Parading the Horribles:  
The Risks of Expanding Religious Exemptions

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People of faith now have a constitutional right to practice their religion—even when doing so conflicts with a government law or policy—that is more rigorously protected than nearly any other right. Some states have passed bills that provide an even broader right to such “religious exemptions” from the law than provided under the U.S. Constitution. Many more such bills have been introduced and await consideration.

Among the most expansive state exemption bills are those modeled on the federal Religious Freedom Restoration Act (RFRA), which provides a robust framework for gaining religious exemptions from any law, policy, or act of the federal government. State RFRA-style laws provide a similar means of gaining religious exemptions from state and local policies. South Dakota and Montana passed RFRAs in 2021, the first since the contentious battle over Indiana’s RFRA in 2015. A third state, Arkansas, will vote on a referendum in 2022 that would incorporate RFRA-style language into its state constitution. Advocates expect a concerted effort over the next few years to pass RFRAs in additional states. Other, somewhat narrower exemption bills include those (introduced in the wake of the COVID-19 pandemic) that exempt religious activities from public health laws, and bills that allow medical providers to refuse certain types of health care, such as contraception.

This article corrects the common misconception that religious exemption measures pose a threat to only a narrow set of issues—namely LGBTQ and reproductive health. The continual expansion of the right to religious exemptions has been granted at the expense of countless rights and liberties of others, far beyond these two issues. By citing real cases, we demonstrate that nearly any law or policy, including those protecting crucial interests like workers’ rights, public health, environmental welfare, emergency response, and religious

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1 This explainer was made possible with the support of the Rights, Faith, and Democracy Collaborative of the Proteus Fund. Thanks to Alison Gill and Dan Furmansky for invaluable feedback.
5 For more on public health exemptions, see DANGEROUS EXEMPTIONS, https://www.dangerousexemptions.org/ (last visited Oct. 8, 2021). For more on religious healthcare refusals, see GUTTMACHER INSTITUTE, Refusing to Provide Health Services (Sept. 1, 2021), https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services.
pluralism, may be limited and/or significantly undermined by religious exemptions. Thus, we sideline religious exemptions as solely a “culture war” issue at our own risk.

Those who have long been sounding the alarm about the risks of overly broad exemptions often trot out a so-called “parade of horribles.” An expansive right to exemptions, they claim, could permit religious adherents to ignore countless civil, and even criminal laws. The deeply religious Supreme Court Justice Antonin Scalia once argued that a far-reaching right to exemptions would “open the prospect” of “religious exemptions from civic obligations of almost every conceivable kind.” In response to these hypothetical warnings, many question whether religious groups would really seek exemptions from, say, minimum wage, race discrimination, or child welfare laws.

This article demonstrates the reality: such cases have already been brought, and sometimes won. For years now, exemptions have been used to (among other things) narrow union and workers’ rights, sanction child endangerment, and allow discrimination against racial and other minorities. Thankfully, many of these troubling cases have been decided by lower federal and state courts, meaning that there are still ample opportunities to stem the tide of such extreme and harmful religious exemptions.

It’s also true that many of the exemption demands outlined below were rejected by courts. Over the past decade, however, the legal right to religious exemptions has vastly expanded, the judiciary has become far more conservative, and large and established religious exemption law firms have taken on new issues, such as fighting for religious exemptions from COVID-19 vaccine mandates. It is worth noting that recent Supreme Court decisions radically expanding the scope of First Amendment protections for religious exercise—which were analyzed in a recent report from the Law, Rights, and Religion Project—seemed implausible only a few years ago. Conservative religious liberty advocates lost many such claims, including demands that houses of worship be exempt from COVID stay-at-home orders, when they were first brought. Yet they persisted in pressing the courts to accept their approach to religious liberty, and have been rewarded for the perseverance. Thus, even some of the most egregious religious exemption demands in the “parade of horribles” discussed in this report would have a far better chance of being granted today.

There has been a movement in recent years to pull back this vast expansion of religious exemptions, returning to a standard that robustly protects religious freedom, diversity, and pluralism without threatening the rights and liberties, including the religious rights, of others. For example, the proposed federal Do No Harm Act would limit the application of RFRA in certain contexts in which religious exemptions can injure others—such as public health,

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7 LIBERTY COUNSEL, LEGAL HELP FOR RELIGIOUS EXEMPTIONS FROM VACCINATIONS (2021), https://lc.org/exempt.
workers’ rights, child protection, and civil rights. Several states have eliminated longstanding religious exemptions from mandatory school vaccination laws in order to shield children from contagious disease. Other states have passed various measures to protect patients from religiously motivated denials of medical care. While the “parade of horribles” presents a very real threat, it is not an inevitable one. By correcting our course on religious exemptions, we can secure a far more just and inclusive version of religious freedom.

