

Abstract

This research paper will examine the newly passed law by the Virginia House of Representatives, “Solemnization of Marriage” or HB 2025. This law protects “religious freedoms” of those who believe in the traditional marriage of a man and woman versus same sex couple marriages. It protects pastors and other religious organizations from participating in the solemnization of marriages they don’t support due to religious beliefs, and prohibits them from receiving any form of punishment from the government. It also guarantees that religious organizations that benefit from favorable tax status will be protected, and will avoid any financial retaliation from the government, even if they choose to deny participation in same sex couple’s wedding ceremonies. This law is unconstitutional and discriminates against members of the LGBTQ community. This research paper will bring forth a new argument because it will contain a personal testimony from a concerned father of a child who is part of the LGBTQ community. This problem requires more research and attention because it is an active piece of discriminatory legislation against same-sex couples, who are protected under the U.S. Constitution, under Freedom of Religion and Equal Protection of the Law. It needs to be discussed more because though the law currently only affects Virginia, it could one day come to represent more states, until an overwhelming number of states are proposing discriminatory laws. This paper will include a variety of sources including a personal testimonies from someone who has relevancy to the law, the wording of the law itself, the U.S. Constitution, websites with differing opinions, and opinions of legislatures and judges.

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Virginia is For Lovers

In the summer of 2015, gay marriage was declared legal in all 50 states in a landmark decision by the U.S. Supreme Court. On this hot Virginia day, my dad celebrated triumphantly as he was comforted by the knowledge that his teenage daughter would have the constitutional right to marry whomever she pleased. Some may have assumed, or at least hoped, that this case would finally put an end to discrimination against L.G.B.T.Q. members, since the Supreme Court had officially declared that the United States now recognizes the legitimacy of gay and lesbian marriages; that was unfortunately not the case. States such as Mississippi and North Carolina are continuously passing laws aimed to discriminate against the entire L.G.B.T.Q. community. In January of 2017, the Virginia Assembly passed a “religious freedom” law called HB 2025. While the Senate version was passed, but then vetoed, HB 2025 made it all the way through committee, was voted on, and passed (Legislative Information System). This law was created to protect private businesses and their “religious right” when it comes to denying service related to same-sex couples. What the law really does is legalize discrimination against a group of people who are seen as different, denying them promised equal protection under the law, and their own religious freedom guaranteed under the U.S. Constitution. Today, my dad does not necessarily worry the government can’t protect his daughter, he worries that they simply won’t. He says frankly, “I am confident that the government can protect the rights of my gay daughter. I am not confident that it wants to protect her rights to the fullest extent. They have the ability, that doesn’t mean they have the desire” (Ridpath). I submit that the Virginia HB 2025 law is

unconstitutional because it permits institutions of state governments to discriminate against one class of people based on personal beliefs, denying the access of equal protection under the law to all citizens. It denies religious freedom to same-sex couples who are compelled under their religion to be married in a particular institution and are denied that opportunity. The enforcement of this law undermines the idea of a government for all people, by all people guaranteed in our constitution.

Though created with the purpose to “protect religious freedom”, HB 2025 essentially provides private businesses with legal footing when it comes to denying services to others based on personal beliefs. The law states: “HB 2025 provides that no person shall be (i) required to participate in the solemnization of any marriage or (ii) subject to any penalty by the Commonwealth... solely on account of such person's belief, speech, or action in accordance with a sincerely held religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman” (Legislative Information System). This law has the ability to *legally protect* the institution of discrimination. Dictionary.com defines discrimination as: “treatment or consideration of, or making a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit.” When we compare it to that definition, HB 2025 claims to be a “religious freedom” law, but it only protects religious freedom for one group of people; it gives rights to the straight majority, -while taking it away from same-sex couples in the minority- that qualifies it to be a law of discrimination law.

Not only does this law actively discriminate against minorities, it contradicts the United States’ policy on gay rights that was brought to a consensus with the legalization of gay

marriage. This law allows for those inclined by their personal beliefs to refuse service to gay couples with anything having to do with the solemnization of marriage; this includes but is not limited to: state ordained ministers, privately owned bakeries, and photography services. One can argue the constitutionality of this law when bringing up the refusal of service by ordained ministers and their prospective facilities. Those who are ordained by the power of their state government, have the responsibility to carry out the right to marry to all citizens, and reflect the law of their state regarding marriage. Since these pastors are ordained by their state governments, they should then represent the values of their state, and since the entire country recognizes gay marriages, these pastors are legally bound by their state to carry out the policies of our nation. No institution certified under the U.S. government has the constitutional right to put restrictions on who can marry people or where people can be married.

