Center for American Progress

Twin Freedoms

The Facts About Freedom of Religion and the Freedom to Marry

Crosby Burns and Jeff Krehely October 2012

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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.

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

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.

What the laws say: The kinds of religious exemptions included in marriage equality legislation

In this section we examine each type of religious exemption provision state lawmakers have included within marriage equality legislation. We also detail which states have adopted those provisions. Notably each of the 10 states we examine in our analysis explicitly included at least one type of religious exemption in its respective marriage equality bill. For a more detailed discussion on the broader impact of these provisions, please see the subsequent section, "What the laws do: The impact of religious exemptions in practice."

For the purpose of our analysis, we examine the 10 states that have passed legislation affirmatively affording the rights and responsibilities of marriage to same-sex couples. These include states such as Connecticut, Vermont, New York, New Hampshire, and Washington, D.C. (which we designate as a "state" in this report) where marriage equality is legal. The list also includes California, Maine, Washington, New Jersey, and Maryland, where state legislators passed a marriage equality bill and where the law was vetoed or repealed, or where it is headed to the ballot box this November. Our analysis does not include Massachusetts or Iowa, even though marriage equality is a reality in those states, since marriage equality and religious exemption legislation were never codified into law following state supreme court rulings ushering in marriage equality in both states. (See "The legal landscape of marriage equality" for more details.)

Essentially, lawmakers in these states considered and often adopted up to four broad types of religious exemptions.

Religious exemption provisions by state[1]

State	Reiterates existing protections for clergy	Public accommodations exemption relating to "solemnization" and "celebration" of marriage	Public accommodation exemption relating to "solemnization," "celebration," and "promotion" of marriage	Protection from civil claim or cause of action	Protection from penalty or withholding of benefits	Inseverability clause	Individual conscience exemption
California	yes	yes[2]	no	no	no	no	no
Connecticut	yes	yes	no	yes	yes	no	no
Vermont	yes	yes	no	yes	no	no	no
Maine	yes	yes[3]	no	no	yes	no	no
Washington, D.C.	yes	yes	yes	yes	yes	no	no
New York	yes	yes[4]	no	yes	no	yes	no
New Hampshire	yes	yes	yes	yes	yes	no	no
Washington	yes	yes[5]	yes	yes[6]	yes	no	no
New Jersey	yes	yes	yes	yes	yes	no	no
Maryland	yes	yes	yes[7]	yes	yes	yes	no

1 This chart reflects what legislative language was or was not included in the most recent marriage equality bills that have been passed in each of the states listed. For a discussion on their actual effect in practice, please see the subsection "What the laws do: The impact of religious exemptions in practice."

2 Only applies to solemnization (not celebration).

3 Applies to "doctrine, policy, teaching or solemnization."

4 Religious institutions are exempted unless those institutions "make such services, accommodations, or goods available for purchase, rental, or use to members of the general public."

5 Religious institutions are exempted unless they "offer admission, occupancy, or use of those accommodations or facilities to the public for a fee, or offers those advantages, privileges, services, or goods to the public for sale."

6 Religious institutions are protected from civil claims unless they offer "those accommodations, facilities, advantages, privileges, services, or goods to the public in transactions governed by law against discrimination."

7 Religious institutions are exempted unless "state or federal funds are received for that specific program or service."

Not requiring clergy to officiate wedding ceremonies that violate their faith

First, every single marriage equality bill that has passed state legislatures includes language stipulating that no religious leaders will be required to solemnize a marriage that violates their religious beliefs. Washington, D.C.'s marriage equality bill, for example, states:

> *No priest, minister, imam, or rabbi of any religious denomination and no official of any nonprofit religious organization authorized to solemnize marriage, as*

defined in this section, shall be required to solemnize any marriage in violation of his or her right to the free exercise of religion.[4]

These provisions do not equip clergy with any substantive legal protections that they do not already enjoy under the First Amendment. These provisions, however, serve to clarify those constitutional protections for the purposes of state law. In doing so, these statutory protections could reduce the number of potential lawsuits filed against clergy—even though these lawsuits have little to no merit in the first place—and thereby minimize the legal burden placed on clergy and religious institutions.

Notably, these provisions are not only applicable to same-sex couples. As worded, they also reiterate that clergy will not be required to marry any kind of couple whose arrangement violates their faith, including intergenerational, interracial, and interfaith couples.

Exempting religious institutions from public accommodations nondiscrimination laws in certain instances

Each state that has legalized marriage for gay couples has also previously passed laws prohibiting commercial entities from discriminating against gay people in areas of public accommodation, such as restaurants, hotels, and retail stores.[5] Some policymakers have expressed concern that the legalization of marriage equality would compromise the religious freedom of some religious organizations by forcing them to open their doors to same-sex couples looking to use their facilities, goods, and services to host or otherwise celebrate their legal marriages.[6]

To address these concerns, every state that has passed marriage equality legislation has included provisions that exempt religious institutions from providing accommodations to same-sex couples if those accommodations are related to the solemnization or celebration of a marriage.[7] So, for example, even if a church rents out its banquet hall to members of the public, this exemption essentially allows that church to deny requests from same-sex couples looking to use that banquet hall for their rehearsal dinner.

Four states—Maryland, New Jersey, New Hampshire, and Washington, D.C.—have instituted broader exemptions by also exempting religious institutions from providing services or accommodations that relate to the "promotion" of marriages that violate their religious beliefs, in addition to "solemnization" and "celebration."

