No. 25-1569

United States Court of Appeals

for the

Fourth Circuit

JOHN DOE,

Plaintiff-Appellee,

– v. –

CATHOLIC RELIEF SERVICES,

Defendant-Appellant,

– and –

STATE OF MARYLAND; UNITED STATES OF AMERICA,

Intervenors.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND AT BALTIMORE

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER AND FOURTEEN ADDITIONAL ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE

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Legal Momentum, the Women's Legal Defense and Education Fund

National Association of Women Lawyers

PFLAG, Inc.

SisterReach, Inc.

SisterReach Illinois

Women Employed

Women's Law Project

WorkLife Law

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 25-1569 Caption: John Doe v. Catholic Relief Services

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Women's Law Center and 14 Additional Organizations (see List of Additional Amici Curiae) (name of party/amicus)

who is Amici Curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐YES ☑NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Elizabeth J. Bower Date: 1/9/2026

Counsel for: Amici Curiae

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

The National Women's Law Center ("NWLC") is a nonprofit organization dedicated to advancing and protecting women's rights and the right of all persons to be free from sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including workplace justice, economic security, reproductive rights and health, and education, with particular attention to the needs of low-income women and those facing intersecting forms of discrimination. To achieve its mission, NWLC advocates for gender justice in the courts, public policy, and society. NWLC has participated as counsel or *amicus curiae* in a range of cases before the Supreme Court, federal Courts of Appeals, and state courts to ensure that rights and opportunities are not restricted based on sex and that all workers, including LGBTQIA+ workers, enjoy equal legal protections against sex discrimination. NWLC and the fourteen additional *amici* respectfully ask that the Court affirm, upholding civil rights protections for Plaintiff-Appellee John Doe ("Doe") and the many others who work for religious employers.

[1] All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the undersigned counsel represent that no party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparation or submission of this brief; and no person other than *amici* and counsel identified herein contributed money intended to fund preparation or submission of this brief.

INTRODUCTION

Plaintiff Doe, a data analyst at defendant Catholic Relief Services ("CRS"), sued CRS for unlawful discrimination after CRS terminated his spousal health insurance benefits because he is a gay man married to another man. This appeal challenges the district court's judgment for Doe on his sex-discrimination claims under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e et seq., and the Equal Pay Act of 1963 (EPA), 29 U.S.C. § 206(d), and his sexual-orientation claim under the Maryland Fair Employment Practices Act (MFEPA), Md. Code Ann., State Gov't (SG) § 20-606(a)(1)(i) (West 2024). CRS's core argument is that long-standing federal and state employment discrimination laws somehow disadvantage religion (despite expressly protecting it) because they draw patently *non*-religious distinctions in enforcement. This argument is not only wrong, but potentially disastrous. If adopted, the blast radius would be huge—it would endanger the civil rights and minimum-pay and maximum-hour protections of thousands of employees of religious entities across Maryland and the Fourth Circuit.

CRS, a social services agency, hired Doe in June 2016, and Doe enrolled his husband in CRS's spousal benefits. *Doe v. Cath. Relief Servs.* ("*Doe II*"), 618 F. Supp. 3d 244, 249 (D. Md. 2022). CRS initially approved the enrollment but later revoked it because CRS does not wish to provide benefits to employees' same-sex spouses. *Id.* at 250. After CRS terminated Doe's husband's health insurance, Doe

brought claims against CRS for sexual-orientation discrimination and sex discrimination under MFEPA, and sex discrimination under EPA and Title VII. *Id.* at 251. In relevant part, the district court granted Doe summary judgment on his Title VII and EPA claims. *See generally id.* Before deciding summary judgment on Doe's MFEPA sexual-orientation claim, the court certified three questions of state law to the Maryland Supreme Court, two of which are relevant to this appeal.

The first was "[w]hether the prohibition against sex discrimination in the [MFEPA] . . . prohibits discrimination on the basis of sexual orientation." (JA954.) Unlike Title VII, MFEPA has separate and express provisions prohibiting employment discrimination on the basis of sex and sexual orientation. SG § 20-606(a)(1)(i). The statute also has a limited religious-entity exemption that applies to sexual-orientation discrimination claims against certain religious entities. SG § 20-604(2). As a result, MFEPA permits exempted religious entities to discriminate in the workplace based on sexual orientation, but not sex, without violating the statute.

In considering this, the Maryland Supreme Court held that MFEPA's prohibition on sex discrimination does not encompass sexual-orientation discrimination. It reached this conclusion because of MFEPA's separate prohibition against discrimination on the basis of sexual orientation, which Title VII lacks. *See Doe v. Catholic Relief Servs.* ("*Doe III*"), 300 A.3d 116, 124–28 (Md. 2023);

compare Bostock v. Clayton Cnty., Ga., 590 U.S. 644, 665 (2020) (holding Title VII's prohibition on sex discrimination "necessarily" includes sexual orientation discrimination). Following the Maryland Supreme Court's opinion, CRS and Doe stipulated to dismiss Doe's MFEPA sex-discrimination claim.

