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Fairness for All:
**RECONCILING
RELIGIOUS
FREEDOM
AND LGBT
RIGHTS**





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—THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

It is time to make peace

America is trapped in endless conflicts between LGBT rights and religious freedom. For much of our nation's history we had broad agreement about the nature of marriage, sexuality, and gender identity. Traditional religious beliefs about these matters were strongly favored and respected.

That consensus is now broken. The Supreme Court has ruled that same-sex couples have a legal right to marry, while many religions and millions of Americans still believe that marriage is religious and only between a man and a woman. Transgender persons now insist on protection and recognition of their gender identity, while many religions teach that God created humankind as male and female.

These conflicting beliefs have led to conflicting claims of rights. LGBT persons demand the right to be free from discrimination, while religious organizations and people of faith demand the right to practice their religion. Both sides want respect and protection. Sometimes conflicts turn bitter, with each side accusing the other of intolerance and bigotry. Legal battles rage for years. The threat to basic constitutional rights—especially religious freedom—is growing.

Whatever one's views about who is right or wrong, we can all recognize that there are good, honest people on both sides who simply hold different beliefs. That reality is not going to change.

We have a choice. We can continue to fight about our differences, or we can find ways to get along and move forward. It is time to make peace.



A FAIRNESS APPROACH TO LGBT/RELIGIOUS CONFLICTS

What has been missing is a framework for peace. We need an approach that respects the basic freedoms and needs of both sides. We need an approach that can work for everyone. Of course, neither side can get everything it wants. But both sides can be reasonably and fairly protected.

The framework for peace is called “Fairness for All” (or “FFA”).

FFA rests on two simple but powerful ideas. First, people should be free to live out their deepest convictions in the essential areas of their lives. Second, every American is entitled to participate on equal footing in public spaces like commercial settings. That means we have sacred and private spaces where government should rarely if ever intrude, such as the home, the church, and other religious organizations. It also means we have many other spaces common to all Americans where the government should ensure equal access.

For example, government should protect LGBT people’s right to engage in commerce and receive services available to the public, but it should also protect the right of churches, religious schools, and religious charities to be true to their beliefs as they conduct their religious affairs.

Protection and fairness for both sides is the key. Here are some specific examples of how Fairness for All works.

EMPLOYMENT

As a general rule, all Americans deserve an equal opportunity to have a job. LGBT Americans are no exception. An FFA approach protects LGBT employees by making it unlawful to deny everyday employment opportunities based on sexual orientation or gender identity. That's basic fairness.

But religious employment is different. Religious organizations like churches, religious schools, and faith-based charities need freedom to have standards that unite their organizations in a common religious mission. No one reasonably expects that a Catholic school will hire an atheist who openly opposes Catholic standards. FFA protects the historical right of nonprofit religious organizations to employ only those who believe in and live their religious teachings, including that sexual relations should occur only within marriage between a man and a woman. That's fair too.

HOUSING

LGBT Americans should be able to buy a home or rent an apartment on the same terms as everyone else. An FFA approach protects that basic right while also respecting the right of religious institutions to reserve noncommercial housing for members of their own faith, such as for their clergy, missionaries, and other religious workers, and to have religious housing standards for students at religious schools. Again, fairness for all.



PUBLIC ACCOMMODATIONS

Public accommodations are basic services that all people should be able to access. Eating at a restaurant. Staying overnight in a hotel. Shopping at a supermarket or mall. Watching a movie in a theater.

Everyone, including LGBT persons, should be legally protected against discrimination in public accommodations.

But private religious properties are different. While they may be welcoming to all, they are not public. Faith communities consider a house of worship, a temple, a sanctuary, and even a denominational headquarters to be sacred. Out of respect for the privateness and sacredness of religious places, federal law should acknowledge that it is a bishop, pastor, or rabbi—not a legislature or judge—who gets to decide who enters religious properties.

An FFA approach would ensure LGBT persons access to basic public services but clarify that religious properties are not places of public accommodation at all.

An FFA approach would also recognize that sometimes unique religious sensitivities are associated with wedding services. A few photographers, florists, and bakers have sincere religious objections to participating in a wedding or reception for a same-sex union. Where alternative wedding services are readily available, the law should avoid forcing religious wedding providers to violate their deeply held beliefs.

EQUALITY FOR RELIGIOUS SCHOOLS

Few things are more central to religious life than passing on the faith to the next generation. Religious schools and colleges are essential to that process. The freedom to operate religious educational institutions that are true to the beliefs of their sponsoring institutions or founding members is vital to the faith community. Our nation has a long tradition of respect for faith-based education. Faith-based institutions should not be discriminated against or penalized because of their long-standing beliefs and practices regarding issues like marriage.

LGBT students should also have the right to an education on equal terms with other students.