This language is broader since presumably acts of solemnization and celebration are most directly related to wedding ceremonies, while promotion may extend to goods and services outside couples' nuptials, including "counseling, programs, courses, retreats, or housing designated for married individuals," as specified in New Hampshire's marriage equality statute.[8]

In these "promotion" states, the exemption relates to services that are either directly related to promoting marriage itself (such as marital counseling), or specifically enumerated in the exemption. No state allows religious institutions or religiously affiliated organizations to refuse to recognize marriages or otherwise deny all publicly available services based on their religious beliefs.

Exemption from civil claims or cause of action

In sum, states whose legislatures passed marriage equality have adopted some varying degree of an accommodations exemption in their marriage equality legislation. What this means in practice is that religious institutions are insulated from lawsuits when they discriminate against same-sex couples seeking wedding-related accommodations. In fact, each of these 10 states has included explicit provisions making it clear that refusing accommodations to same-sex couples cannot create a "civil claim" or "cause of action." This ensures that religious institutions are protected from legal action in these circumstances. Including these provisions is likely unnecessary, however, since including an exemption inherently protects religious institutions from lawsuits. These provisions simply reiterate what it means to be exempt from nondiscrimination laws in the first place (including that they cannot be sued when they are exempt).

Exemption from government penalties and withholding of benefits

Similarly, seven states—Connecticut, Maine, Washington, New Hampshire, New Jersey, Maryland, and Washington, D.C.—explicitly prohibit government agencies from penalizing religious institutions that deny public accommodations under an exemption included in marriage equality legislation. Exempted penalties include fines, the withholding of government benefits, or a revocation of tax-exempt status. These provisions provide religious organizations with substantive protections against punitive government action. Without these provisions, a government would likely be able to penalize a religious institution that discriminates against a

married couple by imposing a fine, withholding public financial assistance, such as grants or subsidies, or revoking a religious organization's status as a tax-exempt "charitable" organization.

Making religious exemptions in marriage equality laws inseverable from the rest of the law

Legislators in two states—New York and Maryland—included an inseverability clause in their marriage equality bills, stipulating that courts cannot strike down any one part of the marriage equality bill without invalidating the entire bill itself. In other words, if a court finds that the religious exemption violates the state's constitution, the court would need to strike down the entire marriage equality law, not just the religious exemptions. It is worth mentioning, however, that the constitutionality of inseverability clauses themselves has been called into question.[9]

Allowing private citizens and commercial entities to deny accommodations to same-sex couples

Marriage equality opponents have asserted that private individuals—and not just religious institutions and leaders—should also be allowed to deny accommodations to same-sex couples if providing them a marriage-related service would violate the individual's religious beliefs. These individuals include private business owners as well as individuals in the public sector, such as town clerks who provide marriage certificates to couples. Conservative opponents of marriage equality have argued that so-called "individual conscience" exemptions are needed to protect these individuals against the purported threats to religious liberty associated with marriage equality.[10]

These exemptions are strikingly similar to exemptions that conservatives argue are necessary for medical care providers, pharmacists, employers, and others who may be morally opposed to abortion, birth control, in-vitro fertilization, sterilization, and other reproductive health services. In practice, what these exemptions actually do is allow these people to discriminate and deny necessary medical services to women who sorely need them.[11]

Similarly, building these harmful exemptions into marriage equality legislation would reverse progress made with nondiscrimination laws and actually give legal

permission to private commercial entities (and employees of such entities), including florists, bakers, and photographers, to discriminate against same-sex couples, simply based on their belief that being gay is wrong. Moreover, these exemptions would extend far beyond the purview of discriminating against same-sex couples and would give commercial entities the right to deny goods, services, and accommodations to couples of different religious faiths or even interracial couples.

Tellingly, no state that has passed marriage equality has gone so far as to exempt private individuals and entitle them to discriminate against same-sex couples based on their religious beliefs.

The legal landscape of marriage equality

The landscape of marriage equality has shifted dramatically over the past decade. In 2000 no state afforded the freedom to marry to same-sex couples. Today, marriage equality is legal in Massachusetts (2004), Connecticut (2008), Vermont (2009), Iowa (2009), New Hampshire (2009), Washington, D.C. (2010), and New York (2011).[12]

While marriage equality is currently the law in these six states and the District of Columbia, this report focuses on those states that passed marriage equality legislatively, and not states where marriage equality became law through judicial review, since religious protections were not codified into law in these instances. Therefore the 10 states that this analysis considers are Vermont, New Hampshire, , New York, Maryland, New Jersey, Washington, California, Maine, and Connecticut, and Washington, D.C.

Lawmakers in Vermont, New Hampshire, New York, and Washington, D.C., passed legislation that extended marriage to same-sex couples. In each of these states, the governor (or in Washington, D.C.'s case, the mayor) signed those bills into law. Marriage equality continues to exist in these states to date.

Six other states have also passed marriage equality legislation, though marriage equality never became or has yet to become a reality in these states. This year, for example, lawmakers in Washington, New Jersey, and Maryland passed marriage equality legislation. But marriage equality in Maryland and Washington must survive a crucial test at the ballot box this fall for those laws to go into effect. And in New Jersey, Gov. Chris Christie (R) vetoed his state's marriage equality bill, which means lawmakers in the Garden State have until 2014 to override his veto.

Prior to this year lawmakers in California twice passed marriage equality legislation, once in 2005 and again in 2007, but in both instances Republican Gov. Arnold Schwarzenegger vetoed the legislation (this report only considers the 2007 bill). Similarly, Maine lawmakers passed a marriage equality bill in 2009, which was repealed via voter referendum later that same year.

