



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Ash Kalra  
Councilmember Raul Peralez  
Councilmember Margie Matthews  
Councilmember Magdalena Carrasco

**SUBJECT:** CITY OF SAN JOSE ACTIONS  
IN OPPOSITION TO STATE OF  
INDIANA'S RELIGIOUS FREEDOM  
RESTORATION ACT

**DATE:** 4/2/15

Approved

*Ash Kalra*  
*Margie Matthews*

Date

*4-2-15*

*4/2/15*

## RECOMMENDATION

Direct City Manager to expedite the preparation of a Resolution with the following goals:

- 1) Ban all city travel and business with the State of Indiana unless the State through legislative or executive action repeals the Religious Freedom Restoration Act;
- 2) Ban travel to any other State which passes similar legislation;
- 3) Call on Governor Brown and California Legislature to follow the lead of other States and a number of other California municipalities and corporations in condemning the actions of the State of Indiana.

## BACKGROUND

Last month, Indian Governor Mike Pence signed into law Senate Bill 101 (SB 101): the Religious Freedom Restoration Act. In the days that have followed, a number of State and Municipal governments have expressed outrage at the new law that is set to take effect on July 1st. The proponents of the Bill argue that the new law simply protects religious freedom and is similar to a law of the same name passed by Congress and signed into law by President Clinton in 1993. Opponents of the law are deeply concerned that the law will allow for private discrimination by commercial enterprises against members of the LGBT community. An analysis of the law passed shows that the distinctions in the Indiana law are legitimate causes for concern from all Americans who are not anxious to return to the days of legal private discrimination prior to the Civil Rights Act of 1964.

There are two primary distinctions in the Indiana law that differentiate it from both previously passed Federal legislation as well as other states that have similar laws on the books. First, "the

Indiana law explicitly allows any for-profit business to assert a right to 'the free exercise of religion.' The federal RFRA doesn't contain such language, and neither does any of the state RFRA's except South Carolina's; in fact, Louisiana and Pennsylvania, explicitly exclude for-profit businesses from the protection of their RFRA's."<sup>1</sup>

"The new Indiana statute also contains this odd language: 'A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding.' Neither the federal RFRA, nor 18 of the 19 state statutes cited by the Post, says anything like this; only the Texas RFRA, passed in 1999, contains similar language."<sup>2</sup>

In essence, it gives a legal defense to a business accused of denying business to someone based upon their religious beliefs. This is the same defense that was used to deny service to people of color during the march for freedom and equality during the Civil Rights era. And, there is a real risk that the parameters the broad manner in which the law was written would also lead to arguments to refuse housing or other public accommodations. And, the pleas of ignorance that have come from the Governor since the national outcry against the discriminatory law belies the fact that Democrats offered an Amendment to the Bill, supported by dozens of legal scholars, prior to its passage that would have clarified that the Bill did not permit businesses to discriminate. Unfortunately, the Amendment was voted down by the Republican majority.

Subsequently to Indiana passing SB 101, the Arkansas legislature has passed a similar law. Thankfully, it appears that the Governor of Arkansas seems to be considering vetoing the law unless changes are made. However, in the event that the Governor signs the law or subsequent states consider far reaching legislations like Indiana, we should be prepared to respond.

In addition to cities, the states of Connecticut, Washington and New York have banned travel to Indiana unless the discriminatory nature of the law is resolved or the law is repealed altogether. As the 3rd largest city in California we should call on our Governor and State Legislature to pass similar legislation until this matter is favorably resolved.

The City of San José should stand for fair treatment and equality for all residents. When any city or state in our union makes efforts to curtail the equal rights under the law that all people are entitled to, it is incumbent upon us to stand up and speak out. What Indiana has done matters to all Americans, particularly as it pertains to the underlying effort to undermine the rights of the LGBT community. Despite the many victories in recent years in the realm of marriage equality, there are still many states that prohibit same-sex marriage. Although the march for equality continues, we must be vigilant against any effort to impose second-class citizenship on members of the LGBT community. The Civil Rights that we enjoy were fought for and should never be taken for granted. Any effort to provide any opening to allow for legalized discrimination, therefore, should be vigorously defeated.

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<sup>1</sup> Garrett Epps, "What Makes Indiana's Religious-Freedom Law Different?" *The Atlantic*, March 30, 2015 (online)

<sup>2</sup> Ibid.