

Gay activists have got company: In Indiana, Arkansas and around the country, Apple, Walmart and other corporations are turning the same-sex marriage tide

By Walter Olson

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Even if you think, as I do, that the past week's great gay rights war was 90% hype — the religious exemption laws in Indiana and Arkansas, even before they got amended, were by no means the bar to future discrimination suits that many backers hoped and opponents feared — one take-away is still a bit amazing: America's big businesses have emerged as a hugely effective ally of gay rights.

That is a very big deal that will reshape this crucial cultural cause, and perhaps others, for years to come.

How did this happen, what does it mean and will it last?

For those whose attention was elsewhere this week, here's what happened:

Like 27 other states, Indiana and Arkansas have no general laws banning discrimination against gay people in private employment or so-called public accommodations, although some cities in Indiana do have local ordinances to that effect.

This week, Republican legislatures in both states enacted Religious Freedom Restoration Act (RFRA) laws, which — among many other impacts in areas of the law unrelated to discrimination — might someday be invoked by florists, photographers or caterers reluctant on religious grounds to participate in a gay marriage celebration.

A national outcry ensued, fed by cable news and social media, and late this week both Indiana Gov. Mike Pence and Arkansas Gov. Asa Hutchinson yielded to the pressure, requesting and getting legislative "fixes" making it clear that neither law would have such an effect. (Contrary to some news reports, the revised laws did not ban such discrimination, but simply made clear that should such disputes emerge under local ordinances or, perhaps, future state laws, the RFRA would not serve as a defense.)

Previous gay-rights blowbacks have been led by people holding signs and chanting slogans.

This one was different. In both states, the rapid turnabout was a direct result of business pressure. Yes, celebrities jumped in with opinions, cable pundits blustered and several liberal governors and mayors, including New York's own Andrew Cuomo, went so far as to cut off "non-essential" travel by state employees to Indiana. (Because Indiana would never respond in kind by banning employee travel to New York, right?)

But that grandstanding was mostly a sideshow: The really effective pressure on the two states came from the business sector.

In Arkansas, Walmart, whose headquarters has single-handedly put the state on the world business map, publicly declared that it wanted the RFRA bill fixed or vetoed. Indiana's law drew collective fire from the Indiana Chamber of Commerce, Cummins Engine, drugmakers Lilly and Roche Diagnostics and online powers Angie's List and Salesforce, a San Francisco company with large Indiana operations.

The Indy-based NCAA weighed in to the same effect — no small thing in perhaps the nation's most sports-mad state — as did Florida-based motorsports giant NASCAR (NASCAR!), which expressed itself "disappointed" at the law's passage.

Out-of-state business leaders joined in, and by no means just the usual Apple-and-Starbucks avant garde. "Madness" and "idiocy" were the terms used by the CEO of Marriott, a company that has famously thrived from a base in middle America under Mormon-led management. (In a perhaps not entirely unrelated sign of the times, Utah itself now has a gay rights law).

Some companies even talked of avoiding conventions in Indiana or forgoing expansion there. Governments boycotting businesses is one thing, but how often do you hear of businesses boycotting governments — and midwestern U.S. states at that, not faraway tyrannies?

In 2012, social conservatives rushed to support Chick-fil-A after reports that its owner strongly opposed same-sex marriage. This year, saw a fascinating flip-side phenomenon: In red states, businesses, typically a conservative force, led, and people followed.

These developments might come as less of a shock if you've followed the rapid engagement of American business with the gay issue. Last month, 379 companies and employer organizations signed on to an amicus brief urging the U.S. Supreme Court to uphold a constitutional right to same-sex marriage, including — just to sample the A's — Accenture, Aetna, AIG, Amazon, American Airlines, American Express, Apple and AT&T.

This has been building for a while, for economic reasons as well as social ones. As Reuters recounts, Wal-Mart's stand reflects "more than a decade of evolving policy" at the retailer, which now scores 90 of a possible 100 points on the Human Rights Campaign's Corporate Equality Index.

In general, decades of "diversity" efforts within large employers have led most of them to be comfortable with internal institutions such as LGBT employee groups, which mostly take a collaborative rather than adversarial approach toward management to engage it in outreach efforts. A key argument is employee recruitment — young and high-skilled talent is more likely to want to go with employers seen as with or ahead of the times, or to be openly LGBT itself.

The same goes for the intangibles of consumer and public image. One reason advertising tilts toward younger consumers is that the perceptions of companies and brands people form in their teens and twenties tend to carry on long afterward. And rightly or wrongly, being perceived as unwelcoming of gays is now seen as almost a pure signifier of "stuck in old ways" — not where most companies want to be.

