

ISSUES IN PERSPECTIVE

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18 April 2015

The New Intolerance and Religious Liberty

In 1993, the US Congress passed and President Bill Clinton signed the Religious Freedom Restoration Act (RFRA). Since the Supreme Court ruled in 1997 that the RFRA applied only to the federal government, some 20 states since then have passed their own RFRAs. Another dozen states have adopted RFRA-style protections in other ways. Probably the most important invocation of an RFRA, in a federal case, was *Burwell v. Hobby Lobby*, which reached the Supreme Court last year. Recently Indiana passed its own RFRA, which has created a firestorm. The law establishes that the state “may not substantially burden” a person’s free exercise of religion unless “it is essential to further a compelling governmental interest” and “the least restrictive means” of doing so. The fear of some is that the Indiana law will be used by Christians to discriminate against LGBT citizens. Governor Mike Pence signed the Indiana law, but called for a revision of the law to make certain there can be no justification for discrimination using this RFRA Indiana law. Several businesses are now threatening to end their business operations in Indiana. What is actually going on here? Are RFRA laws in states such as Indiana a threat to the civil rights of LGBT citizens?

Law professor Daniel O. Conkle of Indiana University stated that “The reaction to this law is startling in terms of its breadth—and to my mind—the extent to which the reaction is uninformed by the actual content of the law.” In a similar fashion, University of Law professor Douglas Laycock, a same-sex marriage advocate, argues that “the hysteria over this law is so unjustified . . . It’s not about discriminating against gays in general or across the board . . . it’s about not being involved in a ceremony that you believe is inherently religious.” Indeed, as theologian Albert Mohler correctly observes, “the real issue here is not the RFRA in Indiana or Arkansas, or another state. The real issue is the fact that the secular Left has decided that religious liberty must now be reduced, redefined or relegated to a back seat in the culture.” Editorial writer for the *New York Times*, Frank Bruni, recently wrote a critical analysis of the RFRA Indiana law; arguably, Bruni illustrates the agenda of the secular Left in the US on the matter of religious liberty. He recently wrote that “The freedom to exercise one’s religion is not under assault in Indiana, or anywhere else in the country. Religious people—including Christians, who continue to make up the majority of Americans—may worship however they wish and say whatever they like.” The essence of Bruni’s argument is that religious liberty is reduced to freedom of worship, but the “free exercise of religion” (that key phrase of the First Amendment) is not restricted to worship in a church, mosque or synagogue. According to Bruni’s line of argument, “Religious liberty is now redefined so that it has no place outside pews, homes, and hearts. Religious liberty no longer has any public significance.” In another column, Bruni wrote: “The drama in Indiana last week and the larger debate over so-called

religious freedom laws in other states portray homosexuality and devout Christianity as forces in fierce collision. They're not—at least not in several prominent denominations, which have come to a new understanding of what the Bible does and doesn't decree, of what people can and cannot divine in regard to God's will."

Mohler writes that "Bruni issued an open demand that evangelical Christians get over believing that homosexuality is a sin, or suffer the consequences. His language could not be more chilling: 'So our debate about religious liberty should include a conversation about freeing religions and religious people from prejudices that they needn't cling to and can jettison, much as they've jettisoned other aspects of their faith's history, rightly bowing to the enlightenment of modernity.'" Mohler continues: "There you have it—a demand that religious liberty be debated (much less respected) only if conservative believers will get with the program and, mark his language, bow to the demands of the modern age." Bruni thereby reduces religious conviction to a matter of choice: "But in the end, the continued view of gays, lesbians and bisexuals as sinners is a decision. It's a choice. It prioritizes scattered passages of ancient texts over all that has been learned since—as if time had stood still, as if the advances of science and knowledge meant nothing. It disregards the degree to which all writings reflect the biases and blind spots of their authors, cultures and eras." Thus, to Bruni, the Bible is an antiquated "ancient text" that reflects "biases and blind spots" of its human authors.

Mohler concludes that "Frank Bruni . . . represent[s] a full-throttle demand of theological capitulation and a fully developed reduction of religious liberty. In his view . . . the only faiths that deserve religious liberty are those that bow their knees to the ever most costly demands of the modern age." What Bruni is in effect arguing is that a belief that is central to Judaism, Christianity and even Islam—that humans are created male and female, and that marriage unites the two basic expressions of humanity in a unique covenant—amounts to a form of bigotry. Robert P. George writes: "When basic moral convictions and historic religious wisdom rooted in experience are deemed 'discrimination,' our ability to achieve civic harmony, or even to reason clearly, is impossible. America was founded on the idea that religious liberty matters because religious belief matters in a uniquely life-giving and powerful way. We need to take that birthright seriously, or we become a people alien to our own founding principles. Religious liberty is precisely what allows a pluralistic society to live together in peace." To that end, columnist David Brooks writes, "While there are many bigots, there are also many wise and deeply humane people whose most deeply held religious beliefs contain heterosexual definitions of marriage. These people are worthy of tolerance, respect and gentle persuasion."

In American civilization, if there is no attempt to balance religious liberty and civil rights, the cause of gay rights will be associated with coercion, not liberation. Brooks compellingly observes that "A movement that stands for tolerance does not want to be on the side of a government that compels a photographer who is an evangelical Christian to shoot a same-sex wedding that he would rather avoid . . . As a matter of principle, it is simply the case that religious liberty is a value deserving our deepest respect, even in cases where it leads to disagreements as fundamental as the definition of marriage." As the *Wall Street Journal* editorially concluded: "The paradox is that even as America has become more tolerant of gays,

many activists and liberals have become ever-more intolerant of anyone who might hold more traditional or religious views.” The new intolerance of the secular Left is chilling and frightening. In the name of freedom, the Left is insisting that, in the words of Russell Moore, the government set itself up as “the lord of our consciences.” The threat to “the free exercise of religion,” guaranteed by the First Amendment, is real, pervasive and relentless. The “new intolerance” marches on with confidence and, increasingly, with the power of the state behind it.

See Erik Eckholm in the *New York Times* (30 March 2015); Frank Bruni’s editorial in the *New York Times* (3 April 2015); editorial *Wall Street Journal* (31 March 2015); David Brooks in the *New York Times* (31 March 2015); *The Economist* (4 April 2015), p. 30; and www.albertmohler.com (7 April 2015).