

LEXINGTON HERALD-LEADER

Discrimination or religious freedom? Bevin weighs in on gay pride t-shirt lawsuit

Daniel Desrochers

February 12, 2018

FRANKFORT—Kentucky Gov. Matt Bevin has submitted a legal brief to the Kentucky Supreme Court in support of a Lexington business that refused to print T-shirts for an LGBT organization because the owner had religious objections to “pride in being gay.”

Hands On Originals was charged with violating Lexington’s fairness ordinance in 2012 when it refused to print T-shirts for Lexington’s Pride Festival. The Kentucky Court of Appeals sided with Hands On Originals last May, ruling that the company’s right to free speech overruled the city’s fairness ordinance, part of which prohibits businesses that are open to the public from discriminating against people based on sexual orientation.

The Lexington-Fayette Urban County Human Rights Commission appealed that ruling and the case is currently in front of the Kentucky Supreme Court.

Bevin’s lawyers filed a brief arguing that requiring Hands On Originals’ owners to print T-shirts “promoting homosexuality” would violate the company’s religious freedom and its freedom of conscience guaranteed in the Kentucky Constitution.

“For over two centuries, the Commonwealth of Kentucky has protected its citizens’ right to act according to their conscience,” said Steve Pitt, Bevin’s general counsel. “This important case, which has attracted national attention, tests whether Kentucky’s history of safeguarding freedom of conscience will continue or be curtailed. Requiring Hands-On’s owners to engage in speech with which they disagree is a violation of their freedom of conscience, and we are hopeful that the Kentucky Supreme Court will reaffirm this bedrock of Kentucky’s constitutional charter.”

Josh Mers, chairman of Lexington Fairness and a candidate for the Kentucky House, said calling the case an issue of freedom of conscience is a “tired old message” that doesn’t apply in this situation.

“I think the most disappointing part is that the governor has decided to add the political aspect to the case by weighing in as the Governor of Kentucky,” Mers said.

The Kentucky case has similarities to a case in front of the United States Supreme Court, where a baker refused to make a cake for the wedding of a gay Colorado couple. The U.S. Supreme Court will likely issue a ruling on that case this spring.

Several conservative groups, including the Kentucky Baptist Convention and The Cato Institute, joined Bevin in filing amicus briefs in support of the Lexington business.

Lexington's ordinance protects gays and lesbians from discrimination because of their sexual orientation, but Hands On Originals objected to spreading the gay rights group's message, Chief Judge Joy A. Kramer wrote in the majority opinion for the Court of Appeals. That is different than refusing to serve the group because of the sexual behavior of its individual members, she wrote.

"In other words, the 'service' Hands On Originals offers is the promotion of messages," she wrote. "The 'conduct' Hands On Originals chose not to promote was pure speech. There is no contention that Hands On Originals is a public forum in addition to a public accommodation. Nothing in the fairness ordinance prohibits Hands On Originals, a private business, from engaging in viewpoint or message censorship."