The Court's ruling broadly removed protections for Marylanders under multiple state statutes that prohibited sex discrimination but did not separately enumerate protections based on both sexual orientation and gender identity. In response, the Maryland General Assembly amended dozens of Maryland statutes to make clear that Maryland's antidiscrimination protections uniformly encompass sex, sexual orientation, and gender identity. *See* 2024 Md. Laws Ch. 377; Letter from Clarence K. Lam, Sen., Md. Legis. Dist. 12, on SB590: Human Relations - Discrimination - Protected Characteristics (Equal Opportunity for All Marylanders Act) (Feb. 16, 2024).

The other relevant certified question asked the Maryland Supreme Court whether MFEPA's religious-entity exemption, SG § 20-604(2), covers sexual-orientation discrimination as to all employees of exempted entities or only those who engage in "activities that are religious in nature."[2] The court found the exemption

[2] The district court certified the question: "Whether, under [SG] § 20-604(2), the [MFEPA] applies to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular sexual orientation or gender identity to perform work connected with all activities of the religious entity or only those activities that are religious in nature." (JA954.)

applies only to "employees who perform duties that directly further the core mission(s) of the religious entity," the determination of which "entails a fact-intensive inquiry . . . ." *Doe III*, 300 A.3d at 136, 138. Subsequently, after an October 2024 trial, the district court ruled for Doe on his remaining MFEPA sexual-orientation claim, concluding he "did not directly further a CRS core mission," and rejecting CRS's argument that "MFEPA is not neutral and generally applicable in its application to CRS." *Doe v. Cath. Relief Servs.* ("*Doe IV*"), 779 F. Supp. 3d 545, 558, 562 (D. Md. 2025).

CRS now appeals the district court's entry of judgment for Doe on his claims of sexual-orientation discrimination under MFEPA and sex discrimination under Title VII and EPA. CRS *admits* it discriminated against Doe due to his sexual orientation (*see* Opening Br. 21) but seeks to evade liability by arguing that decades-old antidiscrimination laws are not neutral and generally applicable and that their enforcement would substantially burden CRS's religious exercise. CRS thus contends that strict scrutiny should apply and that Doe fails to satisfy that standard. (*See id.* 49.)

CRS is wrong, and this Court should not permit it to avoid the consequences of its actions. By their plain terms, Title VII, EPA, and MFEPA are neutral and generally applicable: they do not treat secular activities more favorably than comparable religious activities. In fact, Title VII and MFEPA arguably treat

religious activities *better* insofar as they benefit religious employers (by providing exemptions not available to secular employers) and religious workers (by designating them a protected class and requiring reasonable accommodation of religious practices). That courts must conduct a factual inquiry—as the district court did—to determine whether MFEPA's religious-entity exemption applies does not make the statute anything other than neutral and generally applicable.

That said, CRS's argument is not just wrong—it is dangerous. CRS argues that exemptions for small or niche employers under Title VII, EPA, and MFEPA (which apply regardless of the claimed basis for discrimination) render them not neutral and generally applicable. An erroneous holding adopting this argument could require employees of religious entities to overcome strict scrutiny before they could vindicate basic civil rights, minimum-wage, and maximum-hour protections under these statutes. This would make it dramatically more difficult to hold religious employers in the Fourth Circuit accountable for discrimination on any prohibited basis, including race or sex, in workers' compensation, terms, conditions, or privileges of employment. Notably, CRS identifies no federal appellate precedent in favor of its position, and relies on a single unpublished district court opinion that is not precedential in this Circuit. Although employers are entitled to protection against potential infringement of their religious freedom, employees are also entitled to the full protection of neutral and generally applicable antidiscrimination laws

passed by Congress and state legislatures to ensure workplaces are free of unlawful discrimination. Thus, *amici* ask this Court to hold that Title VII, EPA, and MFEPA are neutral and generally applicable, and affirm the district court's judgment in favor of Doe.

ARGUMENT

I. Title VII, EPA, and MFEPA Broadly Protect Employees Against Discrimination, Including Employees of Religious Entities.

In the more than sixty years since the Civil Rights Act was passed, "few pieces of federal legislation rank in significance." *Bostock*, 590 U.S. at 649. Title VII enshrined the principle that "*any* individual" is broadly entitled to protection against workplace discrimination based on their race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1) (emphasis added). In other words, "all persons are entitled to [Title VII's] benefit." *Bostock*, 590 U.S. at 653. This includes individuals experiencing discrimination due to their sexual orientation. *See id.* at 665 (finding where employer discriminates due to employee's sexual orientation, "it necessarily and intentionally discriminates against that individual in part because of sex. And that is all Title VII has ever demanded to establish liability."). The Equal Pay Act prohibits sex discrimination in payment for equal work, 29 U.S.C. § 206(d).[3] And

[3] While *Bostock* clarified that Title VII's prohibition on sex discrimination encompasses discrimination based on sexual orientation, gender identity, and sex characteristics (including intersex status), EPA's prohibition differs from Title VII's. *Compare Bostock*, 590 U.S. at 656 (observing Title VII "prohibits employers from

MFEPA broadly prohibits workplace discrimination based on "race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability." SG § 20-606(a)(1)(i).

