

Editorial Policy, Religious Freedom Acts and
Denying Access to Same-Sex Marriage

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EDITORIAL POLICY, RELIGIOUS FREEDOM ACTS, AND DENYING ACCESS TO
SAME SEX MARRIAGE

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CHAPTER 1

INTRODUCTION

For hundreds of years, engaged couples have bought space in newsprint publications to announce upcoming nuptials. These often-paid, sometimes free announcements are often found in the society or lifestyles pages. Some choose to include the announcements on Sunday, the highest circulation day for most publications. While the days, story length and information, price and circulation frequency vary from newspaper to newspaper, the announcement is seen as a declaration of love between the two people, as well as one of affection to share with friends and family. The wedding day may only just be a day, but it is a day meant to be shared and cherished for years to come.

The political discourse of whether gay, lesbian, bisexual, and transgender (LGBT) couples should enter into the social institution of marriage has found a battleground in some American news pages, particularly in the newspapers' lifestyles pages, as well as in the American court system, even as same-sex marriage has been recognized by the U.S. Supreme Court as a constitutional right for all Americans. A struggle remains among media markets whether to publicly publish and include same-sex engagement among its other advertisements.

ADD GRAPH ABOUT RFRAS

This paper discusses the history of the newspaper lifestyles pages, the significant attitudinal shifts in same-sex media coverage and public acceptance, and the role the newspaper wedding sections have had in shaping the editorial decisions to exclude same-sex wedding announcements. It also examines the increase in religious

freedom restoration act proposals at the state level and how Indiana Religious Freedom Restoration Act of 2015 faced against anti-discrimination stances in its subsequent media coverage. Finally, the paper will also include suggestions for future studies for media and legal scholars to better understand other developments in freedom of religion scholarship.

CHAPTER 2

LITERATURE REVIEW

Newspaper Traditions: A History

The concept of agenda setting is a contemporary political science method of studying how an issue moves to the forefront of public attention and the movement of an issue to the forefront of public attention, often leading to policy changes (Ura, 2009 p. 431). Much of the news coverage of the past decade has focused on the legal expansion of same sex marriage.

Generations of engaged couples have bought space in newsprint publications to announce to family and loved ones and the community their upcoming nuptials. These announcements and advertisements are often found in the society or lifestyles pages, and while publication days, story length and information, price and circulation frequency vary from newspaper to newspaper, the announcement is often seen as a declaration of love between the two people. In some media markets, a published wedding announcement is a symbol of prestige and social power (Harp, 2003 pp. 4-5). The publication is a milestone on the way to celebrating the more momentous occasion to come, a clip-out keepsake on the road to holy matrimony.

Much research has focused on the continued on wedding traditions and their roots in oral history, but little has been published about the practice of publishing wedding announcements in newspapers. A wedding business blog, named the Dandelion Patch, put together a brief history in the social practice of wedding invitations and announcing prenuptials in public forums. For centuries, families have utilized the technology available at the time to publicize the pending unions. Before the invention of

the printing press, weddings were announced by town criers, whose public announcement acted as the invitation to upcoming nuptials. The idea behind the “announcement” was considered to be joyful and inclusive, understood to be welcome as many guests as possible, as anyone within earshot was welcome to come. The website even included an imagined announcement:

“Hear Ye, Hear Ye, Hear Ye! Joyous news for all the town! Be it known to all hearers that Abigayle Mey Wickersham and Johnathan Elsworth Merriweather are to be married at three-o’clock on Saturday the eighteenth of May. Hear Ye, Hear Ye, Hear Ye!” (The Dandelion Patch p. 1 of 1)”

The couple exchanged the vows in a separate ceremony and not the wedding itself, that are now a part of the Anglican wedding ceremony where present couples vow to love and be faithful to their spouses. The ceremony would also include time for the bride price and dowry exchange, and the business practice was sealed with a drink and a kiss (Ranger 2004 p. 1 of 3).

During the 1300s, the Archbishop of Canterbury proclaimed in a decree that all weddings were to be preceded by the reading of the banns for three consecutive “Lord’s days,” or holidays. Banns were considered a public declaration of a couple’s intent to wed (like those engagements in the newspaper) (Ranger 2004 p. 1 of 3). The tradition of oral and public invitations continued into the 1600s, when two popular alternatives surfaced. Nobles and aristocrats began commissioning monks for elaborate hand-written invitations. The other way to get the news out was to take out space in the local newspaper, a technique that became more established because ordinary printing techniques available stamped ink onto paper using lead type, which resulted in too poor of quality for stylish invitations (The Dandelion Patch p. 1 of 1). The practice of published wedding announcements in newspaper lifestyles section continues

The first adaptation of the modern day lifestyles and society page was created by James Gordon Bennett Jr. for the New York Herald in 1835. The reports focused mostly on the lives and social gatherings of the rich and famous, and the industry found readers' interest shifted to the penny-press stories offered by Bennett's publications (Hudson, Lee, Mott, 2000). As newspapers became more reliant on advertising dollars in the 20th century, the pages moved to the women's pages, a section of the general topics intended to attract the American housewife (Harp 2003, Yang 1996). Those pages included columns on food, fashion, relationships, etiquette, health, homemaking, interior decorating and other family issues. In the 1970s, many newspapers dropped the women's pages concept for a less gendered approach. The gendered past of the women's pages supports the idea that what is news is objective, as many of the professionals interviewed defined the varying topics of coverage (Harp 2007 p. 35).

