



## Citizens for a Responsible Government

December 17, 2007

Dear Pastor:

We are writing to ask that you permit a referendum petition drive against Bill 23-07 sponsored by Citizens for a Responsible Government at your church. As you know, the Non-Discrimination-Gender Identity Bill 23-07 (hereinafter referred to as “the Transgender Bill”) was passed by unanimous Montgomery County Council support. We need to collect 25,000 valid signatures in less than 60 days to bring this Bill to referendum. A referendum will allow Montgomery County citizens the right to vote on this issue. Your support is critically necessary if we are to succeed.

Bill 23-07 has serious flaws which will be particularly threatening to churches:

- **NO RELIGIOUS EXEMPTION:** Bill 23-07 contains no “religious exemption” for churches, parochial schools and other religious organizations (The District of Columbia transgender law has a religious exemption). This will mean forced employment of qualified transgender job applicants in a variety of positions. While traditionally, a church or religious organization could rely on constitutional protections for autonomy in its employment decisions, the latest June 2007 decision of the Maryland Court of Appeals in *Archdiocese v. Moerson* strongly suggests an anti-discrimination statute such as Bill 23-07 will be enforced against churches, religious schools and religious institutions. Bill 23-07 would cover secular-subject teachers and various other archdiocese and church positions and **exempt only those in which religious ministry or teaching religion is a predominant job function in the court’s view.** In summary, it is possible that any religious school in Montgomery County could be forced to hire a transgender or cross-dressing teacher – unless they were teaching religion. Since Bill 23-07 specifically includes facilities in public accommodations, any transgender teacher must also be provided access to the facilities consistent with their chosen gender identity. Current employees, who may be” closeted” cross-dressers, could now engage in this behavior while teaching with no fear of recrimination. Thus, Bill 23-07 threatens to open up the private religious schools’ female children’s locker rooms and rest rooms to biologic male transgenders; i.e. transvestites.
- **PUBLIC ACCOMODATIONS INCLUDED:** Bill 23-07 covers public accommodations (such as stores, swimming pools, schools, etc.) (Just about any public place with a public restroom) **and their facilities.** Unlike the federal ENDA bill, there is no specific exemption from the definition of “facilities” to exempt public restrooms, locker rooms, changing rooms, and saunas. Serious and legitimate concerns for modesty, decency and safety warrant this new law is repealed.
- **BILL 23-07 IS WORSE WITHOUT THE “BATHROOM AMENDMENT”:** The County Council has perpetuated the impression that since the “bathroom” language has been dropped,

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bathrooms and locker-rooms are now exempted. The removed “bathroom” amendment specifically defined facilities as including restrooms/locker rooms, and opened those restrooms and locker-rooms to transgenders who “expressly and exclusively” asserted their gender. The “bathroom” amendment proposed would have restricted bathroom access to transgenders who “expressly and exclusively” asserted their gender ([Option 5 on the County’s memo, page 5](#)). Without the amendment, bathrooms are now open to ALL transgenders including cross-dressers.

- **“DISTINCTLY PRIVATE AND PERSONAL” REFERS TO PRIVATE PROPERTY, NOT PUBLIC BATHROOMS:** The county council and Mr. Leggett now contend that locker rooms and rest rooms are exempted as being “distinctly personal or private” accommodations under section 27-10 of the existing code. In its press release, the County Council claims that “County law regarding discrimination does not apply to accommodations that are distinctly private or personal, such as restrooms.” The Council is confusing accommodations with facilities. The two terms are not synonymous in the legal code. Public accommodations are subject to the law, and thus, the bathroom facilities of those public accommodations are also subject to the law. “Distinctly private or personal accommodations” are not public accommodations, and therefore they and their bathroom facilities are not subject to the law. Hence, the council seems to be misleading the public.<sup>1</sup> The code which Bill 23-07 amends is the Human Rights non-discrimination code, which racially desegregated bathrooms. Other jurisdictions and Federal bill have clearly exempted “places of shared nudity” when considering gender identity protections. Indeed, Montgomery County Council debated this very issue, as clearly demonstrated by the five options detailed in their [internal memo](#) (options begin on page 3). However, the county council failed to add a nudity exemption to the transgender bill.
- **BILL 23-07 also prohibits discrimination of transvestites, transgenders and transsexuals, and cross dressers with no exemption for :** Daycare, schools, mothers looking for child care givers, or renters looking for room-mates (even when sharing a bedroom a female could be forced to share her bedroom with a male transvestite).