Even as corporate America has engaged with pro-gay constituencies, its relations with groups opposing gay rights have mostly ranged from non-existent to acrimonious. Groups like the American Family Association, Family Research Council and National Organization for Marriage have long been known for wildly unsuccessful boycott and shaming efforts against gay-friendly companies like General Mills and Disney, which seems to have done little to keep their co-thinkers from going right on buying Cheerios and visiting Disney World.

So there was nothing new this week when impassioned denunciations of big business and its influence rang through some social-conservative websites over the Indiana and Arkansas situations. Thus FRC president Tony Perkins, ever the voice of moderation, likened big business to the corrupters of Judas, charging it with encouraging public officials to "take the silver" and neglect their religious loyalties.

The complaint couldn't have been more futile. In many ways, it was being identified with advocates like him that doomed the two laws in their original form.

In some parallel universe, bills like Indiana's could have been pitched with a pluralist and moderate appeal: Until quite recently, after all, RFRA's themselves were seen as something of a bipartisan progressive cause and the group of law professors and religious scholars active in the push for state RFRA bills includes more than a few moderates, liberals and libertarians who themselves favor same-sex marriage and gay rights laws.

In our actual universe, on the other hand, where perception is nine-tenths reality, the Indiana effort was seen as the pet project of hard-liners that the state's business community didn't care for and didn't want to have seen as representing the state.

One of the most damaging viral images was that of a ceremony in which Mike Pence was seen signing the initial bill into law surrounded by figures circled and identified as long-time bitter opponents of gay rights. Pence himself floundered on TV when asked to defend the bill, unable to finesse the gap between the culture war themes that had helped fuel its passage at home and the more moderate arguments that might have swayed national viewers.

So is business sentiment now going to put its full weight behind the cause of gay rights, as some are already imagining?

It's not that simple. To begin with, not every controversy is going to happen in a state as exquisitely sensitive as Indiana and Arkansas to business climate reputation arguments.

What's more, it's much easier to rally opinion against a law that's seen as taking a step in the wrong direction than to rally for positive steps that might take a while to accomplish. "Lawmaker introduces bill to do outrageous thing" is good for a hundred thousand social media shares even if you've never heard of the lawmaker and the bill has scant chance of passage.

"Lawmaker fails to support worthwhile new bill" is a zero-share story. People respond to the sense of being attacked, and not all stories will play like this one.

Finally, most big companies are fundamentally conflict-averse; they're trying to get past the culture war as it affects their companies, not fight it. And they know the genie of social-media controversy is not a tractable spirit obedient to anyone's summons.

Outrage can blow up in unexpected ways.

When a small-town Indiana pizzeria owner truthfully answered a reporter's inquiry by saying she was happy to serve gay customers but would have qualms about catering a gay wedding, her mom-and-pop business got hit by a classic social-media pile-on that included fake Yelp reviews and even threats of violence. No sane business — especially a big one — would want to get within miles of such mob-driven ritual shaming.

It might be tricky, in fact, to keep getting the symbolic point across while not alienating the majority of the public that — according to most polls — in fact opposes fines and penalties for bakers, florists and photographers that hold religious objections to entering into gay-marriage celebrations. (One Oregon bakery faces a \$150,000 fine for not doing so.) In February, an AP poll found that by 57% to 39%, the public believes that "wedding-related businesses with religious objections should be allowed to refuse service to same-sex couples."

A Marist poll, which specifically mentioned the penalties under such laws, found an even wider gap of more than 2 to 1 in favor of the conscience rights; Pew, using a different wording, has found public opinion to be about equally divided.

There's even an ironic hint of contradiction in that businesses like Salesforce and Angie's List vigorously assert their own liberty — but not necessarily their opponents' — to refrain from trading with those whose morality offends them.

"Freedom should mean freedom for everyone" has been one of the most effective rallying cries in advancing same-sex marriage, but it sits uncomfortably with laws that deny freedom of association to small town businesspeople trying to lead their lives by their own lights.

But those questions lie ahead, complicating what this week revealed to be a dramatically changed landscape. For now, go ahead and savor the historic moment, and, yes, the symbolism. One of the most powerful forces shaping our world — American-style capitalist enterprise — is actively trying to look out for the interests of gay people. Meanwhile, progressives who rail against the way business throws its weight around to influence public policy are finding that when it's happening for a cause you like, maybe it's not so bad.

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