In accordance with the statutes' plain text, courts have repeatedly held that these cornerstone laws apply to religious employers. *See, e.g.*, *O'Reilly v. Bd. of Child Care of United Methodist Church, Inc.*, 2020 WL 5913242, at *2 (D. Md. Oct. 6, 2020) (finding claim for termination in violation of MFEPA plausibly stated against church board); *McMahon v. World Vision Inc.*, 147 F.4th 959, 973 (9th Cir. 2025) ("World Vision, like any employer, is generally prohibited under Title VII . . . from taking adverse employment actions based on protected characteristics, including sexual orientation."); *Tucker v. Faith Bible Chapel Int'l*, 36 F.4th 1021, 1045 (10th Cir. 2022) ("[A]pplying neutral and generally applicable laws to religious institutions ordinarily does not violate the First Amendment. . . . Faith Christian,

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taking certain actions 'because of' sex"), *with* 29 U.S.C. § 206(d)(1) ("No employer having employees subject to any provisions of this section shall discriminate . . . between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees *of* the opposite sex in such establishment for equal work . . . .") (emphasis added). Below, Doe succeeded on his EPA claim because CRS would have provided benefits for his husband were Doe a woman. *Doe II*, 618 F. Supp. 3d at 257 (granting summary judgment on EPA claim). CRS has not disputed this showing, and objects to any application of both Title VII and EPA.

thus, is subject to Title VII discrimination claims brought . . . by a non-ministerial employee.").[4]

Such cases emphasize that while courts recognize the importance of religious freedom, organizations that discriminate on a prohibited basis cannot merely invoke religion to escape liability.[5] *See, e.g.*, *First Baptist Church*, 1992 WL 247584, at *7 ("Government regulation should not be held unconstitutional simply because it may in some way affect the otherwise unfettered operation of a religious institution."); *Smith v. Raleigh Dist. of N.C. Conf. of United Methodist Church*, 63 F. Supp. 2d 694, 702 (E.D.N.C. 1999) ("While the Free Exercise clause protects religious beliefs . . . it does not . . . protect all actions taken within the context of a religious environment.").

II. Title VII, EPA, and MFEPA Are Neutral and Generally Applicable.

A. Title VII and EPA Are Neutral and Generally Applicable.

CRS does not dispute that it discriminated against Doe because he is a man married to another man. Instead, it attempts to avoid liability by arguing that enforcement of the relevant statutes in this case would impermissibly burden its right

[4] *See also EEOC v. First Baptist Church*, 1992 WL 247584, at *1–2, *14 (N.D. Ind. June 8, 1992) (granting partial summary judgment against church on EPA claim involving ineligibility of female teachers to receive "head of household allowance" benefits).

[5] Title VII does contain exemptions for the employment of co-religionists, not applicable here. *See* 42 U.S.C. §§ 2000e-1(a), 2000e-2(e).

to religious exercise in violation of the Free Exercise Clause. That argument fails. CRS's contention depends on its view that the statutes are subject to, and cannot satisfy, strict scrutiny. (Opening Br. 49.) But laws incidentally burdening religion are not subject to strict scrutiny if they are neutral and generally applicable. *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021). Government regulations are not neutral and generally applicable if "they treat *any* comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (emphasis in original). Neither Title VII nor EPA treats secular activities more favorably than comparable religious ones.

Curiously, CRS emphasizes that Title VII and EPA draw *non*-religious distinctions in enforcement—like Title VII's fifteen-employee threshold for coverage or EPA's carve-out for certain amusement or recreational establishments and camps, fishing industries, and small newspapers—to support its argument that the statutes disadvantage religion. (Opening Br. 50–51.) But nothing about these provisions supports CRS's argument because they apply to qualifying secular and religious employers alike. Title VII's fifteen-employee threshold makes no distinction between religious and secular employers. *See* 42 U.S.C. § 2000e(b). Likewise, EPA's protections—and the broader minimum-pay and maximum-hour protections of the Fair Labor Standards Act ("FLSA"), of which EPA and its exemptions are a part—apply to larger religious and nonreligious newspapers, and

exempt certain camps regardless of whether they are religious. *See* 29 U.S.C. § 213. CRS does not—and cannot—argue that small religious employers and religious summer camps do not benefit from these provisions exactly the way small secular ones do.

