

THE RIGHT TO RELIGIOUS EXPRESSION AND THE PENNSYLVANIA HUMAN RELATIONS ACT FACT SHEET ON HOUSE BILL 300

The Pennsylvania Human Relations Act provides adequate protection for the First Amendment right to religious expression. With regard to housing, Section 5(h)(10) states, “Nothing in this clause shall bar any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization or **from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.**” (emphasis added)

The PHRA provides additional religious expression protection in employment through “Bona Fide Occupational Qualifications.” If a religious institution holds as a tenet of its faith that only certain types of people can hold certain positions, e.g. only men can be priests, then the institution has a right to that religious expression and will be allowed to discriminate in its hiring practices so long as there is a legitimate and verifiable reason to do so. This is found in section 955 of the PHRA and in regulation, 16 Pa. code §41.71

State case law provides additional protection for parochial schools. In 1988, the Commonwealth Court ruled that parochial schools are not “public accommodations” and, thus, do not fall under the jurisdiction of the PHRA. The Roman Catholic Archdiocese of Philadelphia was accused of racial discrimination, but the court ruled in favor of the archdiocese in *Roman Catholic Archdiocese of Philadelphia and St. Stephen’s Parish vs. the Pennsylvania Human Relations Commission*, 119 Pa. Commw. 445; 548 A.2d 328 (1988).

Federal case law provides protection for the First Amendment right to religious expression. Numerous federal courts, including the Third Circuit Court of Appeals, have ruled on a “ministerial exception” to civil rights laws. This exception allows religious institutions to ignore non-discrimination laws when hiring for positions that relate to teaching and expressing the faith. It first occurred in 1972 in *McClure v. The Salvation Army* 460 F.2d 553 (5th Cir. 1972). This exception does not apply just to clergy. Lawsuits by music directors, parochial school principals, parochial school teachers, a Hispanic Communications Manager, an Associate in Pastoral Care, a hospital chaplain, a kosher food supervisor and a university administrator have all been barred.

Faith-based social services, e.g. adoption agencies, will not be impacted by the passage of HB 300. 13 municipalities in Pennsylvania have non-discrimination ordinances that include protections for “sexual orientation” and/or “gender identity or expression,” similar to HB 300. In those 13 municipalities, faith-based social services have not been hindered in their operations nor have they been threatened with lawsuits forcing them to hire individuals or engage in other practices, e.g. placing foster children with same sex couples, that do not adhere to their beliefs.