Newspapers structure the sections in terms of what editors believe will keep readers engaged. The lifestyles pages may still offer a chance to break news and even adopt a policy that may be different than the collective point-of-view at that point in time. The first photograph of an African American in the Dallas Times Herald was in a wedding announcement photo in 1968. The photo only made it into the paper at the urging of the women's pages editor (Harp 2007). This anecdote proves how an opposing editorial request could be seen as a progressive attempt to change the status quo.

News coverage on same-sex issues has not always been fair or balanced but how fair the coverage has often run parallel with how society has viewed same-sex couples at the time. Through a comprehensive look at 50 years of coverage in both

Newsweek and Times magazines from 1947 to 1997, Bennett argued that ever since World War II and throughout the history of reporting on same sex issues, news reports have reflected the dominant social attitudes and expert testimonies of the time. (Bennett 2000 p. 34-35). Bennett discovered that much of the language used in the Newsweek articles from that time period reflected the attitudes and popular thought at the time the article was written (p. 35). Also, more than a decade later, riots would break out after police raided the Stonewall Inn in Greenwich Village. The event received minimal coverage at the time, and of the few articles that did report the news, the view was slanted. In a July 1969 article, Jerry Lisker of the New York Daily News wrote the opening two paragraphs in a narrative style to depict the ongoing battle against authority:

She sat there with her legs crossed, the lashes of her mascara-coated eyes beating like the wings of a hummingbird. She was angry. She was so upset she hadn't bothered to shave. A day old stubble was beginning to push through the pancake makeup. She was a he. A queen of Christopher Street.

Last weekend the queens had turned commandos and stood bra strap to bra strap against an invasion of the helmeted Tactical Patrol Force. The elite police squad had shut down one of their private gay clubs, the Stonewall Inn at 57 Christopher St., in the heart of a three-block homosexual community in Greenwich Village. Queen Power reared its bleached blonde head in revolt. New York City experienced its first homosexual riot. "We may have lost the battle, sweets, but the war is far from over," lisped an unofficial lady-in-waiting from the court of the Queens. (Lisker p.1 of 2).

Though the story is under a distasteful headline ("Homo Nest Raided, Queen Bees Are Stinging Mad"), Lisker's description in the article uses discriminatory language to explain the news event, and the unattributed quote paints an interesting battle cry as the incident at Stonewall became the rallying cry for activists throughout the next couple decades.

Other researchers (Cole, et. al.) had suggested that rhetoric surrounding same-sex marriage opposition based on natural order and perceived historical precedents privileges heterosexuality with an inequality that is seen as “inevitable but appropriate” (p. 59), and if the belief of natural occurrence has been used to privilege one kind of relationship over another, the “rhetorical invocation of what is natural... appears largely unchanged in marriage debates in the U.S. separated by more than 40 years (p. 47).

As newspapers and other media outlets moved into the new millennium, reporters and journalists have produced more thoughtful articles that include LGBTQ perspectives in media coverage. Still, the fairness of the coverage often depended on who the journalist decided to question for the media story. Li and Liu (2010) looked at the framework newspapers use to determine the level of fairness and balance in same-sex marriage coverage. Analyzing the sources used and whether the papers studied had utilized episodic or thematic coverage and how those stories would indicate how those factors might influence coverage frames (p. 75).

Over time some newsrooms and outlets became more tolerant in their news coverage decisions. Editorial decisions to use images of same-sex couples dressed in same-sex wedding attire as they exchanged vows and kissed represented both the quote makes this sentence confusing “the sameness and differences, alluding to the traditional norms and at the same time problematizing them” by dismantling the marriage institution (Moscowitz p. 128). Once events like received more fair and balanced coverage once the issue of same-sex marriage became less about attitude toward gay and lesbian people (Li and Liu p. 85).

The coverage has coincided with overall public opinion. As the news media begin to deconstruct and reconsider the need for the gender-centric society pages late in the 20th century, public opinion on same-sex marriage also began to sway. In 2014, Gallup reported that 60 percent of Americans believed a law should be in place that recognizes marriage between same-sex couples (McCarthy 2015 p. 1 of 7). The statistic has been on the rise since first hitting a majority in 2011, and the numbers are especially high among young adults. Respondents between 18 and 29 years old who were in favor of same-sex marriages reached 80 percent, a significant jump of 37 percentage points since 1996. The latest poll in May 2016 states that more than 61 percent of Americans are now in favor, and the trend is expected to rise (Gallup 2016). This is a considerable increase in a short amount of time. In 1996, the first year Gallup polled the question of whether same-sex marriages should be considered valid (McCarthy 2015 1 of 6).

The Pew Research Center also noticed that since the 1990s, support for same-sex marriage has increased across most demographic and political groups, driven mostly by generational change. According to statistics, millennials, born those individuals after 1980, report the most in favor of same-sex marriage (61 percent), followed by Generation Xers, or those individuals born between 1965 and 1980 with 48 percent. Somewhat less support is considered among the Baby Boomers generation born 1946 to 1964, who reported 40 percent in favor, and the members of the Silent Generation (32%), who were born between 1928 and 1945 (The Pew Center 2012 1 of 3).

