

Faux Religious Protections in SB313/HB300

Bills like SB313/HB300 purport to provide "protections" for religious liberty, but they do 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 constitutional 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. The inclusion of Section 5.4 would not protect religious organizations' ability to hire on the basis of shared religious beliefs and practices related to sexuality and marriage.

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.

There are no religious or conscience protections for public accommodations, like the faith-based adoption agencies or religious wedding service providers. There are no protections for medical professionals who cannot in good conscience give puberty blockers or cross-sex hormones to kids, or engage in surgeries to remove healthy body parts to make someone appear more like the opposite sex.

The state supreme court in both New Mexico and Washington held that the Free Speech and Free Exercise clauses do not protect the photographers (Elane Photography) or florists (Baronelle Stutzman). The federal third circuit court of appeals even held the constitutional protections would not protect Catholic Charities from being forced out of the foster/adoption care business after laws like this were passed in Philadelphia.

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.

KEY POINTS

No statutory provisions are necessary for constitutional protections to apply, so the addition of 5.4 accomplishes nothing. The faux religious liberty section:

- Provides no protections for bodily privacy, women's shelters, or women's athletic opportunities.
- Provides no religious or conscience protections for public accommodations.
- Would not permit religious organizations to hire all their employees based on whether they believe and live consistent with their teachings on human sexuality.
- Provides no housing protections, and would not allow schools to maintain dormitories on the basis of biological sex.

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 even 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.

Nor do the faux religious liberty protections provide any protections in the area of housing, such as the ability to maintain dormitories in schools or women's shelters on the basis of biological sex.

In the area of employment, SB313/HB300 specifically removes protections by adding "sexual orientation, gender identity and expression to the section of the law that applies to religious organizations' employment practices. Our nondiscrimination law currently 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*" with respect to discriminatory practices based on race, color, age, sex, national origin or non-job related handicap or disability, *includes* religious, fraternal, charitable and sectarian corporations and associations *employing four or more persons* within the Commonwealth.

What this ultimately means is the law is inapplicable to religious groups that both receive no government funds *and* have fewer than four employees. Religious organizations with more than three employees¹ are still currently permitted to hire all of their employees based on whether they believe and live according to their shared religious beliefs.² However, SB313/HB300 would make it illegal for churches, ministries, and schools to hire people who actually believe and live according to the religious organization's teaching on human sexuality and marriage because it adds the terms "sexual orientation, gender identity and expression" into the very section of the bill that applies to religious organizations.³



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¹ Religious organizations or associations include religious schools, churches, and religious ministries.

² It does this by excluding the term "religion" from the list of protected classes which **are** applicable to even religious corporations and associations.

³ Ministerial employees would still be exempt from all protected classes by virtue of the Constitution.