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Tom Sabulis

# Religious liberty or freedom to discriminate?



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Moderated by Tom Sabulis

Passion and opinions continue to spark around Georgia's proposed "religious liberty" bill being considered in the General Assembly. Senate Bill 129 passed that chamber last week. Today, pop superstar and philanthropist Elton John, a part-time Atlantan for decades now, voices his concerns with a bill critics call a license to discriminate. On the opposing side, an Atlanta attorney says a state version of the federal Religious Freedom Restoration Act is needed because the latter does not apply to state or local laws, and most religious liberty disputes arise over these.

## Is Georgia Turning its back on tolerance?

By Elton John

On its surface, Senate Bill 129 — a bill under consideration in the Georgia Legislature known as the Religious Freedom Restoration Act— claims to protect religious freedom and encourage tolerance. In reality, it encourages the same discrimination that's haunted the South for too long.

When I moved to Atlanta in 1990, the nation was in the midst an HIV/AIDS crisis fueled by stigma and discrimination. I founded the Elton John AIDS Foundation here in Atlanta to fight the misunderstanding and prejudice at the heart of the epidemic, and to provide support and dignity to those battling the disease.

In 1992, one of my dear friends and a founding board member of EJAF, Eli Saleeby, rushed a friend of his to Grady Memorial Hospital. His friend was suffering from full-blown AIDS. When they arrived at Grady, Eli's friend was in excruciating pain and needed medical assistance right away. But the hospital staff was so fearful of HIV/AIDS, and the stigma surrounding the disease was so intense, that he was left alone, suffering, on a gurney in the hallway. No one would help him.

Eighteen years later, in 2010, Eli was suffering from HIV/AIDS complications himself. He'd fallen down in a parking lot and was rushed to Grady by ambulance. This time, things were different. He had a six-person medical team that treated him with dignity and compassion. Eli ultimately lost his battle with HIV/AIDS, but he fought bravely, and he was supported every step of the way by caring physicians.

I'm proud of the progress we have made, particularly in the South, in treating people living with HIV equally and compassionately. But we still have a long way to go. People living with HIV are still discriminated against in Georgia, and indeed, all across the United States. The rates of HIV/AIDS among LGBT people of color and low-income people remain disproportionately high, especially in the South.

That's why I'm so opposed to SB 129.

Simply put, this bill is a wolf in sheep's clothing. It promises religious freedom, but let's be clear: No one's religious freedom is at risk! Both the Georgia Constitution and U.S. Constitution very explicitly protect this right.



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turn back the clock on the progress we have made — not only in the fight against HIV, but also in the struggle for a more equal and just society.

**Does Georgia need a religious liberty law?**

- Yes, state protections are necessary and needed.
- No, this is a license to discriminate.

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To be clear, I firmly believe in freedom of religion. Everyone has the right to worship as they choose. But I also believe in justice, equality and the rule of law. We can't just let people refuse to follow a law because they don't like it. And we can't just grant special exemptions that allow people to discriminate at will.

In this country, if you don't like a law, you can work to change it. And if enough people agree with your point of view, you'll succeed. That's the beauty of democracy in America. And that's why I'm writing this essay. I hope enough people, once they realize the harmful intent behind SB 129, will join me in fighting it.

No one should be discriminated against because of who he is, or what he looks like, or because of a disease he happens to have. My dear friend Eli fought and lived through a time of progress, and so should we. We cannot afford to turn back the clock as we fight for an AIDS-free future in Georgia, across the country and around the world.

*Sir Elton John is the founder of the Elton John AIDS Foundation, [www.ejaf.org](http://www.ejaf.org)*

## RFRA doesn't suborn bigotry

By Jack N. Sibley

If someone cries "Fire!" falsely in a crowded theater and three people are killed in the stampede, that person's efforts to cover his conduct claiming free speech would fail, and no one would think that the ongoing vigilant protection of free speech should be halted because of its attempted misuse.

Freedom of speech and freedom of religion have been joined a long time.

As John Leland, a Baptist evangelist, friend of Thomas Jefferson and James Madison said, "Let every man speak freely without fear, maintain principles that he believes, worship according to his own faith, either one God, Three Gods, no God, or Twenty Gods; and let government protect him doing so."

This thinking found its way into the First Amendment. "Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof; or abridging the freedom of speech...."

The Georgia Constitution has guaranteed the free exercise of religion since 1777. Shall our protection of freedom of religion be any less vigilant than the other freedoms guaranteed by the First Amendment and the Georgia Constitution? I think not and neither did Congress.

Congress, in 1993, by unanimous vote in the house and a 97 to 3 vote in the Senate — with the support of such diverse religious groups as Jews, Muslims, Catholics, Protestants, and civil liberty groups such as the ACLU and the People for the American Way — passed the Religious Freedom Restoration Act to restore the historical requirement that government must have a compelling state interest to justify interference with our freedom of religion. Congress and these groups wanted to insure that freedom of religion enjoyed the same, vigilant protection safeguarding our other constitutional freedoms.

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that infringes on someone's freedom of religion or someone's questionable conduct is clothed under a claim of freedom of religion, it falls to our courts to resolve the dispute using some standard of review. There is no standard of review embedded in our constitutions. RFRA supplies it.

Why pass RFRA again in a state? The Federal RFRA does not apply to state or local laws and most religious liberty disputes arise over state and local laws. Therefore, each state must decide what protection it will afford its citizens' freedom of religion.

Over the last twenty years, RFRA has come under attack out of fear it suborns bigotry under the guise of religious freedom. The 19 states that have passed RFRA have not become havens for widespread bigotry. RFRA is not a stalking horse for bigotry nor am I a stalking horse for the religious right. But I love our liberty. Whether the Georgia legislature passes RFRA is a decision for our legislators. But the debate should be by what standard shall our freedom of religion be protected? I, for one, want the protection of my freedom of religion on equal footing with freedom of speech and other guaranteed freedoms.

Our courts can protect our free exercise of religion and prevent attempts to misuse it. Supreme Court Justice Sandra Day O'Connor wrote in 2005, "Reasonable minds can disagree about how to apply the Religious Clauses in a given case, but the goal of the Clauses is clear. To carry out the founders' plan of preserving religious liberty to the fullest extent possible in a pluralistic society."

We should not sacrifice our religious freedom on the altar of fear, just as we have not sacrificed our freedom of speech because someone might cry "fire."

*Jack N. Sibley is a partner in the Atlanta law firm Hawkins Parnell Thackston and Young.*

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