1. Minimum Wage & Workers’ Rights

In the infamous 1985 case Tony & Susan Alamo Foundation v. Secretary of Labor, the Supreme Court rejected a religious group’s argument that it should be exempted from the Fair Labor Standards Act (FLSA), which among other things establishes a legal minimum wage. The faith-based organization argued that it need not pay its workers at several affiliated businesses, who were described as “drug addicts, derelicts, or criminals before their conversion and rehabilitation by the Foundation,” and who were compensated only with “food, clothing, shelter, and other benefits.” Since then, religious employers have (sometimes successfully) defended against lawsuits alleging violations of minimum wage law by arguing that their workers were not employees but volunteers.

In other cases, religious employers have argued that their workers were ministers, and that ministers should be exempt from the minimum wage. This argument derives from the “ministerial exception” rule that was formally adopted by the Supreme Court in the 2012 case Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC. The ministerial exception limits the application of some employment laws to employees performing religious duties. Since 2012, the Court has broadened the rule to cover more workers. As the Supreme Court expands

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13 Id. at 292.
16 Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC, 565 U.S. 171 (2012).
both the “ministerial exception” from labor laws as well as religious exemptions more generally, we are likely to see an increase in demands for religious exemptions from the FLSA.

In addition to minimum wage laws, religious entities have sought religious exemptions to avoid compliance with bans on child labor, the requirement to pay equal wages and benefits to women, to offer employee health insurance (in a case brought by Liberty University), and to pay workers’ compensation. While many—though not all—of these efforts have failed, religious employers have in some cases gained exemptions from whistleblower protection laws, sexual harassment laws, the requirement to fully fund employee pension plans, and the requirement to cover contraception in employee health insurance plans.

2. Race Discrimination

While claims involving a faith-based right to exclude or segregate Black people in employment, education, and public accommodations were far more common in earlier decades, similar claims are still brought today. Further—although the Supreme Court in 2014 dismissed the idea that broad religious exemptions would lead to race discrimination—several cases have in fact allowed such discrimination by religious entities. In the 2018 case Beans v. Trinity Episcopal School, for example, a judge dismissed a lawsuit that accused a religious school in Texas of failing to protect a student from racist bullying. The court agreed with the school’s claim that it could not “intrude upon a religious institution’s management of its internal affairs.”

17 Brock v. Wendell’s Woodwork, Inc., 867 F2d 196 (4th Cir. 1989); Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518 (6th Cir. 2011); Reich v. Shiloh True Light Church of Christ, 85 F.3d 616 (4th Cir. 1996); Dole v. Shenandoah Baptist Church, 899 F.2d 1389 (4th Cir. 1990); EEOC v. Fremont Christian School, 781 F.2d 1362 (9th Cir. 1986); EEOC v. Tree of Life Christian Schools, 751 F. Supp. 700 (S.D. Ohio 1990); Liberty Univ., Inc. v. Lew, 733 F.3d 72 (4th Cir. 2013); Big Sky Colony, Inc. v. Mont. Dep’t of Labor & Indus., 2012 MT 320 (2012); South Ridge Baptist Church v. Industrial Com. of Ohio, 911 F.2d 1203 (6th Cir. 1990).


20 Burwell v. Hobby Lobby, 573 U.S. at 692-93 (“The principal dissent raises the possibility that discrimination in hiring, for example on the basis of race, might be cloaked as religious practice to escape legal sanction...Our decision today provides no such shield. The Government has a compelling interest in providing an equal opportunity to participate in the workforce without regard to race, and prohibitions on racial discrimination are precisely tailored to achieve that critical goal.”).


