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The Honorable Luke Clippinger
House of Delegates Judiciary Committee
Room 101
House Office Building
Annapolis, MD 21401

Testimony of FreeState Justice

IN OPPOSITION TO

HB1319: Family Law - Grounds for Divorce - Gender Transition

To the Honorable Chair Luke Clippinger, Vice Chair David Moon,
and esteemed members of the Judiciary Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ+) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

We write today in opposition to House Bill 1319, which would add a spouse's gender transition as an articulated grounds for divorce under Maryland law. Not only is this bill wholly unnecessary, as Maryland law already allows for no-fault divorce, it would have the effect of brandishing the transgender spouse with a scarlet letter of disapproval from the state.

At present, Maryland law provides eight specified grounds for divorce, six of which are historical "fault" grounds: adultery, desertion, conviction of a crime with a sentence of at least three years, insanity, cruelty of treatment, and "excessively vicious conduct." Family Law s. 7-103(a). In addition, two no-fault grounds exist: the parties have separated without cohabitation for at least 12

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months or the parties agree to divorce by mutual consent resolving all issues. Family Law s. 7-103(a)(4), (8).

Half of the grounds for divorce (desertion, conviction of a crime, separation, and insanity) require a waiting period of at least 12 months before an action for divorce can be initiated. Of the other half, all but one (mutual consent) carry with them significant moral approbation; actions for divorce on the basis of adultery, cruelty of treatment, or excessively vicious conduct may be filed immediately, though in the latter two cases the plaintiff must assert that “there is no reasonable expectation of reconciliation.”

While divorce by mutual consent remains available at any time without a statutory waiting period, part of purpose of the legislation that created that grounds was to encourage separating couples to reach an agreement before going to court. According to original bill sponsor Senator Bobby Zirkin, the mutual consent grounds “creates an incentive for people to work it out. Because the last thing you want in a divorce is people fighting over every last thing.” See Michael Dresser, “New Law Eases Path to Divorce for Many Couples,” *Baltimore Sun* (Sept. 30, 2015), available at <https://www.baltimoresun.com/maryland/bs-md-new-laws-divorce-20150929-story.html>.

House Bill 1319 would add gender transition of one of the parties to the list of grounds for divorce without any waiting period, punishing transgender Marylanders for seeking to live their authentic selves. Transition would be placed in a category of fault grounds associated with the most awful and betraying of conduct: adultery, cruelty, and excessively vicious conduct. It would be treated more harshly than both criminal conviction and insanity, which have waiting periods of 12 months and three years respectively. It would be treated worse than literal desertion, which also must continue for at least 12 months.

In short: gender transition would be categorized among the most awful of violations of the marriage covenant, something heinous and unforgiveable.

This is simply unnecessary, and, in many cases utterly counterproductive. While the transition of one party in a marriage does often result in divorce, this is far from universal. Indeed, preliminary research by the National Center for Transgender Equality suggests that over half of couples under 50 remain together after one partner transitions, though numbers drop significantly for older couples. Many couples remain dedicated and loving to each other after one party transitions, and it can even strengthen relationships that had been strained by the stress of one partner living with untreated gender dysphoria.

Rather than encourage both spouses to come to a mutual understanding of each other and of how their family might work post-transition, HB1319 instead encourages partners of transgender individuals to rush to divorce, before they have a chance to understand where their spouse is coming from. In fact, HB1319 would effectively create grounds for a divorce where a party's only action has been to state they are transgender, without having taken any action at all to transition.

Unlike the adultery, cruelty, and excessively vicious conduct, which require some affirmative action on the part of the spouse sued for divorce, HB1319 would permit immediate filing where a spouse merely "self-identifies as a different gender than the gender at the time of marriage." This bill would make merely confessing to one's spouse that you are uncomfortable with the gender assigned to you at birth grounds for immediate divorce, regardless of whether you ever take any additional actions. Again, the bill encourages non-affirming spouses to divorce first and ask questions later.

Finally, because divorce proceedings are not sealed by default, HB1319 would create a permanent, searchable record identifying the spouse as transgender. Court records like these have been shown to contribute to ongoing discrimination against transgender individuals, especially when they are engaged in job searches, applying for housing, or otherwise undergoing routine background checks that might reveal their transgender status.

At the end of the day, there is simply no need for HB1319. Individuals are already more than capable of divorcing their transgender spouses, and don't need a new explicit cause of action to do so, especially not one that treats gender identity on par with cruelty. While proponents of the bill might suggest 12 months is too long to wait for a divorce, the solution to that problem is to amend the existing 12 month waiting period, not to create a new, wholly discriminatory, grounds for divorce.

For these reasons, FreeState Justice urges an unfavorable report on House Bill 1319.