In addition to legislation, state supreme court rulings ushered in marriage equality in three other states—Massachusetts (2003), Connecticut (2008), and Iowa (2009). State lawmakers in Connecticut quickly followed its high court ruling by codifying marriage equality into state law, along with a number of religious exemption provisions. For this reason, Connecticut is included in our analysis. Lawmakers in Massachusetts and Iowa have never passed legislation codifying marriage equality into law nor have they passed legislation affording religious institutions exemptions related to marriage equality. For this reason, this report does not focus on these two states in its analysis.

What the laws do: The impact of religious exemptions in practice

Having summarized each type of religious exemption provision and the states that have adopted them, we now consider the impact these provisions have had or will have on religious institutions, same-sex couples, and private citizens. Specifically, we examine provisions ensuring no religious leader will be forced to solemnize a wedding ceremony, as well as the various provisions that exempt religious institutions from complying with public accommodations nondiscrimination laws.

Officiating wedding ceremonies

First, let's take a look at the provisions that stipulate that no religious leaders will be forced to officiate a wedding that is in violation of their faith. What effect do these exemptions actually have in practice? Do they provide religious leaders with new or needed protections?

In short, the answer is "no." Religious leaders are already fully protected from being compelled by the government to act in a way contrary to their faith under existing state laws, state constitutions, and the First Amendment to the U.S. Constitution. No religious leader has been or will be forced to preside over any religious ceremony—including weddings—if he or she believes doing so would be inconsistent with his or her faith. Thus, related provisions built into marriage equality legislation simply reiterate existing rights rather than afford religious leaders new rights.

No religious leader has been or will be forced to preside over any religious ceremony—including weddings—if he or she believes doing so would be inconsistent with his or her faith.

Massachusetts and Iowa provide perhaps the most instructive examples of how these exemptions do not provide clergy any additional substantive legal protections that they do not already have. In both states, marriage equality became the became law following state supreme court rulings that said limiting marriage to different-sex couples violated same-sex couples' equal protection under the law. Unlike Connecticut, where marriage equality also became a reality through judicial review, Massachusetts and Iowa state legislatures have never passed bills

to codify marriage equality into law. And also unlike Connecticut, Massachusetts and Iowa have never passed bills to codify protections for religious institutions related to marriage equality into law, including protections for clergy.

Many opponents derided these rulings and made dire predictions of religious leaders being forced to officiate wedding ceremonies for same-sex couples. This, of course, never came to pass. Even without provisions 'protecting' clergy codified into law in Massachusetts and Iowa, there is zero evidence that religious institutions and leaders in these two states have been forced to officiate wedding ceremonies for same-sex couples. Existing laws and constitutional protections already prevent that from happening.

That is not to say that these exemptions have no impact. As mentioned earlier, while they do not afford clergy any additional legal protections, these kinds of exemptions serve to clarify federal constitutional protections for state application, and likely reduce the number of potential lawsuits filed against clergy—even though these lawsuits have little to no merit in the first place. In doing so, these exemptions have a tangible impact for clergy since they minimize the potential legal burden placed on them and religious institutions.

Public accommodations

Exemptions that ensure religious leaders can choose which weddings to solemnize do not create new rights for these leaders—they instead amplify existing law and policy. On the other hand, provisions that provide religious organizations with exemptions from state public accommodations laws have a more tangible effect, with some states having broader exemptions than others.

First, with respect to nondiscrimination laws, every state that has passed marriage equality legislation has also passed laws that protect gay individuals from discrimination in areas of public accommodations. These laws ensure gay people are not turned away from restaurants, hotels, libraries, and public transportation, and are not denied goods and services available for public consumption simply based on their sexual orientation.[13]

But every state that has passed marriage equality legislation has also included provisions in that legislation exempting religious institutions from providing

goods, services, and other accommodations related to a marriage if doing so violates their religious beliefs.

In some states these provisions will have a limited effect in practice because they correspond to exemptions that already exist in state nondiscrimination laws. In Connecticut, for example, religious institutions were already exempt from complying with laws that prohibit discrimination against individuals based on their sexual orientation (though they must comply with laws that prohibit discrimination against individuals based on race and gender, among other protected categories).[14] As such, the public accommodations religious exemption in Connecticut's marriage equality law reiterates exemptions that already exist and likely has little new impact in practice.

In other states, however, these exemptions may have a more tangible effect in allowing faith-based organizations to deny goods and services related to the marriage of same-sex couples, denials which would otherwise be prohibited under state law. Let's consider the example of Washington, D.C. Prior to the passage of marriage equality, the District of Columbia did not exempt religious organizations from its public accommodations law.[15] Following the passage of marriage equality, it began exempting religious organizations from public accommodations laws related to the solemnization or celebration of a marriage. So in Washington, D.C., marriage equality in effect allowed gay and lesbian couples to marry, but it also gave churches the legal right to refuse to rent their banquet halls to same-sex couples for their wedding receptions, even if those churches regularly rent space to the general public.

It is in this way—providing exemptions for religious organizations—that marriage equality laws can give legal permission to those organizations to discriminate in certain instances. In addition to banquet halls, for example, some religious organizations may own property or a parcel of land apart from their place of worship that they rent or open to members of the public for weddings. In practice, these exemptions allow religious organizations to discriminate against same-sex couples who may want to rent a building space or a plot of land for their wedding, rehearsal dinner, or reception.

Additionally, these exemptions are worded in a broad way that gives religious organizations legal permission to discriminate against any couple whose relationship they find objectionable. This includes interfaith couples, interracial couples,

and intergenerational couples, among others. These exemptions thus provide religious organizations a blanket license to discriminate on the basis of age, race, and religion in certain instances.

Promotion versus solemnization and celebration

As noted earlier, not all religious exemptions are alike. Some are broader than others. Specifically, the effect of exemption provisions will certainly be stronger in the states that exempt religious institutions from providing goods and services related to the "promotion" of a marriage, in addition to the "celebration" and "solemnization" of a marriage.

