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Resolution to Reject HB 4012, West Virginia Religious Freedom Restoration Act

Marshall University

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Resolution to Reject HB 4012, West Virginia Religious Freedom Restoration Act

Whereas, this bill will allow any individual, business or legal entity to claim that his or her religion gives him or her the right to ignore virtually any law, policy, or regulation, statutory or otherwise;

Whereas, this bill does not define, but leaves open to the Courts to define "person acting under color of law," therefore not making clear what lawsuits may come before the courts under the cloak of religious liberty;

Whereas, this bill may open the door for law suits to the university or persons or entities who do business with the university, if a claim is launched that an employee disregarded a policy, law or regulation on religious grounds;

Whereas, this bill could open the door for employees to discriminate against others by claiming that his or her religion gives him or her a right to do so;

Whereas, this bill could negatively impact the ability of Marshall University to recruit faculty, administrators and students because it opens the door for courts to determine if discrimination can be protected by religious grounds;

Whereas, the Huntington mayor has joined with mayors of eight other cities which have passed anti-discrimination ordinances, multiple businesses, chambers of commerce and the WVU Faculty Senate have urged the Legislature to defeat this bill;

Be it resolved, that the Faculty Senate of Marshall University urges defeat of HB 4012, West Virginia Religious Freedom Restoration Act.

We so resolve.

FACULTY SENATE CHAIR:

APPROVED BY THE
FACULTY SENATE:

Larry Stickler DATE: 2/19/2016

DISAPPROVED BY THE
FACULTY SENATE:

DATE: _____

UNIVERSITY PRESIDENT:

READ:

James A. Silmt

DATE: 3-2-16

COMMENTS:

Some information about HB 4012, Religious Freedom Restoration Act

Liability. Not all business liability has been removed from the bill. While the com sub removes the ability of an employee to sue their employer under RFRA, it is still possible for a customer of a business who has been refused service to sue the employer. As currently written, HB 4012 still allows anyone -- individuals, businesses, or any legally existing entity -- to claim that his or her religion gives him or her the right to ignore virtually any law, policy, regulation, statutory or otherwise.

Who can sue? Leaves much up to courts to decide. "Person" is not defined in either HB 4012. W. Va. Code § 2-2-10 states that, unless context requires otherwise, "(i) The word 'person' or 'whoever' shall include corporations, societies, associations and partnerships". Courts could use this to mean that for-profit businesses could also have a claim under HB 4012. Remember that the U.S. Supreme Court did exactly this in *Hobby Lobby*, which said that a for-profit company can sue if a governmental policy burdened the corporation's religious beliefs.

Who can be sued? Leaves much up to courts to decide. Whether RFRA could be used in private litigation under HB 4012 depends on how the words "person acting under color of law" is interpreted (in the definition of "state action"). This could encompass a government contractor, for instance, and allow it to be sued if its actions burden someone's religion.

RFRA versus LGBT non-discrimination ordinances across WV? Leaves much up to courts to decide. The West Virginia courts would have to determine whether enforcing that nondiscrimination policy is the least restrictive means of furthering a compelling governmental interest. That is a very high standard that the government would have to meet, meaning that the non-discrimination ordinances may be struck down.

Are we just talking about the LGBT community? No. A hotel employee who objects to cohabitation outside of marriage could invoke RFRA to refuse to rent a room to an unwed heterosexual or straight couple. It could allow a pharmacist to refuse to fill prescriptions, such as birth control.

Businesses shouldn't be allowed to refuse service to someone based on their religious beliefs. Under both West Virginia and federal public accommodations civil rights laws, there are no exemptions for people who have religious objections. This is based on history: during the Civil Rights era, some business owners cited to religious beliefs when refusing to serve Black people. Because of this, the federal Civil Rights Act does not allow for any religious exemptions in public accommodations. State laws, many of which follow the federal model, also reflect this standard.

This is because we understand that when you are operating a commercial business, you have to serve the public equally. Moreover, providing a commercial service does not mean a business owner is endorsing anyone's marriage or even agreeing with a customer's beliefs. It simply means that they are providing services to the public and are open to everyone on the same terms.

**OPPORTUNITY WEST VIRGINIA OPPOSES HB 4012
BECAUSE IT IS BAD FOR WEST VIRGINIA'S BUSINESSES.**

OPPORTUNITY WV is a bipartisan movement group of stakeholders committed to ensuring that West Virginia welcomes and retains an attractive and diverse workforce and a competitive economic climate.

WE URGE YOU TO VOTE NO ON HB 4012.

HB 4012 IS BAD FOR BUSINESS AND WILL DETER ECONOMIC DEVELOPMENT. A staggering 97 percent of Fortune 100 businesses have inclusive non-discrimination policies. We must be able to recruit and retain the best, hardest working, and most talented individuals without impediment. Our state has been focused on growing our economy, and we must recruit and retain a talented and diverse workforce. RFRAs undermine this effort to grow jobs in West Virginia because companies understand that by creating a diverse, innovative work environment where individuals from different backgrounds and perspectives come together to share ideas, they will be more productive.

HB 4012 CREATES UNNECESSARY LAWSUITS. HB 4012 allows anyone -- individuals, businesses, or any legally existing entity -- to claim that his or her religion gives him or her the right to ignore virtually any law, policy, regulation, statutory or otherwise.

Customers would be able to sue a business if an employee discriminated against them. And government agencies and municipalities would be subject to lawsuits based on a person's belief that an ordinance, policy, or even citation burdens their religious beliefs.

HB 4012 PERPETUATES DISCRIMINATION. This law allows individuals and businesses to discriminate, even if the alleged burden on the person's religion is indirect. It allows violation of existing ordinances, company or employment policies, "statutory or otherwise." Yet, the majority of West Virginians -- 68% according to Public Policy Polling (2013) -- agree that discrimination against LGBTQ Mountaineers is wrong and should be banned. 74% of Americans surveyed in an ABC / Washington Post poll (September 2015) said that when a conflict arises, the need to treat everyone equally under the law is more important than someone's religious beliefs.

HB 4012 IS MORE EXTREME THAN INDIANA'S BILL THAT SPARKED PUBLIC OUTCRY AND BUSINESS BOYCOTTS. Business groups, conventions, and prominent corporations across America already know that using religion to discriminate is bad for business. Corporations across America voiced their strong opposition to Indiana's law and similar bills elsewhere, and a recent survey estimated that Indiana lost \$60 million in hotel and tax revenue from 12 cancelled conventions due in part to the passage of Indiana's less extreme RFRA in 2015.