., *et al.*, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY at 151, 154 (National Center for Transgender Equality 2016), *available at* <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

² *Id.* at 178.

³ *Id.* at 153 (15% of respondents who held a job in past year reported being verbally harassed, physically attacked, and/or sexually assaulted at work in the past year because of their transgender status); 136 (24% of respondents who attended college or vocational school reported being verbally, physically, or sexually harassed at school because of their transgender status when their gender identity was known to classmates, professors or staff); 213 (31% of respondents who visited a place of public accommodation in the past year where staff or employees realized they were transgender experienced at least one type of negative experience due to their gender identity, including being denied equal treatment or service (14%), verbally harassed (24%), and/or physically attacked (2%)); 89-90 (as a result of showing identification with a name or gender that did not match their gender presentation, 32% reported a negative experience, including verbal harassment (25%), denial of service (16%), and assault (2%)).

requirement makes all of these forms of discrimination more likely.

The publication requirement also increases the likelihood transgender individuals will be subjected to violence. People known, perceived, or suspected to be transgender are more often the targets of hate crimes than cisgender or gender-conforming individuals. Transgender individuals are 2.8 times more likely to be the targets of violence, including virtual violence online or over the phone than cisgender members of the LGBTQ community.⁴ As a consequence of such widespread discrimination and violence directed towards individuals perceived to be transgender or gender non-conforming, the transgender community suffers epidemically high rates of suicidality. The highest rates of suicide attempts and suicidality are experienced by transgender men of all ages (46%) and young, high school and college-aged transgender adults between the ages of 18-24 (45%).⁵ The name change publication requirement causes an already vulnerable community to be even more predisposed to these atrocities.

Transgender youth are especially at risk of violence and discrimination. As detailed by the Human Rights Campaign's national *2018 Youth Report*, 73% of LGBTQ youth experienced verbal threats or harassment and 70% experienced bullying based on their sexual orientation or gender identity.⁶ For minors who are transgender, when their gender identity is a subject of public disclosure, they face this significantly increased risk of discrimination and physical violence in school. In a 2015 survey of transgender Marylanders, 78% of school-aged respondents reported experiencing verbal harassment, discrimination, or physical or sexual assault based on their perceived gender identity in school within the past year.⁷

⁴ Emily Waters, *et al.*, CRISIS OF HATE 1, 32 (National Antiviolence Project 2018) available at http://avp.org/wp-content/uploads/2017/06/NCAVP_2016HateViolence_REPORT.pdf (also indicating that 64% of the victims of all anti-LGBTQ homicides committed nationally between January-August 2017 were under the age of 35).

⁵ Ann. P Hass, *et al.*, NATIONAL TRANSGENDER SURVEY 1, 2 (National Center for Transgender Equality 2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf>.

⁶ Human Rights Campaign Foundation & U. Conn., 2018 LGBTQ YOUTH REPORT 1, 7-9 (2018), available at <https://www.hrc.org/resources/2018-lgbtq-youth-report> (surveying a national survey of 29,291 LGBTQ youth's experiences in schools).

⁷ James S. E., *et al.*, THE 2015 U.S. TRANSGENDER SURVEY, *Maryland State Report* 1, 1 (Nat'l Ctr. For Transgender Equal. 2017) available at <https://transequality.org/sites/default/files/USTS%20MD%20State%20Report.pdf>.

Indeed, because transgender people face such high rates of discrimination, harassment, and violence, courts have been particularly conscious of the danger of revealing a person's transgender status to others. For example, the United States Court of Appeals for the Second Circuit held that the nonconsensual disclosure to others of a person's transgender status violated their constitutional right to privacy, noting the widespread "hostility and intolerance" transgender people face, as well as the "excruciatingly private and intimate nature of transsexualism, for persons who wish to preserve privacy in the matter, [which] is really beyond debate." *Powell v. Schriver*, 175 F.3d 107, 111 (2d Cir. 1999). A federal court in Michigan recently considered a state policy that prevented many transgender people from changing the gender marker on their driver's licenses, and thereby "outed" transgender people to others who could conclude that the person was transgender because their "lived sex" was inconsistent with the gender marker on the ID. *Love v. Johnson*, 146 F. Supp. 3d 848, 854 (E.D. Mich. 2015). The court recognized the fact that transgender people face widespread discrimination and violence, and held that "the Policy creates a very real threat to Plaintiffs' personal security and bodily integrity" and thereby implicated "their fundamental right of privacy." *Id.* at 856.

By allowing automatic waiver of the publication requirement upon request, Senate Bill 581 would protect the privacy and safety of transgender Marylanders and reduce the likelihood that they will be exposed to unnecessary discrimination and violence.

We respectfully urge a favorable report.