

To: Ellen McCormick
Life Lobby

From: Thomas F. Coleman

Re: Amendment to ACA 24

Date: July 2, 1997

As you know, the California Supreme Court ruled in *Smith v. Fair Employment and Housing Commission* (1996) 12 Cal.4th 1143, ruled that a business owner is not entitled to an exemption from a state civil rights law that prohibits discrimination in a commercial transaction. The court held that the business owner's free exercise of religion is not substantially burdened by a law of general application that protects third parties from discrimination. Mrs. Smith petitioned the United States Supreme Court to review the case, but the court denied review last week.

Also last week, in *City of Boerne v. Flores* (1997) __ U.S. __, No. 95-2074, the United States Supreme Court invalidated the Religious Freedom Restoration Act, holding that Congress lacked the power to overturn a recent Supreme Court ruling (*Smith v. Employment Division* (1990) 494 U.S. 872) in which the court had ruled that the free exercise clause of the United States Constitution does not entitle a person with religious objections to a law to get an exemption from a law of general application that does not target religion or discriminate against religion.

As a result of these three rulings (the 1989 and 1997 U.S. Supreme Court cases and the 1996 California Supreme Court case) it is now clear that if a legislative body passes a law that applies to everyone and does not target or discriminate against religion (i.e., it is a neutral law of general application) that everyone must obey it. An exemption from such a law is not constitutionally required under the state or federal constitutions, particularly if granting such an exemption would cause harm to the rights of a third party, such as an employee, tenant, or consumer.

As it is presently written, it is unknown what effect that ACA 24 would have on laws prohibiting sexual orientation discrimination or marital status discrimination or otherwise prohibiting unlawful conduct that harms a third party. In order to insure that ACA 24 would not authorize business owners to impose their particular religious beliefs on others or to use their religious beliefs as an excuse to discriminate against others in commercial transactions, I would propose that the following language be added to ACA 24 after section 4(b):

"A state or local law prohibiting a business from discriminating in employment, housing, or other commercial transactions, or from engaging in conduct that harms third parties in such transactions, does not impose a substantial burden on the exercise of religion."

If this amendment is added, I do not think that laws prohibiting discrimination based on sex, marital status, sexual orientation, or other classifications would be placed in jeopardy by ACA 24. If anyone opposes this amendment, I would be suspicious of their motives for such opposition.



Subject: ACA 24

Date: Tue, 1 Jul 1997 14:42:07 -0700

From: "Ellen McCormick" <ellen.mccormick@lifelobby.com>

To: "Tom Coleman" <tomcoleman@earthlink.net>

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1 BILL NUMBER: ACA 24 INTRODUCED 06/30/97

2 BILL TEXT

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5 INTRODUCED BY Assembly Member Baca

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7 JUNE 30, 1997

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9 Assembly Constitutional Amendment No. 24--A resolution to propose

10 to the people of the State of California an amendment to the

11 Constitution of the State, by amending Section 4 of Article I

12 thereof, relating to the free exercise of religion.

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15 LEGISLATIVE COUNSEL'S DIGEST

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18 ACA 24, as introduced, Baca. Free exercise of religion.

19 The California Constitution provides that the free exercise and

20 enjoyment of religion without discrimination or preference is

21 guaranteed.

22 This measure would prohibit the state or any political subdivision

23 of the state, as defined, from substantially burdening a person's

24 exercise of religion, even if the burden results from a rule of

25 general applicability, unless the state or political subdivision of

26 the state demonstrates that application of the burden to the person

26 the state demonstrates that application of the burden to the person
27 is in furtherance of a compelling governmental interest and is the
28 least restrictive means of furthering that compelling governmental
29 interest.

30 Vote: 2/3. Appropriation: no. Fiscal committee: no.

31 State-mandated local program: no.

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36 Resolved by the Assembly, the Senate concurring, That the
37 Legislature of the State of California at its 1997-98 Regular Session
38 commencing on the second day of December 1996, two-thirds of the
39 membership of each house concurring, hereby proposes to the people of
40 the State of California that the Constitution of the State be
41 amended by amending Section 4 of Article I thereof, to read:

42 SEC. 4. {+ (a) +} Free exercise and enjoyment of religion
43 without discrimination or preference are guaranteed. This liberty
44 of conscience does not excuse acts that are licentious or
45 inconsistent with the peace or safety of the State. The Legislature
46 shall make no law respecting an establishment of religion.

47 A person is not incompetent to be a witness or juror because of
48 his or her opinions on religious beliefs. {+

49 (b) The state or any political subdivision of the state shall not
50 substantially burden a person's exercise of religion, even if the

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1 burden results from a rule of general applicability, unless the state
2 or political subdivision of the state demonstrates that application
3 of the burden to the person is in furtherance of a compelling state
4 interest and is the least restrictive means of furthering that

5 compelling governmental interest.

6 (c) "Political subdivision of the state" for the purposes of this
7 section means a county, city, whether general law or chartered, city
8 and county, school district, municipal corporation, district, or any
9 board, commission, or agency thereof, or other local public agency.

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