Indeed, a Washington district court rejected a similar argument. In *McMahon*, a Christian organization rescinded an employment offer upon learning of the employee's same-sex marriage, and in defense argued Title VII is not neutral and generally applicable because of various "secular" exemptions. 704 F. Supp. 3d 1121, 1142–43 (W.D. Wash. 2023), *rev'd and remanded on other grounds*, 147 F.4th 959 (9th Cir. 2025). The court disagreed, stating, "the mere existence of an exemption *for all small employers*—religious and secular alike—does not transform Title VII . . . from neutral and generally applicable laws into those triggering strict scrutiny." *Id.* (emphasis in original); *see also Kane v. De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021) ("[N]either the Supreme Court . . . nor any other court of which we are aware has ever hinted that a law must apply to all people, everywhere, at all times, to be 'generally applicable.'"). Although the Ninth Circuit reversed based on the ministerial exception (which CRS does not contend applies here), the court agreed that "World Vision . . . is generally prohibited under Title VII . . . from taking adverse employment actions based on protected characteristics, including sexual orientation." *McMahon*, 147 F.4th at 973; *see also* Opening Br. 22. Likewise here,

CRS has not cited—because it cannot—any examples of Title VII or EPA favoring "secular" activities over comparable religious ones.

Next, CRS argues the district court misread *Tandon* because the question when determining whether a law applies neutrally and generally is "not how similar the regulated parties are (in size, or any other way)," but rather the "asserted government interest that justifies the regulation at issue." (Opening Br. 51–52 (quoting *Tandon*, 593 U.S. at 62).) For example, California's interest in *Tandon* was reducing COVID-19. *Tandon*, 593 U.S. at 63. However, because California permitted nonreligious activities to "bring together more than three households" while prohibiting religious activities from doing so, the Supreme Court concluded "California treat[ed] some comparable secular activities more favorably than at-home religious exercise." *Id*. Similarly, in *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 538 (1993), ordinances banning religious animal sacrifices derived from "governmental interests in protecting the public health and preventing cruelty to animals." However, as "almost all other" animal killings were excluded, the Supreme Court concluded the "ordinances had as their object the suppression of religion," and thus were not neutrally or generally applied. *Id.* at 536, 542, 545–46.

CRS argues the government interest here is "the need to tamp down invidious workplace discrimination . . . ." (Opening Br. 52.) To this end, CRS claims the government "does not have a stronger or more particularized interest in rooting out

discrimination by religious employers versus, for example, small businesses, oyster farms, or hometown newspapers." (*Id.*) Here, again, CRS bases its argument on nonexistent distinctions. Title VII and EPA's statutory distinctions—unlike those in *Tandon* or *Babalu*—are not drawn along religious versus secular lines; as noted, small religious and nonreligious employers are both exempt from Title VII. Congress incorporated Title VII's small employer exemption based on concerns about the ability of very small workplaces to defend against litigation. *See Taylor v. Cardiology Clinic, Inc.*, 195 F. Supp. 3d 865, 869 (W.D. Va. 2016) ("Congress intended 'to spare very small businesses from Title VII liability'"); *Miller v. Maxwell's Int'l*, 991 F.2d 583, 587 (9th Cir. 1993) (explaining Title VII confines liability to larger employers due to "costs associated with litigating discrimination claims"). Title VII's small employer exemption, which benefits both religious and nonreligious employers, does not suppress religion; it has nothing to do with religion.[6]

CRS's reliance on *Fellowship of Christian Athletes v. San Jose Unified School District Board of Education*, 82 F.4th 664, 689 (9th Cir. 2023), to support the

[6] EPA's exemptions do not target religion or favor secular activities, either. *See, e.g.*, *Mabee v. White Plains Pub. Co.*, 327 U.S. 178, 184 (1946) ("[T]he exemption of small weeklies . . . was inserted to put those papers more on a parity with other small town enterprises."); *Wirtz v. Chesapeake Bay Frosted Foods Corp.*, 220 F. Supp. 586, 592 (E.D. Va. 1963) (explaining fishery exemption included "to make allowances for an industry which is seasonal in nature . . .").

proposition that there is "no meaningful constitutionally acceptable distinction between the types of exclusions at play here" is similarly misplaced. (Opening Br. 52.) In that case, the court found it was impermissible for a school to allow a women's club to exclude men while prohibiting a Christian club from excluding non-Christians. *See Fellowship of Christian Athletes*, 82 F.4th at 689–90. Here, by comparison, both religious and secular organizations are subject to the same prohibitions and exemptions. Moreover, CRS has failed to demonstrate that "hometown newspapers" or small businesses pose risks comparable to larger organizations, religious or otherwise.