Whereas the words "celebration" and "solemnization" are most directly tied to weddings and wedding-related events such as rehearsal dinners and receptions, adding the word "promotion" to these provisions significantly broadens the exemptions. This language seems to allow religious institutions to refuse to provide social services that would "promote" marriage between same-sex couples.

It is worth noting, however, that there is not yet clear guidance from the legislatures or from the courts about exactly what services 'promote' marriage and thus will be affected by these exemptions. Based on the legislative text, it is likely that core services related to the promotion of marriage such as marriage counseling will be exempted. It is possible, however, that these provisions may also allow religious organizations to discriminate against same-sex couples (or any couple for that matter) with regards to housing, access to homelessness shelters, food banks, and other critical services that faith organizations normally offer to members of the public. This may even be the case when religious organizations are receiving public funds to carry out these public services. Luckily, it is highly unlikely that "promotion" language would allow religious organizations to discriminate in child-care placement, foster care, and adoption services.

States with "promotion" language include Maryland and New Jersey (where marriage equality has yet to take effect) as well as New Hampshire and Washington, D.C. (where it is already law). In giving marital rights to same-sex couples, policymakers in these states simultaneously gave churches a legal right to discriminate against same-sex couples in areas directly related to marriage such as marriage counseling, even when that counseling is broadly available to members of the public and individuals of different faiths, and even when such services are funded with

taxpayer dollars. The extent to which religious institutions are denying same-sex couples access to other social services—such as access to homelessness shelters—is relatively unknown.

Going forward

As we will discuss in the next section, religious exemptions have been useful in securing marital recognition for same-sex couples in numerous states. It is important, however, to recognize that these exemptions can often have a negative impact on same-sex couples seeking a range of goods, services, and accommodations from religiously affiliated organizations, with certain exemptions having a more pronounced effect than others.

Still, the extent to which this has been a significant problem for same-sex couples has likely been limited. Few discrimination complaints have been brought forward either to state agencies or in the media. This may be because same-sex couples are self-selecting away from entities that are likely to discriminate against them in the first place. But it may also be because couples that are discriminated against by religious institutions understand that they have no legal recourse (due to the existence of exemptions) and therefore do not pursue a civil claim against that institution. Or it may be that they simply do not know they were turned away from a food bank, for example, because of discrimination based on their sexual orientation.

The impact of these exemptions may also be limited because only New Hampshire and Washington, D.C., currently have marriage equality laws in effect that have broad exemptions that include the "promotion" language. Given the small populations of those states, the small proportion of gay citizens in those states, and the even smaller number of gay married couples in those states, the number of same-sex couples experiencing discrimination under these laws is likely commensurately small. Their small population combined with self-selection (as well as the other factors listed in the preceding paragraph) may help explain why we have yet to see these exemptions have a particularly strong impact. Should more states pass marriage equality laws with these exemptions, we may see these "promotion" exemptions have a greater and more marked effect.

Going forward, lawmakers should carefully consider the type of exemption language they include in marriage equality legislation, if any at all. Specifically lawmakers should be wary to include "promotion" language since the potential

> . . . without careful consideration, religious exemption language might actually cause more harm than the good done by relationship recognition laws.

impact of that language is still relatively unknown, and it is possible that such language will have a more pronounced and potentially harmful impact than "solemnization" and "celebration" language. Further, these relatively new laws remain untested in the courts, where judges may find constitutional problems with exempting religious institutions and leaders from nondiscrimination laws. Lawmakers should take these factors into account when working to pass marriage equality legislation.

Civil unions in Rhode Island and Colorado: When religious exemptions go too far

In addition to marriage equality bills, religious exemptions have also been included in a number of pieces of legislation that have extended civil unions to same-sex couples. Rhode Island and Colorado's experiences show us that without careful consideration, religious exemption language might actually cause more harm than the good done by relationship recognition laws.

Rhode Island's civil union law goes far beyond including religious exemptions with respect to the solemnization, celebration, or even promotion of a same-sex union. Rhode Island's civil union law instead states that no religious institution, organization, or individual is required to "treat as valid any civil union."[16] This language goes much farther than the exemptions currently built into marriage equality bills. The marriage equality exemptions give religious organizations the legal right to discriminate against same-sex couples in certain instances, namely those that are related to marriage. But Rhode Island's language gives religiously affiliated organizations and individuals a broad right to discriminate against same-sex couples, even if doing so has nothing to do with their marriage. According to Gov. Lincoln Chafee (I-RI), this overly broad exemption has disastrous consequences for same-sex couples in Rhode Island:

> *A party to a civil union could be denied the right to make medical decisions for his or her partner, denied access to health insurance benefits, denied property rights in adjoining burial plots or denied family memberships at religiously-affiliated community centers. If religiously-affiliated hospitals, cemeteries, schools and community centers refuse to treat civil unions as valid, it would significantly harm civil union partners by failing to protect their medical, physical and commercial interests at critical moments in their lives.*[17]

In Colorado state lawmakers recently considered a bill to extend civil unions to same-sex partners. Unfortunately, this bill included a harmful provision that would allow any adoption agency—religiously affiliated or not—to refuse consideration of a same-sex couple looking to adopt a child so long as they have a religious objection to doing so.[18] This bill also applies to foster care providers, meaning that many of the 6,980 children in foster care in Colorado would have to remain in the foster care system rather than in loving and supportive homes headed by same-sex couples.[19] Ultimately, the bill failed to pass.

