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Federal appeals court dismisses rights laws challenge

By ARTHUR LEONARD | A unanimous three-judge panel of the U.S. Court of Appeals for the 6th Circuit on December 9 dismissed a challenge to two Kentucky laws forbidding discrimination based on sexual orientation or gender identity, finding that a dentist who had no expectation of hiring new employees at the time he filed his lawsuit did not have "standing" to bring his claim that the laws violated his right to free exercise of religion. In 1999, both the city of Louisville and surrounding Jefferson County, passed local laws amending their civil rights codes to add "sexual orientation" and "gender identity" to the list of forbidden grounds for discrimination in employment, housing, and public accommodations. J. Barrett Hyman, a gynecologist practicing in Louisville, filed a lawsuit in the federal district court, claiming that as a practicing Christian he could not in good conscience employ any gay or transgendered people, and thus his free exercise of religion guaranteed by the First Amendment of the U.S. Constitution was violated by these laws. He did not allege that he had actually violated the new laws or been threatened with prosecution, but argued that his freedom would be stifled in the future when he had to hire somebody. The government defendants moved to dismiss the case on the grounds that he had no standing, but the federal district court rejected their motion, finding that Hyman was potentially faced with a conflict between his religious beliefs and compliance with the law. However, ultimately the district judge, Charles Simpson, III, ruled on the merits that a private individual may not refuse to comply with a valid civil rights law based on personal religious objections, correctly applying the Supreme Court's precedent in a case called*Employment Division v. Smith,* which held that an otherwise valid law of general application does not violate the free exercise of religion merely because it incidentally places a burden on the religious practices of some people. Hyman, vowing to take his case to the Supreme Court, if necessary, appealed to the 6th Circuit Court of Appeals. Writing for the court, Judge Alice Batchelder found that the district court erred in its initial ruling on the defendants' motion to dismiss the case, because in fact Hyman did not have standing to challenge the law. Noting that a person who objects to a new statute can meet the requirement of "standing" to file a lawsuit only by showing "actual present harm or a significant possibility of future harm," Batchelder wrote that Hyman fell short of that standard when he filed his lawsuit in September 2000. At that time, Hyman was practicing in partnership with another doctor who opposed inquiring into the sexuality of prospective employees. Furthermore, "Hyman did not at that time have an immediate or projected need to hire a new employee, and because his views were known in the community, he did not have any real expectation that he would have any homosexual applicants for employment in the future," the judge wrote. The court also observed that Hyman, during his 32 years of medical practice, had never employed anybody whom he "even suspected of being homosexual." The court concluded that being opposed to a statute and planning to violate it in the future was not enough to meet the standing requirement. Since this court believed that the district court never had proper jurisdiction of the case, it ordered that the district court's decision be vacated and the case be dismissed.