

SENATE BILL 1306
TESTIMONY ON BEHALF OF THE PENNSYLVANIA CATHOLIC CONFERENCE
August 30, 2016

I am Dr. Robert J. O'Hara, Jr., Executive Director of the PA Catholic Conference (PCC), the public affairs agency of the Catholic Bishops of the Commonwealth. With me is Attorney Philip J. Murren of the law firm of Ball, Murren & Connell. That law firm is retained as legal counsel by the Pennsylvania Catholic Conference.

Senate Bill 1306, if enacted into law, would have serious and substantial legal impacts on the Catholic Church's ministries and on its members.

Should the General Assembly exert its coercive power to force the Church to accept into its ministries or teaching positions those whose beliefs, words or conduct contradict Church teachings, the State will have invaded a realm that is vital to the Church's religious freedoms.

The Church has been precise, in its moral teachings, in distinguishing between sexual orientation and sexual behavior. It has condemned all forms of hostility to any individual on the basis of her or his actual or perceived sexual orientation. However, the Church also teaches that sexual activity or marriage between persons of the same gender cannot be reconciled with its beliefs and doctrines. It similarly does not condone heterosexual relations outside of marriage.

Senate Bill 1306 would take the civil law beyond neutrality on such acts and into active opposition to the Church's stance. Moreover, the General Assembly, if it enacted Senate Bill 1306, would be imposing the condemnation and penalties of the Commonwealth government on those Catholic agencies and individuals who act in fidelity to the Church's teachings by refusing to actively facilitate practices toward which they cannot, in conscience, be morally neutral.

The Effect of Senate Bill 1306 on the Church's Ministries

The Catholic Church develops and implements its employment policies and codes of conduct so as to assure that it is acting in fidelity to its religious mission. Those who minister for the Church, whether it be in pastoral ministry, the teaching ministry or in the ministry of caring for others, teach and give witness to their faith and the faith of the Church that they represent by word and by example.

Senate Bill 1306, as applied to the Church, will necessarily create confrontations and conflicts of constitutional significance.

For instance, the Church could be statutorily compelled to accept the conduct of a Catholic school teacher who asserts to her or his students that her or his same-sex relationship is a sacramental marriage. Constitutional litigation on that issue would inevitably ensue.

It is not proper to dismiss the Church's concerns by pointing to the Pennsylvania Religious Freedom Protection Act. As beneficial as that Act may be, it does not dictate any particular result in a church-state conflict. It also does not completely pre-empt those conflicts if the General Assembly has adopted legislation that it knows will necessarily provoke them.

It is also not proper for government to statutorily limit the Church's expectations of doctrinal fidelity solely to those who qualify under the recently-recognized "ministerial exception" subset of Church employees that was described by the U.S. Supreme Court in the *Hosanna-Tabor* case. In fact, there have already been decisions issued by several Federal Courts in Pennsylvania that refuse to apply that narrowly descriptive title to teachers in the Catholic schools. (See, e.g. *Hough v. Diocese of Erie*, 2014 WL 834473 (W.D. Pa. 2014); *Carothers v. Archdiocese of Philadelphia*, Docket No. 13-cv-07544 (E.D. Pa. 2014). The "ministerial exception" classification is therefore much too narrow to be applied as a substitute for adequate statutory restraints on governmental incursions into religiously-grounded Church employment expectations and standards of conduct.

Litigation between church and state is costly, contentious, divisive and ultimately wasteful for both parties. It is likewise easily avoided if legislation is drafted so as to be sufficiently sensitive to the dictates of religious conscience and to the practicalities of religious observance.

PCC believes that the rights of religious entities and their affiliated ministries and organizations to select and retain as clergy, members, officials, representatives, employees, volunteers and contractors only those individuals and entities who share, respect, promote and give witness by word and deed to the doctrines, tenets, principles and codes of conduct of those religious entities must receive adequate protection from the application of the proposed mandates and prohibitions of Senate Bill 1306. Moreover, PCC likewise believes that these protections should be uniform and consistent throughout the Commonwealth and should therefore be applied to any local ordinances that are similar in their mandates and prohibitions to those contained in Senate Bill 1306.

Senate Bill 1306 would impose penalties on those who, for reasons of religious belief, could not comply with its mandates and prohibitions. Senate Bill 1306 threatens to infringe on our ability to hire people who follow the teachings of the Church. It would allow the state to dictate which beliefs the Church is allowed to uphold in its ministries. The Pennsylvania Catholic Conference must therefore oppose the enactment of Senate Bill 1306.