CRS's argument that the government does not have a "stronger" interest in addressing discrimination by "religious employers versus . . . small businesses" relies on a false binary as well. (Opening Br. 52.) No such dichotomy exists—religious employers may be small and thus exempt. *Cf. Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617 (2018) (ruling for small bakery in Free Exercise challenge).[7] If anything—and unlike cases such as *Babalu* and *Tandon*—Title VII treats comparable religious activities *more* favorably than it does secular ones. In addition to forbidding religious discrimination, 42 U.S.C. § 2000e-2, it affirmatively requires reasonable accommodation of religious practice, *id.*

[7] Masterpiece Cakeshop had between four and ten employees. Matthew Bunson, *Masterpiece Cakeshop Owner Jack Phillips 'Thrilled' by Supreme Court Victory*, Nat'l Cath. Reg. (June 11, 2018), http://bit.ly/3KS9Lkq.

§ 2000e(j), and contains religious exemptions permitting some religious entities to engage in conduct that would otherwise be proscribed, *id.* §§ 2000e-1(a), 2000e-2(e). Accordingly, CRS's argument that these statutes afford comparable secular activities more favorable treatment is without textual or precedential support.

B. MFEPA Is Neutral and Generally Applicable.

As Title VII and EPA have done at the federal level, MFEPA has provided essential protections to workers in Maryland for decades. *See* SG § 20-606(a)(1)(i). CRS seeks to erode these protections by arguing that MFEPA is not neutral and generally applicable, that enforcement substantially burdens CRS's religious exercise, and that MFEPA is thus subject to and fails strict scrutiny. (*See* Opening Br. 49–56.)

CRS's argument is twofold. First, CRS repeats the argument it made with respect to Title VII and EPA: that MFEPA is not neutral and generally applicable because it exempts, for example, businesses with fewer than fifteen employees, and therefore impermissibly favors comparable secular activities. *See* Opening Br. 50; SG § 20-601(d)(1)(i). This argument has no more traction in this context than it did as to the federal statutes. *Supra* at 10–14.[8]

[8] Nor has CRS cited secular activities that MFEPA treats more favorably. *See* Opening Br. 49–56; *Gen. Conf. of Seventh-Day Adventists v. Horton*, 787 F. Supp. 3d 99, 119 (D. Md. 2025) ("MFEPA's exemptions for employers with fewer than 15 employees . . . are neutral and generally applicable because they exempt

Second, CRS points to MFEPA's religious-entity exemption, which exempts religious organizations "with respect to the employment of individuals of a particular religion, sexual orientation, [or] gender identity . . . to perform work connected with the activities of the religious entity." SG § 20-604(2). Specifically, CRS asserts that because the application of MFEPA's religious-entity exemption—as interpreted by the Maryland Supreme Court in *Doe III*—involves a factual inquiry into an employee's position, it requires courts to consider a "mechanism for individualized exemptions," which the U.S. Supreme Court found problematic in *Fulton*, 593 U.S. at 533. (Opening Br. 53.)

This argument fails. First, it would produce an absurd result: laws providing relief for religious organizations would be *more* suspect than statutes providing no religious exemption. It "cannot be" that "rules that provide no religious exemption at all are on stronger footing under the Free Exercise clause than rules that provide exceptions on religious grounds and, thus, treat religious conduct more favorably." *George v. Grossmont Cuyamaca Cmty. Coll. Dist. Bd. of Governors*, 2022 WL 16722357, at *13–15 (S.D. Cal. Nov. 4, 2022). Otherwise, "governments would be perversely incentivized 'to provide no religious exemption process in order to avoid strict scrutiny.'" *Id.* (quoting *UnifySCC v. Cody*, 2022 WL 2357068, at *7 (N.D.

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employers—religious and nonreligious—in the same way without favoring comparable secular activities.").

Cal. June 30, 2022)). Courts confronting similar issues have found this result "illogical" and explained that it "cannot be" right, as "[p]olicies with no exemptions at all are less favorable to individuals with religious objections than policies with properly implemented religious exemptions." *UnifySCC*, 2022 WL 2357068, at *7. It is surely not the aim of the Free Exercise Clause to incentivize governments *against* religious exemptions.

In any event, *Fulton* does not prohibit consideration of an employee's role in assessing a discrimination claim against his religious employer. As noted, MFEPA's religious-entity exemption extends to individuals performing work "connected with the activities of the religious entity." *See supra* at 17. The Maryland Supreme Court authoritatively interpreted this provision to mean work that "directly further[s] the core mission(s)—religious or secular, or both—of the religious entity." *Doe III*, 300 A.3d at 136. To this end, the Maryland Supreme Court found that identifying whether duties further a core mission is a "fact-intensive inquiry that requires consideration of the totality of the pertinent circumstances." *Id.* That courts may consider facts to determine whether an exemption applies is unremarkable. Yet according to CRS, such considerations render MFEPA's religious exemption an impermissible "mechanism for individualized exemption[]." (Opening Br. 53.)

