



March 11, 2024

Maryland Senate
Energy, Education, and the Environment Committee
Room 2 West Wing
Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401-1911

Re: Maryland Senate Bill 1107

Dear Chairperson Feldman and Members of the Committee:

Alliance Defending Freedom (ADF) is one of the leading Christian law firms committed to protecting religious freedom, free speech, marriage and the family, parental rights, and the sanctity of life. It is one of the nation's most respected and successful United States Supreme Court advocates, playing various roles in 74 Supreme Court victories. Since 2011, ADF has represented parties in 15 victories at the Supreme Court. These victories have been on behalf of pastors, churches, religious organizations, college students, family-owned businesses, pro-life pregnancy centers, and many others.

In addition, ADF routinely provides legal analysis of proposed legislation and its impact on constitutionally protected freedoms. The purpose of this letter is to share our concerns about the legality of Senate Bill 1107, pertaining to licensing of homeless shelters.

S.B. 1107 would require the Department of Housing and Community Development to “develop operational standards for homeless shelters that include, at a minimum, standards” for multiple areas of shelter operations. *See* S.B. 1107, § 1 (to be codified at Md. Code Ann. Housing & Community Development § 6-1204(A)).

ADF's concern lies with the following proposed operational standard:

policies that affirm that the homeless shelter may not discriminate on the basis of race, color, religion, ancestry or

national origin, sex, age, marital status, sexual orientation, gender identity, disability, or genetic information.

Id. (to be codified at § 6-1204(A)(16)).

Aspects of this requirement would violate the constitutionally protected rights of many religious homeless shelters. Constitutional difficulties arise from the inclusion of religion, marital status, sexual orientation, and gender identity—especially since the proposal lacks any concrete protections for the religious freedom of the organizations subject to its requirements.

A. Application to Shelters' Employment Practices?

The scope and number of potential constitutional violations depends in part on the answer to an important preliminary question: whether the non-discrimination requirement applies a religious shelter's employment practices.

Although we suspect that the drafters of this language intended that it only reach a shelter's interactions with homeless individuals, the proposed provision could very well be interpreted by the Department or the courts to reach a shelter's personnel policies and practices.

Such an interpretation would violate constitutional protections of religious exercise and free speech. First, the application of *any* non-discrimination rule to "ministerial" employees violates the First Amendment. See *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church v. EEOC*, 565 U.S. 171 (2012).

Second, organizations have the freedom to hire only those individuals who share and are willing to communicate the organization's message. See *Dale v. Boy Scouts of Am.*, 530 U.S. 640 (2000).

Third, the First Amendment's Free Exercise Clause and Article 36 of the Maryland Declaration of Rights "limit[] governmental interference with the internal management of religious organizations." *Montrose Christian Sch. v. Walsh*, 363 Md. 565 (Md. Ct. App. 2001).

B. Application to Shelters' Interactions with Homeless Individuals

There can be little doubt that proposed § 6-1204(A)(16) would apply to a shelter's interactions with the homeless individuals it serves. Such application will violate religious shelters' fundamental rights in many instances.

Many religious individuals and organizations hold faith-informed views about marriage, sexuality, and the distinction between the sexes. They believe that marriage is an exclusive union between one man and one woman. They believe that sexual relations outside such a marriage are impermissible. They believe that God created humanity male and female, and that presenting as the opposite sex or attempting to somehow change to the opposite sex is morally problematic.

Shelters holding such religious views may not be able to comply in good conscience with potential interpretations of § 6-1204(A)(16). For example, a shelter for women might be unwilling to permit a man to share sleeping space with women (many of whom may have been subjected to physical and sexual abuse by men), even if he identifies as a woman. [*See Downtown Hope Center v. Municipality of Anchorage.*](#)

Along the same lines, a co-ed shelter might assign individuals to showers, locker rooms, and restrooms based on biological sex rather than gender identity. And many religious individuals and organizations hold that their convictions prevent them from using pronouns that are inconsistent with an individual's biological sex. Finally, some shelters reserve sleeping facilities for married couples to opposite-sex couples.

Some courts and administrative enforcement officials have taken the erroneous view that bans on gender identity and sexual orientation discrimination forbid individuals and organizations from living out these sincerely held convictions. It is reasonable to be concerned that the Department of Housing and Community Development and Maryland courts might interpret the language of S.B. 1107 in this fashion. If they do, they will be violating the constitutional rights of those who follow their beliefs on these issues. *See, e.g., Vlaming v. West Point Sch. Bd.*, 895 S.E.2d 705 (Va. 2023). *See also 303 Creative v. Elenis*, 600 U.S. 570 (2023); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rts. Comm'n*, 584 U.S. 617 (2018).

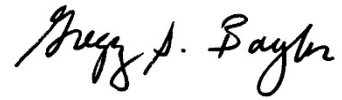
Accordingly, we respectfully recommend that the Committee add a robust religious exemption that ensures religious nonprofits are free both to employ those who share their religious beliefs and to operate consistent with those beliefs. Doing so would avoid constitutional violations and protect fundamental freedoms of speech and religious exercise for these religious organizations.

We respectfully request that the Committee take these concerns into account as it considers the bill.

Letter to MD Senate Energy, Education, and Environment Committee
S.B. 1107
March 11, 2024
Page 4 of 4

Thank you in advance for your consideration.

Respectfully,

A handwritten signature in black ink that reads "Gregory S. Baylor". The signature is written in a cursive style with a large initial "G" and "B".

Gregory S. Baylor
Senior Counsel