Both Rhode Island and Colorado illustrate that sometimes religious exemptions can inflict significant harm, even if they extend a number of marriage or marriage-like rights to same-sex couples.

Why these laws are important: How religious exemptions have shaped political outcomes in the fight for marriage equality

Advocates of marriage equality have increasingly recognized that including religious exemptions in legislation can sometimes help secure the political support necessary to pass marriage equality bills. They similarly recognize that while the religious exemptions that have been included thus far are less than optimal, the significant benefits of marriage equality far outweigh the minimal costs associated with those exemptions.

Next we offer three examples of where religious exemption language proved especially pivotal to winning marriage equality for gay and lesbian couples. We also look at Illinois' recently passed civil union bill to show that while religious exemptions are often important to attracting support for relationship recognition legislation, they are not always necessary to advance rights for same-sex couples. Lastly, we look at two of the states where marriage equality is on the ballot this year, all of which underscore the emphatic role religious exemptions continue to play even outside of legislative halls.

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New Hampshire

In New Hampshire marriage equality might not have become law had it not been for the inclusion of broad religious exemptions. When the New Hampshire House of Representatives passed its version of a marriage equality bill, it only included a single religious exemption, which stated that no religious leaders would be forced to marry same-sex couples if doing so violated their religious beliefs. But Gov. John Lynch (D-NH) indicated he would only support a final bill that included broader exemptions for religious institutions.[20]

As a result, state legislators and the governor hammered out a compromise and finally came to an agreement. The final iteration of the bill contained robust exemptions for religious entities, while ensuring that those exemptions would not

be extended in a way that would give individual commercial entities a license to discriminate against same-sex couples. Due in large part to this compromise, marriage equality was passed into law in the Granite State in 2009.

Maryland

Similarly, when a marriage equality bill was introduced in Maryland in 2011, lawmakers only included a single provision that stated that no individual religious leaders would be required to solemnize a marriage that violated their religious beliefs. Though state legislators later amended the 2011 bill to include expanded religious exemptions, the initial absence of more explicit exemptions—among other factors—contributed to that bill's ultimate failure that year.

Advocates for marriage equality later rewrote the bill keeping this lesson in mind. Earlier in 2012, Gov. Martin O'Malley (D-MD), an outspoken proponent of marriage equality, and state lawmakers introduced a marriage equality bill that included the full gamut of existing religious exemptions. These exemptions include not requiring religious organizations to furnish goods or services related to weddings, and making religious organizations immune from any penalties (including the withholding of government benefits or the ability to be sued) if they refused to solemnize, celebrate, or promote a marriage that violates their religious beliefs. Equality advocates clearly better understood the political environment in Maryland this time around and recognized the need to offer additional exemptions for religious organizations in order to win the legislative battle for marriage equality.

This strategy succeeded in minimizing opposition from faith leaders opposed to marriage equality—who had helped sink previously introduced marriage equality bills in Maryland—while simultaneously garnering sufficient support from lawmakers who were initially hesitant to back the bill. Delegate John Olszewski (D-Baltimore County), for example, continually stated that the presence of religious exemptions would prove crucial in determining his final position on the marriage equality bill. "If Maryland is going to move forward, it is very important that appropriate religious safeguards are included. … we have to be crystal clear on the religious exemptions," Olszewski said at the beginning of the legislative session.[21] After the bill's introduction, Olszewski voiced concerns that he thought the prior year's bill did not have broad enough religious protections but that he believed "this bill goes a long way in addressing those concerns."[22]

Due in part to the inclusion of religious exemption provisions, a majority of Maryland legislators, including Delegate Olszewski, voted to pass a marriage equality bill in February of this year. Gov. O'Malley promptly signed the bill, which will only go into effect on January 1, 2013, should it win approval in a voter referendum this November.[23]

New York

Religious exemptions played an especially critical role in New York's recent debate over marriage equality. Given Republican control of the state senate, marriage equality advocates in New York recognized that broad religious exemption language was needed to secure support from some of the undecided Republicans. Andrew Cuomo, the state's Democratic governor, worked closely with a group of these GOP senators to negotiate changes to the original bill, ultimately strengthening exemptions for religious institutions while remaining true to the state's strong commitment to nondiscrimination.[24]

The inclusion of these religious exemptions secured support from four Republicans whose "yes" votes were needed to ensure majority support for marriage equality in the senate. One of the four, Sen. Stephen Saland (R-Poughkeepsie), said that these religious exemptions were key to securing his support:

> *I must define doing the right thing as treating all persons with equality in the definition of law as it pertains to marriage. To do otherwise would fly in the face of my upbringing. For me to support marriage equality, however, it was imperative that the legislation contain all the necessary religious exemptions, so as not to interfere with religious beliefs which I hold as important as equal rights. I believe this legislation satisfactorily resolves the religious exemptions.*[25]

Without the support from Republicans like Saland, marriage equality simply would not have become a reality in the Empire State. But because of these added religious exemptions, New York became the sixth state in the Union and the first state with a Republican-controlled state legislature to legalize marriage for gay couples.

Illinois

In New Hampshire, Maryland, New York, and other states, religious exemption provisions were critical in assuring on-the-fence lawmakers that marriage equality would in no way threaten religious liberties. But as Illinois shows, these provisions are not always necessary.

State lawmakers in Illinois passed a bill legalizing civil unions in 2011. What's more, they did so without including religious exemptions related to public accommodations attached to the final bill. So in the end, lawmakers in Illinois did not have to sacrifice gay individuals' nondiscrimination protections in order to secure legal relationship recognition for same-sex couples in the state.

As states continue to take up marriage equality and other relationship recognition legislation (such as civil union or domestic partnership legislation), lawmakers should consider Illinois' experience and recognize religious exemptions are often helpful, but not always necessary to successfully secure sufficient political support for those bills.

