

NH's same-sex marriage bill is needlessly discriminatory

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• Page: 07

Last week, the New Hampshire Senate passed a same-sex marriage bill, House Bill 436. Regrettably, legislators in the Granite State failed to follow Connecticut's and Vermont's lead and guarantee that marriage equality rights of same-sex couples do not come at the expense of religious groups that have a different view.

Instead, by a narrow majority, the Senate approved a same-sex marriage bill that offers only pretend religious liberty protections. HB 436 provides that "members of the clergy ... shall not be ... required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion." But the First Amendment already gives this protection. What is missing in HB 436 is what is really needed -- protection for religious organizations and individuals who for reasons of their faith prefer to step aside from facilitating same-sex unions.

Contrast New Hampshire with Connecticut and Vermont, both of which recognized last month that the threats to religious liberty from same-sex marriage are real and stepped forward to craft groundbreaking live-and-let-live accommodations for religious groups.

Who gets protection from coercion in Connecticut and Vermont? In both states, a religiously affiliated group that owns a boardwalk pavilion or a reception hall may choose not to open the space to the celebration of same-sex marriages if to do so would violate its religious beliefs. In Connecticut, religiously affiliated adoption agencies that receive no government funding may place children for adoption only with heterosexual married couples, without risk to their license or the possibility of lawsuit.

What a wise choice. Conscience protections have been a part of the American experiment since colonial times. They permit religious minorities who cannot in good conscience comply with laws that are inconsistent with their faith to live in peace with others.

Connecticut's and Vermont's protections also clarify that existing statutes banning sexual-orientation discrimination do not cover the celebration of same-sex marriages. Bans on orientation discrimination in places of public accommodation were meant to help gay people live their lives the same as others -- to order burgers and take taxis and rent apartments -- commercial services that have no religious content where the denial of the service can only be explained as bigotry.

Yet even Vermont's and Connecticut's exemptions could be strengthened. Sadly, in both states the little guy gets no protection. Photographers, caterers, bakers, wedding advisers, Christian rock bands and anyone else who provides services for weddings -- none of these people gets protection. In New Hampshire, individuals who violate the nondiscrimination statute can be fined up to \$50,000 -- an especially harsh penalty when others would gladly help same-sex couples celebrate their marriages.

Some may worry that accommodating religious objectors may impose hardships on same sex-couples, such as additional wait times. But exemptions can be carefully crafted so that a hardship does not result. For instance, exemptions can specify that no government employee may act as a choke point on the path to marriage: If another willing registrar in the local clerk's office is not available, the state will override conscience objections. Such carefully tailored exemptions are routinely used in employment statutes and health-care conscience clauses. Same-sex marriage bills with thoughtful religious exemptions can thus guarantee both the rights of same-sex couples and also of religious traditions that do not view same-sex unions as marriages.

The efforts of Connecticut and Vermont to protect religious liberty are America at its best, a development for which all Americans, right and left, should be grateful. Gov. John Lynch still has a chance to make sure that the American model -- tolerance for all -- is the model for New Hampshire's future.

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