US Supreme Court refuses to hear challenge to Mississippi's discriminatory "religious freedom" law

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The US Supreme Court on Monday declined to hear an appeal in two lawsuits against a Mississippi law that encourages discrimination by state employees and businesses against homosexuals, transgender individuals, and those who have sexual intercourse but are not married.

As a result, the ruling of the Fifth Circuit Court of Appeals remains in effect allowing and encouraging petty and stigmatizing discrimination against Mississippians who do not conform to conservative Judeo-Christian dogma. As the law stands, a county clerk in Mississippi can refuse to issue a marriage license to a gay couple. Likewise, a pharmacist can refuse to refill an unmarried woman's prescription for birth control, and a restaurant owner could segregate transgender persons in his dining area, or ban them from eating there altogether.

The lower court justices have stated that they will allow plaintiffs to refile the case if they can prove actual instances of discrimination. (The initial challenge to the law in the Federal District Court for the Southern District of Mississippi resulted in an injunction, barring the law from taking effect at all.)

The anti-democratic law, referred to as HB 1523, followed on the heels of the Supreme Court's 2015 decision in *Obergefell v. Hodges* legalizing same-sex marriages.

Titled the "Protecting Freedom of Conscience from Religious Discrimination Act," the law blatantly violates the Establishment Clause and Equal Protection Clauses of the U.S. Constitution and legalizes wide-ranging discrimination against LGBT people based on religious belief. The language of the bill and the legal arguments made by the state of Mississippi on its behalf are consistent with the strategy pursued by the extreme right in mobilizing religious bigotry and backwardness.

Essentially, these forces promote an inverted interpretation of the Establishment Clause of the First Amendment to the U.S. Constitution, which states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...," claiming that this language affords them the right to discriminate against those do not live according to a handful of passages in the Old Testament.

The pertinent section of HB 1523, which outlines its clear intent to codify discrimination against LGBT individuals, reads thus: "The sincerely held religious beliefs or moral convictions protected by this act are the belief or conviction that: (a) Marriage is or should be recognized as the union of one man and one woman; (b) Sexual relations are properly reserved to such a marriage; and (c) Male (man) or female (woman) refer to an individual's immutable biological sex as objectively determined by anatomy and genetics at time of birth."

The bill explicitly permits state officials to recuse themselves from granting marriage licenses of same-sex couples if they claim that it violates their religious beliefs. If a state employee is disciplined or fired for refusing to provide services, the bill provides the means for that employee to sue the state for "discrimination."

For religious organizations, the law provides far-ranging protections to deny an array of services to LGBT people. This includes refusing to provide adoption and foster care services to same-sex couples, firing or otherwise disciplining employees who are

LGBT, and refusing to rent or otherwise provide housing for LGBT people.

The law also explicitly describes instances in which a business or organization can discriminate against an individual based on gender identity. “The state government shall not take any discriminatory action against a person wholly or partially on the basis that the person establishes sex-specific standards or policies concerning employee or student dress or grooming, or concerning access to restrooms, spas, baths, showers, dressing rooms, locker rooms, or other intimate facilities or settings, based upon or in a manner consistent with sincerely held religious belief.”

HB 1523 also allows for broad discrimination by individuals and private companies as long as they cite their religious beliefs as their reason for refusing to provide services. This would include schools, landlords, doctors, non-profit organizations, and all manner of shops and other businesses. This would apply not only to LGBT Mississippians but also to unmarried couples and single parents.

The Mississippi law permitting discrimination is just the latest legal provocation in the aftermath of the Supreme Court’s 2014 decision in the *Burwell v. Hobby Lobby* case, which invented the “right” of a corporation to deny its employees access to contraception required under the Affordable Care Act, popularly known as Obamacare.

The court asserted in their decision that requiring Hobby Lobby to provide contraception is a violation of the corporation’s “religious liberty.” Since that decision, several state legislatures have codified discrimination against LGBT people using a tortured interpretation of the Establishment Clause as a legal fig leaf.

It is no coincidence that many of these laws emerge from the poorest region of the US, the deep south. Mississippi itself has the highest poverty rate in the nation, with 21.6 percent of the population living below the poverty line. It also has the second lowest per capita income of any state at $25,817, and the lowest median family income of any state at $39,319 per family. It is especially critical for the ruling class that workers in these states be politically blinded to the cause of their suffering—the capitalist system and the parasitic ruling class who benefit from it.

The animus behind HB 1523 and its judicial enablers is to whip up reactionary religious zeal to divide and disorient the working class. In both method and motive, this dovetails Jim Crow-era segregation, which also employed a religious freedom argument to defend discrimination.

Under the Trump administration, such tactics have been employed in an effort to build a new far-right movement outside of the Republican Party.

The Supreme Court’s refusal to hear the *Bryant* cases mirrors its treatment of the *Evans v. Georgia Regional Hospital* case last year, and almost certainly derives from the same concern from the liberal bloc, namely, that “swing vote” Anthony Kennedy cannot be relied on where questions of ostensible religious freedom intersect with public accommodations (governmental agencies and private business open to the public).

Kennedy, a generally conservative jurist and an appointee of Ronald Reagan, did write the majority opinions in several landmark gay rights cases including *Romer v. Evans* (1996), *Lawrence v. Texas* (2003), *United States v. Windsor* (2013), and *Obergefell v. Hodges* (2015). None of these cases concerned a purported religious freedom argument, however. Based on his comments in December during oral arguments in the *Masterpiece Cakeshop* case, religious freedom, however discriminatory, antidemocratic it may be, may trump all other constitutional principles.