Building Wealth

TAKING ISSUE
Peter J. Rusthoven

When law and politics intersect, media coverage can be superficial and misleading. An example is House committee approval on April 7 of the proposed Indiana balanced budget amendment.

The AP story, parroted by most outlets, closed: "The state constitution already largely bans Indiana from incurring debt, and Democrats have said the proposed amendment isn't needed."

Yes, some say that (though most Senate Democrats voted for the amendment). But a diligent journalist needn't break a sweat to report that debt prohibition and a balanced budget are far different. The prohibition dates to 1851, and (with exceptions) bars state borrowing. But this does not require a balanced budget, under which expenditures can't exceed revenue.

Indiana's surplus, e.g., is over $1 billion. As this column noted earlier, absent the new amendment, the state could run a two-year billion-dollar deficit despite the "no debt" prohibition.

Sloppy budget amendment reporting pales, however, alongside inflammatory Religious Freedom Restoration Act coverage. First prize goes to Indianapolis Star columnist Matt Tully, who gave new meaning to "Hoosier Hysteria."

RFRA, quoth Tully, is "discrimination wrapped up in a legislative bow." Indiana has "officially endorsed discrimination" in what should "be called the Freedom to Discriminate bill." It is "tired and cynical politics weakly masked as a principled stand."

"Few laws are worse," Tully preaches, "than those that give the majority the power to bully a minority." RFRA made him "embarrassed to be a Hoosier."

These are samples from an intemperate screed astonishing to those who know RFRA history. We'll get to the politics. Let's start with the laws, under which government may not substantially burden a person's exercise of religion unless it is the least restrictive means to further a compelling government interest.

This was national law from 1963 to 1990 under Warren-era Supreme Court decisions. But in 1990, the court held a neutral law of general application could prohibit religious practices (there, using peyote during Native American worship). A Democratic Congress, with ACLU support, promptly passed the federal RFRA, which President Clinton signed.

Thereafter, 19 states enacted RFRA laws. One is Illinois, with support of then-State Sen. Obama. Another is Connecticut, whose governor now self-righteously denounces Indiana. Eleven other states adopted the same rule by judicial decision.

This history is found in a letter supporting RFRA from 16 legal and religious freedom scholars. The signers, who span the political spectrum and include gay marriage supporters, teach at schools such as Harvard, Stanford and Princeton, as well as IU and Notre Dame.

They refute that RFRA is a "license to discriminate," noting there are zero RFRA-law cases reaching such results. As they show, RFRA laws in fact (borrowing Tully's phrase) prevent giving "the majority the power to bully a minority"—whether the minority be Native Americans, Jehovah's Witnesses, Muslims, Amish or, yes, fundamentalist Christians whose religious convictions are at odds with government views.

One would know none of this from reading Tully or a host of others who pounced on Indiana.

And the politics? Well, some among RFRA's supporters may feed Tully-favored stereotypes. Pragmatically, there's debate over the wisdom of doing this now—because wisdom includes understanding how anything touching on "social issues" can be distorted and misused in our era.

But that doesn't excuse those doing the distorting. If Tully and many others want to know who helped embarrass Indiana, they should start by looking in the mirror.•

Rusthoven, an Indianapolis attorney and graduate of Harvard College and Harvard Law School, was associate counsel to President Reagan. Send comments on this column to ibjedit@ibj.com.

Recent Articles by Peter J. Rusthoven / Special to IBJ

RUSTHOVEN: Coats among dwindling, respected breed

RUSTHOVEN: Preschool works; let's move ahead