

The Pennsylvania Family Institute is opposed to HB 300, amending the Human Relations Act to add *sexual orientation* and *gender-identity and expression*. The problems with adding this language to the Human Relations Act extend far beyond the inadequate protections for institutions and individuals on the basis of conscience. Instead, the addition of this language puts decisions implicating homosexual behavior on the same level with racial bigotry.

Laws against discrimination reflect a societal judgment that certain choices are morally wrong and repugnant to our social norms. Adding sexual orientation and gender identity and expression, however, dangerously departs from the historic vision of such laws by seeking to villainize and prohibit choices that — far from immoral — are made on the basis of some citizens’ reason and conscience. Adding such language, therefore, pits one group’s views on acceptance of homosexual conduct against others’ religious liberty and right of conscience.

Many, including those in favor of a greater governmental approval of homosexual behavior, recognize that laws designed to promote acceptance of homosexual behavior are on a collision course with religious liberties and moral conscience. For instance, homosexual rights advocate and Georgetown Law professor, Chai Feldblum, recognizes, “When we pass a law that says you may not discriminate on the basis of sexual orientation, we are burdening those who have an alternative moral assessment...” See *Banned in Boston: The Coming Conflict Between Same-Sex Marriage and Religious Liberty*, THE WEEKLY STANDARD, May 15, 2006, p.22. Feldblum went on to say that although sexual orientation laws burden religious liberty, she has “a hard time coming up with any case in which religious liberty should win.” See *id.*

Adding sexual orientation and gender identity to the Human Relations Act is going to get a lot of reasonable institutions *and* individuals in significant trouble:

- What if a religious school expelled students for homosexual conduct? That *could* constitute a violation based on denial of a public accommodation. Someone may argue against this example in that Human Relations Act protects mere “status” and nothing more. However, regardless of the wording of such laws, their application has moved well beyond mere status. In fact, this is a real life example from California

where a religious school was accused of discrimination on the basis of “sexual orientation” after expelling two students for that exact reason.¹

- What if a photographer refused to photograph a same-sex “wedding” ceremony? That could violate the public accommodation provision. In New Mexico a photography business (husband & wife) was fined \$6,600 after the wife refused to do so. To be clear, she did not refuse to serve homosexual clients, but merely wished to avoid photographing such a ceremony. She was still found her guilty of discrimination on the basis of “sexual orientation”.
- What if a religious landowner did not want to use its property to facilitate such a ceremony? That, too, could violate the public accommodation provision. The Ocean Grove Camp Meeting Association of the United Methodist Church was preliminarily found guilty of discrimination after it refused to allow its property to be used for a civil union ceremony. Again, it was not prohibiting entry by homosexuals, it just refused to have its property used for such a ceremony. As a result, prosecution continues, it may face a fine, and it has lost part of its tax exempt status.
- What if a physician declines to perform in vitro fertilization on a lesbian patient when it violates the physician’s moral beliefs to bring a child into a non-married relationship? The California Supreme Court determined that refusal to perform in vitro fertilization on a lesbian constituted discrimination on the basis of “sexual orientation.”
- What if a religious adoption placement agency refuses to place children into a homosexual relationship? Catholic Charities in Massachusetts abandoned its adoption placement ministry for religious reasons rather than comply with a similar law in Massachusetts.

All of the above scenarios could occur here on account of the public accommodations portion of the Human Relations Act if sexual orientation and gender identity is added. Other portions of the law would also be problematic.

- What if a homosexual couple seeks to rent an apartment and the landlord’s religious conscience will not allow him to facilitate homosexual

¹ Ultimately the California’s Supreme Court determined that a Christian School was not covered by their act. It is not clear from our act and our Supreme Court has never ruled on this issue.

sex? The landlord would violate the housing part of the Human Relations Act.

- What if you were a church and homosexuality violated the church's beliefs? Nevertheless, you could not refuse to hire a homosexual without violating the act if your church employed more than four people.

The exceptions in the amendment to the Human Relations Act are inadequate. Under the proposed language, religious entities are subject to the public accommodations portion and are completely subject to the employment provisions if it has more than four employees.² There are no exceptions for individuals due to their religious or moral beliefs. More sensible exceptions are not going to solve the underlying problems. Instead, once we add sexual orientation and gender identity to these laws, we are basically saying that such choices are immoral and must be prohibited. Therefore, any exception because of conscience or morals that would apply to *individuals* really would not make sense—at least not for long.

Ultimately, adding sexual orientation and gender identity creates a new public policy. It has been used by courts elsewhere as evidence of a policy in favor of homosexuality and formed the basis for various decisions to mandate same-sex marriage or marriage equivalents.

As a loving society, we should respect all people, regardless of sexual orientation. But the presence of government dictates only works to create a public policy with problematic secondary effects and works to mandate not merely civility toward status but acceptance of lifestyle. Therefore, the bill should be opposed.

² While the law doesn't give this protection, there are cases that hold that churches can hire ministers of their choosing. The same may not be true for other positions.