CHAPTER 3

HISTORY OF THE LIFESTYLES PAGES

An early 2000s case study about a newspaper publishing its first same-sex announcement provides an interesting glimpse into the kind of debates that either happened or could have been perceived to have happened across the country. Tiemann used an exploratory analysis of letters submitted to the editor of a rural newspaper in Grand Forks, North Dakota, after the paper decided to publish its first same-sex wedding announcement in 2003. For a few months after the announcement was published, several readers wrote in to express their views on how this announcement had expressed changing values in the community. Tiemann found three prevalent themes in her study, and the readers often invoked tolerance, religious and spiritual values or normalization in letters both for and against the announcement's publishing. The "normalization" argument also focused on anti-gay rhetoric and called out the local newspaper for hindering other individual rights (Tiemann 2006 p. 121, 129). Some of the exchanges were:

"If we put the Ten Commandments back where they belong in our lives and follow God's rules, maybe our great country could start to mend and get back to normal. This is a wake-up call. Don't be afraid to stand up and be counted and say same-sex commitments and marriages are morally wrong and should not be tolerated. (p. 125)"

"By including the item beside the engagement announcements, the newspaper essentially stated that the commitment announcement is acceptable, normal and good. But I believe it should not be normalized in that way . . .

When the media deem such practice as normal and good, and when studies show that homosexual behavior results in greater-than-average substance abuse, depression, suicide and health problems, then individual 'rights' begin to hurt the rest of society." (p. 130)

While the population of Grand Forks is approximately 55,000, the majority of the letters responding to the wedding announcements came from surrounding communities that

were considerably smaller (1,500 people or less). Among the points posed by the opposing voices include the hazards that the “normalization of gays and lesbians” pose to the threat of values cherished and shared by what they believe is by most Americans (Tiemann, 2006 p.129).

The lengthy letter exchange in this early letter-writing example in Grand Forks represents a snapshot in not only how the argument for and against same-sex marriage had existed then in the early twenty-first century but also how it may resembled other requests for publishing other same-sex engagement announcements.

Gatekeeping is a concept in media studies to describe the process through which information is filtered for publication or broadcast. Instituted by social psychologist Kurt Lewin, a gatekeeper decides what shall pass through at each and every gate section, or publication. In the search for news frames, editors and journalists create occurrences that become events, and events are transformed into news stories, where “a part and parcel of everyday reality” and the “public character of news is an essential feature of news” and how editors arrive at deciding what deserves coverage and what does not (Tuchman 1978 p. 193, 50-51).

During the 2000s, editorial stances against publishing same-sex wedding announcements occurred received national coverage attention.

President and CEO Harold E. Miller went as far as saying the advertising departments at two newspapers, the Lancaster, PA, Intelligencer Journal and the New Era, had the right to deny publication because same-sex marriage was not “consistent with prevailing community standards” (Nepkin 2013 1 of 3). The New York Post’s coverage of the lesbian couple who were denied access into the Texarkana Gazette in

2013 was written under headline “Not write! Gay couple outraged after Texas newspaper refuses to print wedding announcement” and included several photos of the couple together, including one of them posing with the image they had planned to use in the announcement. (Kemp 2013). Michelle Cooks, one of the brides-to-be, told the paper: “It is our Texarkana Gazette and we felt we had a right just like everyone else to announce our wedding.”

In 2014, a conservative, family-run the New Hampshire Union Leader newspaper printed its first same-sex marriage announcement, a few years after it publicly denied a request by a same-sex couple. Publisher Joseph W. McQuaid told the Associated Press in 2010 the paper was not “anti-gay” but publishing such announcements would be “hypocritical” given the owners’ belief was that “marriage is and needs to remain a social and civil structure between men and women and our opposition to the recent state law legalizing gay marriage” (Sacks 1 of 2). After the announcement was published, McQuaid told media blogger Jim Romenesko that the social announcements are now strictly paid submissions and “no longer an editorial call,” a policy the newspaper had changed “three or four years ago” (Romenesko 2014 p. 1 of 3).

Many other newspapers instituted policy changes after their decision to reject the same-sex announcements. Online petitions through social media, active posts through activist organizations like GLAAD and through the petition site Change.org were started to put pressure on the newspapers’ staff to allow the announcement to be published. The Cambridge Daily Jeffersonian did not have an online petition but several people posted comments on the newspaper’s website, most in favor of allowing the announcement to be published (SOURCE NEEDED).

CHAPTER 4

FEDERAL RELIGIOUS FREEDOM RESTORATION ACT

The main opposition to the Supreme Court decision that recognized same-sex marriages across the country has been objectors who refuse to serve flowers, cakes and print wedding announcements. These objections are based on Religious Freedom Restoration laws, which were first passed nearly a quarter of a century ago in reaction to another Supreme Court decision.

The case of *Employment Division of Oregon v. Smith* is centered on the firing of two counselors at a private drug rehabilitation clinic after they had ingested peyote as part of a religious ritual. Alfred L. Smith and Galen Black were members of the Native American Church, and they filed a claim for unemployment compensation with the state. The claim was denied because their dismissal was considered work-related misconduct. Smith and Black argued that their use of peyote as part of their religious practice was protected by the Free Exercise Clause. The Supreme Court upheld the lower court decision that in most circumstances, generally applicable laws that impose a burden on the practice of religion are not subject to the compelling interest test, and in Justice Antonin Scalia's opinion, the Free Exercise Clause may protect religious beliefs but it does not "insulate religiously motivated actions from laws, unless the laws single out religion for disfavored treatment" (Pew Research Center 2007 p. 1 of 3).

Although not doubting the sincerity of the belief, the Court concluded that a broad reading of the Free Exercise Clause "make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself" and that this "unavoidable consequence of democratic government must be

preferred to a system in which each conscience is a law unto itself or which judges weigh the social importance of... laws against... religious beliefs” (Pew Research Center 2007 p. 1 of 3).

