

Religious beliefs give no right to discriminate against gays The Times April 24, 2007

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The debate in the House of Lords last month on the Equality Act (Sexual Orientation) Regulations 2007 raised in acute form the important question of what degree of protection our society should recognise for religious opinions. The House of Lords was correct to reject the contention by religious groups that further exceptions should be recognised to the duty not to discriminate on the ground of a person's sexual orientation.

The regulations implement the Equality Act 2006 by prohibiting discrimination on the ground of sexual orientation in the provision of goods and services to the public (for example, in shops and hotels), in education and in the rental and sale of premises. They prohibit a restaurant from throwing out a gay couple for holding hands, or a hotel from refusing two lesbians a double room or a school excluding a child because of the sexual orientation of one or both of the parents.

Regulation 14 exempts religious and belief organisations, and those acting under their auspices, where that is necessary to comply with the doctrines of the organisation or to avoid conflicting with the strongly held beliefs of a significant number of a religion's followers. So it will remain lawful for a church or mosque to refuse membership of its congregation to a gay man in accordance with its religious doctrine.

A priest will not be required by law to bless the union of a lesbian couple.

However, the draft regulations stated that where a religious organisation provides services to the community on a commercial basis or on behalf of and under contract with a public authority, then it must comply with the principles of nondiscrimination. A concession was given to faith-based adoption and fostering agencies so that the new regulations will only come into force on January 1, 2009 after a transition period of 20 months. But thereafter, a Roman Catholic adoption agency must not refuse to consider homosexual parents. It must act by reference to the best interests of the child.

Dr Rowan Williams, the Archbishop of Canterbury, and Cardinal Cormac Murphy-O'Connor, the Roman Catholic Archbishop of Westminster, each wrote to the Prime Minister objecting to the regulations as an infringement of religious freedom. The Archbishop of York complained during the debate in the House of Lords on March 21 that the regulations create a "legal sausage machine", requiring everyone to "come out the other end, sanitised and with our consciences surgically removed". The Bishop of Southwell and Nottingham objected that the regulations were "a new kind of secular dogmatism".

You have a right to believe whatever you like, however absurd it may be. A judge cannot determine whether (as the Vatican is now suggesting) the late Pope John Paul II recently performed a miracle by interceding from Heaven to cure a nun of her Parkinson's disease after she wrote his name on a piece of paper. Courts will not decide whether, as Hamlet observed: "*There are more things in heaven and earth, Horatio, Than are dreamt of in your philosophy.*"

The regulations do not prevent anyone from believing whatever they like for whatever reason they wish. But although freedom of belief is absolute, freedom to manifest belief is strictly limited. This was confirmed by the law lords last year when rejecting the claim of the schoolgirl who wanted to wear a particular form of religious dress in defiance of the school uniform policy.

The right not to be discriminated against on the ground of sexual orientation is a fundamental right, any interference with which requires substantial justification. That the discriminator is acting by reference to his or her religious beliefs cannot of itself provide a justification, any more than if the provider of the services (perhaps Boers who emigrated from South Africa after the National Party lost power) have a

religious objection to dealing with people of a different race.

No doubt the State should interfere with the manifestation of the religious beliefs of others only where that is justified. But the religious objector is entitled to no special protection in this respect. If I run an adoption agency and believe that it is wrong for children to be adopted by homosexuals, the fact that my views are based on logic, careful study of reports, and an expertise in child psychology cannot make my beliefs less entitled to respect than if they are based on a belief that God told Moses or Muhammad the right answer.

These are increasingly important issues as religion continues to promote strong feelings in large numbers of adherents. One of the gravest challenges faced by an open society is how human rights law should respond to those seeking to use freedom of religion to impose a closed society on others.

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