

Whose views on religious freedom changed?

## **People used to talk about religious freedom less, and when they did they were often liberals. What changed?**

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One interesting element in the debate over laws like Arizona's SB 1062 has been a widespread willingness to simply accept the basic framing—LGBT equality/nondiscrimination vs. religious freedom—as the obvious starting point. But just a few years ago, this wouldn't have been obvious at all. Religious freedom may be the rallying cry of much of the right, but only recently. People used to talk about religious freedom less, and when they did they were often liberals.

What changed? [Ramesh Ponnuru says liberals did](#):

*What has changed since 1993 is American liberalism's view of religious freedom. The [federal Religious Freedom Restoration Act] was not something liberals conceded to religious conservatives. It was something they affirmatively sought. . . . Now liberals regard religious exemptions from laws as suspicious privileges for religious believers. Brian Beutler, [writing in Salon](#) about the Arizona bill, makes the point thus: "To support SB 1062 you must conceive of religious liberty as a social trump card. . . . This view writes democratic norms and competing liberties entirely out of the equation. . . . That view reflects an old, reactionary conception of liberty."*

Beutler's account is an overstatement but not an invention. The old, reactionary conception of liberty championed by Ted Kennedy really did regard religious liberty as a trump, in many instances, over laws that were enacted democratically to advance other values. The same is of course true of any other liberty: If it does not sometimes act as a trump, it does not exist; and if it does

not often act as a trump, it hardly exists.

[Mark Silk counters](#) that the point of the RFRA, which has been getting so much conservative love of late, was to overturn a Supreme Court decision in which the *conservative* justices prevailed and Scalia wrote the majority opinion. That is, it's the conservatives who have changed their tune on religious freedom:

*Smith*, at the time, signified conservative judicial frustration with minority religious claims against political decisions expressing societal norms. Liberals supported these claims — i.e. religious liberty — because of their habitual civil libertarian support for the rights of disfavored minorities.

In the two decades since RFRA became law, liberals have in fact not lost their sympathy for those minorities. Witness, for example, their support for the right of Muslims to build mosques — or even for ([this week](#)) the right of individuals to decline health insurance on religious grounds. They are, however, profoundly unsympathetic when large and powerful minorities seek to impose their religious preferences on others. It is to this arena that the most important religious liberty cases have migrated today, including not only those involving discrimination against gay couples but also the Affordable Care Act's contraception mandate.

For conservatives, Scalia's fear that the "compelling interest" test would create social anarchy has faded into insignificance now that the democratic process is imposing religious burdens on them.

This is not to say that conservative religious bodies didn't support the original RFRA. But they didn't see religious freedom threatened then the way they claim it is today. The Catholic bishops conference, for example, only reluctantly joined the pro-RFRA coalition, fearing that if *Roe v. Wade* were overturned, someone would claim a religious right to abortion. Now that that their ox is being gored, religious liberty has become so important a cause they've mounted an annual [Fortnight for Freedom](#) on its behalf.

Regular readers won't be shocked that I find Silk's angle more persuasive than Ponnuru's here. But the larger point is that this whole affair isn't just about

competing claims of nondiscrimination vs. religious freedom. It's also about the fact that religion freedom seems to mean different things to different people at different times. And while the law may treat religious liberty the same whether the religion in question is large and powerful or small and marginal, the social and political implications can be quite different.

Starting with the fact that people in a privileged position tend to interpret their own rights a bit more expansively than those on the margins do.