The Smith decision spurred action in Congress, and in March 1993, a bipartisan collaboration sought to establish a test that requires a proven substantial burden. The Religious Freedom Restoration Act would reinstate the Sherbert test and make it easier to prove a substantial burden because religious objectors would not need to comply with any federal that imposes a substantial religious burden unless the government can demonstrate that the law passes strict scrutiny (Greene 2015 p.178). When claims of religion are not pre-textual but are sincerely held, this more expansive definition risks interfering with effective government regulation. In 1997, part of the RFRA was overturned in the *Boerne v. Flores* Supreme Court decision when the Higher Court decided that the RFRA did not apply to states. The ruling stated that Congress had overstepped its bounds and the federal religious protections do not apply to the states.

Since it is up to state interpretation, states would have to pass their own RFRA's. Several state have enacted their own RFRA's to help bridge the gap created by *Employment Division v. Smith*. Over the last two decades, nineteen states have passed their own state RFRA's, starting with Connecticut and Rhode Island in 1993 and Mississippi in 2014 (Steinmetz 2015b p. 1 of 3). Interest in state RFRA's would be regenerated in recent years in direct response to the further expansion of same-sex rights.

CHAPTER 5

INDIANA RFRA AND OTHER STATE RFRAS

Indiana's Religious Freedom Restoration Act that set in guidelines prohibiting the government from substantially burden a person's exercise of religion unless the government can show it has a compelling reason. Supporters of Indiana's RFRA most vocally proclaim the legislation is considered a victory for protecting religious freedoms, like the choice to not cater a gay wedding. Others viewed the law as a tool to discriminate members of the LGBTQ community. Arguments remain whether RFRA has been established to protect the rights of religious minorities. The Indiana RFRA became a debated topic in the public as people on opposing sides misinterpreted the law's intent, and Governor Mike Pence signed a clarification a week after its enactment, clearing up that the law was not intended to discriminate against the LGBTQ community. State RFRAs are "a way to tap into whether religious freedom laws come about as a result of broad ideological commitments or issue-specific views" (Bridge 2014 p. 353).

Some researchers have criticized the Indiana's RFRA for the rhetoric used. Katz (2015) criticized the Indiana RFRA for imposing a "heavy burden" on government officials for justifying exemption requests, saying the Act uses inconsistent terminology in private litigation terminology in private litigation because the law "extends its reach to private litigation through unusual and opaque terminology that it uses" in a process he called "inapt and unfair" (p. 47, 52). Hamilton (2015) argues that lawmakers should separate rhetoric from reality in regards to the

RFRA and other corporations and businesses have looked for state RFRA coverage to fight public accommodation laws for the LGBT community and doing business with same-sex couples (p. 156).

ADD ANOTHER GRAPH

CHAPTER 6

MEDIA COVERAGE AND THE INDIANA RFRA

A content analysis that attempted to conceptualize the dichotomy of those in support or opposed to the Indiana RFRA found that of the articles examined, “most texts debated on several interpretations of the law, based on its legal intricacies and mostly based on the effects that contextualization had on the representations of values,” using several frames to interpret the new laws’ meanings (Hosu 2015 p. 92).

The dispute about what deserves freedom of expression protection has been argued in the public sphere for a number of years. The passing of the Indiana RFRA drew attention from both national and regional press both national and regional press. An April 2015 Huffington Post article discusses the controversy the Indiana RFRA, and how the law could act as a “sword” to discriminate against same-sex couples as well as a “shield” to give people more religious freedom “to follow the dictates of their faith” (Cohn 2015 p. 1 of 10).

Several business, civic and sports leaders had requested the state amend its newly passed RFRA because it was perceived that the law would allow businesses to discriminate against the LGBTQ community. Indiana Senate President Pro Tem David Long told USA Today that the state’s RFRA was “never intended to discriminate against anyone. The perception led to the national protests we’ve seen” (Cook, LoBianco and Stanglin 2015 p. 1 of 4).

Other opposing opinions claimed the Indiana RFRA was selective and discriminatory. White House press secretary Josh Earnest also drew a distinction between the federal RFRA and the Indiana RFRA, stating while the 1993 law was

passed to protect “religious liberty of religious minorities,” the Indiana legislation “is a much more open-ended piece of legislation that could reasonably be used to try to justify discriminating against somebody because of who they love” (Montanaro 2015 p. 6 of 10). These opponents also note that even though more than 20 years has passed since the federal RFRA was signed into law, the political climate has changed dramatically. Jennifer Drobac, a law professor at Indiana University, told Time Magazine in March 2015 that she was one of several academic professionals who signed a letter expressing concern over the bill and that she thought the Indiana RFRA was “a stupid law” that needed to be “repealed immediately.” “The boogeyman that wants to attack religious adherents has just not arrived in Indiana,” Drobac said. “This is all coming from the same-sex marriage debate” (Steinmetz 2015a 1 of 3). Notre Dame law professor Richard Garnett, on the other hand, was among a list of academic professors who supported the Indiana RFRA, arguing that Indiana’s Constitution “protects religious liberty to a considerable — but uncertain — degree” (Steinmetz 2015a p. 2 of 3).

