

Questions & Answers on The Religious Right to Abortion



Should religious-right-to-abortion suits be filed in every state?



Litigation isn't a one-size-fits-all strategy. Whether it makes sense to bring a religious-right-to-abortion suit in a particular state depends, among many other things, on both the abortion and religious liberty laws in the state, how those laws have been interpreted by courts and enforced by the government, and the current judges serving in the state.

It's important to remember that all litigation carries some risk; while lawsuits can, of course, make changes for the better, they also have the potential to make things *worse*—for example, by giving a court the chance to revisit a previous, helpful abortion rights decision. If you are considering filing a lawsuit, it's therefore crucial to start by checking in with a variety of stakeholders, including experts in both religion law and your state's abortion law, as well as grassroots groups like local abortion funds. **You are encouraged to reach out to the Law, Rights, and Religion Project (LRRP) with any questions at lawrightsreligion@law.columbia.edu.**



What laws are being used to claim a right to abortion?



Today, most religious-right-to-abortion lawsuits are being brought under state law. There are two basic ways such claims can be made: “free exercise” claims and “anti-establishment” claims. Many suits bring *both* claims.

Free exercise claims argue that an abortion ban wrongfully prevents those bringing the suit (the “plaintiffs”) from practicing their religion, in violation of 1) a state’s constitution and/or 2) a state law, often called a “Religious Freedom Restoration Act” (RFRA). RFRA provides a right to exemptions from laws that violate one’s religious beliefs. About half the states have passed RFRA, which use a complex, multi-step test to determine when a religious exemption should be granted or denied. If you win a free exercise suit, the challenged law (here, an abortion ban) is usually not overturned for everyone. Rather, the plaintiffs typically get a personal religious exemption from the law. While this is unusual in a religious liberty lawsuit, it may be possible for a larger number of plaintiffs to obtain exemptions if a RFRA suit is certified as a “class action.”

Anti-establishment claims argue that an abortion ban wrongfully advances or favors one religious belief over another, in violation of the right to separation of church and state under a state’s constitution. If you win an anti-establishment claim, it overturns the law altogether.



What will the Supreme Court, or other courts, do with these suits?



As mentioned above, most suits are now being brought under state rather than federal law.

That means the Supreme Court would not have an opportunity to rule on these claims. It's impossible to predict with certainty how state supreme courts considering religious-right-to-abortion suits will rule; while religious liberty rights have been interpreted very broadly in recent years in cases brought primarily by conservative Christians, most states with abortion bans also have conservative judges on their state supreme courts, many of whom strongly oppose abortion.



Have religious-right-to-abortion claims ever been made before?



Yes. Both free exercise and anti-establishment claims challenging abortion restrictions have been made numerous times, as early as 1970. Many of these claims are cataloged in LRRP's report "A Religious Right to Abortion: Legal History and Analysis" (see the link at the end of this Q&A).

Unlike current suits, these earlier claims were typically made in federal rather than state courts.

Nearly all free exercise suits were dismissed for various reasons before courts issued any significant decision in them. For example, the New York legislature voted to legalize abortion before any court ruled on the religious-right-to-abortion lawsuit that had been filed in that state.

In the 1980 case *Harris v. McCrae*, the Supreme Court ruled that federal funding restrictions on abortion did not violate the separation of church and state. It ruled that "the fact that the funding restrictions... may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause." However, this ruling does not prevent state judges from taking a different approach to the interpretation of their states' constitutions. Moreover, there may be stronger evidence that certain state abortion laws were passed with an improper religious motive, such as where lawmakers have cited their religious beliefs as inspiration for passing an abortion ban.



What have different religious denominations said about the religious right to abortion?



The idea that religious freedom includes a right to access abortion care actually came from religious groups themselves, not lawyers. Further, these claims are not new. They have been

articulated for decades. To give just a few examples of many: in 1983 the Presbyterian Church (USA) issued a statement that national policy on abortion should "carefully guard[] separation of church and state with respect for the freedom of the individual's conscience." In 1984, the Central Conference of American Rabbis said that "Freedom of choice in the issue of abortion is directly related to the First Amendment's guarantee of religious freedom." In 1987, the Unitarian Universalist Association proclaimed that any legislative attempt to restrict abortion access is "an infringement of the principle of separation of church and state." And in 1991, Evangelical Lutheran Church in America stated, "for some, the question of pregnancy and abortion is not a

matter for governmental interference, but a matter of religious liberty and freedom of conscience protected by the First Amendment.”



I want to get more involved in reproductive rights work.

What else can I do?



There are many ways for people of faith to get involved in reproductive health, rights, and justice work. One of the most impactful things you can do is donate to an organization that provides or facilitates abortion care, such as abortion funds or practical support organizations. Many such organizations are listed on the websites of the National Network of Abortion Funds and Apiary for Practical Support. There are also numerous national and local organizations—both secular and faith-based—that engage in political advocacy, organizing, education, practical support, and other activities to advance abortion rights and access. See the list of organizations below for more information.



How can I learn more?

For much more detail on religious-right-to-abortion lawsuits, read LRRP’s report “A Religious Right to Abortion: Legal History and Analysis” at tinyurl.com/RRTALA.



You can sign up for LRRP’s mailing list at lawrightsreligion.law.columbia.edu and follow us on Twitter at [@LawRtsReligion](https://twitter.com/LawRtsReligion) for updates.

