Insight

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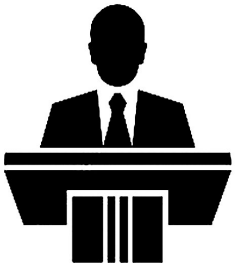
#ProtectPastors

House Bill 372
Rep. Jason Petrie

Pastor Protection Act: *DO WE NEED IT?*

In 2012, the Kentucky Supreme Court decided to use "rational basis" in a religious freedom case essentially nullifying much of our Constitutional religious freedom in Kentucky. The General Assembly promptly moved in 2013 to enact The Religious Freedom Restoration Act (RFRA), giving direction for Kentucky courts. The RFRA overwhelmingly passed both chambers restoring "strict scrutiny" as the standard for courts deciding religious freedom cases in Kentucky.



RFRA enforces the broad principle of religious freedom – our "first liberty" in the First Amendment – and has already been used to win the appeal of the compelled speech case of *Hands On Originals*.

In 2015, the U.S. Supreme Court made a specific ruling about marriage in *Obergefell v. Hodges*, redefining it to include two people of the same sex. This narrow ruling however, leaves many unanswered questions.

During oral arguments in *Obergefell v. Hodges*, Justices John Roberts and Samuel Alito asked Solicitor General Donald B. Verrilli, Jr. (the lead attorney for the U.S. Government) whether a ruling that *same-sex marriage is a constitutional right requires* a religious college that has married housing to afford such housing to same -sex couples and whether a the college could lose its tax exempt status if it failed to do so. The Solicitor General responded that "it's certainly going to be an issue. I don't deny that . . . It is going to be an issue." Transcript of Oral Argument at 38, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (No. 14-556), Link: http://www.supremecourt.gov/oral_arguments/_transcripts/14-556ql_7148.pdf

In Kentucky, legislators can once again act wisely, giving guidance to the courts regarding how to handle the newly created intersection where religious freedom and the right for same sex couples to marry now collide.

In other states where that direction has not been given, the courts have been left to interpret existing state law without that further guidance. Thus, we have the Iowa Civil Rights Commission interpreting a state-wide SOGI ("Fairness" Ordinance) to apply to churches, meaning that churches and pastors could be prosecuted for operating consistent with their church's doctrines or for not allowing a visitor to use the restroom or changing areas designated for the opposite sex. Link: http://www.adfmedia.org/News/PRDetail/10015

The Massachusetts Commission Against Discrimination and Attorney General Maura Healey both interpreted the Commonwealth's public accommodations laws to force churches to open church changing rooms, shower facilities, restrooms, and other intimate areas based on their perceived gender identity, and not their biological sex, in violation of the churches' religious beliefs. Because those laws also prohibited covered entities from making statements intended "to discriminate" or to "incite" others to do so, the Commission and Attorney General also intended to force churches and pastors to refrain from religious expression regarding sexuality that conflicts with the government's views.

So here is the answer to the question, ***"Do we need it?"*****:** The General Assembly has the opportunity to act now to create a harmonious environment where everyone's personal beliefs and behaviors can be mutually respected and protected. ***Or*** . . . they can *NOT* act and leave it up to a court to decide (legislate) without this additional guidance.