They argue that the proposed legislation is similar to the federal RFRA wording, and other states have already enacted their own RFRA. Several articles used war imagery to describe the combatant sides on this issue. In the April 2015 Time Magazine article “The Battle of Indiana,” the authors described Pence’s signature on the state RFRA “looked at first like a successful raid on competing social conservatives in the crowded field of Republican presidential hopefuls” (Von Drehle et. al. p. 30). An NPR article titled “Indiana Law: Sorting Fact From Fiction in Politics” called the opposing sides “culture wars,” where conservative politicians were championing the law for the added protection it gives decisions made from religious convictions. Wisconsin

Governor Scott Walker said the law strengthens the “right for Americans to exercise their religion and act on their conscience,” while Texas Sen. Ted Cruz said the law “is giving voice to millions of courageous conservatives” (Montanaro 2015 p. 5 of 10).

The clarification Pence signed was more to quash the negative press the Indiana RFRA had generated as it prevented the law from being used to refuse employment, housing or service to people based on sexual orientation or gender identity. Daniel Conkle, a professor of law and adjunct professor of religious studies at Indiana University, told the Greensburg Daily News in March 2015 that several areas throughout Indiana have adopted discrimination protections, and that if a business were to deny based on religious convictions, it is unlikely the company will get the court to agree that the burden trumps the compelling interest to outlaw discrimination (Ladwig 2015 p. 2 of 5).

The reason behind the controversy surrounding Indiana’s law may have more to do with the political stances the state has considered in recent history. In 2014, lawmakers attempted to pass a constitutional amendment that would ban same-sex marriage, just months before the state would be forced through court proceedings to issue marriage licenses to all couples regardless of sexual orientation. Grant’s Washington Post article “Why no one understands Indiana’s new religious freedom law” (in March 2015) suggest under different circumstances, the Indiana RFRA would not have been as controversial, considering it is a “virtual copy of the federal RFRA that was enacted 20 years ago with near-unanimous support in Congress” (4 of 5). But while RFRA may raise the bar on laws that burden religion, it does not give religion the power to veto laws (Grant 2015 p. 5 of 5).

CHAPTER 7

OTHER RFRA CLAIMS

Some cases in which a state RFRA has been successfully defended religious freedom include Chosen 300 Ministries, which sued the city of Philadelphia in 2012 over an ordinance that barred the distribution of free food in public parks; a 2010 case where Native American parents of a kindergartener sued a school district in Texas over a grooming policy that required boys to wear in a bun on top of their heads or tucked into their shirts and not as in the Apache religion required long and unbraided or in two braids; and when a Kansas appeals court ruled in 2011 in favor of a Jehovah's Witness patient who needed a liver transplant and requested a bloodless transplant from a health policy authority because of her religious convictions (Ladwig 2015 p. 2 of 3).

There has not been a case in 22 years that has ever won a religious exemption from a discrimination law under a RFRA standard, and those cases rarely come up before the Supreme Court (Rudow 2015 p. 4 of 18). Other state court decisions like in New Mexico Supreme Court's decision in *Elane Photography, LLC. v. Willock* pit creative works and a businesses' right to serve against discrimination. A photography business run by Elane Huguenin received a request from Vanessa Willock, who was looking for a photographer to shoot her commitment ceremony to her partner, Misti Collingsworth. Huguenin responded in an email that she did not want to use her photography to communicate the message that marriage is something other than one man and one woman, because that would be contrary to her religious beliefs.

A couple of months later, Willock wrote Elane Photography another email asking if it offers its services to same-sex couples,” to which Elane Huguenin wrote back that the company does not photograph same-sex weddings.” Willock filed a complaint with the state, claiming Elane Photography violated state public accommodations law by engaging in sexual orientation discrimination. The New Mexico Supreme Court found that the refusal to serve the couple violated the New Mexico Human Rights Act, which prohibits discrimination on the basis of sexual orientation. Elane Photography argued the refusal was protected by New Mexico’s RFRA, which provides “a governmental agency shall not restrict a person’s exercise of religion” absent justification. The New Mexico Supreme Court had rejected Elane Photography’s claim on the grounds that the state RFRA is only “applicable to disputes in which a government agency is not a party” (Katz 40).

Even though same-sex marriage was not legal in New Mexico at the time Willock inquired about Elane Photography’s services, the state was found to have had prior legislation that made discrimination based on sexual orientation illegal. The New Mexico Human Rights Act states that it is unlawful for “any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person,” on a variety of different grounds, including sexual orientation, and the state Supreme Court ruled that Huguenin had discriminated against the same-sex couple.

Other recent examples of a business that denied service based on sexual orientation have also arisen with subsequent media coverage. Jack Phillips, the owner of Masterpiece Cakeshop, appealed to the Supreme Court in July 2016 to hear his

case. Phillips turned away the gay partners Charlie Craig and Daniel Mullins after they requested a custom wedding cake, citing his religious beliefs (Robles 2016 p. 1 of 2). Phillips argues that it was not his intent to discriminate against gay couples because his business will design and create any other bakery product, except a wedding cake because of the “celebratory message about the same-sex marriage that baking a wedding cake would convey” (Craig and Mullins v. Masterpiece Cakeshop Inc. 2015 p. 14).

Whether the highest court will decide if a business owner can refuse service based on religious beliefs remains to be seen. The Supreme Court refused to hear Elane Photography’s appeal, and the Phillip’s case was declined to be heard by the Colorado Supreme Court because, like New Mexico, Colorado has an Anti-Discrimination Act that does not compel the cake shop to endorse any religious views but does prohibit discrimination against sexual orientation.

