

MEMORANDUM

To: Daughters Advocating for Restoration Executive Committee¹
From: Palmer Williams, Brandon Smith, Andy Wilson
Holtzman Vogel Baran Torchinsky & Josefiak PLLC
Date: October 12, 2026
Re: *Legal Implications of Restricting Daughters of the American Revolution
Membership Eligibility to Biological Females*

The National Society Daughters of the American Revolution (“DAR”) can and should limit membership to biological women, consistent with its original purpose and historical practice. The simplistic and one-sided memorandum prepared by Professor Samuel Bagenstos and circulated by the National Board of Management in advance of the June 2026 vote on whether to limit DAR membership to women (the “Bagenstos Memorandum”), misinterprets controlling statutory and decisional law in arguing otherwise. This memorandum provides a clear-eyed assessment of DAR’s legal position, in light of efforts to restore its women-only membership eligibility, across four dimensions and reaches the following conclusions:

First, with respect to the D.C. Human Rights Act (“DCHRA”), DAR qualifies for the statute’s “distinctly private” exception—an exception the Bagenstos Memorandum materially understates—and DAR already faces the same baseline DCHRA exposure simply by excluding non-trans-identifying men from membership. Restoring DAR membership eligibility to its true intent does not create new legal risk; it merely presents an additional application of a theory DAR already confronts.

Second, DAR possesses a powerful First Amendment expressive-association defense under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), reinforced by *303 Creative LLC v. Elenis*, 600 U.S.

¹ In publishing this memorandum, Daughters Advocating Restoration has authorized disclosure only of this document. To the fullest extent permitted by law, any waiver of attorney-client privilege, work-product doctrine, or any other applicable privilege resulting from this disclosure is limited to the specific contents of this document as published and will not extend any other communication, document, draft, or work product subject to those protections about the same or related subject matter.



570 (2023), *United States v. Skrmetti*, 605 U.S. 495 (2025), and *West Virginia v. B.P.J. by Jackson*, 146 S. Ct. 2356 (2026). The Bagenstos Memorandum’s claim that this defense is weak ignores *Dale*’s deference to an organization’s self-definition and misrepresents the case law.

Third, the membership clarification poses no realistic threat to DAR’s tax-exempt status. The *Bob Jones* doctrine is inapplicable, and DAR’s principal property tax exemptions were conferred by federal statute and cannot be revoked by D.C. executive action.

Fourth, the NBM’s handling of the proposed clarification—refusing to call a mandatory Special Meeting, distributing only the Bagenstos Memorandum while suppressing contrary analysis, and retaliating against members who advocated for the clarification—raises substantial fiduciary-duty concerns actionable under D.C. law.

The Bagenstos Memorandum’s alarmist framing is contradicted by the weight of legal authority, is built on an unsubstantiated factual premise about DAR’s purported history of admitting transgender members, and reflects an outdated view of First Amendment jurisprudence that ignores critical recent developments in the law.

This analysis also applies to other longstanding women-only historical lineage societies that are also subject to the DCHRA or similar laws, to the extent they share relevant characteristics of DAR discussed herein.

I. THE D.C. HUMAN RIGHTS ACT

The DCHRA applies to any “public accommodation,” pursuant to the law’s deliberately expansive 2020 amendments. *See* D.C. Code § 2-1401.02; Bella Evangelista and Tony Hunter Panic Defense Prohibition and Hate Crimes Response Amendment Act of 2020, D.C. Law 23-283. As such, clarifying that membership is limited to biological women could theoretically expose DAR to enforcement actions. But this framing, standing alone, is misleading for two critical reasons.