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<sup>1</sup> There is much case law across the country as to what club, fraternal order, or organization can be considered “distinctly private” in order to not be considered a place of public accommodation subject to nondiscrimination statutes. For example, where a woman, whose application to become a member of a fraternal organization had been denied, claimed that the action violated a state civil rights law prohibiting sex discrimination in a “place of public accommodation,” in *Gifford v. Guilderland Lodge, No. 2480, B.P.O.E. Inc., 707 N.Y.S.2d 722, 83 A.L.R.5th 777 (App. Div. 3d Dep’t 2000)*, the court held that the fraternal organization came within an exception for private clubs or associations where the statute further provided that an organization formed under the Benevolent Orders Law, as this organization was, “shall be deemed to be in its nature distinctly private.” Also, the Boy Scouts assert that they are a distinctly private organization, and thus exempt from New Jersey’s sexual orientation non-discrimination public accommodation law. The Supreme Court agreed with the Boy Scouts. See *BOY SCOUTS OF AMERICA AND MONMOUTH COUNCIL, ET AL. v. JAMES DALE*, 120 S. Ct. 2446 (2000). Section 27-10(c) refers only to “distinctly private or personal” accommodations, and not to facilities. Any other interpretation voids the statute for vagueness.

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- **CROSS-DRESSERS ARE INCLUDED.** Gender identity is not limited to people who have undergone a sex change operation. The bill defines *gender identity* as “an individual’s actual or perceived gender, including a person’s gender-related appearance, expression, image, identity, or behavior, whether or not those gender-related characteristics differ from the characteristics customarily associated with the person’s assigned sex at birth.” Transgenders, as defined by the new law, is a broad term that includes men who dress like women and wear make-up and high heels. Transvestites, intermittent transgenders, and anyone in fact who chooses on a certain day to dress as a member of the other sex are covered.
- **GENDER IDENTITY IS A MENTAL DISORDER** “Gender Identity Disorder” is classified as a mental disorder by the American Psychiatric Association. Legal protection against discrimination based on mental illness is not provided for any other disorder, and there is no rational explanation why it should be offered for this one. Those who wish to assume a “gender identity” contrary to their biological sex are in need of mental health treatment to overcome such disturbed thinking, not legislation to affirm it. Dr. Paul McHugh, formerly psychiatrist-in-chief at the Johns Hopkins University Hospital, [relates how a careful study of transgenderism led them to abandon the practice of performing sex change operations](#). McHugh notes: “We have wasted scientific and technical resources and damaged our professional credibility by collaborating with madness rather than trying to study, cure, and ultimately prevent it.”

We have included the relevant portions of the code modified by Bill 23-07 in the endnotes; Bill 23-07 in its entirety is posted here:

<http://www.montgomerycountymd.gov/content/council/pdf/bill/2007/23-07.pdf>

If at all possible, we would like to start collecting referendum signatures at the churches immediately. If we do not succeed - it is not clear that we will win in court, given the very broad language of the law. If you have questions or would like more information, please contact Anna Mell, our religious outreach director, at 240-671-2307, or refer to our website, [www.notmyshower.net](http://www.notmyshower.net).

Thank you for your consideration –

The Parents and Citizens of Maryland Citizens for a Responsible Government

<sup>i</sup> Bill 23-07, Section 27-10, Scope; Section 27-11, Public Accommodations

<sup>ii</sup> Bill 23-07, Discriminatory Employment Practices (will apply to religious organizations)

<sup>iii</sup> Bill 23-07 Other Troubling Provisions

# Maryland Citizens for a Responsible Government

## i **DIVISION 1. DISCRIMINATION IN PUBLIC ACCOMMODATIONS.\* [Note]**

### **Sec. 27-10. Scope.**

(a) This division applies to every public accommodation of any kind in the County whose facilities, accommodations, services, commodities, or use are offered to or enjoyed by the general public either with or without charge, such as:

