

Kansas religious conservatives want to revive controversial 'religious freedom' bill

BY BRYAN LOWRY - EAGLE TOPEKA BUREAU

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A controversial bill allowing public and private employees to refuse to serve same-sex couples based on religious beliefs about marriage is likely to resurface in some form in the next legislative session. AP / FILE PHOTO

A controversial bill allowing public and private employees to refuse to serve same-sex couples based on religious beliefs about marriage is likely to resurface in some form in the next legislative session.

The legislation – called the religious freedom bill by supporters – passed easily in the House in the last session but was halted by Senate leaders after lawmakers were flooded with angry phone calls and e-mails.

Some supporters of the bill are eager to revisit the issue now that a federal court has struck down the state's constitutional ban on same-sex marriage and same-sex couples have begun to wed across the state. It's unclear how similar this session's bill would be to the original one and who

would introduce it.

Proponents say the bill is needed to protect the rights of religious Kansans who object to same-sex marriage.

Gay-rights activists, meanwhile, have called for the state to offer legal protections for sexual orientation, similar to the ones already in place for race and religion.

Sen. Steve Fitzgerald, R-Leavenworth, expressed frustration that the bill didn't make it to the Senate floor last session and said it was "just flat mis-represented." He said the federal ruling is cause to pursue the issue again; he considered introducing a bill early in the new session but decided to wait and see the mood among other lawmakers.

He says the bill is meant to protect religious Kansans from lawsuits. He pointed to a recent case in New York State in which owners of a farm that regularly hosts weddings were fined \$13,000 for refusing to let a lesbian couple hold their wedding there.

"So what you've got is we'll sue you and take everything you can get unless you participate in and help us celebrate what you consider to be gravely evil," Fitzgerald said. "So your freedom of religion is exactly, mmm, pay up."

LGBT rights advocates have compared a business turning away gay and lesbian couples to the discrimination faced by African-Americans during the segregation era.

"Should businesses that do business with the public have to serve everybody? Yes," said Tom Witt, the executive director of Equality Kansas, the state's leading LGBT rights organization. "That's a principle of American society. You are open for business, then you're open for business to everybody. And you don't get to choose what classes of people you're not going to serve."

Witt's organization will push to have sexual orientation and gender identity added to the state's anti-discrimination statute in the upcoming session. State law forbids discrimination based on race, gender, religion, age and disability, but not sexual orientation.

"You can be fired for being gay. You can be evicted for being lesbian. And you can be kicked out of a restaurant for being transgender. And you have no recourse," Witt said.

Rep. Louis Ruiz, D-Kansas City, introduced an anti-discrimination bill last session, but it never received a hearing. Republican leaders said it was too late in the session. Witt said the bill would be introduced earlier this time around.

“If we’re going to give hearings to bills legalizing discrimination, then we should give hearings to bills banning discrimination,” Witt said.

Michael Schuttloffel, executive director of the Kansas Catholic Conference, said adding sexual orientation to the state’s anti-discrimination law would make religious Kansans vulnerable to lawsuits.

“The whole point of those kinds of laws is to punish people for their religious beliefs,” Schuttloffel said. “No one’s brought forward examples of Kansans who are denied service at restaurants because they’re gay. ... It’s not happening in Kansas. It’s not happening anywhere in the United States.”

He said his organization would object to someone being denied service at a restaurant for being gay, but thinks owners of wedding-related businesses, such as flower shops, should have the right to refuse to serve same-sex weddings. He said that is why the state needs to enact a bill that deals specifically with marriage.

“We want to protect their religious beliefs from government run amok,” Schuttloffel said. “This was a First Amendment bill where we’re just saying that the government can’t punish people for their beliefs and living out their religious beliefs. That’s America 101. That’s a core American principle.”

Senate Vice President Jeff King, R-Independence, said that Kansas already has a general protection for religious freedom that is one of the strongest in the country. The law, passed in 2013, requires the government to demonstrate a compelling public interest before it can intervene in cases involving religion.

“When you have such strong protections for religious liberty, which I’m glad we have, there’s not a lot left legally that we need to do to protect religious freedom that we haven’t already done,” he said.

Kerry Wilks, one of the plaintiffs of the lawsuit that led to overturning the state's ban on same-sex marriage, called conservatives' conclusion that they need a bill to enable businesses to turn away same-sex couples proof of the state's need to add sexual orientation to its anti-discrimination law.

"Take out the word 'gay' and put any other word in there and is it acceptable? Put 'Muslim,' put 'African American,' put an 'interracial couple'... does it sound better? Does it sound worse?" she said. "We're not talking about churches. We're not talking about forcing a minister to marry someone in a church. That's protected."

Wilks said the reason she feels comfortable speaking out about the issue is that she is a tenured professor at Wichita State University. Without the protection of tenure, she said, she is unsure whether she could be as public.

