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## Arizona Should Protect Freedom of Association for All

By Deroy Murdock

Governor Jan Brewer (R., Ariz.) was correct to veto SB 1062, but she should have done it for a different reason: It did not go far enough.

Brewer faced tremendous pressure to kill this measure, which would have let religious business owners refuse to serve gay patrons. Many Americans understandably had a visceral reaction against this legislation that, fairly or not, was seen as a potential green light for homophobia. The fact that this bill would have allowed enterprises to spurn gay clientele due to religious liberty probably sharpened the burrs beneath the saddles of its foes.

However, what Brewer still should sign is a simple bill reasserting the personal, constitutional right of all Arizonans to associate with *and without* whom they please. By recognizing this right only for those with religious objections to homosexuality, SB 1062 would have created a small safe harbor rather than a huge port of individual liberty.

For example, what if a straight baker does not want to bake a cake for a gay couple, not because he has a religious problem with homosexuality, but because he just doesn't care for gay marriage, even though he is an atheist?

What if a gay baker decides that his thriving gay-wedding cake business is doing just fine, thank you, and he chooses not to bake wedding cakes for straight couples — not because of anything biblical, but because he wants to cater exclusively to the gay community that he knows and loves?

In both cases, the bakers' beliefs and preferences should trump those of the couples.

America has (or at least had) something in the Bill of Rights called freedom of association. As the First Amendment states: "Congress shall make no law . . . abridging the freedom of speech, or of the press, *or the right of the people peaceably to assemble.*" The Ninth Amendment also applies here: "The Enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Cato Institute legal scholar Roger Pilon describes freedom of association as the junction of liberty, sovereignty, and personal autonomy. As he wrote in the *American University Law Review*: "The freedom in 'freedom of association' is the freedom to be left alone, not the 'freedom' to force oneself on another."

So long as private parties act on private property, it should be none of the government's damn business for whom someone bakes cakes, takes photos, or pours drinks — or does *not* do so. If

people object on religious grounds, fine. If people just don't want to associate with people for whatever reason, that is fine, too. Period.

Many businesses have signs in their windows that read, "We reserve the right to refuse service to anyone." If those private signs are on private property, they deserve respect and deference.

If the government is involved, however, that is something completely different. When dealing with the government, Americans should enjoy equal justice under law and equal protection as citizens. The 14th Amendment says as much. That's why the anti-gay Don't Ask/Don't Tell law was an abomination that President Bill Clinton never should have signed, and which Obama and the Democratic Congress were correct to overturn in 2010. As the late, great conservative hero Senator Barry Goldwater (R., Ariz.) once said: "To be a good soldier, you don't have to be straight. You just have to shoot straight."

Likewise, to the extent that government insists on insinuating itself in marriage, rather than letting the private sector handle this sphere of human relations, gay and straight couples should have equal access to marriage licenses.

Those who pounded on Brewer over this measure should be careful what they wish for. Forcing people to associate with gay customers despite their objections — religious or otherwise — could boomerang on gay people. Mandatory-association laws could be used by straight people who want to horn in on gay establishments.

Consider a summer camp in New Jersey called Mountain Meadow. It caters to gay parents and their children. Now, what if a heterosexual evangelical applied to become a camp counselor there? Would Mountain Meadow be required to hire that person? And what would happen if he started preaching to the young campers about what he considers the sins of their gay parents? Would his religious freedom to do so be protected?

In 2010, eHarmony paid a \$516,800 settlement to some 130 Californians plus \$1.5 million in court costs and attorney's fees. These plaintiffs sued because this originally heterosexual, Christian dating site did not offer services for men seeking men. eHarmony wound up establishing a gay dating website called Compatible Partners.

So, what is ManMate.com going to say when a straight man complains, "What's with all the dudes on your website? I'm a man, and I want to check out hot chicks!" This guy could use eHarmony's precedent to sue ManMate.com and force its employees and managers to start helping boys seek girls.

If someone especially liked the lighting, location, and prices of a particular gay bar, would its owners have to make it available to a party planner who wanted to rent it for a female wet-T-shirt contest? What if the gay bar's owners and regular clientele were less than enthused by the prospect of watching buxom women jiggle to the cat calls of aroused heterosexual males? Could the owner say no to this private-event organizer?

One also wonders why a gay couple would want to harness the state's boundless powers of coercion to make a reluctant, straight photographer document their wedding. Why pay someone to take such photos while scowling, constantly checking his watch, and taking long smoking breaks while the groom and groom enjoy their first dance and cut their cake? Can Bob and Steve sue if all of their photos are out of focus? Why not, instead, hire a photographer — straight or otherwise — who actually wants the assignment and will cheer their celebration?

Beyond sexuality, one easily could imagine the unintended consequences of government's mounting hostility to freedom of association:

- Can the state order a fundamentalist Muslim calligrapher to address the invitations for an orthodox Bar Mitzvah?
- Can government make a vegan photographer take pictures at the annual meeting of a hunt club?
- Would a dedicated member of Handgun Control, Inc. be compelled to cater a lunch for the Tucson chapter of the National Rifle Association?
- Imagine that the Arizona Right to Life Committee's office needed new wiring. The best and cheapest electrician in town happens to be pro-choice. When the committee tries to hire her, does she maintain a woman's right to choose, or must she work for people who rock her world — in the worst possible way?
- Would a Vietnam War veteran with post-traumatic stress disorder be mandated by government to videotape a Vietnamese couple's wedding?

If these scenarios sound crazy, they are not much wackier than a baker getting sued for not baking a cake.

Remember: Opponents of the Arizona bill likely favor contrary legislation that would empower government not just to reason with those who oppose homosexuality. Those who refuse to bake gay-wedding cakes and take gay-wedding photos would be compelled by government to do so. If they refuse, at some point a judge will order them to comply. If they still do not bow down to the state, they will be found in contempt of court. Somewhere down the road, this involves arrest, handcuffs, and possible incarceration.

Do those who want every baker to make gay-wedding cakes really want to see objectors thrown behind bars?

If they do not want to perform services for these potential clients, the alternative is for these businesses to fire their employees, close their doors, and increase commercial vacancies.

Some, of course, will obey such laws while gritting their teeth and saying behind their backs: "The gays are taking over. Damn them!" How is this healthy?

The real question here is, when will the ever-expanding state focus on performing its limited duties admirably and stop putting guns to people's heads and making them do things they would prefer to avoid?

So, 2.5 cheers for the now-rejected SB 1062. The Grand Canyon State's legislature should pass a new bill that goes beyond the narrow parameters of religious freedom. It should reassert that every Arizonan — gay, straight, or otherwise, and regardless of faith or lack thereof — has a constitutional right to free association. The matter at hand is even larger than it appears.