

FREEDOM'S EDGE

Freedom's Edge takes the reader directly into the heart of the debate over the relationship between religious freedom and LGBT and reproductive rights. The book explains these complex areas of law, and what is at stake in the battle to protect each of these rights. The book argues that religious freedom and sexual freedom share some common elements and that in most contexts it is possible to protect both. *Freedom's Edge* explains why this is so and provides a roadmap for finding common ground and maximizing freedoms on both sides. The book enables anyone with an interest in these issues to understand what the law actually teaches us about religious freedom, sexual freedom, and how they interact. This is important because what is often argued by partisans on both sides distorts the legal and cultural stakes and diminishes the possibility of compromise.

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Freedom's Edge

RELIGIOUS FREEDOM, SEXUAL FREEDOM, AND THE FUTURE OF AMERICA

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*This book is dedicated to my wife Chika, my daughters
Elysha and Ariana, and my parents Carl and Arline.*

*This book is also dedicated to all people who seek to build
bridges between communities rather than destroy bridges.*

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PREFACE

I wrote this book because I can no longer sit back and watch as outspoken opponents of religious freedom characterize any attempt to protect it as discrimination, and as opponents of sexual freedom characterize same-sex marriage as somehow eroding the fabric of America. Moderate voices are often drowned out by more radical ones on each side, and the media seems to prefer the radical voices. This makes sense since radical voices often make for a “sexier” headline or news story than do the nuanced positions of moderates. Yet, as a deeply religious person who strongly supports LGBT rights and reproductive freedom, I know I am not alone in supporting freedom on both fronts.

Two problems often arise in public discourse on religious freedom, LGBT rights, and reproductive freedom. First is a lack of balance – not just in media reports but also in debates I often overhear in stores or restaurants. It seems that few people consider the possibility that we can have strong religious freedom laws *and* strong protection for both LGBT and reproductive rights. It is not that no voices are out there advocating for this but rather that those voices are not being heard as well as the voices of those screaming on one side or the other.

Second, few people besides law school professors and some in the broader legal community truly understand the law governing religious freedom, LGBT rights, and reproductive rights. And why should they? This law is highly complex, and those of us involved in the legal debates often use quite a bit of legalese as shorthand when we discuss these issues. This makes our discussions more understandable within the legal community, but it can mystify the law for laypeople who could

easily understand it if they did not have to sort through the meaning of the vast array of terminology lawyers and courts use. If people do not understand the law, it is hard for them to gain a well-informed position on these issues because the issues are heavily connected to the law.

This book has two major goals. First, it aims to present the issues in as balanced a way as possible so that readers understand that protections for religious freedom and for LGBT and reproductive freedom are not necessarily antithetical – in fact, it is possible to have both. Second, this book aims to explain the law in a way that those who are not lawyers can understand it and also use it to help inform their views on these issues.

In suggesting a balanced approach, I stress the areas of commonality between the issues, but I do not stray from the areas of conflict. Where conflict is unavoidable I advocate compromise, which I realize will be uncomfortable for people on both sides. I apologize for the discomfort, but it is healthy discomfort because it requires us to challenge ourselves to expand our horizons and work to heal a sensitive area in our remarkably polarized society. In this way, it is a bit like a doctor apologizing for the discomfort caused by a test or procedure that may save someone's health or life. The reality is that religious freedom is currently at risk, as demonstrated by the recent defeats of state religious freedom laws, and LGBT and reproductive rights are also at risk as backlash continues to grow. A bit of discomfort while confronting these issues may help us protect both.

These are hard issues, especially in our currently polarized society, but the choices are to compromise or to harden positions on both sides, thus increasing rage at the extremes and fanning the flames of the culture wars until we lose one freedom or the other. If this book is successful at achieving its goals, I expect people on both sides to be challenged and perhaps the extremes on both sides to be enraged, but my goal is to speak to the vast number of people in the middle, and to those on either side who are willing to compromise to protect the freedoms that matter to them.

I have decided that it is time to take what I know as a law professor – focused on law and religion, as well as on constitutional law – and speak to the public, rather than within my field where I am most comfortable. Quite honestly, the task of doing so scares me because doing an

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adequate job is onerous; yet I feel a deep need to do this because remaining silent only increases the chance that freedoms may be unnecessarily lost on both sides. As a moderate on these issues, I want to give some voice to the silent majority and can only ask you, the reader, to engage with these issues. I hope you gain something from reading this book. I fear that I am an inadequate messenger given the importance of this task, but I hope you will learn something from what I have written here.

ACKNOWLEDGMENTS

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I have incorporated modified sections from two articles into this book:

Frank S. Ravitch, *Be Careful What You Wish For: Why Hobby Lobby Weakens Religious Freedom*, 2016 *BYU L. REV.* 55 (2016).

Frank S. Ravitch, *Essay: Complimentary or Competing Freedoms: Government Officials, Religious Freedom and LGBT Rights*, 11 *FIU L. REV.* 163 (2016)(symposium).