How the RFRA became intertwined in the same-sex debate is not clear but the rhetoric of this debate tends to overtake the facts long before this national news story. The fact that RFRA getting passed do not mean religious business owners are exempt from discriminating against the LGBTQ community. But the RFRA also do not prevent discrimination by landlords from renting to same-sex couples or an individual fired from the company he works for because he is gay.

The phrase “prohibiting the government from substantially burdening a person’s exercise of religion unless the government can show it has a compelling interest to do so” can be found in the anti-discrimination laws that are enacted in many states. These statewide bans have placed sexual orientation alongside other protected classifications,

such as race, sex and religion. In states that do not have anti-discrimination laws (32 states total), it is still legal to fire or evict someone because of sexual orientation or gender identity. While the federal law does not go as far to define a “person,” the Indiana law does, and according to that standard, in the Section 7 of the Indiana code, the “person” includes people, churches and corporations (Montanaro 2015 p. 5 o 7).

CHAPTER 8

CONCLUSION

The historical significance explored in the lifestyle or society pages in local newspapers presents an interesting area to gauge public opinion in readership and management of the paper itself and whether the publishing of wedding announcements is rooted in a tradition that celebrates wealth (Wheatcroft 1999 p.15). But why some newspapers have denied publication of same-sex unions in its lifestyles pages and whether that is an indication of privilege has yet to be seen. According to a New Republic article, The New York Times, in particular, continually uses images and content promoting prestige in society through its wedding announcements, a tradition that has been in practice for at least two decades. The author states that one would have to go back to May 1994 to find anyone listed as a vocational school graduate, and that case also reflects the upper class as the groom would become engaged to a geophysicist with a Columbia doctorate degree (Sandler 2002 p. 15).

Future research may also want to look into the journalism profession itself to see if the results can be duplicated in a newsroom setting. Combining both quantitative and qualitative research methods like surveys, interviews and content analysis could provide a better foundation as well as better support for the gatekeeping model. It may also determine editorial emphasis on lifestyle page restrictions. Different restrictions may also be in place for newspapers that have lower circulation numbers and are based in rural areas.

The resurrection of RFRAs across several states was enacted shortly before the landmark Supreme Court case that recognized marriage as a constitutional right

regardless of sexual orientation. Those legislations were in direct response to this decision. In 2015, sixteen states attempted to pass state RFRAS but only two – Indiana and Arkansas – succeeded. Challenges to the lawsuits are pre-enforcement challenges where the complaint is filed based on a perceived threat to rights before the law has been enforced. Any outcome on future cases that may stem from these cases could have important ramifications.

The anti-discrimination laws are the compelling interest needed to permit the government to substantially burden a person's exercise of religion. Since many states with an RFRA had also passed previous laws that banned discrimination based on sexual orientation, that classification was considered alongside other protected classes, such as race, sex, national origin, disability and religion. While the Indiana RFRA needed to be "fixed" to include clarification that the new law would now discriminate against the LGBT community.

What the media attention surrounding editorial decisions to deny same-sex wedding announcements and the consideration of religious freedom laws demonstrate is that holes are still prevalent in state legislatures. States without anti-discrimination laws that specify against sexual orientation discrimination cannot protect the LGBTQ community from employment discrimination or unfair housing practices. Only nineteen states and Washington, D.C., have passed laws that prevent discrimination against the LGBTQ, and three other states offer protection on the basis of sexual orientation (Bellis 2016 p. 3-4).

Same-sex marriage has seen a substantial increase in social acceptance in the last 20 years, with more people in favor of marriage equality than ever before in history.

Civil rights laws prohibit discrimination on certain ground, and those laws specify what activities they are applied to (Epps 2015 p. 1 of 4), but RFRAS are not civil rights statutes. Additional legislation at the federal level would need to be approved to provide full discrimination protection.

A newspaper in a state with no ant-discrimination stipulation could deny publishing a same-sex wedding announcement in its lifestyles pages, and a business owner may claim religious freedom in denying service to a same-sex customer, but neither situation may pan out the way the editor or the owner imagines. There is a highly organized base ready to petition any perceived discrimination based the LGBTQ community. Online polls, protests and other organized measures are more likely to occur now than in the past, which could result in negative publicity for the publication or business in question. Given the economic climate of newspapers, the rejection of any revenue stream and the potential backlash that follows should they deny publishing. It is an interesting time in history, and the Supreme Court decision may prove how editors might construct an opinion to either run or decline to run a same-sex wedding announcement based on either perceived community values or First Amendment protection but still call themselves objective journalists. It seems closer to the editor may have that upholds that decision.

