

Local Court Ruling Takes the Hands off of Hands On: Tensions between Fairness Ordinances and Religious Freedom Restoration Acts

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Businesses should keep a close eye on a case that continues to develop in Lexington, Kentucky, as it highlights the current tensions between emerging, evolving antidiscrimination paradigms and rights of free expression and freedom of religion as they exist under both federal and state laws.

The case of *Hands On Originals v. Lexington-Fayette Urban County Human Rights Commission*^[1] began when a local group, the Gay and Lesbian Services Organization (“GLSO”), approached Hands On Originals (“HOO”) about printing t-shirts for an upcoming event, the Lexington Pride Festival. HOO initially issued a quote to the organization for the shirts, but after learning that the design and message of the shirt, HOO informed the GLSO that it “could not print the t-shirts because those promotional items did not reflect the values of HOO and HOO did not want to support the festival in that way.”^[2] HOO offered to contact other printing companies to get the work done at the quoted price, but GLSO filed a complaint with the Lexington-Fayette Urban County Human Rights Commission (“HRC”), stating that this denial of service by HOO was a violation of Lexington’s “Fairness Ordinance,”^[3] which prohibits public accommodations from discriminating against individuals on the basis of sexual orientation. The HRC held that HOO violated the ordinance and discriminated against the GLSO on the basis of the sexual orientation of its members. HOO appealed the order to Fayette Circuit Court.

In the opinion in *Hands On Originals*, the court reversed the order and opinion of the HRC, holding that (1) the order from the HRC violated the right of HOO to be free from compelled expression, and (2) the order violated the right of HOO to free exercise of religion.

Concerning freedom of expression, the court was careful to make the distinction that it believed HOO refused service to GLSO on the basis of the message in the asked-for product and not the identity of the organization or its members themselves. Indeed, it was undisputed in the case that HOO neither knew nor inquired of the sexual orientation of the representative of the GLSO. The court applied strict scrutiny review and ruled that to require HOO to print the shirts with a message contrary to their stated beliefs would, in effect, compel them to speak, and there was no evidence to suggest the denial of service was based on anything other than the message conveyed in the order. The court cited *Boy Scouts of America v. Dale*^[4] – a case upholding the right of an organization to expressive association in the face of public accommodations laws – for the proposition that a for profit

corporation can have First Amendment rights.

The court's second holding, implicating free exercise of religion, is of particular interest to businesses in the current climate. The court invoked KRS §446.350, Kentucky's version of the Religious Freedom Restoration Act ("RFRA"), to hold that the HRC's Order placed too great a burden on the exercise of religion of HOO and its owners. This provision is similar to laws in several other states, and provides that "[g]overnment shall not substantially burden a person's freedom of religion,"^[5] unless the government can prove there is a compelling interest and uses the least restrictive means to further the interest. Kentucky statutes recognize that the term "person" can include businesses, which, as noted by the court, is consistent with the Supreme Court's recent decision in *Burwell v. Hobby Lobby*.^[6] The denial of service, according to the Hands On court, was based upon the sincerely-held religious beliefs of HOO and its owners. Requiring HOO and its owners to print the shirts would, according to the court, force them to convey a message that conflicts with their religious faith, substantially burdening their free exercise of religion.

This ruling is likely to face appeal, but it highlights the tension between the growing number of both state RFRA laws and local antidiscrimination ordinances that confer protected status on the basis of sexual orientation and gender identity.

[1] Hands On Originals v. Lexington-Fayette Urban County Human Rights Commission (14-CI-04474)

[2] Id. at 6.

[3] Ordinance 201-99; Section 2:33

[4] *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000)

[5] KRS §446.350

[6] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2768-69 (2014)

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National Law Review, Volume V, Number 126

Source URL: <https://natlawreview.com/article/local-court-ruling-takes-hands-hands-tensions-between-fairness-ordinances-and-religi>