Abortion Funds & Practical Support Organizations

National Network of Abortion Funds | abortionfunds.org/funds

Abortion funds are local, grassroots organizations developed to support the needs of their communities. Funds may distribute financial support for abortion procedures, abortion pills, transportation and lodging when travel is required, childcare, doula and emotional support, or other needs. Find your nearest abortion fund on the website of the National Network of Abortion Funds.



Apiary for Practical Support | apiaryps.org/pso-list

Practical support is logistical assistance for people seeking abortion care. It can include travel, lodging, childcare, meal assistance, direct cash assistance, and more. Find your nearest practical support organization on the website of Apiary for Practical Support.

National Faith-Based Reproductive Rights Organizations

Catholics for Choice | catholicsforchoice.org

Catholics for Choice is a nonprofit organization that lifts up the voices of the majority of Catholics who believe in reproductive freedom. Since 1973, Catholics for Choice has worked in the U.S. and abroad to ensure that all people have access to safe and affordable reproductive health care services and to infuse its core values into public policy, community life and Catholic social thinking and teaching.



Faith Aloud | faithaloud.org

Faith Aloud is dedicated to providing compassionate spiritual and religious support for people in all their decisions about pregnancy, parenting, abortion, and adoption.

Faith Aloud provides nonjudgmental spiritual counseling to people across the country on its free, confidential clergy counseling line.

HEART | hearttogrow.org/sexual-and-reproductive-justice

HEART works to promote sexual health, uproot gendered violence, and advance reproductive justice by establishing choice and access for the most impacted Muslims.

HEART engages in in-person and virtual health education, direct service, advocacy, research on Muslim communities, and training and technical assistance for organizations serving Muslim communities.



NCJW | ncjw.org

National Council of Jewish Women (NCJW) | ncjw.org

National Council of Jewish Women (NCJW) is a grassroots organization of volunteers and advocates. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's "Rabbis for Repro" program helps Jewish leaders commit to using their voice to teach, write, and speak out about reproductive freedom.

Religious Coalition for Reproductive Choice (RCRC) | rcrc.org

Rooted in sacred, moral, and reproductive justice values, the Religious Coalition for Reproductive Choice (RCRC) is a multifaith, intersectional, and antiracist movement for reproductive freedom and dignity leading in spiritual companionship, curating frameworks for faith leaders, and training the next generation of activists. RCRC's activities include the Religion & Repro Learning Center, compassionate care workshops, clinic blessings, and the Spiritual Youth for Reproductive Freedom (SYRF) program.



Side With Love | sidewithlove.org

Sponsored by the Unitarian Universalist Association, Side with Love is a public advocacy campaign that seeks to harness love's power to stop oppression. Side With Love's UPLIFT Action is a new campaign organizing for LGBTQIA+, Gender, and Reproductive Justice.

SisterSong | sistersong.net/

SisterSong is a Southern based, national membership organization whose purpose is to build an effective network of individuals and organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communities. SisterSong engages in faith organizing as well as reproductive justice training and leadership development, policy initiatives, education, and advocacy.



Spiritual Alliance of Communities for Reproductive Dignity (SACReD) | sacreddignity.org



SACReD is an alliance of organizers, religious leaders, academics, and congregations working together to advance reproductive justice through congregational designation and community building programs. SACReD equips, educates, and engages faith communities to utilize Reproductive Justice, liberative theologies & spiritualities, and community organizing in order to end bodily oppression and affirm the wholeness of all people.

Women of Reform Judaism (WRJ)/Religious Action Center of Reform Judaism (RAC)

wrj.org/social-justice/reproductive-health-rights

Women of Reform Judaism (WRJ) is a network of Jewish women working together to empower women and communities through the bonds of sisterhood, spirituality, and social justice.

Religious Action Center of Reform Judaism (RAC) works to educate, inspire, and mobilize the Reform Jewish Movement to advocate for social justice. WRJ and RAC have partnered on the WRJ-RAC Reproductive Health & Rights Campaign to provide an organizing structure for congregations, women's groups, and other Reform Jewish communities to take collective action for reproductive health and rights on a local, state, provincial, and federal level.



State and Local Faith-Based Reproductive Rights Organizations

- **Multiple States:** National Council for Jewish Women Local Chapters
- **Florida:** Florida Interfaith Coalition for Reproductive Health & Justice
- **Illinois:** Religious Coalition for Reproductive Choice - Illinois
- **Indiana:** Indiana Religious Coalition for Reproductive Choice
- **Kentucky:** Kentucky Religious Coalition for Reproductive Choice
- **Michigan:** Michigan Unitarian Universalist Social Justice Network
- **Minnesota:** Minnesota Religious Coalition for Reproductive Choice
- **Mississippi:** Faith in Women
- **Nebraska:** Nebraska Religious Council for Reproductive Freedom
- **New Mexico:** New Mexico Religious Coalition for Reproductive Choice
- **New York:** Concerned Clergy for Choice
- **Ohio:** Faith Choice Ohio
- **Oklahoma:** Roe Fund of the Oklahoma Religious Coalition for Reproductive Choice
- **Pennsylvania:** Pennsylvania Religious Coalition for Reproductive Justice
- **Rhode Island:** Rhode Island Religious Coalition for Reproductive Freedom
- **Tennessee:** SisterReach
- **Texas:** Just Texas
- **Wisconsin:** Wisconsin Religious Coalition for Reproductive Choice

For questions, contact the Law, Rights, and Religion Project at LawRightsReligion@law.columbia.edu.