

Keep PA Fair

HB 1510 / SB 974 and Existing Pennsylvania Law Do Not Provide Adequate Protections for Conscience or Religious Convictions

Laws like the proposed HB 1510/SB974 became law in a number of other states because of a desire for a more “fair” society, but in practice they have been used to undermine fairness and tolerance by punishing individuals and ministries who believe there is something sacred about marriage between a man and a woman. As there are more and more victims of these new laws, the public has been showing strong support for those who are being unfairly punished. Recent polls have shown between 82% and 85% believe a photographer with deeply held religious beliefs should be permitted to decline working at a same-sex wedding ceremony, with an additional 8% being undecided.¹

These laws harm the religious liberty of Pennsylvanians, but also prevent religious groups from contributing to the common good of Pennsylvanians, unless they violate their religious beliefs. Catholic Charities in Boston and Illinois were forced out of the adoption and foster care ministry because their conviction that children should only be placed with married couples (one man and one woman) based on church teaching. Even Christian schools and ministries (with four or more employees) would be forced to hire persons who do not comply with their doctrinal code of conduct. *It is dangerous to our social fabric to force good people to choose between violating their convictions and losing their livelihood or ministry.*

HB 1510 / SB 974 purports to provide “protections” for religious liberty, but it does nothing of the sort. Proposed Section 5.4 only restates that Constitutional protections of Free Speech and Free Exercise still apply. Thanks, but no thanks. *First*, no statutory provisions are necessary for those protections to apply, so the **addition of 5.4 accomplishes nothing**.

Second, the Free Speech and Free Exercise clauses protect from government action, and do not protect individuals or religious entities in disputes involving claims of discrimination by private parties. This is why even a church cannot discriminate in hiring a religious school teacher or a church employee on the basis of protected classifications like race, disability or national origin. As such, Section 5.4 provides no protection for religious entities or individuals **even if the employee rejects the church’s or school’s religious teaching on same-sex marriage**. To be clear, **the Free Speech and Free Exercise clauses have never been successfully employed to help the wedding service providers and did not prevent Catholic Charities from being forced out of the foster/adoption care business** after laws like HB 1510 and SB 974 were passed in other states.

A church or school legally cannot discriminate in hiring on the basis of race, but this Bill would make it illegal for churches, ministries, and schools to hire people who actually believe and live according to church teaching.

¹ A Rasmussen poll found that 85% percent of American Adults believe a person with deeply held religious beliefs, such as a photographer, has a right to decline to work at a same-sex marriage ceremony. Likewise, the Caddell poll released July 30, 2015 found that 82% of Americans believe a photographer should have the right to say no to serving at a same sex marriage ceremony, and 8% were undecided.

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Third, the advocates for adding sexual orientation and gender identity claim that broad religious protections in employment, housing, and public accommodations already exist. This could not be further from the truth. In Pennsylvania, we have no religious protections that would protect those burdened by adding sexual orientation or gender identity to our discrimination law – neither in our discrimination law nor in Pennsylvania’s Religious Freedom Protection Act, 71 P.S. § 2401 et seq.

There are no religious or conscience protections for public accommodations. The employment protection is anemic and would provide no more protection than that afforded to racist organizations. Our non-discrimination law defines “employer” as follows:

The term “employer” includes...any person employing four or more persons..., but except as *hereinafter provided*, does not include religious, fraternal, charitable or sectarian corporations or associations, *except such corporations or associations supported, in whole or in part, by governmental appropriations*. The term “employer”...*includes* religious, fraternal, charitable and sectarian corporations and associations *employing four or more persons* within the Commonwealth.

What this ultimately means, is **the only employers to whom the law is inapplicable are religious groups that both receive no government funds (which excludes schools) and have fewer than four employees (which excludes almost all churches, ministries and schools)**. And, again, there’s no protection whatsoever for public accommodations like the faith-based adoption agencies and religious wedding service providers.

Some claim that Pennsylvania’s Religious Freedom Protection Act, 71 P.S. § 2401 et seq., would give protections to those conscientious objectors like the wedding service providers, Christian schools, foster care and adoption agencies, and other ministries. However, religious freedom laws like this one have proven ineffective in protecting those who have been charged with violating non-discrimination laws. Religious freedom laws merely require the government to have a compelling interest behind its action. Once a law declares an act discrimination, courts have consistently determined that no religious accommodation should be given. *See, e.g., Elane Photography, LLC v. Willock*, 309 P.3d 53, 59 (N.M. 2013) (finding New Mexico’s RFRA inapplicable to a discrimination claim between private parties).

Moreover, Pennsylvania’s religious freedom law does not protect corporations, like most businesses involved in the wedding industry. See 71 P.S. 2403 (defining a person protected by this act as “[a]n individual or a church, association of churches or other religious order, body or institution which qualifies for exemption from taxation”). Moreover, the non-discrimination law gives a private right of action for one private party to sue another. Therefore, **even an individual – rather than a corporation – who is sued would likely have no recourse under the Religious Freedom Protection Act because the government is not a party.**

Pennsylvania is already a tolerant community. Please do not undermine the space and diversity that we currently have by passing laws that treat those who believe marriage is between a man and a woman or that adhere to certain doctrinal commitments as if they are enemies of the state.