On the other end of the spectrum, some may argue that HB 2025 is not about denying services to people, it's about guaranteeing rights for others, such as in this testimony from Republican Delegate, Nicholas Freitas, who argues that, "This is simply about preventing the government from punishing a religious organization because it doesn't fit with a current governor or anyone else's interpretation of social standards" (Rothey). Freitas presents a fair argument, but protecting the rights of others is only constitutional - and therefore effective - when it does not take away the rights of others. HB 2025 does not provide citizens equal protection under the law, which is definitively protected in the 14th amendment. The Equal Protection Clause states "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its

jurisdiction the equal protection of the laws” (The Constitution of the United States: A Transcription). I attest that the HB 2025 law denies constitutionally protected privileges to same sex couples who are protected under the 14th amendment the right to marriage, wherever they please by whomever they please.

Virginia is not the only state with active discrimination laws in effect. Mississippi passed a very similar law to HB 2025 in Spring of 2017: HB 1523. This law, similarly to HB 2025, protects the rights of businesses when refusing to provide “accommodations, facilities, or goods” that relate to the “solemnization, formation, celebration, or *recognition*” of any marriage (Kaplan). The law was effectively blocked by a federal judge appointed under Barack Obama: Carlton W. Reeves. Reeves makes a compelling argument comparing the context and background of HB 1523 to Mississippi’s racist history, and the back and forth legislation between the Supreme Court and individual states while adhering to the separate but equal ruling. It can be argued that the reason for this Mississippi law can be easily compared to the reaction of the Brown v. Board of Education ruling, and the governor at that time, J.P. Colman, who stated that the separate but equal decision “represents an unwarranted invasion of the rights and powers of the states”. When comparing this to today’s current controversy of the state and national government’s role in marriage, a parallel can be made between southern states today and those of the Civil Rights Movement, and their consistent belief that there has been an invasion of rights and powers. This statement shows that America has seen laws such as HB 2025, and people today may not see it as discrimination, as did people in the 50s, but history will look back on this current time period of constant struggle between the national government and state governments, one that denies rights to same sex couples, as a period of intolerable discrimination. Reeves sums

up his final thoughts on the law with, “the title, text, and history of HB 1523 indicate that the bill was the state’s attempt to put L.G.B.T. citizens back in their place (after the legalization of gay marriage)” (Green). The opinion of federal judge Reeves only further sustains the fact that the Virginia HB 2025 law was put in place with the purpose of denying rights to the L.G.B.T. community in backlash to the major supreme court decision, and he attests that this fight will continue until the national government is able to fully protect same-sex couples.

Though we are currently only seeing cases of discrimination when it comes to more innocent institutions, such as bakeries or photography, this law has the ability to protect businesses that serve a much greater role in the overall well being of someone’s life. For example, the Human Rights Campaign says, “HB 2025 could allow taxpayer-funded organizations like homeless shelters and adoption agencies to refuse service to same-sex couples, transgender people, and anyone suspected of having intimate relationships outside of a heterosexual marriage (such as single mothers or a cohabiting straight couple) without losing taxpayer funding, contracts, licensing, or other forms of state recognition” (Peters). Homeless shelters and adoption agencies are corporations that receive state and federal funding - and therefore have absolutely no place to decide who can and cannot receive their services. If we are not diligent, if we do not continue to monitor the power of this law, and future discrimination laws by staying informed and well educated, we are submitting to the idea that the government should have the power to deny couples of life, liberty, and happiness as they are denied access to services that are basic human rights. If this law has the ability to deny the basic service of a homeless shelter, we as a country are tolerating the idea that those of a certain sexuality are not deserving of a warm bed and protection in times of need. Are we going to see cases such as this

often? The simple answer is, no. No, there is not a current issue of homeless shelters, battered women shelters, or adoption agencies denying service to same sex couples, but the point is that this law could potentially permit those basic human rights, and if it is not halted into further implementation, it has the ability to one day seriously negatively alter one's life based on their sexual orientation.

The argument about the illegitimacy of HB 2025 is greater than just being denied a wedding cake, or engagement pictures, or even being married in the church of choice, by your minister of choice - it's about guaranteeing the rights of minority groups now and forever. If we tolerate this now, after a very strict, national law has been established, what kind of precedent are we setting for stronger discriminatory laws down the road? This law is unconstitutional, infringing on rights of same sex couples, while being used to protect the majority. When my dad thinks back on June 26, 2015, the day the Supreme Court declared gay marriage constitutional, he says, "I felt elation and joy for not only my daughter, but for all of the loving gay couples in the country. I felt like a new day had dawned in the country" (Ridpath). He attested to anticipated conservative retaliation, for history has shown us that after a major decision there will be a period of backlash, a period of struggle between states and the national government, but that does not mean we sit and wait for change to happen, for others to protect the rights of same-sex couples. It's just as much my duty, as it is any citizens to stand up for what they believe is constitutionally right, which I submit is declaring the HB 2025 law, and other laws formed with the purpose of denying rights to anyone, unconstitutional.

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