

Freedom of Worship, Not Freedom of Religion: The Administration's Trend to Define Down Religious Rights

by attorney Richard C. Baker

Religious liberty is the first freedom guaranteed by the Bill of Rights and highly regarded as a vital part of our American way of life. However, there is a view growing in popularity that religion is dangerous and with that view comes the call to define down religious rights.

This view is evident in the government's alarming trend to elevate sexual freedom and anti-discrimination laws, over religious freedom and the accommodation of that freedom when the new anti-discrimination laws bring them into conflict.

Chai Feldblum, an Obama appointee to the EEOC and law professor, in a 2010 law review article, summarized the administration's thinking on the primacy of its new non-discrimination policy. She stated that where the rights of the LGBT community and people of sincere religious conviction conflict, "society should come down on the side of protecting the liberty of LGBT people."



And how does society accomplish this? By expanding the categories of discrimination in law, while at the same time narrowing the scope of religious protection, the government can extend its control over more and more religious organizations and individuals to suppress beliefs or practices it deems politically incorrect.

Last year, as part of this trend, the Senate passed The Employment Non-discrimination Act which, if the House had assented, would have expanded Title VII and other non-discrimination federal

laws to include sexual orientation and gender identity as protected classes. Not to be thwarted by the lack of congressional approval, the President recently issued an executive order expanding the government's ban on job discrimination by federal contractors to include sexual orientation and gender identity. The effect of this order is widespread, reaching even into the non-profit sphere. Further, without congressional authority, the administration has begun to enforce its expanded interpretation of

prohibited discrimination in Title IX cases involving public, private and religious schools.

In addition to the ever expanding categories of prohibited discrimination, this Administration has sought to limit religious exemptions to these laws and orders. Under Obamacare, HHS narrowed the religious exemption by limiting the definition of a religious employer to not-for-profit organizations which primarily employ and serve those who share its religious tenets and values. It has been said that even Jesus in his ministry would not be exempt under this definition. As a result, many religious organizations such as schools, adoption agencies, halfway houses, hospitals, soup kitchens, etc., were stripped of their religious exemption and have been forced to file hundreds of lawsuits to challenge Obamacare.

While the final HHS rules helped some, the federal government still narrowly defines "religious employer[s]" as "churches, other houses of worship, their integrated auxiliaries and conventions or association of churches, as well as the exclusively religious activities of any religious order." Now, even after much litigation and promised amendments to broaden the exemption, the Administration still holds that only churches and their direct affiliates are exempt.

But this should not come as a surprise. This is in line with the Administration's narrow interpretation of the First Amendment as protecting only religious worship (religious practice only within the four walls of the church) rather than free exercise (the right to live out one's faith in public as well as in private). "Freedom of religious worship" was "guaranteed" under Article 124 of Stalin's 1936 Soviet Constitution. The chilling distinction between the two phrases is laid out in the Evangelicals and Catholics Together Statement in Defense of Religious Freedom:

Proponents of human rights, including governments, have begun to define religious freedom down, reduc-

ing it to a bare "freedom of worship." This reduction denies the inherent public character of Biblical religion and privatizes the very idea of religious freedom, a view of freedom such as one finds in those repressive states where Christians can pray only so long as they do so behind closed doors. It is no exaggeration to see in these developments a movement to drive religious belief, and especially orthodox Christian religious and moral convictions, out of public life. (Defense of Religious Freedom, a Statement by Evangelicals and Catholics Together, March 2012, First Things)

This view, that religion is dangerous and the corresponding movement to drive religious belief out of public life, is also apparent in the government's position in the recent Hobby Lobby and Conestoga Woods case where Christian businesses challenged Obamacare because it forced them to pay for abortifacients for employees contrary to the owners' deepest religious convictions. The administration argued that religious freedom threatened female workers by restricting their access to free contraceptives and that protection of their "right" to free contraceptives paid for by their employers outweighed any restriction on religious liberty for those employers who conscientiously objected to providing abortifacients.

Again, this defining down of religious rights can be seen in the administration's argument to reduce or jettison religious exemptions in the recent case of Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC. In that case, a teacher, who was terminated by a parochial school run by the Lutheran Church Missouri Synod, sued under the Americans with Disabilities Act for disability discrimination. The case pitted the right of a religious organization to choose its own ministers against the government's interest in preventing discrimination in the workplace. Fortunately, in a 9-0 decision, the Supreme Court rejected the Justice Department's "remarkable" argument, as Justice Alito called it, that the Religion Clauses of the First Amendment have nothing to do with a religious organization's free-

dom to select its own ministers. It further rejected the government's "extreme" position, as Justice Roberts called it, to limit the ministerial exception to only those employees who are engaged in "exclusively religious functions" contrary to four decades of precedent in the lower federal courts.

But the administration has not stopped there. Revelations coming from recently surfaced IRS emails indicate that the IRS sought to team up with the FBI and the Justice Department to investigate and then prosecute various conservative organizations it had targeted due to their political views. In connection with this crackdown on conservative groups in general, the IRS has taken a tougher stance against pastors exercising their First Amendment rights in the pulpit to express views regarding politics.

These indeed are perilous times for religious freedom in the United States. While the persecution we face here is far less than that of many of our brothers and sisters around the world, it is nevertheless serious and growing and we ignore it at our peril.

So what can we do? First, repent. Change our minds. Turn around and seek out God's perspective. And most of all pray.

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then I will hear from heaven, and I will forgive their sin and will heal their land. 2 Chron. 7:14

We must also be courageous and prepared to resist intimidation. Rather than be timid, we must be willing to stand up for what is right, willing to take a stand that may not be popular but may be costly. It was scary for the owners of Elaine Photography in

New Mexico to face the Human Rights Commission when they declined to video a same-sex ceremony out of their conviction that God ordained marriage as between a man and a woman. It was courageous for Melissa Klein to stand up for her convictions and put her bakery at risk, facing months of relentless attacks by homosexual activists for her refusal to bake a wedding cake for a same-sex wedding. Facing the loss of their business and with enormous courage, the Green family, owners of Hobby Lobby, refused to provide or pay for four potentially life-threatening drugs and devices required under the HHS Mandate because to do so would violate their deeply held religious belief that life begins at the moment of conception.

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We all know that famous quote of Edmund Burke: "All that is necessary for the triumph of evil is that good men do nothing." But how many know that he also said: "Nobody made a greater mistake than he who did nothing because he could do only a little." He was speaking to you and me.

Volunteer for the Boy Scout or Girl Scout troop and work to see that children are taught what is wholesome and right. Get on the zoning, library or local school board. Run for local government. Be sure not to neglect your own children as you bring them up in the training and instruction of the Lord. And at the very least, become informed, not just with the party line, but dig deeper. Look not only to the words, but the character of those running for office.

And by all means, vote. But vote responsibly. Don't simply vote your pocket book or for your power block. What has that done for us in Illinois? Look to those who will restore this nation as one where religious liberty flourishes. ■