

FIU LAW REVIEW

RELIGION AND THE LAW SYMPOSIUM

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Abstracts



THIRD SESSION: FREEDOM OF RELIGION AND EXPRESSION

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Complimentary or Conflicting Freedoms? Why Religious Freedom, Reproductive Freedom, and LGBT Rights Can Coexist and Thrive

Recent events in a number of states, along with the Supreme Court's recent decision in *Obergefell v. Hodges*, have resulted in a national debate often pitting religious freedom against the civil rights and civil liberties of the LGBT community. This controversy follows closely on the heels of the Supreme Court's decision in *Burwell v. Hobby Lobby*, which set off a firestorm over the balance between reproductive rights and religious freedom. The framing of these supposed conflicts by the media and by some legal scholars ignores one central fact: religious freedom and strong civil rights and civil liberties for all can coexist when properly understood. The key is understanding the parameters of the rights involved on both sides, the fact that they do not conflict in the vast majority of religious freedom cases, and to work towards a legal framework that helps us navigate the situations where genuine conflicts do exist. This article will first explain that most religious freedom claims, such as a request by a Muslim or Jewish employee to be able to have a short break to pray quietly at certain times during the day while at work, do not conflict with the rights of third parties. Next, it will turn to those situations where religious freedom claims have conflicted with the rights of others. Prior to *Hobby Lobby* it was generally understood that such claims would not be successful, but *Hobby Lobby* has seriously muddied the waters on this issue.

This article will focus on government employees, such as county clerks who deny marriage licenses to same-sex couples, and explain when accommodation may be appropriate and when it is not. The article suggests that when someone else in the office can grant the marriage license without inconveniencing those seeking the license there may be grounds for a religious exemption, but where the person seeking the exemption is the only one who can grant the license no accommodation should be forthcoming. The article also explains why this is consistent both with Free Exercise Clause jurisprudence, RFRA, and the fundamental nature of the right to religious freedom.

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This article will discuss the implications of the Supreme Court's decision on same-sex marriage (SSM) on debates over accommodating the religious freedom of individuals and entities

who oppose SSM and same-sex relations on religious grounds. Justice Alito and Thomas assert that the Obergefell, by obviating the need or possibility for state-by-state legislative/political resolution of SSM, will have negative consequences for the religious freedom of individuals and groups who oppose SSM. I propose to analyze and evaluate this claim. At a minimum, they refer to the fact that in some states political/legislative deals tied recognition of SSM "to protection for conscience rights." I will look at such laws to see how they did this, and if these were thought to adequately protect religious objectors to SSM.

My main claim is that the dissenters' complaint is an assumption about the actual workings of the political process that religious objectors to SSM were successfully or adequately using their power (veto power) over legal recognition of SSM to negotiate carve-outs for themselves in a regime that recognized SSM. It is also a moral claim -- that it is appropriate to give religious people a trump over recognition of SSM as a bargaining chip to negotiate carve outs. If you believe, as I do, that the harm to same-sex couples and their children is immediate and serious, whereas the harm to religious objectors to SSM is largely speculative and diffuse, then it is wrong to give religious objectors a veto right.

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This paper examines line drawing between protected and unprotected speech, with a focus on the distinction between provocation and incitement to imminent violence. Specifically, it looks at the French government's response to the January 7th *Charlie Hebdo* attacks in Paris and measures the French free speech standard against international law.

The French government's response was, on the one hand, zealously in favor of free speech, with social media saturated with the hashtag #JeSuisCharlie, or #IAmCharlie. On the other hand, the government also commenced "aggressive enforcements" of Law No. 2014-1353 of November 13, 2014, an anti-terrorism law that was rarely used until the weeks pursuant to the attack, against anyone who spoke out against the *Charlie Hebdo* cause. Among those prosecuted for their speech was Dieudonné M'Bala M'Bala, a French comedian, who was arrested for "defending terrorism" in a Facebook status that read, "Tonight, as far as I'm concerned, I feel like Charlie Coulibaly." The statement was a combination of the slogan "Je suis Charlie" ("I am Charlie") and Amedy Coulibaly, the name of the gunman who terrorized the kosher supermarket, and appeared to imply sympathy with the terrorists. M'Bala was fined \$37,000.

Various commentators and scholars have pointed out the double standard in the French government's treatment of speech, especially in the wake of the *Charlie Hebdo* attack. Jonathan Turley reflected in the *Washington Post* about the spontaneous rally in support of *Charlie Hebdo* after the attack: "[O]ne could fairly ask what they were rallying around. The greatest threat to liberty in France has come not from the terrorists who committed such horrific acts this past week

but from the French themselves, who have been leading the Western world in a crackdown on free speech.”

Indeed, the French government has a history of using its speech laws to curtail the speech of journalists, comedians, celebrities, and ordinary citizens alike. At the core of the French double standard is its inconsistent distinction between protection and punishment of provocative speech. In Part I, this paper will look at how provocation is treated in international law, in particular, Articles 19-20 of the International Covenant on Civil and Political Rights (ICCPR). Then, Part II will look at the ways French speech law is inconsistent with these international standards due to its inherent vagueness and consequent potential for abuse. The paper will conclude by advocating for a more uniform, more protective approach to speech—one that will bring French law into conformity with international law.

SPEARIT

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Sonic Jihad: Muslim Hip Hop in the Age of Mass Incarceration

This essay explores legal criticism at the intersection of prisons, Islam, and hip hop culture. It argues that for Muslims in America, hip hop culture has functioned as a megaphone for voicing a long list of radical critiques of the criminal justice system—including unfair laws, law enforcement, and courts. Among the troubles that have afflicted the hip hop generation and its offspring, perhaps nothing compares to the effects of losing friends, family, and loved ones to the system of mass imprisonment.

As the phrase “down by law” indicates, criticism of the law has been a part of hip hop culture from the earliest days, which invariably involves the blasting of prisons. The attacks are launched at multiple levels, against an institution known in the lyrics by a host of names like “pen,” “bing,” and “clink.” Sometimes the “belly of the beast” is vilified in a lyrical twist or in the title of a song, other times entire songs or albums are dedicated to telling the horrors of imprisonment and stories of solitary confinement, while more extreme depictions redefine fantasy fiction through apocalyptic visions of revolution and revenge. Within this cosmic view, prisons are but an extension of the slave system that first brought African Muslims to America as chattel. The music embodies the hardest edges of sound, stacked with heavy beats and lyrics that decry the new slavery.

The following offers a candid view of this full-blown discursive war, which challenges the view that the most radical voices in Muslim America are to be found in mosques and other Muslim gatherings. This view must contend with the sonic jihad launched by Muslim rappers. Their war of words is discourse in the extreme that rivals the rhetoric of any jihadist organization.