

Oppose Floor Amendment #4 to H.B. 1063 – Stop Employment Discrimination

Floor Amendment #4 allows both religious organizations and secular nonprofits controlled by religious organizations to practice employment discrimination on any grounds – including race, disability, age, gender, or sexual orientation – whenever the discrimination is based on the religious tenets of the religious organization.

- Floor Amendment #4 allows *any* secular nonprofit organization that is operated or controlled by a religious organization (e.g., a hospital or social service agency) to engage in *any* form of employment discrimination (e.g., on the basis of race or disability) as to *any* employment position (e.g., secretary or janitor), so long as the discrimination is motivated by the tenets of faith of the religious organization. But the tenets of the faith of the religious organization are not relevant to the hiring decision of secular nonprofits. Moreover, these secular nonprofits (such as Catholic Charities, Lutheran Social Services, Baptist Family Services or Jewish Family Services) employ people of a variety of faiths, serve people of a variety of faiths, and their employees are not hired to transmit church doctrine. Also, many of these secular nonprofits receive federal and/or state funds. Finally, the inquiry into whether a particular discriminatory decision by a particular secular nonprofit was motivated by religious faith will excessively entangle the Illinois Human Rights Commission and the courts in religious matters.
- Anti-discrimination laws that serve important governmental interests in protecting against discrimination trump a religious organization’s discriminatory action based upon a tenet of its faith.¹ The Illinois House should not allow existing or future religious institutions to significantly undercut our state’s interest in nondiscrimination as to race, gender, disability, and sexual orientation – much less allow such discrimination by secular nonprofits operated by religious organizations.
- The existing Illinois Human Rights Act (“IHRA”) allows religious organizations to discriminate on the basis of religion with respect to the hiring of any employment position. Thus, churches can require that all of its employees – from the minister to the janitor – be of that church’s denomination or faith. However, the current IHRA does not allow churches to fire or refuse to hire persons such as custodians or administrative staff based upon their disability or race or sexual orientation. Floor Amendment #4 changes this to allow a church, based upon the tenets of its faith, to refuse to hire a gay secretary or accountant or fire a gay janitor, or – depending on the particular religious organization – refuse to hire a minority or a woman.
- The Free Exercise Clause of the U.S. Constitution allows religious organizations to discriminate on any basis – including race, gender, and sexual orientation – with respect to the hiring of individuals whose work is important to the spiritual and pastoral mission of the church.² Thus, churches can refuse to hire a gay man or lesbian woman as the priest, minister, church-organist or choir director. But a church has no free exercise right to practice employment discrimination as to positions that are not important to the spiritual and pastoral mission of the church, such as secretarial or janitorial positions.³ Again, Floor Amendment #4 changes this and allows broad discrimination on any religiously motivated grounds by a religious organization.

¹ See e.g. Bob Jones Univ. v. United States 461 U.S. 574 (1983) (holding that the state’s interest in equal educational opportunity outweighed a religious university’s asserted free exercise right to discriminate against African American students).

² Rayburn v. General Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir. 1985).

³ EEOC v. Fremont Christian School, 781 F.2d 1362 (9th Cir. 1986) (lay teacher); EEOC v. Pacific Press Publishing Assn., 676 F.2d 1272 (9th Cir. 1982) (secretary); EEOC v. Southwestern Baptist Theological Seminary, 651 F.2d 477 (5th Cir. 1981) (finance and maintenance staff), cert.denied, 456 U.S. 905 (1982); EEOC v. Mississippi College, 626 F.2d 477 (5th Cir. 1980) (psychology professor), cert.denied, 453 U.S. 912 (1981).