REFERENCES

- Bennett, L. (2000). "Fifty Years of Prejudice in the Media." *Gay & Lesbian Review*. 7:2. pp. 30-35. 5p.
- Bridge, D. (2014). "Religious Freedom or Libertarianism: What Explains State Enactments of Religious Freedom Restoration Act Laws?" *Journal of Church and State*. June 2014. 56:2, pp. 347-369. 22p.
- Brown, A. (2013). "As Congress Considers Action Again, 21 Percent of LGBT Adults Say They've Faced Workplace Discrimination." Pew Research Center. November 4, 2013. Online. <http://www.pewresearch.org/fact-tank/2013/11/04/as-congress-considers-action-again-21-of-lgbt-adults-say-they-faced-workplace-discrimination/>.
- Cohn, J. (2015). "Why Indiana's Religious Freedom Law Is Such A Big Deal." *Huffington Post*. 2 April 2015. Online. http://www.huffingtonpost.com/2015/04/01/indiana-religious-freedom_n_6984156.html.
- Cole, et. al. (2012). "Against Nature: How Arguments about the Naturalness of Marriage Privilege Heterosexuality." *Journal of Social Issues*. 68:1, pp. 46-62. 16p.
- Cook, T., T. LoBianco and D. Stanglin. (2015). "Indiana governor signs amended 'religious freedom' law." *USAToday*. 2 April 2015. Online. <http://www.usatoday.com/story/news/nation/2015/04/02/indiana-religious-freedom-law-deal-gay-discrimination/70819106/>.
- Craig and Mullins v. Masterpiece Cakeshop, Inc. (2015). Colorado Court of Appeals. Online. https://www.courts.state.co.us/Courts/Court_of_Appeals/Opinion/2015/14CA1351-PD.pdf.
- Epps, G. (2015). "Public accommodations and private discrimination." *The Atlantic*. 14 April 2015. Online. <http://www.theatlantic.com/politics/archive/2015/04/public-accommodations-and-private-discrimination/390435/>.
- Gallup. (2016). "Marriage." Online. Accessed Sept. 1, 2016. <http://www.gallup.com/poll/117328/marriage.aspx>.
- Gaspar, T. (2015). "A Religious Right to Discriminate: Hobby Lobby and 'Religious Freedom' as a Threat to the LGBT Community." *Texas A&M Law Review*. 3:2, pp.395-416. 21p.
- GLAAD. (2008) "Announcing Equality." Online. 23 June 2014. <http://www.glaad.org/resources/announcingequality>.

- Greene, A. (2015). "Religious Freedom and (Other) Civil Liberties: Is There a Middle Ground?" *Harvard Law & Policy Review*. 9:1, pp. 161-193. 33p.
- Grinberg, E. (2012). "North Dakota paper reverses ban on same-sex wedding ads." CNN. Online. 1 Aug 2012. <http://www.cnn.com/2012/07/30/living/north-dakota-same-sex-wedding-ads/>.
- Hamilton, M. (2015). "The Case for Evidence-Based Free Exercise Accommodation: Why the Religious Freedom Restoration Act Is Bad Public Policy." *Harvard Law & Policy Review*. 9:1, pp.129-160. 32p.
- Harp, D. (2003) "Feminist Conscious and the Production of a Contemporary Women's Section." *International Communication Association*. 2003 Annual Meeting, San Diego, California. p. 1-28. 29p.
- Harp, D. (2007). "Desperately Seeking Women Readers: U.S. Newspapers and the Construction of a Female Readership." Lexington Books.
- Harper, C. (2016). "Kentucky Clerk Kim Davis Just Officially Won The Same-Sex Marriage License Battle." *Daily Caller*. 14 April 2016. Online. <http://dailycaller.com/2016/04/14/kentucky-clerk-kim-davis-just-officially-won-the-same-sex-marriage-license-battle/>.
- Hassan, T. (2015). "A Historical Analysis of the Development of Free Speech Justifications." *Journal Jurisprudence*. 28, pp. 487-506. 20p.
- Hosu, R. (2015). "Equality or Religious Freedom? The Indiana RFRA. Some Media Representations." *Transylvania Review of Administrative Sciences*. 45. pp, 76-96. 20p.
- Jones, R.P, D. Cox, B. Cooper, and R. Lienesch. (2016). "Beyond Same-sex Marriage: Attitudes on LGBT Nondiscrimination Laws and Religious Exemptions." *PRRI*. 18 Feb. 2016. Online. <http://www.prii.org/research/beyond-same-sex-marriage-attitudes-on-lgbt-nondiscrimination-and-religious-exemptions-from-the-2015-american-values-atlas/>.
- Katz, R. (2015). "Indiana's Flawed Religious Freedom Laws." *Indiana Law Review*. 49:1, pp. 37-56. 20p.
- Kemp, J. (2013). "No Write! Gay couple outraged after Texas newspaper refuses to print wedding announcement." *New York Post*. Online. 10 Sept. 2013. <http://www.nydailynews.com/news/national/no-write-gay-couple-outraged-texas-newspaper-refuses-print-wedding-announcement-article-1.1451073>.
- Ladwig, B. (2015). "Law professor: religious freedom bill widely misunderstood." *Greensburg Daily News*. 27 March 2015. Online.

