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The Honorable Thomas Stevens, Chair
House Committee on General, Housing and Military Affairs
Vermont Legislature
State House
Montpelier, Vermont

RE: H.783 – An act relating to recovery residences

Dear Chair Stevens and Members of the Committee:

Thank you for the opportunity to provide written testimony to the Committee on H.783 – an act relating to recovery residences. I am the Executive Director and Legal Counsel for the Vermont Human Rights Commission (HRC or the Commission). The mission of the agency is to promote full civil and human rights in Vermont. The Commission enforces anti-discrimination laws in housing, public accommodations and employment through investigations, conciliations and litigation. Additionally, the HRC provides education and training on civil rights and anti-discrimination laws and develops and advances policies relating to the protection of Vermonters.

Because the work of the HRC is limited to enforcing the anti-discrimination statutes of this state, I will limit my testimony to the singular issue of discrimination and defer to my community members with lived experiences, expertise and knowledge in the area of recovery, to address the purpose, goal and need for this very important bill.

Here, I provide some background information on discrimination law, call your attention to some issues and propose potential language that could be added to the bill.

There are typically three types of discriminatory claims: 1) disparate treatment which is otherwise known as intentional discrimination claims; 2) disparate impact claims which occurs when a neutral policy results in a disproportionate impact on a specific group of people; and 3) reasonable accommodation/modification claims brought by persons with disabilities.

Intentional discrimination occurs when a member of a protected class is treated differently because of their protected status. This can result when there is a facially discriminatory policy, rule, ordinance or statute. It can also occur when an individual is motivated by discrimination and treats members of a protected class differently.

Any law that is facially discriminatory (favors, benefits, or disfavors or restricts any protected class) is likely to violate both federal and state anti-discrimination laws unless the government could show that either 1) **the restriction benefits the protected class; or 2) that the restriction responds to legitimate safety concerns raised by the individuals affected, rather than based on stereotypes.**

Protected classes under the unfair housing statute found at 9 V.S.A. §4503 are: race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or disability of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking. Noteworthy is that the law protects those with disabilities but does not protect those without disabilities. Likewise, persons without minor children are not a protected group. However, race, sex, sexual orientation, gender identity, etc. include all persons falling within those categories. Thus, sex means both sexes and gender identity includes all gender identities including cisgender, transgender, binary, non-binary, etc.

With this background information, I now turn to the unfair housing language found under section (d) on page 5, lines 4-6 which reads: *Notwithstanding 9 V.S.A. § 4503, a recovery residence may limit housing opportunities based on gender, gender identification and on the basis of having one or more minor children.*

First, opening a recovery residence for parents having one or more minor children is not discriminatory because not having a minor child is not a protected status. However, a recovery residence that is limited to women and children discriminates against men who have children.

Second, gender-specific housing is interpreted by the HRC to include any person who identifies as that gender and any person who identifies as non-binary or binary. While the HRC finds that the term “gender” does not require further clarification for the purposes of enforcement, the legislature may find that recovery residences require more specific language. As such, the HRC recommends the following additional language, if necessary: *...gender, includes any individual that identifies as that gender, any individual that is binary and non-binary as well.*

Third, limiting housing opportunities on the basis of gender identification opens the small risk that a recovery home could be made available only to cisgender individuals which is likely not the population this legislation intends to serve.

Lastly and most importantly, recovery residences that restrict housing opportunities on the basis of gender and gender identity are facially discriminatory and run the risk of violating both state and federal laws (although the federal fair housing statutes do not provide protection on the basis of gender identity, some courts have interpreted sex more broadly to capture some gender identity discrimination claims).

Courts have allowed cases to proceed to trial when the law or policy was facially discriminatory even when the exclusion or restriction was reasonable and well-intentioned. So, while the legislative intent behind H.783 is honorable, that intent is not sufficient to save recovery residences from potential discrimination claims.

Having shared some of those concerns, the HRC supports H.783. The purpose and goals of this bill align with the mission and goals of the HRC. The Commission recognizes that Vermont's most vulnerable populations are in need of safe and stable housing and the best opportunities for success in their recovery journeys. Additionally, the risk of litigation is low and the need for more recovery residences in the State is great.

The HRC proposes the following underlined language be added to the statement of purpose:

Statement of purpose of bill as introduced: This bill proposes to: (1) provide certain residential rental agreement exclusions to recovery residences; (2) require that recovery residences have certain policies and procedures; (3) require a municipality to treat a recovery residence as a single family residential home under its land use bylaws; (4) protect recovery residences that seek to limit residents on the basis of gender, gender identification and on the basis of having one or more minor children from federal and state unfair housing laws because legitimate safety concerns exist and/or restrictions on these bases benefit women, members of the LGBTQ plus community and women with minor children.

Additionally, the HRC encourages the Committee to seek testimony from witnesses with knowledge, expertise and experience in the field of recovery residences who will attest to the safety concerns and benefits of these types of restrictions. These witnesses should be advocates and recovery specialists. Additionally, witnesses should include women, members of the transgender community, and parents with minor children who have resided in recovery homes and can speak to their successes, their need for safety and the benefits of these types of restrictions.

The HRC believes that H.783 is a bill that is protective and reflective of the needs of the communities whom it seeks to serve. As such, the HRC fully supports the bill and asks that the members of the legislature vote to support it.

Thank you for your time.



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