

# VERDICT

LEGAL ANALYSIS AND COMMENTARY FROM JUSTIA

## Rabbis With a Conscience Make History

28 APR 2016 | **MARCI A. HAMILTON**



POSTED IN: **CRIMINAL LAW**

So far in the 21<sup>st</sup> century, U.S. religious leaders are best known for negative positions like their demands for a “free exercise right” to **discriminate** against the beleaguered minority of LGBTQ individuals, a First Amendment right to discriminate against their **own ministers**, a right of secular employers to **deprive women of reproductive health care choices** in their employment **benefit plans**, and, last but not least, child endangerment, from **starvation**, to **neglect** to **sex abuse**. Small wonder that **institutional religious affiliation** has been dropping. At the same time, the headlines persistently cover religiously-fueled global terrorism, which is a sobering reminder of the atrocities that religion can justify, as we know from even a cursory study of world history.

Others have tried to paint the contemporary push for extreme religious liberty as a new “Great Awakening” when in fact it has been a time of global darkening for the vulnerable, including LGBTQ individuals, women, and children.

The Supreme Court has abetted some of this by failing to stand up for its power to interpret the First Amendment and instead letting Congress, via the Religious Freedom Restoration Act, **unilaterally set free exercise standards**. Moreover, the Court acquiesced in RFRA’s allowing the courts to become unaccountable policymakers, letting a majority of Justices hand employers **an unnecessarily broad right to discriminate** against their employees well beyond the category of clergy in *Hosanna Tabor*. Finally, at least while Justice Antonin Scalia was on the Supreme Court, a majority significantly narrowed the indispensable separation of church and state by carving back the Establishment Clause’s **standing doctrine** and opening **doors** to and more **government-backed prayer**.

Thus, the Court with Scalia responded to the era of darkening by reinforcing the voices of negativity, discrimination, and oppression. A majority often seemed to have abandoned the pose of blind (fair) Lady Justice and instead flirted with theocracy. The one bright spot has been the Supreme Court’s majority affirming the fundamental right for same-sex couples to marry, but the hysterical voices in dissent in *Windsor* and *Obergefell* no doubt mobilized and empowered the ugly developments we now see in **North Carolina** and **Mississippi**.

The best way to counter the negativity that some vocal religious leaders have imposed on the United States in the 21<sup>st</sup> century is for other religious and civil rights leaders to stand up for the oppressed, whether they be LGBTQ individuals, employees, women, or children. That has happened for adults,

with the LGBTQ community and **employees** finding support from **leading religious leaders** and **civil rights groups**, and women and female employees receiving the support of and **civil rights groups**. Children, not so much.

A burst of fresh air blew into the United States this week when leading religious leaders—including many rabbis—joined forces to announce their *support* for child sex abuse victims' access to justice. In a letter published online on Tuesday, April 26, 2016, 62 Jewish rabbis and leaders signed a **letter** calling for New York to pass the Child Victims Act, which for almost a decade has been the victim of **lobbying** by the Catholic bishops and Agudath Israel of America. The only religious organization to stand up publicly for access to justice for child sex abuse victims before now was the **National Black Church Initiative**.

The NY Child Victims Act was one of the early measures introduced in the states to create access to justice for child sex abuse victims by eliminating and reviving expired statutes of limitations (“SOLs”). Why is it needed? Because **New York is one of the most retrogressive** on child sex abuse. While **Assemblywoman Marge Markey** has been its stalwart supporter in the Assembly and succeeded in getting it passed four times, it has been introduced and deep-sixed by New York senators more often than any other SOL reform in the United States—as they knelt to the bishops and rabbis demanding protection from their own bad acts. The tragic irony is that New York bishops and ultra-orthodox rabbis have been defeating in Albany the very child sex abuse victims they created while at the same time blocking access to justice for their congregants abused by family members, the largest cohort, and others.

Since the turn of the century, there has been a global movement, including in the U.S., to erase the arbitrary statutes of limitations that have dogged child

sex abuse victims and protected predators and aided institutions that callously ignored the signs of child suffering and endangerment. Again and again, Catholic bishops have fought tooth and nail to keep their secrets and retain the short SOL status quo: a legal regime that is inherently dangerous for children. It's hard to understand at first but it's true: Adults prefer and protect adults, so they just didn't care. Underfunded and non-cohesive children's advocates (who are, in their defense, overtaxed with the pressing immediate need to provide direct services to as many children and victims as possible), and the lonely voices of the victims have been no match for the bishops' (and in New York, ultra-Orthodox rabbis') power except in some particular states or countries.

It is heartening to read the list of rabbis who now stand with child sex abuse survivors [in favor of the New York Child Victims Act](#), saying:

Many rabbis and Jewish leaders have seen in our communities the wounds caused by sexual predators; wounds whose pain cannot be overstated, wounds that may never be fully healed. We also painfully acknowledge that rather than being a source of healing for victims of child sexual abuse, religious institutions have too often been a part of the problem.

This rabbinical mea culpa is not the groundbreaking moment, though—plenty of Catholic bishops and a few Protestant officials have apologized when forced into a corner by litigation. What is groundbreaking is that these religious leaders are standing up for justice for victims even before a case is filed. That is a stand for civil rights. There is a pleasant whiff of the 1960s Civil Rights Movement in the rabbis' letter.

We need many more religious leaders (and adults generally) to take up the civil rights banner to fight the epidemic of human rights violations

committed against children here in the United States. These Rabbis with a conscience should be remembered as pioneering heroes in the civil rights movement for children.

POSTED IN: [CRIMINAL LAW](#), [INJURY LAW](#)

TAGS: [CHILD SEX ABUSE](#), [LEGAL](#), [NEW YORK](#)

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