

BANNED IN BOSTON

The coming conflict between same-sex marriage and religious liberty.

by Maggie Gallagher

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“Twenty years ago it would have been inconceivable that a Christian or Jewish organization that opposed gay marriage might be treated as racist in the public square. Today? It's just not clear.”

“[Anthony] Picarello summarizes: "All the scholars we got together see a problem; they all see a conflict coming. They differ on how it should be resolved and who should win, but they all see a conflict coming.”

“But I ask [Marc Stern] point blank what he would say to people who dismiss the threat to free exercise of religion as evangelical hysteria. "It's not hysteria, this is very real," he tells me, "Boston Catholic Charities shows that.”

“Precisely because support for marriage is public policy, once marriage includes gay couples, groups who oppose gay marriage are likely to be judged in violation of public policy, triggering a host of negative consequences, including the loss of tax-exempt status.”

"In Massachusetts I'd be very worried," [Marc] Stern says finally. The churches themselves might have a First Amendment defense if a state government or state courts tried to withdraw their exemption, he says, but "the parachurch institutions [affiliated organizations such as Catholic Charities and United Jewish Communities] are very much at risk and may be put out of business because of the licensing issues, or for these other reasons--it's very unclear. None of us nonprofits can function without [state] tax exemption. As a practical matter, any large charity needs that real estate tax exemption.”

"The impact will be severe and pervasive," [Anthony] Picarello says flatly. "This is going to affect every aspect of church-state relations." Recent years, he predicts, will be looked back on as a time of relative peace between church and state, one where people had the luxury of litigating cases about things like the Ten Commandments in courthouses. In times of relative peace, says Picarello, people don't even notice that "the church is surrounded on all sides by the state; that church and state butt up against each other. The boundaries are usually peaceful, so it's easy sometimes to forget they are there. But because marriage affects just about every area of the law, gay marriage is going to create a point of conflict at every point around the perimeter.”

“Marc Stern is looking more and more like a reluctant prophet: ‘It's going to be a train wreck... A very dangerous train wreck.’ ”