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Marriage on the ballot

Religious exemption language is playing an especially critical role in the current referenda surrounding marriage equality. In the two states where voters will have the opportunity to affirm or oppose marriage equality legislation passed by their lawmakers, both ballot questions include strong religious freedom provisions in addition to marriage equality language. In Maryland voters will be asked to be for or against the Maryland marriage equality law, which is described as follows:

> *Establishes that Maryland's civil marriage laws allow gay and lesbian couples to obtain a civil marriage license, provided they are not otherwise prohibited from marrying; protects clergy from having to perform any particular marriage ceremony in violation of their religious beliefs; affirms that each religious faith has exclusive control over its own theological doctrine regarding who may marry within that faith; and provides that religious organizations and certain related entities are not required to provide goods, services, or benefits to an individual related to the celebration or promotion of marriage in violation of their religious beliefs.*[26]

Similarly, Washington state voters will be asked if the marriage equality bill passed by the state legislature should be "approved" or "rejected." These voters will see the following language on their ballot on November 6:

> *The legislature passed Engrossed Substitute Senate Bill 6239 concerning marriage for same-sex couples, modified domestic-partnership law, and religious freedom, and voters have filed a sufficient referendum petition on this bill. This bill would allow same-sex couples to marry, preserve domestic partnerships only for seniors, and preserve the right of clergy or religious organizations to refuse to perform, recognize, or accommodate any marriage ceremony.* [27]

Both of these referenda include strong language reminding voters that pending marriage equality legislation in no way threatens the religious freedom of religious organizations and institutions. In the case of Maryland, 71 of the 96 words on the ballot refer to religious liberties. Clearly, advocates recognize the importance of reminding voters that marriage equality and religious freedom are perfectly compatible with one another.

Growing support for equality among religious Americans

While many religious institutions and individuals remain morally opposed to marriage equality, a large and growing portion of religious Americans from the pew to the pulpit are coming out in favor of marriage equality.

Today, three out of four Millennials agree that "gay and lesbian people can be as committed to God and their religion as anyone."[28] Similarly, more than three out of five Catholics and white mainline Protestants have a somewhat or very positive moral and theological view of gay and lesbian people.[29]

Looking specifically at relationship recognition, we also see growing support for gay and lesbian individuals among religious Americans. According to the Public Religion Research Institute, majorities of the unaffiliated (82 percent), non-Christian religiously affiliated Americans (81 percent), Catholics (72 percent), white mainline Protestants (69 percent), and black Protestants (59 percent) agree that gay and lesbian relationships should be accepted by society.[30]

In terms of marriage equality, the Pew Charitable Trusts similarly finds that majorities of religiously unaffiliated (73 percent), Catholics (53 percent), and white mainline Protestants (52 percent) support marriage equality. But less than a majority of black Protestants (35 percent) and white evangelical Protestants (19 percent) have come out in favor of ending marriage discrimination against same-sex couples.[31]

Religious institutions have also become friendlier to gay and lesbian parishioners. In fact, many churches–including the Episcopal Church and the Evangelical Lutheran Church—allow ministers to bless same-sex unions. In these and a growing number of other places of worship, same-sex couples can come before friends, family, and God to make a public commitment of their love.[32]

Warning signs: New strategies to blunt equality

Thus far, marriage equality legislation has struck a mostly harmonious balance between ensuring religious freedoms and ensuring all couples are afforded the rights and responsibilities of marriage. Yet conservatives have and likely will continue to attempt to disrupt that balance by advocating for overly broad exemptions that would essentially hollow out laws that protect gay and transgender Americans in the workplace, in the community, and in relationship recognition.

Their strategy appears to be twofold. In the context of marriage equality, conservatives have attempted to insert language that would exempt any individual (not just those associated with religious organizations) from complying with marriage equality laws based on broadly defined religious beliefs. In a larger and far more dangerous context, conservatives are working to pass far-reaching legislation that would exempt individuals from complying with a host of laws based on their religious beliefs, a political strategy that has significant implications for women's health, child care, and, of course, gay and transgender equality.

Despite the claims to the contrary, these two tactics are not about maintaining religious freedoms, but instead about curtailing equality and fairness for gay and transgender individuals and many other American citizens. Let us take a look at both of these strategies in turn.

The unconscionable consequences of "conscience" exemptions

Conservatives argue that "individual conscience" provisions must be included in marriage laws to "protect" business owners and their employees from allegedly being forced to violate their religious beliefs.[33] Similarly, others have called for religious protections for public employees who are opposed to marriage equality, arguing that city clerks and registrars who distribute marriage licenses should not have to do so for same-sex couples, despite the fact that doing so is a core function of their job.[34]

The freedom to hold and practice one's religious beliefs, however, does not carry with it the right to impose one's beliefs, or the consequences of those beliefs, on others. This is certainly true in the commercial realm. Business owners and their employees should not be allowed to deny goods or services to a patron based simply on his or her sexual orientation. It is also true in the public realm. Public officials should not be allowed to abdicate their responsibilities to serve every citizen. But including exemptions for individuals who are religiously opposed to marriage equality would be tantamount to state governments sanctioning discrimination based on sexual orientation.

Specifically, granting an individual right to discriminate could create a loophole that could gut existing public accommodations laws prohibiting discrimination based on sexual orientation. Historically, courts have been lenient when determining what constitutes someone's privately held religious or moral beliefs. Thus, passing marriage equality along with an individual "conscience" clause would arguably make public accommodations laws moot, since it would provide most people with a moral or religious rationale to substantiate their discriminatory practices against gay individuals.