CRS is mistaken because the facts underlying *Fulton* are inapposite. The provision in *Fulton* bestowed discretion upon a city commissioner to determine

whether an organization's reason for discriminating was legitimate, whereas MFEPA requires a court to make an objective finding as to whether an employee's work "directly further[s] the [organization's] core mission[]." *Doe III*, 300 A.3d at 136. Specifically, in *Fulton*, the Supreme Court applied strict scrutiny to a city contract prohibiting foster care providers from rejecting a child or family based upon sexual orientation "unless an exception is granted by the Commissioner . . . in his/her sole discretion." 593 U.S. at 535. The Supreme Court concluded this discretion triggered strict scrutiny because it invited "the government to decide which reasons for not complying with the policy [we]re worthy of solicitude . . . ." *Id.* at 537. Therefore, the "entirely discretionary exceptions . . . render[ed] the contractual non-discrimination requirement not generally applicable." *Id.* at 536. This provision bears no resemblance to MFEPA's exemption, which grants no discretion upon any official to decide whether a religious employer's rationale for discriminating is worthy. Rather, a court makes an objective factual finding as to whether an employee's role furthers the employer's core mission. If so, the exemption applies; otherwise, it does not.

Even for exemptions where the government exercises a modicum of discretion, courts have rejected arguments similar to CRS's. For example, in *UnifySCC*, the Court upheld as neutral and generally applicable a county vaccination policy allowing employees to seek a reasonable accommodation where they objected

to COVID-19 vaccination based on religious belief or practice. *See UnifySCC*, 2022 WL 2357068, at *6–8. In determining whether the exemption applied, "the County exercised minimal discretion . . . consider[ing] only whether the request 'articulated a claimed religious belief on the face of the exemption request form' . . . ." *Id.* at *2. This inquiry was permissibly "limited" because the county "[did] not exercise any discretion" once it determined the exemption was sought for a religious reason. *Id.* at *7–8. MFEPA's religious-entity exemption is even more limited. It confers no state-actor discretion; courts only evaluate whether an employee's role directly contributes to the religious employer's core mission. *See Doe III*, 300 A.3d at 136–37. *See also We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 290 n.29 (2d Cir. 2021) (statute neutral and generally applicable where standards "sufficiently well-defined to avoid grossly pretextual or discriminatory application").

CRS is also wrong that a factual inquiry automatically renders an exemption a "mechanism for individualized exemptions" subject to strict scrutiny. Courts routinely engage in such inquiries without raising Free Exercise issues. For example, the totality-of-the-circumstances test widely applied to the "ministerial exception" requires a factual inquiry. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188, 190–91 (2012) (considering "all the circumstances of [respondent's] employment"); *Palmer v. Liberty Univ., Inc.*, 72 F.4th 52, 74 n.3 (4th Cir. 2023) ("[T]he ministerial exception is a fact-based inquiry

that must be based on the totality of the circumstances"). A Maryland federal court recently confirmed that the "multi-factor guidance" of *Doe*'s core-mission test "is similar in kind to the totality-of-the-circumstances analysis that the United States Supreme Court has established for determining whether the ministerial exception applies." *Horton*, 787 F. Supp. 3d at 130. Put simply, application of MFEPA's religious-entity exemption is neither unique nor any cause for concern. As the district court observed, "fact-specific inquiries are common as dishwater in deciding whether or not a particular statutory exemption or exception applies." (JA1135–36.)

CRS's argument that strict scrutiny should apply to MFEPA because our "legal system . . . has granted most-favored-nation status to religious exercise" is equally flawed. (Opening Br. 54.) The Constitution's protection for religious freedom has long coexisted with a system that guards against discrimination through a framework of neutral and generally applicable laws. CRS's argument would upend that framework, making it exceptionally difficult for workers who have experienced discrimination to vindicate their rights.

Finally, CRS relies only on one out-of-circuit district court case, which has been twice rejected by courts within the Fourth Circuit, for its argument that laws containing exemptions based upon nondiscretionary criteria or objective fact-based inquiries—and which do not target religious belief—run afoul of *Fulton* or *Tandon* or do not apply neutrally and generally. *Compare* Opening Br. 53 (citing *Union*

Gospel Mission of Yakima, Wash. v. Ferguson, 2024 WL 4660918, at *4 (E.D. Wash. Nov. 1, 2024) *with Doe IV*, 779 F. Supp. 3d at 565 n.12; *Horton*, 787 F. Supp. 3d at 121. No other appellate court has taken this position—were the Court to adopt CRS's position, it would stand alone. *See, e.g.*, *We The Patriots USA*, 17 F.4th at 288 (noting an exemption is not individualized merely due to the existence of exceptions for categories of persons that are objectively defined); *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1178, 1180–81 (9th Cir. 2021) (finding exemption to vaccine mandate was not a mechanism for individualized exemption because it was nondiscretionary and that mandate applied neutrally and generally because plaintiffs failed to show it was implemented to "suppress[] religious belief").

