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“Religious freedom” and the assault on democratic rights in America

Eric London

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The two statutes passed in recent days by the legislatures of Indiana and Arkansas are milestones in an anti-democratic effort to legalize discrimination in the US under the false banner of religious freedom.

The laws in the original form passed by the state legislatures overtly establish a special legal privilege for business owners to invoke their religious beliefs in court as justification for discriminating against clients or employees. Though media coverage has focused exclusively on the impact of the statutes on same-sex couples, the laws have far broader implications for the population as a whole.

At the urging of Republican Governor Mike Pence, the Republican-dominated Indiana legislature met Thursday to approve an amendment to its Religious Freedom Restoration Act (RFRA), including language stating that the law “bars discrimination based on factors that include race, disability, sexual orientation, gender identity or United States military service.”

Pence had signed the original version of the bill into law on March 26, but was forced to backtrack after he came under pressure from corporations and business organizations demanding that modifications be made.

In Arkansas, an initial bill passed this week was held up by Republican Governor Asa Hutchinson, who, having received his marching orders from Arkansas-based Walmart, announced he would veto the legislation unless it was modified. The Arkansas legislature subsequently added a clause prohibiting businesses from using the statute as a legal defense when sued by individuals for discrimination. The amended Arkansas bill does not include specific anti-discrimination language.

The supposed “fixes” being incorporated into the new versions of the bills do not address the more fundamental assault on democratic principles involved in the legislation. At bottom, the statutes rely on a legal principle that was rejected by the Supreme Court in decisions such as *Heart of Atlanta Hotel v. US* (1964) and *Katzenbach v. McClung* (1964), which banned racially segregated businesses in the South.

Relying on the same basic argument as the proponents of segregation, the Indiana and Arkansas statutes implicitly revive the claim that private property rights allow business owners to refuse to provide service to people on the basis of their race, religion or sexual orientation. The underlying premise and logic of these bills, even in their amended form, constitute a fundamental attack on democratic rights.

The thinly veiled use of “religious beliefs” by the framers of the Indiana and Arkansas statutes to justify discrimination not only contradicts the Supreme Court decisions of the 1960s, it flies in the face of the legal secularism on the basis of which the American Republic was founded. The separation of church and state enunciated in the first sentence of the First Amendment proscribes legislatures from establishing two-tiered legal systems, where special rights and privileges are made available to the religious. The attack on anti-discrimination laws is part of a broader attack on the gains made through the social struggles of the 1950s and 1960s against segregation. When the Supreme Court in 2013 struck down the enforcement mechanism of the Voting Rights Act of 1965—passed to ensure that the rights of African American voters in formerly segregated states were protected—the Democratic Party made no serious attempt to pass legislation restoring the critical provisions of the act.

In fact, the political soil out of which the Indiana and Arkansas statutes grew was cultivated by the Democratic Party. It was President Bill Clinton who sought the passage of the federal Religious Freedom Restoration Act and signed it into law in 1993. The federal RFRA was sponsored by Democrats Edward Kennedy and Charles Schumer and supported by a conglomerate of religious groups, including the Traditional Values Coalition, the Christian Legal Society, the Baptist Joint Committee for Religious Liberty and the National Association of Evangelicals. President Obama’s term in office has been marked by repeated concessions to religious organizations. In 2011 and again in 2013, the administration waged a campaign to prevent young women from accessing emergency contraceptives.

In 2012, Obama exempted churches from the requirement that employers provide contraceptives as part of their health insurance plans under Obamacare, and in 2013 he extended the exemption to all religious non-profit entities. It was, in part, based on the administration’s repeated extension of the contraception exemption that the Supreme Court, in its 2014 *Burwell v. Hobby*

Lobby Stores Inc. ruling, broadened the exemption further to include closely held for-profit corporations.

The Indiana and Arkansas statutes are the direct products of the *Hobby Lobby* decision. By opening the doors to for-profit corporations to assert “religious liberties” claims, the decision paved the way for corporations to drastically expand their powers over consumers and employees.

The opposition of corporations such as Walmart, Apple, Microsoft and others to the original Indiana and Arkansas laws was not motivated by a commitment to democratic rights. These corporations, along with sections of the media and Democratic politicians, opposed certain elements of the RFRA statutes solely on the limited grounds that they targeted gay marriage and same-sex couples. The laws are certainly a reactionary attack on the democratic right to marry whomever one chooses, but the nearly exclusive focus on the issue of gay marriage obscures the broader and more fundamental assault on democratic principles contained in the laws.

The corporate opposition on this question reflects the degree to which gender and identity politics have been incorporated into the ideology and modus operandi of capitalist rule, and are used to cover over the more fundamental class divisions in society—as well as providing a political cover for the corporate and government assault on the social conditions and democratic rights of the working class.

Much of the corporate and political establishment is fixated on issues such as gay marriage that affect a very small and generally more privileged social layer, but they fail to bat an eye over the effective suspension of habeas corpus, the indefinite detention of prisoners without trial, the state assassination of US citizens, the attacks on journalists and on free speech and assembly, the massive spying conducted by the National Security Agency, the jailing and persecution of whistleblowers, the de facto legal immunity granted government officials guilty of torture, the transformation of cities into militarized zones, and the impunity with which police brutalize and murder workers and youth

The fundamental lesson that must be drawn is that no democratic right is secure in a society as riven by social inequality as the United States. This essential fact of political and social life is underscored by another event that recently took place in Indiana. On Monday, a judge sentenced a 33-year-old woman, Purvi Patel, to a 20-year prison sentence for feticide. Patel, who had a miscarriage in 2013, was arrested after her doctor informed police that she may have procured abortifacient medication to terminate her pregnancy. She was hauled out of the courtroom in chains to begin her prison term.

Democracy is incompatible with a society dominated by an unaccountable financial aristocracy and characterized by massive and ever widening levels of social inequality.

The fight to defend democratic rights cannot be entrusted to the very corporations and political parties responsible for transforming the United States into a militarized wasteland of poverty and inequality. Such a struggle can be waged only by the working class, in direct opposition to the entire political establishment, through the struggle for socialism.

