

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: Interested Persons
Date: February 2018
From: A. Eric Johnston
Re: The City of Montevallo Nondiscrimination Ordinance, or “Equality is Not a Threat”

The City of Montevallo is in the process of adopting a nondiscrimination ordinance. It prohibits discrimination “because of race, color, religion, sex, gender identity, sexual orientation, handicap, familial status, or national origin.” It applies to real estate and rental transactions, municipal contracts, and “all forms of discrimination.” It is very restrictive and covers employers who have as few as one employee. The ordinance has a few exemptions. The religious exemption, in particular, is very limited and will not provide much protection to churches and ministries.

Several weeks ago, supporters of the ordinance organized a forum. In response, Montevallo resident Dr. Daniel Thompson organized a forum to objectively respond to the ordinance. On behalf of the Southeast Law Institute, I participated in the forum along with Briarwood Church Pastor Harry Reeder, Alliance Defending Freedom lawyer Matt Sharp and Jones Law School professor Adam MacLeod. We each spoke to various aspects of the ordinance. It was a standing room only crowd at the Parnell Memorial Library in Montevallo. However, most of the crowd demonstrated their support of the ordinance by wearing stickers that “Equality is Not a Threat.”

Mr. Sharp provided a good overview of the ordinance, Professor MacLeod an explanation of accommodations law and similar ordinance in other cities, and Pastor Reeder a pastor’s perspective including the implications of rights in America and the importance of religious belief. My focus was that the ordinance was about the clash between sexual rights and religious rights.

There is no evidence of any active discrimination in Montevallo. Except for gender identity and sexual orientation, the other grounds are already covered by a massive amount of federal law. The ordinance acts as a cover to introduce into the community a moral and religious difference of opinion, which does not exist as actual discrimination. Ordinances like this are meant to preempt the beliefs of persons who disagree with the *Obergefell v. Hodges* (2015) U.S. Supreme Court (“SCOTUS”) opinion legalizing same sex marriage. Predominantly, those persons have religious convictions that homosexuality is a sin and same sex marriage is prohibited by the Bible.

I urged the crowd to understand that freedom of religion is our first freedom. We must respect it in the application of all laws. I provided a history of those cases which expanded sexual freedom in America. I also explained those cases which had developed religious freedom.

Sexual freedom began with *Griswold v. Connecticut* in 1974, a very mundane case upholding a married couple’s rights to purchase contraceptives. Through the years, that right of privacy related to sexual issues has encompassed the right to abortion (*Roe v. Wade*, 1973) and now the right to homosexual marriage and other activities (*Obergefell v. Hodges*, 2015).

Religious liberty cases have been decided, though not dealing with sexual issues. Through the 1980s and 90s there was litigation reaffirming free exercise of religion rights. When in 1990, SCOTUS struck down a law exempting certain Indian religious rights, it created a furor on how to judge governmental interference with religion. It resulted in the Religious Freedom Restoration Act (for federal) and the Alabama Religious Freedom Amendment (for Alabama). The former was recently applied in the case of *Burwell v. Hobby Lobby* (2014) excusing Hobby Lobby, a family owned business, from having to pay for abortifacients under the Affordable Care Act.

While the right of privacy and the religion cases were dealing with different subjects, those two lines of cases have now met in the case of *Craig and Mullins v. Masterpiece Bake Shop and Jack Phillips*. That case involves the Colorado baker who refused to decorate a wedding cake for a same sex marriage. It is under submission to SCOTUS and will be decided by June 2018. It will determine the strength of religious protection in America. See, November 2017 Educational Update.

The Montevallo ordinance may be beyond the authority of a city to promulgate and, at a minimum, is premature and should await the outcome of the *Masterpiece* case. The commission the ordinance appoints is not qualified to determine discrimination issues. All of this will result in much litigation costing the City of Montevallo financially. Better wisdom was for the city to have waited, but it exercises little wisdom, since this ordinance creates discrimination, rather than removes it. We recognize certain same sex rights have been granted by SCOTUS. While those rights exist, we must recognize the religious rights of persons to disagree.

I asked the crowd why it was that the gay rights lobby thinks “Equality is a threat.” Their stickers said, “Equality is Not a Threat,” but the reality of their effort to push this gay rights ordinance demonstrates they cannot coexist with those who disagree. The ultimate goal of the gay rights lobby is to diminish or remove any and all opposition to their lifestyle. In reality, it is only the church that stands in their way. If they can remove the judgment of the church, that is the religious freedom to disagree, then there is no one to condemn them.