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### Reminder: We've Used 'Religious Liberty' For Discrimination Before

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During the furor over Indiana's new "religious liberty" law, the debate has been haunted by some not-too-distant memories of the last time rapid social change encountered an embattled conservative population placed on the defensive. Yes, it enrages today's religious conservatives to hear their demands for a zone of "conscience" in which they may choose to exempt themselves from antidiscrimination laws with similar demands a half century ago. But the parallels cannot be wished away.

When the Civil Rights Act of 1964 became an unavoidable and imminent reality, conservatives—not all of them southerners—executed a strategic retreat, accepting the demolition of *de jure* segregation but defending *de facto* segregation via private action. This required last-ditch opposition to the provisions of the law prohibiting discrimination by employers and those offering "public accommodations" such as restaurants, hotels and retail stores. Here's how the 1964 Republican presidential nominee took his stand with Dixieland:

I wish to make myself perfectly clear. The two portions of this bill to which I have constantly and consistently voiced objections, and which are of such overriding significance that they are determinative of my vote on the entire measure, are those which would embark the Federal Government on a regulatory course of action in the area of so-called "public accommodations" and in the area of employment--to be precise, Titles II and VII of the bill. I find no constitutional basis for the exercise of Federal regulatory authority in either of these areas; and I believe the attempted usurpation of such power to be a grave threat to the very essence of our basic system of government, namely, that of a constitutional government in which 50 sovereign states have

reserved to themselves and to the people those powers not specifically granted to the central or Federal Government.

Goldwater didn't merely object to these portions of the law on "constitutional conservative" grounds, however:

[I]n addition I would like to point out to my colleagues in the Senate and to the people of America, regardless of their race, color or creed, the implications involved in the enforcement of regulatory legislation of this sort. To give genuine effect to the prohibitions of the bill will require the creation of a Federal police force of mammoth proportions. It also bids fair to result in the development of an "informer" psychology in great areas of our national life--neighbors spying on neighbors, workers spying on workers, businessmen spying on businessmen, where those who would harass their fellow citizens for selfish and narrow purposes will have ample inducement to do so. These, the Federal police force and an "informer" psychology, are the hallmarks of the police state and landmarks in the destruction of a free society.

This prediction, of course, was thunderously wrong, but it reflected the kind of "slippery slope" arguments we are hearing today with respect to enforcement of nondiscrimination laws involving LGBT folk. Just as importantly, Goldwater and many others were engaged in an effort to depict discriminators as victims of government overreach simply wanting to live their lives according to their religiously informed consciences.

Southern white churches were not necessarily leading the fight against civil rights legislation, but they were certainly heavily present in the ranks. And their leadership position became decisive in another front of the fight to preserve a right to private racial discrimination: the white flight from integrated public schools into "segregation academies" that were more often than not organized by churches. This was not a small issue; indeed, the historian Randall Balmer [makes a convincing case](#) that the fight to maintain tax-exempt status for such schools was the original impetus for the rise of the Christian Right, well before conservative evangelicals decided to unite with conservative Catholics in the anti-abortion cause.

Conservative Christians have long been vulnerable to the charge that they offer religious cover for what may be simple resistance to social change, as reflected in the strong alliance between conservative evangelicals and a Republican Party only partially interested in the agenda of the Christian Right. It's interesting that this alliance has recently been extended into the traditionalist hierarchy (if not so much the laity) of the Catholic Church, precisely over the campaign for "religious liberty" protections.

There are two very specific reasons for the rapid growth of this campaign into a major preoccupation for the GOP and for conservative Christians: the enactment of the Affordable Care Act, with its contraceptive coverage mandate, which tripped all sorts of conservative cultural triggers, and then the sudden, shocking success of the marriage equality movement. As Michael Linderberger [pointed out](#) at *The New Republic* this week, it was the latter that really lit the fuse, most particularly the 2011 breakthrough in New York:

The first to seriously sound the alarm was New York Cardinal Timothy Dolan. "We are living in New York, in the United States of America—not in China or North Korea," Dolan said. "In those countries, government presumes daily to 'redefine' rights, relationships, values, and natural law. There, communiqués from the government can dictate the size of families, who lives and who dies, and what the very definition of 'family' and 'marriage' means." That was bracing stuff, and it lit a fire among conservatives who were eager to shift the debate away from the rights of gays and lesbians and onto more favorable ground, the rights of Americans to practice their faith. That movement is only now cresting in a wave of religious freedom statutes. You could see it last year in Arizona and in last week's victory for gay marriage opponents, Pyrrhic as it likely is, in Indiana.

Like southern "Christian" segregationists in the recent past, today's politicized conservative Christians are executing a strategic retreat into an allegedly private sphere where they are on stronger ground in resisting anti-discrimination policies. They intensely dislike the parallels on the grounds that hostility to gay rights and/or same-sex marriage is deeply entrenched in their faith, or in the case of conservative evangelicals, in the Bible.

That is exactly what the segregationists said as well, of course. It is not hard to foresee a day when the tortured efforts of religious leaders to stitch together a few culture-bound passages into an eternal condemnation of homosexuality (or for that matter, abortion, which is virtually invisible in Scripture) will look just as absurd and embarrassing as yesterday's thundering sermons on black people being consigned to submission by the Curse of

Ham. And then maybe the strategic retreat into efforts to hang onto discrimination via protestations of "religious liberty" will look less sympathetic as well.

*Ed Kilgore is the principal blogger for Washington Monthly's [Political Animal blog](#), Managing Editor of [The Democratic Strategist](#), and a Senior Fellow at the [Progressive Policy Institute](#). Earlier he worked for three governors and a U.S. Senator. He can be followed on Twitter at [@ed\\_kilgore](#).*

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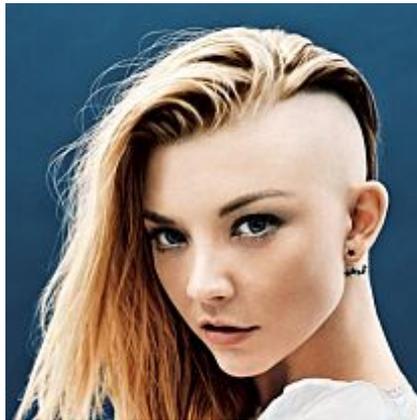
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