

Religion Today  
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***“Religious Freedom, Gay Marriage and the Hobby Lobby Decision”***  
Paul V.M. Fleisher

The U.S. Supreme Court on June 27 declared gay marriage legal in all 50 states. Most Americans agree with this decision. However, a significant minority of Americans believe their religion teaches that homosexuality is morally wrong. They fear the legalization of gay marriage will lead to discrimination against them, requiring some of them to participate in gay activities against their conscience.

Their fears are not unfounded. Just a week after the Supreme Court decision, an Oregon court fined a bakery owned by an evangelical Christian couple \$135,000 for refusing to supply a cake for a lesbian wedding. Cases like these have led to calls among conservative Americans for a “religious freedom” exemption that would allow employees and businesses to deny service to gays.

More cases like this are occurring, and Christian business owners have publicly stated they deny service to gays. Several state legislatures are considering bills to allow religious-based discrimination.

Can there be a right to deny service to people on the basis of religious beliefs?

In the short term, there will be lots of debate, passing of laws, boycotts and court cases. But if we look 10 years down the road, when the dust begins to settle, the answer will probably be yes, but not in the way religious adherents now hope for.

Current legal decisions and precedents suggest that the right of “religious refusal” of service (to coin a term) will not apply to individual employees. It will be restricted to a limited class of businesses. This limited class will consist only of businesses owned by families or individuals. The reason for this is the Supreme Court’s Hobby Lobby decision in June 2014.

The Hobby Lobby corporation is owned by a family of evangelical Christians. They challenged the Obamacare law asking to set aside the requirement to provide contraception as part of their company-sponsored health care package, claiming contraception was against their religious beliefs. The Supreme Court decided in their favor, thus setting the owners’ religious beliefs ahead of their employees’ standing before the law.

That decision set two important legal precedents. First, with regard to family-owned companies, when the owning family’s religious beliefs conflict with their employees’ legal rights, the family’s religious beliefs prevail. Second, the employees are subordinate to the religious-based policies set by the family (or individual) who owns the company. That is, the business determines the policy concerning the refusal or granting of service to gays on a religious basis, and the employees must carry it out. The employees’ moral or religious beliefs are irrelevant.

Consider the employees’ situation in light of the debate over the Indiana Religious Freedom Restoration Act (RFRA) passed in March 2015. Indiana’s RFRA law was written to permit “anti-gay discrimination” against customers on the basis of religious belief. After protests by individuals and big business, the legislature rewrote the law to prevent such discrimination. Perhaps the most important factor in the legislators’ reversal was that companies from Apple to the NBA, from Subaru to Eli Lilly, warned Indiana they would boycott the state otherwise.

The involvement of America’s leading companies in the Indiana fracas revealed that most have formulated gay-friendly policies because they understand that gays and their supporters comprise a significant part of their consumer and worker base. If an employee at one of these companies refused service on the basis of personal religious beliefs, he or she would be fired.

The Hobby Lobby decision indicates that the only companies who could gain the right to engage in religious refusal of service to same-sex individuals or couples would be those to which religious behavior can be attributed. Since companies in and of themselves are not religious entities (they do not pray, worship, take communion, attend Mass or “get saved,” for instance), most cannot meet any criteria of religious belief or adherence. How could the “religion” of a public company owned by hundreds or thousands of stockholders be determined?

That is why the Hobby Lobby decision grants only private companies owned by individuals or families --who can have religious beliefs and behave in a religious manner -- a right of religious refusal over their employees. Only these businesses can decide to have a company policy of religious refusal and require their employees to implement it.

Of course there is another type of institution that has religious beliefs and practices. It is not a business but a religious organization: churches, mosques, synagogues and so on. These organizations will be allowed to make policies concerning religious refusal or granting of services to gays. And, again, their employees will have to follow those policies.

So, a decade or more down the road, current law points to a situation in which there will be no religious freedom for individual employees that will allow them to refuse or grant service to same-sex individuals independent of company policy. The right of religious action will be limited to a small class of companies and institutions, and their policies will require their employees practice religious refusal or not. While on the job, employees will lack the right to act in accord with their own religious beliefs.