In New Mexico, for example, a professional photographer recently refused to take pictures of a same-sex couple's commitment ceremony, arguing that doing so was a violation of her religious freedoms. As expected, the New Mexico Court of Appeals found that doing so did not harm her religious liberties, but instead constituted a clear violation of the state's Human Rights Act, which prohibits discriminating in areas of public accommodation on the basis of sexual orientation. Had the state legislators in New Mexico, however, carved an "individual conscience" exemption into state law, this kind of discrimination would have been perfectly legal (though a court may later consider such a broad exemption unconstitutional).

In short, these so-called conscience exemptions would impose a tangible harm on same-sex couples. If included in marriage equality legislation, they would surely sacrifice progress already made in one area of law (nondiscrimination) to make progress in another (marriage equality). Democratic Maryland State Sen. Jamie Raskin articulated this notion in a hearing on marriage equality earlier this year:

> *We already have laws that ban discrimination against gay people in the state and in a certain way we're just extending that to the institution of marriage here. So it would be ironic if we used this legislation as an opportunity to roll back protections that gay people have to be served in restaurants, hotels, motels and other places of public accommodation.*[35]

Broader efforts to undermine equality: Extreme Religious Freedom Restoration Acts

Proposals to grant individuals a legal right to discriminate against gay people are bad enough. But conservatives are lobbying state lawmakers to consider much broader measures that would apply to all areas of the law, not just marriage equality and nondiscrimination laws.

These proposals, known as Religious Freedom Restoration Acts, or RFRAs, essentially allow private citizens to avoid following laws based on their religious or moral beliefs. Congress originally passed a federal religious freedom act in the early 1990s after two Native American individuals were denied government benefits after testing positive for peyote, an illegal psychoactive substance often used in indigenous religious ceremonies. The federal religious freedom act insulates individuals from laws that "substantially burden" a person's religious practice or beliefs.[36]

The Supreme Court, however, in its *City of Boerne v. Flores* decision, significantly weakened the federal religious freedom act, noting that Congress did not have the power to dictate which level of scrutiny ("substantial burden") by which states had to abide.[37] About a dozen states passed laws immediately following that ruling in the late 1990s meant to make up for the newly weakened federal religious freedom restoration act.[38] They did so by passing religious freedom laws with the "substantial burden" language in tact—language that had been struck down at the federal level.

Today we are seeing a renewed push for the passage of state religious freedom legislation. But this time around, conservatives are advocating for legislation that goes far beyond what has previously been proposed, and would essentially provide individuals broad exemptions from an unimaginable range of state laws.

Whereas previous state religious freedom laws required individuals to prove that a law imposes a "substantial burden" on themselves and their religious beliefs, these new laws strike the word "substantial" and only require individuals to prove that a law imposes a "burden."[39] This seemingly minor change has major and dangerous legal implications. Striking the word "substantial" essentially allows any individual to claim exemption from laws based on ill-defined concepts of their religious beliefs. As legal expert Marci Hamilton says, "Conduct that is remotely related to religious beliefs or indirectly involves religious doctrine could be enough to

overcome important laws." For this reason, Hamilton calls these new Religious Freedom Restoration Acts "extreme RFRAs."[40]

For women's health, these extreme religious freedom laws could create significant barriers for patients seeking reproductive services, contraception, in-vitro fertilization, and other medically necessary health care. If passed, doctors would be legally permitted to refuse to see patients seeking care related to their sexual health. Pharmacists would be legally permitted to refuse to hand over emergency contraception. And entire drug store chains could refuse to even sell certain products—such as birth control—because doing so would allegedly violate their religious beliefs.

Extreme religious freedom legislation would obviously also do significant harm to gay and transgender Americans by providing commercial entities a license to discriminate against people based on sexual orientation or gender identity. These extreme laws go much farther than the individual conscience exemptions in marriage equality laws discussed above, which only apply to accommodations directly related to weddings and wedding-related services. Extreme religious freedom laws give people a broad license to discriminate against people who are gay or transgender in any setting. In effect, these laws actually protect and entitle people to discriminate, allowing them to fire employees for being transgender, deny housing to a family headed by a same-sex couple, and refuse to serve gay or transgender patrons.

Opponents of equality have historically undermined equality and fairness for gay and transgender Americans by directly attacking gay and transgender people themselves. But as the public has become more accepting of gay and transgender individuals, this tactic has become less and less successful.[41] For this reason anti-gay advocates are pushing forward laws like extreme Religious Freedom Restoration Acts to achieve the same goal—to continue a discriminatory and unequal environment for gay and transgender people—behind the guise of "religious liberty."

But the harm is not limited to women and to gay and transgender individuals. These extreme religious freedom laws would give people the legal right to discriminate against individuals on the basis of their race, color, sex, disability status, national origin, age, and a host of other characteristics that currently enjoy substantive legal protections from discrimination. Beyond discrimination, a religious rationale could similarly be used to avoid complying with child labor laws, environmental standards, food safety laws, and more. Few laws would be unaffected in an extreme Religious Freedom Restoration Act world.

"Anti-gay advocates are pushing forward laws like extreme Religious Freedom Restoration Acts to achieve the same goal—to continue a discriminatory and unequal environment for gay and transgender people—behind the guise of "religious liberty."

Current efforts to pass extreme religious freedom laws

In short, extreme religious freedom laws would clearly have deleterious effects on women, gay and transgender individuals, and numerous other groups. They give wide latitude to people to not follow the law if they claim that doing so would violate their religious beliefs.