- Landau, J. (2009). Straightening Out (the Politics of) Same-Sex Parenting: Representing Gay Families in U.S. Print News Stories and Photographs. *Critical Studies in Media Communication*. 26:1, 80-100. 20p.
- Lax, J. R. and J. H. Phillips. (2009). "Gay Rights in the States: Public Opinion and Policy Responsiveness." *American Political Science Review*. 103:3, pp. 367-392. 25p.
- Lewis, G. B. and C.W. Gossett. (2008). "Changing Public Opinion on Same-Sex Marriage: The Case of California." *Politics and Policy*. 36:1, 4-30. 27p.
- Li, X. and X. Liu. (2010). "Framing and Coverage of Same-Sex Marriage in U.S. Newspapers." *The Howard Journal of Communications*. 21: pp. 72-91. 19p.
- Lisker, J. (1969). "Stonewall Inn raid engages the homosexual community in 1969." *New York Daily News*. 6 July 1969. Online. Accessed 27 Feb. 2015. <http://www.nydailynews.com/new-york/manhattan/stonewall-raid-enrages-homosexual-community-1969-article-1.2627685>. 2p.
- McCarthy, J. (2015). "Record-High 60 percent of Americans Support Same-Sex Marriage." Gallup. 19 May 2015. <http://www.gallup.com/poll/183272/record-high-americans-support-sex-marriage.aspx>.
- Montanaro, D. (2015). "Indiana Law: Sorting Fact From Fiction From Politics." NPR. 1 April 2015. Online. http://www.npr.org/sections/itsallpolitics/2015/04/01/395613897/sorting-fact-from-fiction-from-politics-on-the-indiana-law?utm_source=npr_newsletter&utm_medium=email&utm_content=20161028&utm_campaign=npr_email_a_friend&utm_term=storyshare.
- Moscowitz, L. (2013). *The Battle Over Marriage: Gay Rights Activism Through the Media*. University of Illinois Press: Champaign, IL. 163p.
- Nelson, R.H. (2015). "Sexual Orientation Discrimination Under Title VII After Baldwin v. Foxx." *Washington and Lee Law Review Online*. 72:2, pp. 255-277. 22p. <http://scholarlycommons.law.wlu.edu/wlulr-online/vol72/iss2/2>.
- Pew Research Center. (2012). "Growing Support for Same-Sex Marriage." 7 February 2012. Online. <http://www.people-press.org/2012/02/07/growing-public-support-for-same-sex-marriage/>.
- Pew Research Center. (2007). "The Smith Decision: The Court Returns to the Belief-Action Distinction." 24 Oct. 2007. Online. <http://www.pewforum.org/2007/10/24/a-delicate-balance6/>.
- Ranger, A. (2004). "A History of Anglo-Saxon Wedding Customs." *Teemings*. Online. <http://web.cs.ucla.edu/classes/winter04/cs240A/notes/temporal/Teemings%20>

[%20Issue%206%20-%20A%20History%20of%20Anglo-Saxon%20Wedding%20Customs%20by%20Arden%20Ranger.htm](#).

Reed, A. (2016). "RFRA v. ENDA: Religious Freedom and Employment Discrimination." *Virginia Journal of Social Policy and the Law*. 23:1, pp. 1-37. 37p.

Robles, Y. (2016). "Colorado Baker Wants Supreme Court To Hear Gay Cake Case." *Denver Post*. 22 July 2016. Online. <http://www.denverpost.com/2016/07/22/colorado-baker-gay-wedding-cake-supreme-court/>.

Romenesko, J. (2014). "Same-sex Marriage Announcement Runs in the Conservative New Hampshire Union-Leader." *Jim Romenesko*. 18 August 2014. Online. <http://jimromenesko.com/2014/08/18/same-sex-marriage-announcement-once-banned-runs-in-the-new-hampshire-union-leader/>.

Sandler, L. (2002). "Society Page." *New Republic*. 23 Sept. 2002. Vol. 227, Issue 13. p. 14-15. 2p.

Sanneh, K. (2015). "The Hell You Say." *The New Yorker*. 10, 17 Aug. 2015. Online. <http://www.newyorker.com/magazine/2015/08/10/the-hell-you-say>.

Schwartz, J. (2011). "Whose Voices Are Heard? Gender, Sexual Orientation and Newspaper Sources." *Sex Roles*. 64: p. 265-275.

Scwartzschild, M. (2016). "Do Religious Exemptions Save?" *San Diego Law Review*. 53:1, pp. 185-200. 15p.

Steinmetz, K. (2015a). "The Debate Over What Indiana's Religious Freedom Act is Really About." *Time*. 30 March 2015. Online. <http://time.com/3764347/indiana-religious-freedom-discrimination-act/>.

Steinmetz, K. (2015b). "This Map Shows Every State With Religious Freedom Laws." *Time*. 2 April 2015. Online. <http://time.com/3766173/religious-freedom-laws-map-timeline/>.

Tiedemann, P. (2015). "Is There a Human Right to Freedom?" *Human Rights Review*. June 2015. 16:2, pp. 83-98. 16p.

Tiemann, K. (2006). "Why Is Their Picture on the Wedding Page?" *Journal of Homosexuality*. 51:4. pp. 119-135.

Tuchman, G. (1978). *Making News: A Study in the Construction of Reality*. The Free Press: New York, 244 pgs.

Ura, J. (2009). "The Supreme Court and Issue Attention: The Case of Homosexuality." *Political Communication*. 26:4, p. 430-446.

Von Drehle, D. et. al. (2015). "The Battle of Indiana." Time. April 13, 2015. 185:13, pp. 28-35, 8p.

West, S. (2014). "First Amendment Neighbors." Alabama Law Review. 66:2, pp. 357-374. 18p.

Wheatcroft, G. (1999). "The penumbra of pedigree." Atlantic. February 1999. Vol, 283, Issue 2. p. 14-16. 2p.

Yang, M. (1996). "Women's Pages or People's Pages: The Production of News for Women in the Washington Post in the 1950s." Journalism & Mass Communications Quarterly. Summer 1996, Vol. 73, Issue 2. p. 364-378. 15 p.

"Members of Congress Introduce Legislation To Restore Federal Religious Freedom Law." (2016). Church & State. July/August 2016. 69:7, pp. 18-18. 3/4p.

"The Smith Decision." (2007). Pew Research Center. 24 Oct. 2007. Online. <http://www.pewforum.org/2007/10/24/a-delicate-balance6/>.

"Wedding Announcements, A Small History." The Dandelion Patch. Online. <http://www.thedandelionpatch.com/wedding-invitations-a-small-history/>.

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