- (1) restaurants, soda fountains, and other eating or drinking places, and all places where food is sold for consumption either on or off the premises;
- (2) inns, hotels, and motels, whether serving temporary or permanent patrons;
- (3) retail stores and service establishments;
- (4) hospitals and clinics;
- (5) motion picture, stage, and other theaters and music, concert, or meeting halls;
- (6) circuses, exhibitions, skating rinks, sports arenas and fields, amusement or recreation parks, picnic grounds, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool rooms, and swimming pools;
- (7) public conveyances, such as automobiles, buses, taxicabs, trolleys, trains, limousines, boats, airplanes, and bicycles;
- (8) utilities, such as water and sewer service, electricity, telephone, and cable television;
- (9) streets, roads, sidewalks, other public rights-of-way, parking lots or garages, marinas, airports, and hangars; and
- (10) places of public assembly and entertainment of every kind.

(b) In this Chapter, "public accommodation" includes any service, program, or activity offered to or used by the general public.

(c) This division does not apply to accommodations that are distinctly private or personal. (Mont. Co. Code 1965, § 77-9; Ord. No. 6-43; 1969 L.M.C., ch. 33, § 1; 1972 L.M.C., ch. 21, § 1; 2001 L.M.C., ch. 9, § 1; 2001 L.M.C., ch. 33, § 1.)

### **Sec. 27-11 Discriminatory practices.**

(a) An owner, lessee, operator, manager, agent, or employee of any place of public accommodation in the County must not, with respect to the accommodation:

(1) make any distinction with respect to any person based on race, color, sex, marital status, religious creed, ancestry, national origin, disability, sexual orientation, or gender identity in connection with:

- (A) admission;
- (B) service or sales; or
- (C) price, quality, or use of any facility or service;

(2) display, circulate or publicize or cause to be displayed, circulated or publicized, directly or indirectly, any notice, communication, or advertisement that states or implies:

(A) any distinction in the availability of any facility, service, commodity, or activity related to the accommodation that would violate paragraph (1), or

(B) that the patronage or presence of any person is unwelcome, objectionable, unacceptable, or not desired or solicited on account of any person's race, color, sex, marital status, religious creed, ancestry, national origin, disability, or sexual orientation;

(3) retaliate against any person because that person:

- (A) lawfully opposed any discriminatory practice under this division; or
- (B) filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this division;

#### *Sec 27-6 Definitions*

*Gender identity* means an individual's actual or perceived gender, including a person's gender-related appearance, expression, image, identity, or behavior, whether or not those gender-related characteristics differ from the characteristics customarily associated with the person's assigned sex at birth.

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ii **27-19. Discriminatory employment practices.**

(a) A person must not because of the race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, gender identity, family responsibilities, or genetic status of any individual or disability of a qualified individual, or because of any reason that would not have been asserted but for the race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status:

(1) For an employer:

\* \* \*

(d) (1) Except as provided in paragraph 2, a person must not print, publish, or cause to be printed or published, any notice or advertisement indicating any preference, limitation, or specification based on race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, gender identity, family responsibilities, or genetic status relating to:

\* \* \*

(e) Notwithstanding any other provision of this division, it is not an unlawful employment practice:

(1) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any program, on the basis of race, color, religious creed, age, sex, marital status, national origin, ancestry, disability, sexual orientation, gender identity, family responsibilities, or genetic status based on a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

\* \* \*

(k) An employer may require an employee to adhere to reasonable workplace appearance, grooming, and dress standards that are non discriminatory and not precluded by any provision of state or federal law. However, an employer must allow an employee to appear, groom, and dress consistent with the employee's gender identity.

iii **Bill 23-07 Other Troubling Provisions**

**27-5. Duties generally**

(a) The Commission must:

\* \* \*

(2) Conduct educational and other programs to promote equal rights and opportunities of all persons regardless of race, color, religious creed, ancestry, national origin, sex, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income.

\* \* \*

(6) Study and investigate, through public or private meetings, conferences, and public hearings, conditions that could result in discrimination, prejudice, intolerance, or bigotry because of race, color, religious creed, ancestry, national origin, sex, age, marital status, disability, sexual orientation, gender identity, genetic status, presence of children, family responsibilities, or source of income.