Luckily, no state has passed such an extreme religious freedom law—but not for lack of trying. Conservatives attempted to secure an extreme religious freedom law in Louisiana in 2009, only to see voters reject such a radical bill. This past June, North Dakotans voted down Measure 3, legislation that would have written extreme religious freedom provisions into law, by nearly a 20-point margin. Meanwhile, Colorado antigay organizations, despite failing to do so in 2010, pushed to put extreme religious freedom legislation before the voters later this year.[42] Once again, they ultimately failed to do so. Kansas is also coming dangerously close to passing such a bill. The Kansas House overwhelmingly passed an extreme Religious Freedom Restoration Act this past March, and the Kansas State Senate may take up the bill later this year.

Right-wing advocates are clearly ramping up their efforts to undermine a host of laws that ensure fairness and equality for gay and transgender Americans and others. Just this past March, for example, a group of conservatives founded a new advocacy group, called Conscience Cause, which aims to ensure people can use religion to avoid complying with laws they find personally objectionable.[43] Efforts such as these are dangerous and undermine the rule of law in the United States.

Freedom of religion is not absolute

Our Supreme Court has time and again delivered opinions that the freedom of religion in the United States is not absolute. For example, U.S. Supreme Court Justices Sandra Day O'Connor, William Brennan, Thurgood Marshall, and Harry Blackmun's concurrence to *Employment Decision v. Smith* states:

> *To say that a person's right to free exercise has been burdened, of course, does not mean that he has an absolute right to engage in the conduct. Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute.*[44]

Even Supreme Court Justice Antonin Scalia, an avowed Catholic and social conservative, agrees. When discussing whether or not it is permissible to allow individuals to be exempt from laws based on their religious beliefs, Scalia noted: "To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."[45]

Americans are free to believe whatever they want with respect to gay and transgender people. But we should not allow our legal system to use religion in a way that allows people to act in ways that impose significant harm on others.

"… the freedom to act, unlike the freedom to believe, cannot be absolute."

Conclusion: Maintaining our twin freedoms

Marriage is about making a commitment before friends, family, and, for many couples, God. Gay and lesbian couples want the same civil and legal rights and responsibilities of marriage currently afforded to opposite-sex couples. And in an increasing number of states, same-sex couples are finally being afforded those rights and responsibilities as state lawmakers across the Union enact marriage equality legislation.

Still, opponents of marriage equality would rather you think that this debate is not about affording the freedom to marry to same-sex couples. Instead, they want you to think that marriage equality is about weakening religious freedoms and liberties. They want you to think that marriage equality and religious freedom are incompatible. And they want you to think that insufficient protections exist for religious leaders and institutions as they relate to affording the freedom to marry to same-sex couples.

This smoke-and-mirrors strategy is intentionally aimed at distracting lawmakers from the core issue at stake in this debate: equal relationship recognition under the law for same-sex couples. Marriage equality advocates have addressed religious freedom concerns in every single marriage equality bill that has passed through a state legislative body. Doing so has proven that lawmakers can afford same-sex couples the rights and responsibilities of marriage while simultaneously maintaining and even strengthening the religious freedoms of their constituents.

Given the existence of these provisions, the claim that marriage equality threatens religious freedom is a red herring. Arguments like these are an intentional distraction, aimed at taking the conversation backward, not moving it forward.

Marriage equality advocates should remain cautious going forward with respect to the inclusion of religious exemption provisions in marriage equality legislation. Generally, each successive piece of legislation affording marital rights to same-sex

couples has included even broader language exempting religious organizations from areas of the law, specifically nondiscrimination laws.

For the most part, the religious exemptions that have been adopted by states thus far have not come at a high cost compared to the benefits of recognizing marriages between same-sex couples. At the same time, many of these religious exemptions have not been in place for very long, especially some of the broader exemptions. Therefore their ultimate impact is still not completely clear. Certainly, these exemptions merit close scrutiny in the months and years to come.

There is also a need to be wary as the country engages in a larger debate over the intersection of religious freedoms and other laws and policies. Extreme Religious Freedom Restoration Acts in particular could not only gut gay and transgender nondiscrimination and marriage laws, but also a wide range of other policies including, but not limited to, health, housing, and even land use laws. Consequently, they too merit close scrutiny.

Freedom of religion and the freedom to marry are wholly compatible with one another—thanks in large part to our Constitution's ability to help lawmakers sort out complex debates like this one. Lawmakers should ensure that all couples have the same rights and responsibilities of marriage, just as they should promote our freedom to worship as we choose. But they should not favor the freedom to worship at the expense of equality.

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While at CAP, Crosby has also documented discrepancies in the higher education financial aid system that impact applicants with same-sex parents as well as impact LGBT applicants themselves. Additionally, Crosby monitored the Don't Ask, Don't Tell repeal process to ensure a swift and efficient implementation of repeal.

Prior to joining CAP, Crosby worked at the U.S. Department of Justice where he helped investigate mergers and acquisitions in the telecommunications and media markets. Crosby holds a B.A. in political science and psychology from the University of California, Berkeley. He will be attending Harvard University in the fall of 2013 where he will be pursuing his master's in public policy at the John F. Kennedy School of Government.

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Before MAP, Jeff worked at the National Committee for Responsive Philanthropy, serving as NCRP's research director (February 2003 until January 2004), as well as its deputy director (February 2004 until he joined MAP in September 2006). While at NCRP, Jeff led the organization's work documenting the successful strategies right-wing foundations used to advance a conservative public policy agenda, and lobbied Congress to pass laws increasing the accountability of the philanthropic sector. Jeff has also served as the special assistant to the president of The Atlantic Philanthropies, Inc., a multibillion-dollar international grant-making organization, and as a research associate at the Urban Institute's Center on Nonprofits and Philanthropy.

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