



Brewer's Veto Motivated By Principle--and Pressure

By Joel B. Pollak
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Republican Gov. Jan Brewer's veto of Arizona's SB 1062, which would have protected business owners from discrimination lawsuits if they turned down gay patrons for religious reasons, brought a sigh of relief to a her state and to her party. Arizona feared losing tourists, conventions, and even the Super Bowl. Republicans were worried about broader damage to their party, once again vilified--albeit unfairly--as backward and intolerant.

The truth is that there were sound legal reasons for the veto. Though SB 1062 did not, as opponents falsely claimed, create Jim Crow (or "Jim Queer," as *New York Times* columnist Charles Blow [put it](#)) laws, it was probably too vague to withstand constitutional challenge. It could have been applied far beyond the original purpose of protecting religious dissent on gay marriage, and could have enabled discrimination more broadly.

There is little in current law that prevents discrimination against homosexuals, actually. Yet that is changing, especially in the wake of the Supreme Court's ruling last year on the Defense of Marriage Act, and arguably SB 1062 could have run afoul of an emerging judicial standard (even if, as Ilya Shapiro of the Cato Institute [points out](#), all SB 1062 did was bring Arizona law in line with the 1993 federal Religious Freedom Restoration Act).

Brewer cited legal reasoning along these lines in her [letter](#) explaining her veto, noting that SB 1062 is "broadly worded." Yet she also cited some dubious arguments, including the claim that the bill "does not seek to address a specific and present concern related to Arizona businesses. The out-of-state examples [of lawsuits against businesses] cited by proponents of the bill, while concerning, are issues not currently existing in Arizona."

There is no doubt that such cases are coming to Arizona, and to other states as well, because gay rights groups are looking for the next frontier, and that is using the coercive power of the state to force private acceptance of gay marriage. The Obama administration is already doing that through its contraceptive mandates, where it is forcing religious institutions to violate their fundamental teachings, brazenly challenging the First Amendment.

The governor has been under enormous public pressure to veto the bill. Rush Limbaugh was correct to call it "bullying," especially after the way the state was treated regarding its immigration law in 2009, SB 1070. As with SB 1062, most of what Democrats said about SB 1070 was false. And, ironically, the controversial part of the bill, allowing police to demand proof of legal residency, was the one part that survived the Supreme Court.

But the damage--including tattling at the UN Human Rights Council, and an outrageous rebuke by the Mexican president in an address to Congress (who received a grotesque standing ovation from Democrats)--was done. It is evident in Brewer's veto explanation when she describes the need to "foster Arizona's business friendly environment." She can only mean the fear of boycotts, given that SB 1062 was designed to *help* businesses.

A bill tailored more narrowly to the issue of religious freedom as regards traditional marriage might stand a better chance. Such a bill would shift the burden of debate to those who would infringe on religious freedom. Given that some of the cases that motivated SB 1062 are still working their way through the courts, it might be best to see what happens. And given the November elections, many Republicans will hope Arizona sits tight.