An FFA approach balances these rights by applying nondiscrimination rules to federally funded secular schools and colleges, while protecting the right of religious schools and colleges to have their unique beliefs, traditions, and standards. Religious schools and colleges must have both the right to employ teachers who fully support their religious mission and the right to admit students who live their religious beliefs and standards, including those related to marriage and sexuality. They must have the right to uphold traditional housing, dress, and other policies that reflect their faith. No student or religious college should be denied Pell Grants or an equal right to receive government aid because of religion.

FFA rejects calls to defund religious schools merely because they are not a good fit for every student. Students who reject a school's religious beliefs and standards can attend thousands of other schools eager to meet their needs. FFA promotes a diversity of educational options for students rather than a one-size-fits-all approach.



EQUALITY FOR RELIGIOUS CHARITIES

Taxpayers support a vast array of programs and activities. Some activists want the government to revoke federal support for any organization that has traditional religious standards about marriage, sexuality, or gender identity. This would discriminate against faith-based charities that serve tens of thousands of needy people every day.

Faith-based charities should be able to partner with government on an equal basis without having to abandon their beliefs. An FFA approach would protect LGBT persons generally in federally funded programs but also allow churches and religious charities to serve in ways that are consistent with their religious beliefs. For example, a crisis center run by a church should not have to admit transgender women (natal males who identify as female) if doing so would violate its religious beliefs or traumatize female sexual-assault victims. Other facilities can better meet the needs of transgender persons.

Likewise, FFA would allow private religious adoption and foster care agencies to continue to serve according to their religious beliefs, while also ensuring that same-sex couples have full access to adoption and foster care opportunities. This work is too important to the welfare of needy children to exclude religious agencies because of their long-held beliefs in traditional marriage. The Supreme Court has recognized this very point in protecting a Catholic foster care agency from a city's religious discrimination.

PRESERVING VITAL PROTECTIONS FOR RELIGIOUS FREEDOM

Some argue that existing statutory rights for people of faith and religious institutions should be reduced to make room for LGBT rights. FFA rejects this false choice. With good-faith compromises, religious freedom and LGBT rights can peacefully coexist. Both kinds of civil rights deserve protection. While the FFA approach supports expanded federal LGBT rights, it rejects attempts to revoke existing religious protections, such as the Religious Freedom Restoration Act, perhaps the most important federal law protecting religion in our nation's history.

CIVILITY AND PRINCIPLED COMPROMISE

Debates over these important issues can produce strong emotions, including fear and mistrust. Fairness for All efforts often begin by respectfully listening to the life experiences and needs of others. That can reveal many areas of commonality and agreement, such as the willingness to afford others respect and protection for basic freedoms all Americans value. It may also confirm areas of serious disagreement. In this process, it is critical to distinguish between vital interests, where compromise is less possible, and other important interests, where flexible approaches are appropriate. Not everything is essential. Ideological perfection should not become the enemy of practical, workable solutions.



FFA does not require agreement about marriage, gender identity, or sexuality—in fact, it assumes deep disagreements about those issues. But where there is goodwill, reasonable accommodations for everyone’s legal rights can usually be found.

Throughout the FFA process, civility, respect, and patience are essential. It takes hard work to build trust and find fair solutions to serious differences. Being a peacemaker in this area is challenging. But it can be done.

CONCLUSION

Bringing peace to the destructive battles over religious freedom and LGBT rights is possible if we take a Fairness for All approach. Americans have always found ways to get along. We can do so in this difficult area too. In 2015, an FFA effort in Utah led to a popular law that now protects both religious and LGBT rights in employment and housing. The spirit of that success is behind efforts to pass FFA legislation in Congress and other states. Respect and principled compromise, not perpetual conflict, is the way forward.

ABOUT US

The International Center for Law and Religion Studies is a global leader in comparative and international law concerning religion. The Center's mission is to help secure the blessings of freedom of religion and belief for all people by 1) expanding knowledge and expertise, 2) building networks of experts, and 3) contributing to law reform. As an academic institution at J. Reuben Clark Law School, Brigham Young University, the Center partners with leading universities, NGO's, and governments around the world to organize conferences, training seminars, and workshops. Since its inception in 2000, the Center has helped organize more than 350 educational events in more than 50 countries; worked with more than 1,000 scholars, government officials, judges, and community and religious leaders; consulted on proposed legislation in 55 countries; produced numerous scholarly works and training materials; and educated thousands of students. To learn more visit www.iclrs.org



ANSWERS TO COMMON QUESTIONS

Religious freedom is an essential protection allowing people with strong differences of opinion and belief to live together in peace. These protections, however, are relatively meaningless if confined to private observances at home or in places of worship. Deeply-held beliefs affect all aspects of people's lives and link them in community to other believers.

What are the religious freedom rights of individuals and groups in public settings? A Practical Guide to Religion in the Public Square sheds light on this somewhat complicated and often-misunderstood topic in an easy-to-understand Q&A format.

Additionally, this brochure offers suggestions on how to find common ground so that individuals, religious groups, and government officials can resolve differences peacefully and fairly.



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