The membership clarification does not create new DCHRA exposure. If the DCHRA applies to DAR’s membership decisions at all, DAR’s longstanding exclusion of *men* already presents substantially the same statutory issue. The *Pietrangelo v. Refresh Club* litigation—in which a co-working club’s exclusion of men resulted in a \$3,000 judgment—confirms that enforcement risk exists at baseline. *See Pietrangelo v. Refresh Club, Inc.*, 2024 WL 3400258 (D.D.C. July 12, 2024), *aff’d*, 2025 WL 1953500 (D.C. Cir. July 16, 2025). But that risk exists *regardless* of whether DAR adopts the proposed clarification. \

The “Distinctly Private” Exception

The Bagenstos Memorandum treats the DCHRA’s “distinctly private” exception as effectively unavailable. That is wrong. The statute creates a *conjunctive* three-part test: the exception applies *unless* the organization (A) has 350 or more members, (B) serves meals on a regular basis, *and* (C) regularly receives payment from nonmembers for trade or business. D.C. Code § 2-1401.02(24). All three conditions must be met to defeat the exception.

DAR’s membership size and rental of Constitution Hall may satisfy conditions (A) and (C). But condition (B) does not apply. DAR’s National Society does not regularly serve meals in the District of Columbia—its own website states that “DAR does not offer catering services.”²

The Bagenstos Memorandum correctly observes that even if the exception applies, DAR could face sanctions under D.C. Code § 2-1402.67 when applying for operating permits or licenses, but the First Amendment protects the National Society from such enforcement action.

Resolution by Congressional Action

Legislation pending in both houses of Congress would resolve the DCHRA question entirely. On July 15, 2026, Representative Ben Cline introduced H.R. 9701, the Daughters of the American Revolution Membership Integrity Act with dozens of co-sponsors.³⁴ On July 28, 2026, Senators Blackburn, Britt, Lee, Tuberville, and Cramer introduced a companion bill.⁵ Both bills would amend DAR’s federal charter to limit membership to biological women.⁶ Enactment would preempt the DCHRA under the Supremacy Clause.⁷ The DCHRA confirms that result: “Nothing in this chapter shall be construed to

² DAR’s website advises that “DAR does not offer catering services.” *Venue Details and Guidelines*, Daughters of the Am. Revolution, <https://www.dar.org/national-society/entertaining-dar/venue-details-and-guidelines> (last accessed Aug. 18, 2026).

³*Rep. Cline Introduces Legislation to Ensure the DAR’s Membership is Limited to Women*, Ben Cline (July 15, 2026), <https://cline.house.gov/news/documentsingle.aspx?DocumentID=2687>.

⁴*Id.*; see also H.R.9701, Congress.Gov, <https://www.congress.gov/bill/119th-congress/house-bill/9701> (last visited July 30, 2026). The bill currently has thirty-nine cosponsors and support from Concerned Women for America, American Principles Project, Heritage Action, and Independent Women.

⁵Press Release, Sen. Marsha Blackburn, Blackburn Leads Colleagues in Introducing Legislation to Keep Biological Men Out of the Daughters of the American Revolution (July 28, 2026), <https://www.blackburn.senate.gov/2026/7/blackburn-leads-colleagues-in-introducing-legislation-to-keep-biological-men-out-of-the-daughters-of-the-american-revolution>.

⁶ Both bills would insert a new 36 U.S.C. § 153101a defining “woman” as “an adult human female” and “female” as a person with the reproductive system that produces ova.

⁷See *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 471 (2018); *Student Loan Servicing All. v. D.C.*, 351 F. Supp. 3d 26 (D.D.C. 2018).



supersede any federal rule, regulation or act.”⁸ Amendment of the federal charter remains the cleanest path to resolving DCHRA concerns, so DAR members who support limiting membership to biological women should contact their congresspersons to advocate its passage.

II. FIRST AMENDMENT

The First Amendment places substantial limits on the government’s power to compel a private expressive association to accept members it does not wish to admit. DAR has a robust First Amendment defense to any DCHRA enforcement action—a defense the Bagenstos Memorandum materially understates.

The Expressive Association Doctrine

The governing framework is *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), in which the Supreme Court held that New Jersey’s public-accommodations statute could not constitutionally be applied to dictate the Boy Scouts’ membership decisions. *Dale* established that the “paradigmatic” burden on expressive association is a “regulation that forces the group to accept members it does not desire.” *Id.* at 648. That is precisely the situation here. If the Boy Scouts can refuse to admit an openly gay assistant scoutmaster, DAR can refuse to admit biological males who identify as women.

