



Religious Freedom Restoration Act might not go far enough

By [Steve Wilson](#)

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It's a sad commentary on the state of affairs in the United States that a law called the Religious Freedom Restoration Act is not only needed, but vital. It might not even go far enough.

The [law](#)^[1], passed in Mississippi this legislative session and signed into law by Gov. Phil Bryant, has been the subject of ridicule by the mainstream media and leftist organizations.

Just read the headlines.

From Politico, "[Mississippi governor Phil Bryant signs anti-gay bill](#)^[3]." Or Slate, "[Mississippi Passes Anti-Gay Segregation Bill. Will It Be Struck Down](#)^{[4]?}"

In the art of war, the side that decides the battlefield and forces the engagement is the side that usually wins. The battlefield in this debate is the way the issue is framed as intolerant, ignorant Mississippi against an oppressed minority.

It's hard to win a fight on those terms.

"It's very scary," said [Jameson Taylor](#)^[5], vice president for policy at the Mississippi Public Policy Center and one of the bill's biggest proponents. "I've never seen this level of misinformation on one particular measure. The mainstream media ran off with a false narrative on a bill that's a page and a half. It was a useful narrative for the left's purposes."

Lost in the all of the noise is what the law is and isn't. As written, it is a near mirror of the [federal law](#)^[6] passed in 1993 and signed into law by then-President Bill Clinton.

The law, as originally [draft](#)^[7]ed, allowed the use of religious freedom as a defense against both government action and third-party lawsuits. The [version](#)^[8] signed by Bryant removed that language. It made individuals wanting to use religious freedom as a defense reliant on a court's interpretation of the statute, since the law covers only action by state or local governments.

Arizona's Legislature tried to amend its RFRA with similar language, but the [measure](#)^[9] was vetoed by Gov. Jan Brewer.

There have been cases in Mississippi where the statute would've come into play, such as the case of Sikh truck driver [Jagjeet Singh](#)^[10], who was pulled over for a flat tire and endured harassment at the hands of both Department of Transportation officers and a Pike County judge. Another was the case of [Telsa DeBerry](#)^[11], whose desire to move his [Opulent Life Church](#)^[12] to a new building in Holly Springs required him to seek the approval of 60 percent of the businesses surrounding his proposed church, plus that of the mayor and the aldermen. A city ordinance made only churches subject to such restrictions.

In one celebrated case, the law wouldn't have helped at all. Tuesday, the Supreme Court declined to hear the [Elane Photography](#)^[13] case in New Mexico. In 2006, Vanessa Willock wanted the photographers Elaine and Jon Huguenin to shoot her commitment ceremony to her same-sex partner. The photographers declined on religious grounds as both are Christians.

Willock filed a complaint with the [New Mexico Civil Rights Commission](#)^[14] and the matter went all the way up to the New Mexico Supreme Court, which [ruled](#)^[15] in favor of Willock. New Mexico has a [RFRA](#)^[16], but since its language is similar to the federal statute, the New Mexico courts ruled its protections didn't cover the Huguenins.

There's one question in the debate over the New Mexico case that has never been answered: Why not just go find another photographer to shoot your commitment ceremony without going through the complaint process and a legal battle?

"We at Cato would rather people be free to associate or not associate with whom they choose, except in the case of monopolies," said [Ilya Shapiro](#)^[17], senior fellow of constitutional studies at the Cato Institute. "In this case, this wasn't a matter of it being the only hotel for miles and miles. There are hundreds of photographers in Albuquerque. This was a case the ACLU created."

The beauty of the free market is for every business that isn't able or willing to satisfy your needs, there are likely plenty that can.

That's the beauty of free association. Unfortunately, that's not a right Mississippi's new law protects.

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URLs in this post:

[1] law: <http://billstatus.ls.state.ms.us/2014/pdf/history/SB/SB2681.xml>

[3] Mississippi governor Phil Bryant signs anti-gay bill:

<http://www.politico.com/story/2014/04/mississippi-governor-phil-bryant-signs-anti-gay-bill-105378.html>

- [4] “Mississippi Passes Anti-Gay Segregation Bill. Will It Be Struck Down:
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- [5] Jameson Taylor: http://www.mspolicy.org/about/view_staff.php?entryID=297
- [6] federal law : <http://www.gpo.gov/fdsys/pkg/STATUTE-107/pdf/STATUTE-107-Pg1488.pdf>
- [7] draft: <http://billstatus.ls.state.ms.us/documents/2014/html/SB/2600-2699/SB2681IN.htm>
- [8] version: <http://billstatus.ls.state.ms.us/documents/2014/html/SB/2600-2699/SB2681SG.htm>
- [9] measure: <http://www.azleg.gov/legtext/51leg/2r/bills/sb1062p.pdf>
- [10] Jagjeet Singh: <https://www.aclu.org/blog/religion-belief-racial-justice/judge-sikh-man-remove-rag-or-go-jail>
- [11] Telsa DeBerry: http://www.clarionledger.com/article/20140329/OPINION/303290035/Religious-Act-important-protect-churches?nclick_check=1
- [12] Opulent Life Church: <http://www.opulentlife.org/index.cfm?page=1>
- [13] Elane Photography: <http://watchdog.org>The Mississippi legislature passed and Governor Phil Bryant signed into law the Religious Freedom Restoration Act.[/caption]
- [14] New Mexico Civil Rights Commission: <http://www.volokh.com/files/willockopinion.pdf>
- [15] ruled: <http://www.adfmedia.org/files/ElanePhotoNMSCopinion.pdf>
- [16] RFRA: <http://www.essexuu.org/nmstat28-22.html>
- [17] Ilya Shapiro: <http://www.cato.org/people/ilya-shapiro>
- [18] swilson@watchdog.org: <mailto:swilson@watchdog.org>
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