



February 29, 2016

Delegate C. Todd Gilbert
Chair, House General Laws Committee
General Assembly Bldg #511
Box 406
Richmond, VA 23218

Re: SB 41 – A Bill That Would Allow for the Discrimination against any Virginian

Dear Chair Gilbert:

We write to urge you to oppose SB 41 because it would sanction discrimination by government employees and it would interfere with Virginians' fundamental right to marry. In addition, it would permit organizations that operate a place of public accommodation to discriminate.

Freedom of religion is a fundamental American value. It means that we are all free to believe or not as we see fit, but it does not mean that government employees or entities providing public accommodations can use their religion as a justification for denying the rights of others. Yet, this bill would allow just that by allowing some the ability to refuse to perform marriages or provide marriage services.

State Employees Should Not Be Allowed to Refuse To Solemnize Marriages

Freedom of Religion Does Not Mean State Employees Can Discriminate

If this legislation were passed and signed into law, it would allow all persons authorized to perform a marriage ceremony in Virginia—including government employees, like judges and justices of courts of records,—to refuse to solemnize any marriage if it violates a sincerely held religious belief. This bill would allow judges at a courthouse that holds itself open to perform marriages, to turn certain couples away at the door.

Government officials, funded with taxpayer dollars, should not be allowed to pick and choose which of their duties they will fulfill or which services they will provide and to whom, especially when the result would be blatant discrimination and the service to be denied involves a fundamental human right. Nor should government employees be allowed to impose their personal religious beliefs on those whom they serve. Yet this bill would allow just that by allowing judges to refuse to perform marriage ceremonies.

Allowing judges to deny marriages to those who have a lawful right to marriage is simply unfair. All Virginians should expect their government to treat them equally and fairly, and no one should be denied the services their own tax dollars fund because of the personal beliefs of a government official. Any couple who is eligible to marry should expect to receive the same treatment from a government official as every other Virginian.

No Law Authorizes or Requires an Accommodation of Religious Beliefs that Burdens Others

Supporters of this bill might argue that other laws already require the accommodation of employees' beliefs, such as the accommodation of Saturday Sabbath by employers and that allowing judges to refuse to perform a marriage is no different. But, neither Title VII of the Civil Rights Act nor any other state or federal law requires or permits an accommodation of belief that results in discrimination against a customer or other employees.¹ At most, such laws require an employer to make a "reasonable" accommodation of an employee's beliefs if the accommodation would not impose an "undue hardship" on the employer. In this case, the undue hardship on the Commonwealth and Virginians is twofold. First, the Establishment Clause of the U.S. Constitution precludes the government from providing religious exemptions that come at the expense of innocent third parties, such as those told their marriages will not be solemnized.² Second, accommodating government employees' personal beliefs in the manner allowed in this legislation would require the Commonwealth to endorse discrimination against her people.

Allowing Judges to Refuse to Solemnize Marriages Would Interfere with Virginians' Fundamental Right to Marry

The United States Supreme Court has long held that marriage is a fundamental right,³ and in June of last year, the Supreme Court decided *Obergefell v. Hodges*,⁴ holding that the U.S. Constitution protects the right of same-sex couples to marry. As a result, allowing government employees to refuse to solemnize a marriage and interfere with a couple's ability to get legally married could violate the U.S. Constitution. SB 41 would place additional and unfair obstacles in the way of certain couples who seek to marry. Indeed, couples with a marriage license looking to solemnize the marriage as required by the Commonwealth⁵ could end up in a situation in which they are unable to find anyone who will perform that service. And, of course, it fully ignores the dignitary harms caused to the couples being turned away. No one should have to "test" their rights against the personal views of a particular judge or other government official.

The Exemption for Religious Organizations Is Too Broad

We agree that the state should not and, under the First Amendment, may not force clergy, houses of worship, and similar religious organizations to perform or host marriage ceremonies with which they have religious objections. Indeed, the First Amendment already allows, for example, a rabbi to refuse to marry an interfaith couple or a priest to refuse to solemnize a marriage for a divorced person. Unfortunately, the provision of SB 41 that seeks to reiterate this sentiment goes well beyond the rights already provided in the First Amendment and is too broad. SB 41 allows organizations that are operated in connection to a religious organization to refuse to provide any marriage related services even if they are operating a place of public accommodation.⁶ There are clear differences between a house of worship that hosts the weddings of its members and wants keep it that way and a religious organization that runs a commercial wedding hall that is open to the public to make money. But SB 41 would allow, for example, a religiously-affiliated university or other religious organization, including a commercial wedding chapel, that rents a banquet hall or chapel

¹ *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977).

² *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985) (striking down a state law that granted employees a statutory right not to work on their Sabbath because the accommodation failed to consider the burdens that would be imposed on the employer or other employees); *Tex. Monthly, Inc. v. Bullock*, 489 U.S. 1 (1989) (striking down a sales-tax exemption for religious periodicals in part because the burden third parties would experience in raised tax bills).

³ *Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.").

⁴ 135 S. Ct. 2584 (2015).

⁵ Va. Code Ann. § 20-13

⁶ Va. Code Ann. § 2.2-3900

to the general public for weddings, to refuse services on religious grounds to a couple because they are same sex, interfaith, previously divorced or of a particular faith. It is unfair to allow a commercial enterprise to reap the rewards of its business but then escape the nondiscrimination requirements placed on all other commercial businesses simply because it claims a religious affiliation.

Conclusion

The Virginia legislature should not pass legislation that sanctions taxpayer-funded discrimination and interferes with the fundamental right to marry. Nor should it allow entities that operate a place of public accommodation to discriminate. For the reasons discussed, we urge you to oppose SB 41. Thank you for your consideration on this important matter.

Sincerely,

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