Critically, *Dale* set a broad standard. An organization’s expression can be “public or private,” and “associations do not have to associate for the ‘purpose’ of disseminating a certain message.” *Id.* at 648, 655. An association “must merely engage in expressive activity that *could* be impaired.” *Id.* at 655. Moreover, courts must defer to an association’s own view of what would impair its expression. *Id.* at 653.

Recent Case Law Confirms DAR’s Strong Position

Green v. Miss United States of Am., LLC, 533 F. Supp. 3d 978 (D. Or. 2021), *aff’d on other grounds*, 52 F.4th 773 (9th Cir. 2022): The court held that a beauty pageant could exclude transgender women because the pageant’s “conception of female identity” was itself expressive, and compelling inclusion would “significantly affect” its ability to advocate its viewpoints. *Id.* at 992, 997. If a pageant qualifies as expressive, DAR—a 135-year-old lineage organization with a chartered mission—unquestionably does.

Olympus Spa v. Armstrong, 169 F.4th 817 (9th Cir. 2026): The Ninth Circuit denied expressive-association protection to a women-only commercial spa because the spa “and its patrons do not engage

⁸ D.C. Code § 2-1401.03(c) (“Nothing in this chapter shall be construed to supersede any federal rule, regulation or act.”).



in expressive activity.” *Id.* at 836. This case is helpful to DAR: the court drew a clear line between noncommunicative “commercial services” and organizations that “transmit a system of values” with “consistent instruction and engagement with a stable membership.” *Id.* DAR falls squarely on the expressive side of that line.

DAR’s Identity Is Inherently Expressive

DAR’s very *name* embodies its expressive identity. To be a “*Daughter* of the American Revolution” is to be a member of an organization whose identity, mission, and membership definition are inextricable. The meaning DAR assigns to the term “Daughter”—and whom that term includes and excludes—is itself part of the organization’s expression. The government cannot separate DAR’s message from its membership definition when that definition is embedded in the organization’s name, history, and purpose.

The Bagenstos Memorandum’s Counterarguments Fail

The Bagenstos Memorandum’s principal counterargument—that DAR “has permitted transgender women to become members for decades” (Bagenstos Mem. at 3)—is built on sand. **The present record does not substantiate this assertion.** DAR does not track gender or sex in its membership database. When members asked at Continental Congress how many transgender individuals are currently members, they were told DAR “does not track gender/sex in their database.” The Registrar General admitted this assertion was “based on anecdotal evidence.” The determinative factual premise of the memorandum the NBM distributed to all voting members was unsupported by any institutional records.

Moreover, even if DAR had at various points admitted some transgender members, that would not defeat a First Amendment defense. *Dale* requires courts to defer to an association’s *present* articulation of its expressive identity. 530 U.S. at 653. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984), recognized that the inquiry is whether a law is being applied “for the purpose of hampering the organization’s ability to express its views.”

The Bagenstos Memorandum also errs in characterizing DAR’s expression as limited to “patriotic, historical, and educational” purposes unrelated to gender. This misunderstands *Dale*. Organizations need not associate for the *purpose* of disseminating a message about gender to invoke expressive-association protection. The expression includes the identity conveyed through membership criteria themselves.

Recent Supreme Court Developments

Three recent Supreme Court decisions significantly strengthen DAR's constitutional defense:

United States v. Skrametti, 605 U.S. 495 (2025): The Court upheld biological sex classifications, confirming that laws drawing distinctions based on biological sex are not inherently suspect. This directly undermines any argument that DAR's reliance on biological sex contravenes "national public policy."

West Virginia v. B.P.J. by Jackson, 146 S. Ct. 2356 (2026): The Court further affirmed biological sex distinctions and acknowledged that allowing biological men into women's-only spaces "can deter some women and girls who would otherwise participate . . . from doing so." *Id.* at 2375. This is precisely what has happened at DAR: thousands of members have already resigned because of the organization's failure to limit membership to biological women. And more than one thousand women have signed a petition supporting efforts to restore DAR to its intended composition of biological women only.

