



Is Gary Johnson a Libertarian?

Donald Devine

September 9, 2016

Former New Mexico Governor Gary Johnson, the Libertarian Party candidate for president, is now earning an average of 13 percent of voter support in key states, much higher than any previous libertarian nominee.

Is his success because of or in spite of his libertarianism?

Or is he a libertarian at all?

Johnson raised the issue when he told Washington Examiner's Timothy Carney his views on anti-discrimination laws: "if we allow for discrimination — if we pass a law that allows for discrimination on the basis of religion — literally, we're gonna open up a can of worms. If you broaden that, I just tell you, discrimination will exist in places we never dreamed of."

Scott Shackford, a libertarian Reason magazine editor, responded that Johnson had not "analyzed the complexity of the issue" and "failed to provide evidence that the slippery slope he suggests will actually happen, will be widespread, and will require government intervention to fix."

Johnson used an interview with Utah's Deseret News to explain further that religion was "an important part of who I am" but "there have also been times in our history when religion has been invoked to justify serious harm. I want to be clear. I believe we can, and must, strike a balance between our shared American values of religious liberty and freedom from discrimination."

He commended Utah's compromise legislation that "barred discrimination against lesbians, gays, bisexuals and transgendered individuals in employment and housing" and supported same-sex unions but also provided "reasonable protections for the freedoms of speech and association of bona fide religious organizations — and made the religious and LGBT protections inseverable."

On his big time CNN appearance, Johnson said "my head's been in the sand" on discrimination and the need to do something about it. In a Washington Post op-ed, he said his team was running as "fiscal conservatives and social liberals," downplaying libertarianism.

Utah's was an interesting compromise but is "freedom from discrimination" libertarian?

Shackford **commented**, "The freedom to choose with whom to associate is a fundamental human and Constitutionally-protected right. The ability to engage freely in commerce is another one."

Nobody has the right to force the baker, the photographer, or anybody else to work for them in a free country.”

Cato Institute Vice President David Boaz **conceded** he disagreed with Johnson on discrimination issues.

George Mason University Law Professor and Cato scholar David Bernstein explained what he believed was the libertarian position on anti-discrimination policy.

He opposed, “the mentality that anti-discrimination concerns should override everything else, that the fundamental liberties we’ve enjoyed in this country since the founding era, freedom of expression and the subsidiary rights of freedom of speech, freedom of the press, of religion, the right to petition government, all of these need to be subordinated to the anti-discrimination agenda.”

When asked for such examples, he noted courts that held it illegal discrimination to fire a teacher in a religious school for getting pregnant out of wedlock when she had signed an agreement to adhere to the moral values of the school that forbade it.

He mentioned cases where companies were penalized for sexual harassment in lawsuits where one employee used language to another that would be protected First Amendment speech if said outside of the workplace simply because someone was offended.

In the District of Columbia, “you’re not allowed to place ads in the local paper saying you want a Republican roommate, or a Democratic roommate, or a Jewish roommate, or anything like that because you’re violating the fair-housing laws. Or you can’t even say you want a gay roommate” because that is an expression “based on sexual preference.”

Bernstein **explained** libertarianism is about freedom. “So you have a religious workplace or a feminist workplace that may say it’s part of your employment contract that you understand we have very strict rules regarding what we can say and do. And if you don’t like that you could go to a workplace run by a libertarian or by an American Civil Liberties Union person who allows people to say whatever they want.”

“So the answer is that the real problem is that the government is creating a nationwide speech code by mandating that employers crack down on speech and the way they’re doing that is that if you don’t ban speech, someone could sue you.

“Essentially what the hostile environment rules mean is that the government is dictating one standard. Instead of having a pluralistic society where we have different workplaces and different rules, and you can find as an employee the one that fits your comfort level, everyone has to basically conform to the most sensitive people.”

That does not sound like what Gov. Johnson has been saying about anti-discrimination laws and if that is what he means, he should say so.