Last session's bill

Last session's religious freedom bill extended to public employees, meaning that county clerks, for example, could refuse to serve same-sex couples seeking marriage licenses. Some attorneys read the bill as being broad enough that it would have extended to all public employees, including police officers, who could theoretically refuse to help a same-sex married couple based on their religious beliefs.

Senate President Susan Wagle, R-Wichita, who halted the bill, said in February that "public service needs to remain public service for the entire public."

Wagle's office would not weigh in on the issue ahead of the upcoming session.

Schuttloffel said the Kansas Catholic Conference would be fine with jettisoning the portion concerning public employees, contending that federal law already enshrines religious protections for public workers.

However, Fitzgerald contended that the bill should extend to public employees, such as county clerks and judges.

"Should a judge be required to perform a ceremony? A question for you," Fitzgerald said. "The basic question is regardless of your employment should you be forced, compelled, coerced, made under force of law or threat of suit, to go against your own morals?"

When Judge Daniel Crabtree ruled the state's ban unconstitutional last month, he cited the U.S. Constitution's 14th Amendment, which was enacted in the aftermath of the Civil War and guarantees equal protection under the law.

But conservatives say the issue at stake is the First Amendment's guarantee of free exercise of religion.

"So we're to believe that the Reconstruction Congress was anxious to spread sodomy throughout the states at the time?" Fitzgerald said in reference to the ruling. "That was the intent of the 14th Amendment due process clause?"

Witt responded that 14th Amendment was enacted "so that all Americans and everybody on U.S. soil are treated equally before the law." He and others say that's why the bill proposed by conservatives would be unconstitutional.

Unwilling to reconsider

Not all House conservatives want to revisit the issue. Rep. Dan Hawkins, R-Wichita, voted in favor of the bill last session, but expressed regret after conversations with constituents changed his perspective.

"The one thing we learned, I guess after the fact, was the problems with that bill that a police officer or a firefighter could arrive on a scene and just decline to help, which would be absolutely horrible," Hawkins said.

"It would have to be severely changed," Hawkins said about whether he would support the bill if it returned. "I don't think they would get the support if it came back in its prior form. And I'm not sure even how'd they change it. I do know I would be searching out some good legal advice to make sure it wasn't discriminatory before I ever supported it."

House Speaker Ray Merrick, R-Stilwell, expressed regret for bringing the bill to the floor last session. Asked whether he would allow an altered bill to the floor this session, his spokeswoman, Rachel Whitten, said in an e-mail, "The speaker has not seen anything dealing with religious freedom (for this session). Without details, speculation on the chances of any bill is premature."

Rep. Steve Brunk, R-Wichita, a strong opponent of same-sex marriage, said he expects the issue to be addressed during the session. But he said he is unsure what a possible bill would be like and which chamber it would be introduced in. "Certainly there's been conversations. The topic is not

going away with the actions that the courts have taken,” Brunk said.

“This is an unprecedented situation we’re in. ... Clearly there’s going to be some discussion about protecting the First Amendment,” he added.

Ruiz called the bill an atrocity and he said he hoped the public outcry from last session would prevent it from resurfacing. “I was hoping that they learned a lesson from last year when Ray Merrick had a lot of egg in his face for having his House voting (for) a bill that discriminates,” he said.

Brownback noncommittal

Gov. Sam Brownback has been noncommittal about the issue. He has repeatedly asserted his support of religious freedom in a general sense but has not said whether he would sign a bill.

While seeking re-election, he repeatedly railed against the federal ruling and his administration has instructed state agencies not to recognize same-sex marriages while the state appeals the decision.

Terry Fox, a Wichita pastor who has been active in his opposition to same-sex marriage, said that he has had contact with several lawmakers who have encouraged him that there will be legislation on religious freedom this session.

Fox appeared with Brownback at a rally against same-sex marriage in Wichita before the election. He said Brownback made no promises about signing legislation but indicated that he felt stronger legal protections may be needed for religious beliefs.

“He didn’t particularly say ‘religious freedom bill,’ but he shared with me that we are going to have to provide more protections for Christians in that area,” Fox said. “Let me say it like this, and I would be glad to be quoted as saying, I would be extremely disappointed if he chose not to pursue it and sign into law.”

The governor’s office would not comment.

The Rev. Jackie Carter, a Wichita pastor who has received death threats for performing same-sex weddings, said that some Christian leaders were missing the point of Christ’s message in their objection to LGBT rights.

“If the Christian message is to follow Jesus, then the stand that they’re taking is not the stand that Jesus Christ would have taken,” Carter said. “Everything that Jesus Christ did and preached while he was here was inclusionary. It included everybody that everybody else kicked out. So if we want to be Christians ... then we are called to care for all people.”

Reach Bryan Lowry at 785-296-3006 or blowry@wichitaeagle.com (mailto:blowry@wichitaeagle.com). Follow him on Twitter: [@BryanLowry3](https://twitter.com/BryanLowry3) (<https://twitter.com/BryanLowry3>).