III. The Consequences of Ruling in Favor of CRS Would Be Severe.

Accepting CRS's argument that Title VII, EPA, and/or MFEPA are not neutral and generally applicable would have widespread harmful consequences. As an initial matter, holding these laws are not neutral and generally applicable could imperil employees' protection from discrimination on any number of grounds, irrespective of the employees' roles. Because EPA is part of the FLSA—and because CRS argues that the FLSA's exemptions render EPA not neutral and generally applicable—such a holding could even undermine core national labor protections under the FLSA, like minimum-wage and maximum-hour provisions.

Likewise, a ruling that Title VII's religious exemption "applies whenever a religious employer makes an employment decision because of the employee's nonconformance to any 'aspect[] of religious observance and practice, as well as belief,'" *see* Opening Br. 14, would, as the district court found, "effectively exempt[] religious organizations wholesale," *Doe II*, 618 F. Supp. 3d at 253. Title VII mandates "eliminat[ing] *all* practices which operate to disadvantage the employment opportunities of *any* group protected by Title VII." *See McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 278–80 (1976) (emphases added). CRS's impossibly broad interpretation not only contradicts this mandate but incentivizes religious employers to cite religious justifications as a defense to any number of discriminatory actions. For example, a religious employer could justify providing benefits only to men due to a religious belief that a woman's proper role is at home. *Cf. First Baptist Church*, 1992 WL 247584, at *5–6 (finding church's sex-based "head of household" allowance policy violated EPA despite claim that policy was "a means of observing a religious belief"). Or a religious employer could refuse to hire non-white individuals by claiming white supremacy as a religious belief. *See* Lawrence D. Rosenthal, *Title VII's Unintended Beneficiaries: How Some White Supremacist Groups Will Be Able To Use Title VII To Gain Protection From Discrimination In The Workplace*, 84 Temp. L. Rev., 443, 469 (2012) (discussing courts' treatment of white supremacy as religion under Title VII). Indeed, under

CRS's interpretation, little would prevent religious employers from characterizing *any* decision as pertaining to some "aspect" of its religious belief to evade liability. This would contradict Title VII's terms, contravene decades of precedent, and expose more employees to discrimination.

A ruling that adopts CRS's views would have severe repercussions for workers in Maryland and beyond. If employees of religious entities must overcome strict scrutiny to pursue their discrimination claims, they will be at a stark disadvantage compared to employees of secular employers. While women, disabled people, immigrants, people of color, LGBTQIA+ individuals, and those with intersecting marginalized identities would bear the brunt of this, such a ruling could impact *all* employees of religious entities because Title VII, EPA, and MFEPA equally forbid discrimination against historically advantaged groups. *See Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 310 (2025) (Title VII "establish[es] the same protections for every 'individual' . . . without regard to that individual's membership in a minority or majority group"); 29 C.F.R. § 1620.1(c) ("Men are protected under the [EPA] equally with women."); *Md. Dep't of Health v. Best*, 329 A.3d 335, 353 (Md. App. Ct. 2024) (white employee was member of protected class under MFEPA and Title VII because discrimination claims were "race-based").

A finding that MFEPA is not neutral and generally applicable, but that Title VII is, would harm Maryland workers seeking remedies under state law. Many

employees who experience discrimination will likely acquire only cursory knowledge of whether they have a "strong" claim under federal law, state law, or both. *See* The Institute for the Advancement of the American Legal System & HiiL, *Justice Needs and Satisfaction in the United States of America*, 185 (2021), https://bit.ly/4pKkBbl (finding workers seek assistance for employment-related legal problems from "informal" sources more often than from lawyers). They often must decide what claims to file, if they choose to file at all, while grappling with "well-founded fear" of reprisal or harm to their careers. *See id.* at 185, 188 (finding a third of survey respondents "effectively end[] their justice journey before even starting it"); Jenny R. Yang & Jane Liu, *Strengthening Accountability for Discrimination: Confronting Fundamental Power Imbalances in the Employment Relationship*, Econ. Pol'y Inst., 14–15 (Jan. 15, 2021), https://bit.ly/4qmp8kd (explaining "costs and risks of coming forward are often greater for vulnerable workers," with "[p]eople of color, women, and others in marginalized groups . . . particularly at risk of retaliation in the form of interpersonal costs"). Maryland workers will likely find that their state laws are, in many ways, more protective than federal laws—but this case threatens to create an exception in which LGBTQIA+ workers are uniquely disadvantaged. *See* Stevie Marvin & Kyle K. Moore, *Workplace Nondiscrimination Protections: State Solutions to the U.S. Worker Rights Crisis*, Econ. Pol'y Inst. (Sept. 29, 2025), https://bit.ly/491A2Vp (explaining

Maryland "ha[s] discrimination laws that cover a more expansive range of protected traits than federal law"). If queer and trans workers file state claims, believing their state has "strong" remedies, and religious employers then shield themselves by reciting CRS's arguments, those LGBTQIA+ workers will find themselves running out of time to file valid Title VII complaints while also confronting the daunting obstacle of overcoming strict scrutiny. As a result, LGBTQIA+ workers would be uniquely more likely to receive adverse decisions under Maryland law *and also* be unable to file a claim under Title VII within its statute of limitations.

