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Civil-Rights Law as Lawyer Full-Employment Act

Ilya Shapiro

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The data that Eric Kaufmann presents and explains about ideological prejudice, social intolerance, and “affective polarization” (“Political Discrimination as Civil-Rights Struggle,” July 12) are as disturbing as they are depressing. Progressive authoritarianism is a growing problem, particularly among young elites and thus at the commanding heights of business, culture, and education. But the solution Kaufmann proposes – expanding anti-discrimination law to cover political belief – is worse than the disease.

There’s a reason why legal protections for ideology are currently found only in places such as Seattle and Washington, D.C.: They’re progressive innovations, one more barnacle on the crusty hull of employment law. Each time a new protected category is added to civil-rights laws that were originally enacted to break Jim Crow – talk about “systemic racism”! – it further burdens employers and enriches lawyers. Indeed, Kaufmann’s proposal is a lawyer full-employment act, with easily foreseeable litigation about whether a particular ideological belief is a “bona fide occupational qualification.”

“Legislators and courts would need to define terms tightly,” Kaufmann allows, but how confident are we that they would, or will long continue to do so? If discrimination “on the basis of sex” can be read 50 years later to include sexual orientation and gender identity – see last year’s *Bostock v. Clayton County*, which did just that to federal employment law – then even the tightest statutory definitions will loosen over time. In other words, the idea that narrow exemptions for political parties (what about think tanks?) from a ban on political discrimination won’t eventually be read to allow forced adherence to corporate diversity/equity/inclusion statements is laughable. And then we’re back where we started, except with more billable hours.

Ilya Shapiro is a vice president of the Cato Institute, director of the Robert A. Levy Center for Constitutional Studies, and publisher of the Cato Supreme Court Review. Before joining Cato, he was a special assistant/adviser to the Multi-National Force in Iraq on rule-of-law issues and practiced at Patton Boggs and Cleary Gottlieb.