

# WATCHDOG ((ARENA))

## Government involvement complicates balance between minority rights and religious freedom

By Josh Kaib

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The Supreme Court of the United States could legalize same-sex marriage [nationwide](#) later this year. The fight that just took place in Indiana over religious freedom is far from over, and it could be coming to your state next.

With recent events in mind, the National Constitution Center [brought together](#) leaders representing organizations from across the political spectrum Monday for ‘Freedom Day,’ which the center hopes to establish as an unofficial holiday of sorts to help Americans better appreciate freedom. The issue of religious freedom in particular came up frequently during the day’s events, which took place at the [National Constitution Center’s headquarters](#) in Philadelphia.

The first panel of the day, “On the Front Lines of Religious Liberty,” approached the issue head-on. The conversation remained rather low-key until Gregory Lipper, Senior Litigation Counsel for Americans United for Separation of Church and State, asserted that religious liberty proponents had “weaponized” the Religious Freedom Restoration Act, a 1993 federal law signed by then-Pres. Clinton.

“What has happened, though, in cases like Hobby Lobby, and in places like Indiana and Arkansas, the Religious Freedom Restoration Act has now been weaponized as a tool for some people to force their religious beliefs on others and deprive third parties [of their rights],” Lipper said.

Defending states that are enacting state-level RFRA, Kristina Arriaga, Executive Director of the Becket Fund for Religious Liberty, pointed out that many states have enacted RFRA since the U.S. Supreme Court ruled in 1997 that the federal law does not apply to the states.

“As soon as the ’97 decision came down, several states started to adopt RFRA,” Arriaga explained. “We have 21 states with Religious Freedom Restoration Acts, state versions of it, and over 30 states now have religious protections that are RFRA-like.”

Opponents of the recently introduced state-level RFRA in Indiana and Arkansas say they are clearly in response to gay marriage and are intended to limit gay rights. But what about the rights of religious people to practice their beliefs as they see fit?

Michael Gerson, columnist for the Washington Post, pointed out that the federal RFRA passed the U.S. Senate 97-3, hardly a controversial measure at the time, and the issue of religious freedom was once championed by the late Supreme Court Justice William Brennan, a man of the left.

Gerson also expressed disappointment with how the public debate over religious freedom has played out.

“It is a shame, a terrible shame when issues this important get sucked into the vortex of the culture war,” he said. “Because what we are talking about isn’t just one issue among many, we are talking about one of the great achievements of the American tradition, which is the protection of a kind of religious pluralism that is actually good for the country.”

He added that people do great things in the name of religion, like set up hospitals and care for the poor. But Gregory Lipper responded by saying that RFRA have become ‘toxic’ because they are being used for discrimination.

“When religious liberty gets associated with denying women vital healthcare, denying women control over their bodies...that is deeply troubling to the cause of religious liberty as a whole,” Lipper said. “And you saw the same thing in Indiana and Arkansas when religious liberty is associated with discrimination, with denying people services at public accommodations, that is deeply troubling. Religious Freedom Restoration Acts have become toxic, and they have become toxic because they’ve been used in these ways.”

So how can society balance the rights of gays and lesbians with the religious freedom rights of people of faith? Perhaps the problem here is government. A consensus seemed to emerge from the conservative and libertarian-leaning speakers at Freedom Day that government involvement in marriage complicates matters.

Kristina Arriaga said “People disagree on religion and sex all the time in America, the answer is to not bring in government regulation.”

Appearing on a panel later in the day, Cato Institute President Peter Goettler affirmed his organization’s support for same-sex marriage but said government involvement in marriage has caused the present dispute.

“If the state were not already involved in marriage, licensing marriage, defining marriage, we would not have had the very difficult discussion that we’ve had over the last few decades,” Goettler said.

And yet, progressive supporters of gay rights still see the state as the best way to achieve equality.

Anthony Romero, Executive Director of the ACLU and an openly gay man, suggested that proponents of religious freedom laws are reacting to the LGBT community—lesbian, gay, bisexual, and transgender individuals—getting their rights from the government.

“The only reason why you find this great resurgence of people demanding their religious freedom, and saying their religious freedom is under attack, is because we’ve made advances in LGBT equality,” Romero said, later adding that “[People demanding religious freedom] woke up and saw the political context around them changing, that LGBT people are getting their rights.”

“Getting their rights,” he said, as in the state is giving people their rights, not that they exist outside the state. So to someone like Romero, the state limiting its role in marriage is the exact opposite of progress, because the government must guarantee equality.

Clearly, this debate is far from over, and it doesn’t end with the close of Freedom Day. The leaders of the attending groups are the ones steering the direction of this public policy debate. If they can come together to talk about the issue in a civilized manner, there may yet be hope to resolve the dispute and properly balance the competing interests of gay rights and religious freedom.