

AMERICAN ATHEISTS

June 25, 2018

The Honorable Rep. Ronald Mariano
Majority Leader
Massachusetts House of Representatives
Massachusetts State Capitol, Room 343
24 Beacon Street
Boston, MA 02133-1099

The Honorable Rep. Patricia Haddad
Speaker Pro Tempore
Massachusetts House of Representatives
Massachusetts State Capitol, Room 370
24 Beacon Street
Boston, MA 02133-1099

Re: SUPPORT for H 767, Testimony from American Atheists in support of the bill to prevent for-profit business owners from discriminating on the basis of religious belief.

Dear Majority Leader Mariano, Speaker Haddad, and Members of the House Working Group:

American Atheists, on behalf of its nearly 1,000 constituents in Massachusetts, thanks you for hosting a hearing on H 767, a bill that fixes loopholes potentially exempting for-profit corporations from nondiscrimination laws. We urge you to swiftly pass this important legislation.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. American Atheists believes that religious liberty is an individual right guaranteed by the First Amendment, and therefore corporations should have no basis to challenge vital civil rights protections on the basis of religion.

Massachusetts law prohibits various forms of discrimination in areas like housing, employment, and public accommodations, on grounds including race, color, religious creed, national origin, sex, gender identity, sexual orientation, disability, veteran status, and others. These laws include specific exceptions carefully designed by lawmakers to account for religious liberty, costs, and other considerations. For example, the employment nondiscrimination law specifically allows religious nonprofit organizations, such as religious schools and houses of worship, to give religion-based employment preferences.¹

The problem is that some for-profit business corporations are asserting religious freedom arguments to challenge neutral government laws, including state nondiscrimination laws. This is not a new development. In fact, businesses challenged the federal Civil Rights Act of 1964 with arguments about

¹ Mass Gen. Laws Ann. Ch. 151b § 4.

the owner's religious beliefs forbidding racial integration. However, until the *Hobby Lobby* decision² by the Supreme Court, these arguments by for-profit businesses were unsuccessful.

Since the 2014 *Hobby Lobby* decision, for-profit corporations have renewed these arguments, asserting that they should receive exemptions from nondiscrimination laws due to the religious views of the corporation. For example, when a transgender employee sued after being fired by a for-profit multi-location funeral home company, a federal judge in Michigan held that the company was exempt from the law on this ground.³ Although this decision was later overturned by the Sixth Circuit Court of Appeals,⁴ this situation creates a loophole which may allow for-profit corporations to claim exemption from nondiscrimination laws, undermining the purpose and effect of these vital protections.

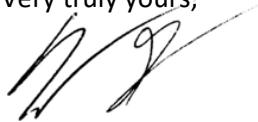
This trend in for-profit religious discrimination has found additional support after the recent *Masterpiece Cakeshop* decision.⁵ *Masterpiece's* narrow opinion rested on improper review by the Colorado Civil Rights Commission and avoided passing judgment on whether a business can assert First Amendment rights to deny service to a class of people. However, the failure of the Supreme Court to affirm longstanding precedent and condemn discrimination has called into question state nondiscrimination protections, creating uncertainty in the law.

As legal entities created by the state of Massachusetts, the legislature has the authority to set the rules, rights, and restrictions of for-profit entities organized under state law. H 767 solves the aforementioned loophole by preventing for-profit businesses from raising religious claims for corporate exemptions to nondiscrimination laws. This bill only applies to for-profit businesses organized under state law and similar businesses incorporated in other states; it does not apply to nonprofit corporations.

H 767 does not amend Massachusetts' nondiscrimination laws. Instead, it addresses attempts by for-profit corporations to get around the law by claiming religious exemptions. Similarly, this bill does not address claims by individuals or by nonprofit corporations relating to religious freedom. While American Atheists does not believe that religious belief should ever provide exemption from neutral laws of general applicability such as nondiscrimination laws, we support this bill as it would prevent for-profit corporations from abusing the concept of religious liberty to exempt themselves from the law.

Thank you for the opportunity to submit testimony in favor of this important bill to prevent discrimination in Massachusetts. If you should have any questions regarding American Atheists' support for H 767, please contact me at 908.276.7300 x9 or by email at agill@atheists.org.

Very truly yours,



Alison Gill, Esq.
Legal and Policy Director, American Atheists

² *Burwell v. Hobby Lobby Stores Inc.*, 134 S.Ct. 2751 (2014).

³ *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 100 F.Supp.3d 594 (E.D. Mich, 2015).

⁴ *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, (6th Cir. 2018).

⁵ *Masterpiece Cakeshop Ltd. v. Colo. Civil Rights Comm'n*, 584 U.S. ____ (2018).