These constraints will compound the harmful effects of discrimination. It is well established that workplace discrimination causes severe harm, often impoverishing workers and halting their careers. *See* Cailin S. Stamarski & Leanne S. Son Hing, *Gender Inequalities in the Workforce: The Effects of Organizational Structures, Processes, Practices, and Decision Makers' Sexism*, 6 Frontiers in Psych. 1, 4–5 (Sept. 16, 2015), https://bit.ly/3MIcnSq (discussing how discriminatory employment practices negatively affect women's pay and opportunities); *see also* Vivian Ho, *The Discrimination Pushing LGBTQ Workers to Quit*, BBC (Mar. 6, 2023), https://bit.ly/4nngL5Z (explaining LGBTQ individuals face range of workplace discrimination, including harms to job security or advancement opportunities).

Research also indicates that "workplace discrimination and harassment negatively impact employees' health and well-being, as well as their job commitment, satisfaction, and productivity." Brad Sears et al., *LGBTQ People's Experiences of Workplace Discrimination and Harassment*, Williams Inst. 2 (Aug. 2024), http://bit.ly/4p6RTjR ("*LGBTQ Experiences*"). Indeed, studies have drawn broad associations between discrimination and "negative influence[s] on mental and physical health," including "reduced life-satisfaction" and "psychological distress." Elizabeth Keller et al., *Discrimination in the Workplace Linked to Psychological Distress: A Longitudinal Study in the United States*, 66 J. of Occupational & Env't Med. 803, 803–04 (Oct. 2024). Recent research further confirms that discrimination is a "substantial social determinant of health [that] exert[s] a profound negative impact on various health outcomes," such as "increased risk" for cardiovascular disease, hypertension, depression, and suicidal ideation. Adolfo G. Cuevas et al., *Multi-Discrimination Exposure and Biological Aging: Results from the Midlife in the United States Study*, 39 Brain, Behavior, & Immunity – Health 100774 (2024).

Marginalized populations experience even more severe employment harms. A report examining nationwide survey data from 2023 found that "employment discrimination against LGBTQ people continues to be persistent and widespread." *LGBTQ Experiences* at 2. One 2023 study found that half of LGBTQIA+ individuals, and 70% of transgender individuals, reported experiencing workplace

discrimination or harassment just in the previous year. Isabela Salas-Betsch, *Ending Discrimination and Harassment at Work*, Ctr. for American Progress (Mar. 14, 2024), https://bit.ly/42UwAK1.

Women, and especially Black and brown women, also continue to face sex discrimination at work. *See id.* (citing survey findings that 42% of employed women, and 53% of Black women, have experienced workplace sex discrimination); *see also* Ashir Coillberg, *A Window Into the Wage Gap: What's Behind It and How to Close It*, Nat'l Women's L. Ctr. 2 (Feb. 26, 2025), https://bit.ly/491Mapk (explaining Black and Latina women experience wage gaps resulting in annual loss of $25,480 and $32,070, respectively).

Federal data substantiate that discrimination remains a serious social problem. The Equal Employment Opportunity Commission ("EEOC") experienced a significant increase in discrimination charges filed in 2024 due to an uptick in charges based on sex, race, age, national origin, and disability discrimination. *See* U.S. EEOC, *Fiscal Year 2024 Annual Performance Report*, 6 (Jan. 17, 2025), https://bit.ly/4qw6bfS (explaining EEOC "received 88,531 new charges of discrimination in fiscal year 2024 alone, reflecting a more than 9% increase" from 2023). And a 2025 survey showed that a broad cross-section of United States residents report experiencing workplace discrimination due to their identity, including being paid less and not hired or promoted. Edelman Trust Inst., *2025*

Edelman Trust Barometer Special Report: Fairness and Opportunity in the U.S., 8 (July 2025), https://bit.ly/3Jr0SgU (finding majority of Asian and Pacific Islander, Black, Hispanic, and white individuals reported unfair or unequal treatment at work).

A holding that narrows the protections of Title VII, EPA, and MFEPA will only exacerbate these problems. In Maryland alone, thousands of employees of religious organizations would become more vulnerable to the harms of discrimination. *See Religious Organizations*, DataUSA, http://bit.ly/4othYcW (last visited Dec. 19, 2025) (reporting approximately 22,000 Marylanders employed by religious organizations in 2023, with more than 1.1 million nationwide). Despite the serious harms of employment discrimination in all its forms, CRS seeks to undermine the very laws that prevent this from happening. This Court should not allow such a result.

CONCLUSION

For the foregoing reasons, *amici* respectfully support Plaintiff-Appellee's request that the Court affirm the district court's orders and rule in favor of Doe.

Dated: January 9, 2026

Respectfully submitted,

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