



Twin Freedoms

The Facts About Freedom of Religion and the Freedom to Marry

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Introduction and summary

Religious liberty—the ability to freely exercise one’s religious beliefs—is a cornerstone of American democracy. It is a right woven throughout the legal fabric of our nation, one that is espoused in state laws, state constitutions, and most importantly in the First Amendment to the U.S. Constitution.

Unfortunately, however, conservative lawmakers have increasingly turned to misusing religious freedom as a political tool to obstruct policies they oppose. With regard to marriage equality for gay and lesbian couples, for example, conservatives are charging (and misleadingly so) that laws and policies that level the playing field for same-sex couples threaten the free exercise of religion in the United States.¹

An increasing majority of Americans, including President Barack Obama, believe that we should afford the freedom to marry to all couples.² And Americans from all faith backgrounds support the ability to practice one’s religion free from government interference. These twin freedoms—the freedom to worship and the freedom to marry—are both important American values, and they are wholly compatible with one another.

But opponents of marriage equality would like to think otherwise. They disingenuously argue that marriage equality will unduly require clergy to officiate weddings between same-sex couples even if doing so violates their religious beliefs. Opponents similarly claim that marriage equality laws violate the religious freedom of shopkeepers, restaurant owners, and private citizens by compelling them to provide goods and services to same-sex couples, even if they already must do so under existing nondiscrimination public accommodations laws.

We’ve seen much of this show before. Opponents of interracial marriage employed similar arguments and tactics as a way to gin up opposition to laws and court rulings that advanced equal marriage for couples of different races. Of course, following these laws and rulings, no religious leader has been forced to officiate a wedding ceremony that violated his or her faith, including ceremonies

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for interracial couples. The only thing that changed with the legalization of interracial marriage is that governments were no longer able to deny these couples a marriage license or the benefits that come with marriage. The state of religious liberty remained and continues to remain unchanged with respect to interracial marriage. The same rings true in those states that have legalized marriage equality for same-sex couples.

Still, some moderate policymakers who support marriage equality for gays and lesbians have simultaneously expressed genuine concern over potential threats to religious freedoms that may arise when same-sex couples are afforded equal marital rights. In states that have passed marriage equality legislation, advocates have addressed these concerns head-on by including explicit religious exemption language within marriage equality bills themselves. Doing so has been useful in securing sufficient support for marriage equality in many states, helping assure policymakers that marriage equality safeguards the religious liberties of communities of faith. In fact, every legislative body that has debated and passed a marriage equality bill has included explicit exemptions for religious institutions and communities.

A close examination of the legislative text reveals that some marriage equality bills have included broader religious exemptions than others. Some reiterate existing religious freedoms clergy already enjoy under the First Amendment. These include a common provision stating that no clergy member will be compelled to preside over a wedding ceremony of any couple arrangement that violates his or her faith, including interfaith couples, interracial couples, and yes, same-sex couples. Other states have included more expansive provisions that exempt religious institutions from complying with certain aspects of public accommodations laws. These provisions essentially allow religious leaders and institutions to discriminate against same-sex couples in certain instances, such as denying same-sex couples access to banquet halls or lodging facilities on church property.

These public accommodations exemptions are certainly not ideal. The especially broad exemptions can have a negative impact on same-sex couples denied accommodations from religious institutions that are otherwise available to the general public. Still, the cost of these exemptions is far outweighed by the benefits same-sex couples receive by being legally recognized as married by their state and local governments.

Even with the ample religious exemptions built into marriage equality laws, some conservatives still claim that they do not go far enough. These opponents of equality want to go as far as to exempt individual citizens from providing goods

and services to same-sex couples when doing so would allegedly be inconsistent with their faith. They believe, for example, that shopkeepers and restaurant owners should be able to deny goods and services to same-sex couples, all in the name of “religious freedom.” They similarly believe that public-sector employees, such as city clerks, should be able to deny government services to same-sex couples if they are religiously opposed to marriage equality.

In truth, exempting private citizens from existing laws that prohibit discrimination against gay individuals is not about safeguarding religious freedoms. Instead, it is simply about giving people a license to discriminate.

Luckily no state has gone so far as to include provisions that exempt private citizens from sexual orientation-nondiscrimination laws, but each successive state to pass marriage equality legislation has generally provided broader exemptions for religious institutions and communities of faith. Doing so has often been seen as necessary to getting the votes needed to pass these bills. But going forward, marriage equality advocates should be sure to draw a line in the sand and ensure private citizens are not given permission by their government to discriminate against gay individuals. Doing so would sacrifice progress in one area (nondiscrimination laws) for progress in another (marriage equality)—and that’s simply not an option.

This debate over the freedom to marry and the freedom of religion will continue to intensify as state legislators and voters continue to consider marriage equality bills and referendums. Just this year Maryland, New Jersey, and Washington all took historic steps to advance relationship recognition for same-sex couples in the United States by passing marriage equality legislation. While Gov. Chris Christie (R-NJ) vetoed that legislation in New Jersey, voters in Maryland, Washington, and Maine will head to the ballot box this November to vote on marriage equality. Voters in Minnesota will also go to the polls in November to vote on an antigay ballot initiative aimed at enshrining discrimination in the state constitution by defining marriage as solely between one man and one woman.³

The debate over religious freedoms and marriage equality will likely continue as right-wing religious organizations, antigay faith leaders, and antiequality politicians continue to attempt to obstruct marriage equality victories throughout the United States. Judging by their past actions and statements, these groups will use incendiary and misleading rhetoric to argue that marriage equality is chipping away at religious freedoms and liberties.

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In this context we offer a comprehensive analysis of marriage equality legislation to better understand the range of religious exemptions that have been debated and often adopted in state marriage equality laws. We also consider the impact those exemptions have had and will continue to have on policy and political outcomes in each state. Doing so is crucial to keeping marriage equality opponents in check and ensuring the debate over marriage equality and religious freedoms is one that is based in fact, not fiction.

This report presents that analysis across four main areas. First, we analyze the kinds of religious exemption provisions that exist in marriage equality bills and detail the number of states that have included those provisions. Second, we discuss the current and future impact of these provisions on state residents. Third, we explain how the inclusion of these religious exemptions has increasingly shaped the outcome of marriage equality debates across the country. Fourth, we look at current efforts to undermine existing laws in ways that would actually create new legal authority for people to discriminate against gay and transgender individuals.

Lastly, we want to acknowledge that an increasing number of religious Americans and denominations have voiced their support for marriage equality. Religious opponents of marriage equality do not speak for all people of faith. Their claims should not go unchecked.

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