303 Creative LLC v. Elenis, 600 U.S. 570 (2023): The Court stated unequivocally: "When a state public accommodations law and the Constitution collide, there can be no question which must prevail." *Id.* at 592. Any attempt to apply the DCHRA to override DAR's First Amendment rights will face this dispositive principle.

In sum, if DAR formally defines its identity as a women's lineage organization encompassing a biological-sex-based understanding of "daughter" and "woman," any DCHRA enforcement action would fail.

III. TAX IMPLICATIONS

The Bagenstos Memorandum's suggestion that DAR risks losing its tax-exempt status is unfounded.

Federal Tax-Exempt Status. The *Bob Jones University v. United States*, 461 U.S. 574 (1983), doctrine is inapplicable. *Bob Jones* permits the IRS to revoke tax-exempt status only where practices violate "national public policy"—a case involving racial discrimination with a unique constitutional and legislative history. There is no "national public policy" against sex-based membership restrictions in private genealogical organizations. The IRS has never revoked tax-exempt status on such grounds. The current administration would not pursue such action. And *Skrametti* and *B.P.J.*—both upholding biological sex classifications—foreclose any argument that limiting membership to biological women contravenes established national policy. See Jean Wright et al., *Illegality and Public Policy*



Considerations, IRS, at 8 (1994) (identifying *Bob Jones* as the only known case in which an organization’s tax-exempt status was challenged solely for allegedly violating public policy rather than a specific law).

D.C. Property Tax. DAR’s historic properties are exempt by a series of federal acts codified at D.C. Code §§ 47-1028–1032 and 47-1002(5).⁹ These are *statutory* exemptions conferred by Congress. The D.C. executive branch cannot unilaterally revoke what the D.C. legislature, much less Congress, granted. *See D.C. v. John R. Thompson Co.*, 346 U.S. 100, 114 (1953) (“The repeal of laws is as much a legislative function as their enactment.”). The Bagenstos Memorandum’s invocation of D.C. Code § 2-1402.67 is therefore irrelevant to DAR’s principal property tax protections.

D.C. Income Tax. D.C. law incorporates federal law as to charitable status. D.C. Code § 47-1802.01(a). DAR’s D.C. income tax exemption depends on its federal 501(c)(3) status, which is not at risk.

Potential Risks. For these reasons, the only realistic risk the DAR faces is challenges to its discretionary D.C. property-tax exemptions on a handful of newer buildings and withdrawal of certain permits—to which the First Amendment would pose an equally strong defense.

IV. FIDUCIARY DUTY

The NBM’s handling of the proposed membership clarification raises substantial fiduciary-duty concerns under D.C. nonprofit law, which applies to DAR to the extent its federal charter is silent on governance matters.

Refusal to Call the Special Meeting

Article VIII, Section 7 provides that a Special Meeting “*shall* be called by the President General upon the written request of thirty or more chapters in at least ten states.” This is mandatory. Over thirty chapters in more than ten states submitted qualifying petitions by early 2026. The President General acknowledged receipt but refused to call the meeting.

Instead, she offered only a “Special Order of Business” at Continental Congress—announced solely to already-selected delegates, not to all members. A professional parliamentarian, Timothy Wynn, PRP, confirmed this was deficient: the duty to call arises “the moment the required number of written requests are made,” and the President General lacks “authority to change . . . or to partially carry out

⁹ *See* Act of Dec. 24, 1942, Pub. L. No. 77-846, 56 Stat. 1089; Act of May 21, 1924, Pub. L. No. 68-125, 43 Stat. 135; Act of Sept. 16, 1922, Pub. L. No. 67-305, 42 Stat. 846; Act of Feb. 27, 1903, Pub. L. No. 57-118, 32 Stat. 907.



the directive.” When a renewed request met the threshold for convening a Special Meeting, the President General denied it, citing the prior vote—despite Robert’s Rules expressly providing that “[a]ny motion that is still applicable can be renewed at any later session.” RONR (12th ed.) 38:3(2). These actions constitute a clear violation of mandatory bylaw obligations.

