

# Indiana governor signs bill allowing for discrimination on religious grounds

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On Thursday, Indiana Governor Mike Pence signed legislation allowing for widespread discrimination against groups or individuals on religious grounds. The Religious Freedom Restoration Act (RFRA) is a reactionary attack on democratic rights, opening the door to discrimination based on race, gender, sexual orientation or political views and violating the constitutional principle of separation of church and state.

Pence, a Republican, signed the bill in a private ceremony, accompanied only by lobbyists and right-wing religious figures. "Many people of faith feel their religious liberty is under attack by government action," he said in a statement. The bill is "not about discrimination," he added, asserting that "if it was, I would have vetoed it."

This is pure sophistry. Eric Miller, executive director of Advance America, who lobbied for the bill, said it could help bakers, florists and photographers avoid legal retaliation for "refusing to participate in a homosexual marriage," and protect churches that refuse to host same-sex weddings.

In justifying the legislation, Pence referenced as precedents a federal bill of the same name signed into law in 1993 by Democratic President Bill Clinton as well as similar legislation in 19 other states. Pence also cited the US Supreme Court's 2014 "Hobby Lobby" decision allowing employers to refuse to provide employees with birth control coverage on religious grounds under the Affordable Care Act, President Obama's health care overhaul.

Protests against the new law were held at the state Capitol in Indianapolis over the weekend. The law has also provoked a backlash on social media, with calls for a boycott of the state. A number of liberal groups and celebrities have called for opposition to the bill on

grounds that it allows for discrimination against LGBT (lesbian, gay, bisexual and transgendered) people.

Some business and media groups, including Microsoft and Walmart, have also condemned the legislation. Fearing the economic consequences, the chief executive of the Indiana Chamber of Commerce called the law "entirely unnecessary." Angie's List suspended plans for a \$40 million expansion of the firm's headquarters in downtown Indianapolis, and the National Collegiate Athletic Association (NCAA) said the law might "affect future events" held in the state.

The law states that "a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability." This implies that an individual, group or business may circumvent legal requirements by claiming it is doing so in accordance with its religious views. The state can take exception to such behavior "only if the governmental entity demonstrates that application of the burden to the person ... is in furtherance of a compelling governmental interest [and] is the least restrictive means of furthering that compelling governmental interest."

"A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened... [may] assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding," the law goes on to state. This effectively empowers those who wish to discriminate against others because of their race, religion, national origin, sexual orientation or some other characteristic to defend such action in court on religious grounds.

Drawing from the *Burwell v. Hobby Lobby* decision, the Indiana law specifically grants to businesses and

other groups the same religious rights as individuals. It states that, in addition to religious individuals and groups, those covered by the law could include “a partnership, a limited liability company, a corporation, a company, a firm, a society, a joint-stock company, an unincorporated association, or another entity that ... exercises practices that are compelled or limited by a system of religious belief...”

The law opens the door to the type of discrimination that dominated the Jim Crow South prior to the civil rights struggles and reforms of the 1960s, with religion replacing “separate but equal” statutes and property rights as the pseudo-legal and unconstitutional pretext for denying service to or otherwise discriminating against certain categories of people. Then, African Americans were denied service at “white only” lunch counters and excluded from private facilities on the grounds that the owners had the right to decide whom they would serve or allow to enter their facilities.

Under the new Indiana law, florists, banquet halls or churches that refuse to serve gay couples will have the backing of the state government and its laws, so long as they claim they are motivated by religion. But the same claim can be used to discriminate against other groups or individuals.

At the same time, the elevation of religion as a principle that essentially trumps longstanding civil rights laws and the 14th Amendment’s guarantee of “equal protection of the laws” is a flagrant violation of the US Constitution, whose First Amendment begins with a ban on the establishment of religion, meaning that the government must maintain a strict neutrality on religious questions.

Appearing on ABC News’ Sunday morning program “This Week,” Pence repeatedly ducked questions from the host, George Stephanopoulos, asking if the law would allow business owners to discriminate against gays. When asked by Stephanopoulos if he would support legislation explicitly protecting LGBT people from any possible discrimination engendered by the law, Pence said he would not.

Prominent Democrats, including likely presidential candidate Hillary Clinton, denounced the Indiana law, which cuts across the race- and gender-based politics that have become their stock in trade. But successive Democratic presidents, from Bill Clinton to Barack Obama, have facilitated the right-wing attack on

democratic rights in the name of “religious liberty” by seeking to appease the Catholic Church and the Christian right, while working to build up the police powers of the state.

In 2012, prior to the Supreme Court’s “Hobby Lobby” ruling, Obama caved in to pressure from the Catholic Church and the Republican right and announced that churches and other religiously affiliated organizations would be permitted to exempt themselves from the requirement under his health care law that birth control services be provided to employees free of charge. He declared at the time that while women had a right to health care, “We’ve been mindful that there’s another principle at stake here—and that’s the principle of religious liberty ... As a citizen and as a Christian, I cherish this right.”

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