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Q. The uproar caused by Indiana's passage of a Religious Freedom Restoration Act law has died down somewhat. At its essence, it seems to bring two fundamental ideas into conflict with each other - the right of a person to expect fair and equal treatment from a business vs. the right of a person to act in accordance with his or her religious beliefs. Is that a fair characterization?

A. That was certainly the conflict that was perceived to be posed by the original Indiana law. The conflict was then addressed when they revised the law to make clear that the law wouldn't provide a defense to a business that refused services to a customer.

Q. Why does the issue inflame passions on both sides?

A. For some participants, the debate over these religious freedom bills is a proxy for the larger debate over same-sex marriage. Many of the people who do not want to see same-sex marriage legalized are looking to religious exemptions as a final firewall -- and there's a crossover between a lot of people who are urging the Supreme Court not to require recognition of same-sex marriage and the people who are advocating for these exemptions.

That said, there are other supporters of these religious liberty bills who are motivated not primarily by issues involving same-sex marriage or LGBT rights but rather more traditional exemption claims by religious minorities -- such as Amish parents asking to have their children exempted from compulsory education laws after the 8th grade or members of the Native American Church asking for an exemption from drug laws when they use peyote as a sacrament -- and protecting those.

In terms of supporters of same-sex marriage and opponents of exemptions, their concern is that for the first time a group of people who normally might be protected against discrimination in the marketplace might be subjected to discrimination in the marketplace. Even though a business can't refuse service to an interracial couple,

an interfaith couple or to a couple - one of whom has been divorced - they might be able to refuse service to a same-sex couple. That is the fear.

Q. Is there a middle ground?

A. I think one of the major problems is both sides already think they are compromising. And they draw the middle ground in different places.

Q. What's the legal background on the issue? How did we get here?

A. Think back to the race context. We had a similar dynamic in the 1960s. Religion was still frequently invoked in favor of segregation and in opposition to interracial marriage. You had at least one business in the '60s argue that it did not have to serve black customers because of its sincere religious opposition to integration.

And the court rejected that argument that the business could get religious exemptions from anti-discrimination laws. We're in a similar situation today because of a high level of religious opposition to homosexuality and same-sex marriage.

Q. Two Oregon cases figure prominently in this national debate. Taking them one at a time, what precedent was set by the 1990 case involving the Oregon Employment Division and two drug counselors who were fired after their employer learned they were ingesting peyote as part of their religious ceremonies as members of the Native American Church?

A. The biggest consequence for today's debate is that this issue of religious exemptions used to be one that the court would decide as a constitutional matter. But **in that 1990 case**, the court changed course and said exemptions are not required as a constitutional matter. And that's what sent the issue to legislatures - both Congress at the federal level, which passed the **Religious Freedom Restoration Act of 1993**, and to states, some of which followed with their own version of RFRA.

Q. Secondly, 25 years later, we have the [Sweet Cakes by Melissa case](#), where a state agency has found that the bakery owners who refused to prepare a wedding cake for a lesbian couple violated the Oregon Public Accommodations Law and the Oregon Equality Act prohibiting discrimination on the basis of sexual orientation. Assuming the case is appealed, is there any likelihood the owners would prevail?

A. I think it's very unlikely the owners will prevail. Oregon, unlike some other states, does not have a law providing religious exemptions. There are some accommodations in the law for nonprofit religious organizations but those wouldn't provide a legal defense for a commercial business that violates the anti-discrimination law.

Q. Where are we headed next on this issue? Do you see the Oregon Family Council possibly coming back with a new initiative after withdrawing a [2014 proposal](#) that would have explicitly allowed businesses to decline marriage-related services and benefits to same-sex couples?

A. I don't think Oregon is a likely venue for future proposals in this area -- at least, future proposals that become law. The proposals we've seen in other states would more likely have political support in more conservative states.

I believe supporters of the Oregon initiative have said they will be focusing their efforts on litigation. For them, however, I think the prospects of success in court are low.

Q. What about other states? What's brewing in Louisiana?

A. The governor in Louisiana has announced he is supporting [a religious liberty proposal](#) that would provide a specific exemption for businesses that refuse services based on their religious beliefs.

Q. How does that go beyond the Indiana law?

A. The difference is the bill in Louisiana is more specifically about

marriage, so the terms of the debate are more clear legally than in Indiana. The political debate, however, is likely to be similar. On the one hand, Gov. Bobby Jindal, who is considering running for president, has been very supportive of measures like this around the country and has indicated this kind of religious liberty protection is appropriate. On the other hand, as in Indiana, there are indications that business groups will be very concerned about a measure like this.

For example, the convention bureau in New Orleans has announced its opposition to the bill and New Orleans is a regular host of the Super Bowl, so you could see that dynamic raising the profile of the debate.

Q. Is religion ever just a private matter? The Oregon Family Council said in 2013 that religion is more than just private worship, that it involves public expression on moral and social issues.

A. This is a major dispute about the extent of religious liberty in the current debate. Some people believe religion should not be just a private matter. Others are inclined to think it should primarily be a private matter. But I think even for those who believe religion shouldn't be just a private matter, it's important to remember there's a difference between expressions of religious belief in the public square and conduct that affects others in the public square. So, it's one thing for the owners of Sweet Cakes by Melissa to go to a political convention and express their views in opposition to same-sex marriage. It's another for them to refuse to provide services to a same-sex couple that they provide to any other couple that comes in the door.

Q. Supporters of the Oregon bakers and the Washington florist who's also been in the news often ask, "Why don't these same-sex couples simply take their business elsewhere? Why put a business owner in the position of having to violate their conscience?"

A. Again, this is a very similar issue to what we confronted decades ago with race. To use an example, when Jackie Robinson was

playing baseball, he was traveling to cities where there were lots of hotels where he could stay, but it was still wrong that the hotel where his teammates were staying would turn him away because of the harm to his dignity of not being treated like everyone else in the marketplace.

It's just not about being able to get services somewhere. It's about being able to get services equally with other members of the public.

Q. You've just written two legal analyses about exemptions for businesses in the same-sex marriage context. How are they germane to the current discussion?

A. One issue that hasn't been addressed prominently is what happens if a state does enact exemptions that allow a business to refuse services to a same-sex couple? Can that be challenged as a constitutional violation? I think the answer is yes.

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