

The New Faith-Based Office and The Case for Charitable Pluralism

This essay ends with a plea for policies that combine protection of the civil rights of LGBTQ Americans and a respect for the diversity of religious views on important debated topics in American society. I want to argue that it would be both in keeping with the best of the American tradition of freedom, choice and pluralism and also politically strategic to do that now.

There is no federal legislation that guarantees the civil rights of LGBTQ Americans. That is a serious deficiency that should be corrected now. The Equality Act passed by the House of Representatives does that and I support much of that bill. Unfortunately, the Equality Act also weakens the freedom of faith-based organizations to conduct their activities in a way consistent with their views on marriage.

I think this weakness of the Equality Act fails to respect the long American tradition of religious freedom, choice and pluralism. It is a simple fact that there are large numbers of Catholics, Evangelicals, Orthodox Jews, Mormons, historic black denominations like the African Methodist Episcopal Church and Muslims who believe that marriage should be between a man and a woman. And the numerous nonprofit programs run by these groups serve millions of Americans families, especially the most needy. And a considerable part of their financing comes from government programs. Is there any reason for federal legislation to force these agencies to either violate their deep-seated views on marriage to obtain continued funding, or to simply stop carrying out their ministry to the needy?

That is exactly what has happened in more than one case. When the state of Massachusetts endorsed gay marriage, the state government told Catholic Charities that they must change their policy in their large adoption program and start placing children with gay couples or lose their license to do adoption in the state. One could see some logic in this ruling if Catholic Charities' adoption program was the only or primary adoption agency in the state. But that was not the case. There were a number of adoption agencies in the state gladly serving gay couples. So, allowing Catholic Charities to act upon its long-standing religious belief about marriage, would not in any way have prevented gay couples from receiving adoption services. But the state refused the option of respecting freedom, choice and pluralism. Instead, the state took away Catholic Charities' license to do adoptions in Massachusetts. Score one point for liberal intolerance.

Douglas Laycock (University of Virginia law professor), who has long advocated legalizing same-sex marriage and federally protecting LGBTQ people says that the Equality Act is simply not balanced. "It goes very far to stamp out religious exemptions". "It regulates religious nonprofits.... This is not a good faith attempt to reconcile competing interests. It is an attempt by one side to grab all the disputed territory and to crush the other side. "

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In a free society enjoying freedom of association, a wide variety of organizations rightly are free to select staff who share their core commitments. Environmental organizations, feminist groups, unions, etc. should be free to choose only staff who agree with their agenda. Nor should this right disappear if governments choose to request that these private organizations perform some desired tasks. Planned Parenthood, for example, should not lose its right not to hire pro-life staff simply because it has a government contract. To deny this right to religious organizations would be intolerant discrimination, not the promotion of an open free society.

Law, precedents, and common sense all argue that a private organization that accepts government funds still retains its separate identity. This is clearly seen in such cases as colleges and universities receiving government funding, scholars engaging in federally subsidized research, and artists and artistic organizations funded by the National Endowment for the Arts. All of these receive government funds; all maintain their autonomy and freedom of action. They maintain their academic or artistic freedom. They do not become agents of government. Similarly, a religious organization that receives government funds to provide a public service which we as a society have decided is for the public good must be free to maintain its identity and autonomy, and not be co-opted by government. Among other things, this means it must retain its right to use religious criteria in making hiring decisions

The American tradition is one of respecting the religious views of all kinds of people, without in any way undermining their full rights as citizens to believe and practice their beliefs. America, especially in more recent decades, has placed great emphasis on choice and pluralism. Individual choice is held as a highly valued aspect of the American ideal. Pluralism is a fact, and respect for that pluralism should be viewed as a strength, not a weakness.

It is hard to see how one might find a way forward to a compromise that respects and protects the most basic concerns and values of everyone. There is a significant block of secular liberals who are largely hostile to any protection for people and organizations with a traditional view of marriage. And there is a sizable group of religious conservatives who are adamantly opposed to any legal recognition of the civil rights of LGPTQ people. Our only hope for a wise negotiated compromise can only emerge if the more moderate people on both sides are able to negotiate a mutually beneficial solution.

I think the *Fairness For All Act* proposed by the National Association of Evangelicals and the Council of Christian Colleges and Universities, offers a possible way forward. That federal act would guarantee in law the civil rights of LGBTQ Americans. It would also protect the right of faith-based organizations (e.g. Christian Colleges and Universities, hospitals, and community organizations serving the poor) to continue to hire on the basis of their traditional view of marriage without losing access to government-funded programs. I hope that vigorous negotiation could develop a bill that contains what is best in both the Equality Act and the Fairness for All Act. In the current climate, obviously, such an outcome seems difficult if not impossible.

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But I think there is a case to be made for both sides to negotiate and compromise at this point in time. For conservatives, it is an obvious fact that the larger culture has changed enormously in the last two decades on LGBTQ issues. And that trend continues. In light of that trend, conservatives have good reason to compromise now to obtain some basic guarantees of their religious freedom.

For liberals it is very likely that the current Supreme Court is going to come down strongly on the side of those with conservative views on marriage. That trend may last for a decade or two at least. The best (and perhaps only) way to avoid major Supreme Court decisions that weaken the civil rights of LGBTQ persons is for those civil rights to become law through national legislation.

Perhaps my hope for a negotiated compromise is impossible. But I think there are concrete reasons for each side to consider such a compromise at this point in time. If successful, it would help to avoid harsh conflict in this area. Above all, it would represent a victory for the American tradition of respect for diversity, affirmation of pluralism and individual choice as well as continuing the long American tradition of insistence on religious freedom for citizens of every and no religious belief.

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