Informational Asymmetry and Suppression of Contrary Analysis

The NBM’s own June 19, 2026 letter acknowledged its “obligation to ensure that members voting on consequential matters have access to information necessary to fully exercise that responsibility.” Its conduct flatly contradicted this principle:

- Distributed the Bagenstos Memorandum as an “independent legal analysis” while suppressing the contrary Center for American Liberty memorandum from January 2025—without even disclosing that it had received it;
- Imposed a Standing Rule prohibiting members from relying on outside legal opinions—*after* it had distributed its own preferred outside legal opinion;
- Engaged in a documented pattern of retaliation: warning letters, disciplinary threats, removal from appointed positions, exclusion from communications platforms, and other adverse actions directed at members supporting the Special Meeting.

This orchestrated informational asymmetry rendered the Continental Congress vote uninformed and constitutes a breach of the duties of good faith and ordinary prudence. *See* D.C. Code §§ 29-406.30(a), (c), 29-406.42(b).

The “Anecdotal Evidence” Problem

The logical inconsistency at the heart of the Bagenstos Memorandum’s factual premise is itself evidence of a flawed process. DAR told members it “does not track gender/sex in their database,” yet the Bagenstos Memorandum asserted that DAR “has permitted transgender women to become members for decades.” The Registrar General admitted this assertion was “based on anecdotal evidence.” Either official records exist and inaccurate information was given, or they do not and the memorandum’s key factual premise was unsupported. Both scenarios support a breach-of-fiduciary-duty claim.



Remedies and Litigation Posture

D.C. law permits dues-paying members to bring direct claims for breach of fiduciary duty.¹⁰ While D.C. Code § 29-406.31(d) provides near-blanket immunity from monetary damages for directors of charitable corporations, this defense does not bar equitable relief—and the “intentional infliction of harm” exception likely applies given the documented pattern of deliberate bylaw violations and retaliation. *See Bronner v. Duggan*, 317 F. Supp. 3d 284 (D.D.C. 2018).

The strongest litigation posture is a governance-enforcement action seeking: (1) mandatory injunctive relief to compel a Special Meeting; (2) declaratory relief establishing the bylaw violations; and (3) an order preventing the NBM from suppressing discussion or retaliating against those who engage in advocacy.¹¹

CONCLUSION

The proposed membership clarification is legally defensible, and similar measures by comparable historical lineage societies would be as well. DAR and similarly situated organizations possess both a substantial statutory defense under the DCHRA’s “distinctly private” exception and a powerful First Amendment expressive-association defense reinforced by recent Supreme Court authority. Clarifying that only biological women may be members poses no realistic threat to these organizations’ tax-exempt status. And the NBM’s conduct in suppressing the Special Meeting, distributing one-sided legal analysis, and retaliating against advocates provides a viable basis for governance-enforcement litigation.

The Bagenstos Memorandum materially overstates DAR’s legal risk. It treats the statutory exception as unavailable when DAR has a robust claim to it. It dismisses the First Amendment defense by ignoring *Dale*’s deference to organizational self-definition and disregarding *Green* and *Olympus Spa*. It relies on a factual premise—DAR’s alleged decades-long acceptance of transgender members—that is admittedly based on anecdotal evidence unsupported by institutional records. And it overstates tax exposure by conflating statutory exemptions applicable to DAR’s historic properties with discretionary ones that affect only a handful of recent purchases.

DAR members committed to safeguarding their organization’s women-only identity should pursue a twofold approach: (1) closely monitor and actively support the pending federal legislation (H.R. 9701 and the Senate companion), which would amend DAR’s federal charter to preempt DCHRA concerns

¹⁰ *See Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 728–30 (D.C. 2011).

¹¹ Article XIX, § 6 provides for a nine-month grievance period before initiating litigation, although it simply permits discipline of members who fail to abide by it rather than creating a jurisdictional bar to suit.

HV

entirely; and (2) prepare to adopt the membership clarification directly, supported by a formal articulation of DAR's expressive identity and a robust First Amendment defense. The Constitution is clear: "When a state public accommodations law and the Constitution collide, there can be no question which must prevail." *303 Creative*, 600 U.S. at 592.