

July 19, 2021

Dear Members of the Montgomery City Council,

The undersigned are public-interest lawyers who stand for religious freedom, freedom of speech the right to life, and the traditional family. It has come to our attention that Mayor Reed has been working with the Human Rights Campaign to create an ordinance that would force Christians and other religious citizens to violate their religious beliefs or face fines. Mayor Reed's proposed "nondiscrimination" ordinance purports to protect the civil rights of all, but it would actually deprive many of your citizens of their first civil right: religious freedom.

As we read the ordinance, it would force churches to allow transgender individuals to use the restroom of their choice instead of letting churches create their own policy based on their faith. Furthermore, it might require churches who let heterosexual couples use their facility for weddings to offer the same accommodations to same-sex couples in violation of their beliefs. Although the ordinance contains an exception for religious organizations to hire and fire ministers in accordance with their faith, that exception might not apply to personnel whom the law does not consider "ministers." In other words, this ordinance might require churches to hire secretaries, facility managers, or day-care workers that do not share the church's religious convictions.

Christian schools, ranging from Alabama Christian Academy to Faulkner University, would likewise be in the crosshairs. While the ministerial exception would cover Bible teachers, it might not cover instructors who teach subjects that may not seem religious in nature. It would also require the schools to let students who hold themselves out as transgender to use the bathrooms, locker rooms, and showers of their choice. Because the language is written so broadly, sexual predators will be able to take advantage of this and easily gain access to their victims.

Christian small businesses and charities will likewise be targeted. For instance, Christian adoption and foster-care agencies will be forced to place children with same-sex couples contrary to their religious beliefs. Christian small business owners who cater to the wedding industry will also be forced to promote same-sex weddings in violation of their faith. Even Christians who list their homes on Airbnb and the like would probably be forced to let same-sex couples use their house to engage in sexual activities that violate the homeowners' religious beliefs.

Thus, by passing this ordinance, the City would violate the First Amendment rights of these people, who merely want to enjoy their first freedom: the free exercise of religion. In certain cases, the City's actions may violate other rights, such as the freedom of speech, freedom of assembly, and freedom of association.

The U.S. Supreme Court has ruled in favor of religious liberty both times it has taken cases involving the clash between religious liberty and LGBT rights. *Fulton v. City of Philadelphia*, 141 S.Ct. 1868 (2021); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S.Ct. 1719 (2018). Lower courts around the country also have been ruling in favor of religious adherents who assert their First Amendment rights in cases like these. See, e.g., *Telescope Media Group v. Lucero*, 936 F.3d 740 (8th Cir. 2019) (ruling in favor of Christian couple who had religious objections to using their artistic skills to celebrate same-sex weddings); *Brush & Nib Studio, LC, v. City of Phoenix*, 448 P.3d 890 (Ariz. 2019) (same).

Of particular relevance to Alabama, the U.S. Court of Appeals for the Eleventh Circuit (which has jurisdiction over Alabama) recently ruled in favor of Christian counselors when the government prohibited them from using conversion therapy to counsel clients who were struggling with unwanted same-sex attractions. *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020). It also held that religious liberty enjoys far greater protection when the government violates other constitutional rights along with it (such as freedom of speech, freedom of association, etc.), which would be the case in most of the hypotheticals listed on the previous page. *Henderson v. McMurray*, 987 F.3d 997 (11th Cir. 2021).

Between the Supreme Court cases, Eleventh Circuit precedent, and precedent from around the country, the City would be likely to lose if we sued over the ordinance. Please be aware that some of the undersigned attorneys were either counsel of record in the cases listed above or work for the law firms that got the courts to defend the First Amendment. Furthermore, please be aware that if we sued and the City lost, it would have to pay our attorney fees. See 42 U.S.C. § 1988(b). Montgomery will spend a fortune defending this ordinance, lose anyway, and then have to pay us for winning.

All things considered, this ordinance is not in the best interests of the people of Montgomery, which is one of the most religious cities in the United States. The City should not make criminals of its citizens for simply living in accordance with their faith. For that reason, the undersigned respectfully urge you to defend the constitutional rights and public safety of your people by rejecting this ordinance.

Sincerely,

A handwritten signature in black ink that reads "Matthew J. Clark". The signature is written in a cursive, flowing style.

Matthew J. Clark
Executive Director, Alabama Center for Law and Liberty

The lawyers on the following page have authorized me to send this on their behalf:

Mathew D. Staver
Chairman
Liberty Counsel

A. Eric Johnston
President
Southeast Law Institute

Allen Mendenhall
Executive Director
Manuel H. Johnson Center for Political Economy

John A. Eidsmoe
Senior Counsel
Foundation for Moral Law

Margaret Clarke
General Counsel
Eagle Forum of Alabama

Phil Williams
General Counsel and Chief Policy Officer
Alabama Policy Institute