22 Suayan, supra note 21.
Other race discrimination suits brought by a **seminary professor** in Kentucky, an addictions counselor at the **Salvation Army** in Michigan, and **others** have also been dismissed because the employees were deemed “ministers” and therefore unprotected by antidiscrimination law.\(^23\) In a 2002 **case** from Wisconsin, a for-profit company’s decision to remove a manager from a role in which he supervised non-white employees because of his membership in a white supremacist church was found to constitute religious discrimination.\(^24\) As the Supreme Court expands the right of religious entities to be exempt from government regulation, the types of workers **considered “ministers,”** and which entities count as “religious” (including some for-profits), more and more institutions could gain a right to engage in—or ignore—racist discrimination and harassment.\(^25\)

### 3. Other Discrimination

Dozens of cases have been brought by institutions seeking the religious right to deny jobs, housing, and services to certain classes of people, including LGBTQ people, religious minorities and atheists, unmarried couples and parents, women, people with disabilities, and others. The results of these cases have been mixed, but some have led to the creation of religious exemptions from civil rights laws of all kinds. In 2019, an Arizona **calligraphy company** won the right to refuse to sell wedding invitations to same-sex couples.\(^26\) Teachers have sued (with **varied outcomes**) for a religious right to refuse to call trans students by their requested names and pronouns.\(^27\) Courts have exempted religious employers from laws prohibiting a **hostile work environment**.\(^28\) In an **ongoing case**, a government-funded child welfare agency in South Carolina is defending its ability to refuse to place children (who are wards of the state) with Catholics.\(^29\) The agency has also **turned away Jews**.\(^30\)

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\(^{28}\) Demkovich, supra note 18.


\(^{30}\) Lydia Currie, I was Barred from Becoming a Foster Parent Because I Am Jewish, JEWISH TELEGRAPHIC AGENCY (Feb. 5, 2019), https://www.jta.org/2019/02/05/opinion/i-was-barred-from-becoming-a-foster-parent-because-i-am-jewish.
Numerous entities have been permitted to fire pregnant, unmarried employees, with other cases ongoing. Landlords in several states have also sued for—and sometimes won—permission to refuse housing to unmarried couples, citing a religious exemption. In 2019, a North Carolina police officer who was fired after refusing to train a female colleague argued that he was religiously obliged to follow the “Billy Graham rule,” which bars unmarried men and women from spending time alone together. The case was later settled. Finally, several ministerial exception cases—including the foundational Hosanna-Tabor case mentioned above—have allowed religious organizations to discriminate against teachers and certain other employees based on age and disability, in violation of the Americans with Disabilities Act and the Age Discrimination in Employment Act.

4. Access to Divorce

Cases have been brought by Christians in Texas, Pennsylvania, Maryland, Connecticut, Kansas, North Dakota, and Oklahoma arguing that no-fault divorce laws violate their right to religious liberty. In Pankoe v. Pankoe, for example, a husband argued that he and his wife had “entered into a Christian marriage contract, which Pennsylvania cannot invalidate.” So far, no state has granted a spouse a religious right to force their partner into a binding “biblical” or “covenant” marriage, although several states have passed laws allowing partners to voluntarily enter a “covenant” marriage with a more restricted right to divorce.
5. Child Welfare

Religious exemption laws in many states have allowed parents to withhold necessary medical care from their children, or provide only “faith healing,” without being charged with neglect. While all U.S. states prohibit child abuse and neglect, over half of states have exemptions for denials of medical care due to religious belief.\(^{38}\) Such denials have led to numerous documented child deaths from treatable conditions.\(^{39}\) A number of states have, over the past several decades, repealed earlier religious exemptions from child neglect laws.\(^{40}\) In recent years, there has been a dedicated effort to repeal Idaho’s medical neglect exemption after a report found numerous instances of preventable childhood deaths in the state.\(^{41}\)

Religious exemption laws and lawsuits have also allowed parents to refuse required child immunizations, and to pull their children out of school before the legal minimum age.\(^{42}\) Moreover, certain religious exemption laws (and lawsuits) shield religiously affiliated schools and childcare facilities from government licensing, regulation, and oversight in ways that can put children at risk.\(^{43}\) For example, it took years of complaints of violent abuse at one religiously affiliated reform school before Alabama passed a law requiring state oversight of such facilities.\(^{44}\)

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6. The Right to Union Organizing

Faith-based colleges have been granted religious exemptions from provisions of the National Labor Relations Act (NLRA) requiring them to recognize unions. In 2020, for example, a federal court ruled that the National Labor Relations Board, which enforces U.S. labor laws, had no jurisdiction over a Catholic university in Pennsylvania, stymying an effort to unionize adjunct faculty members. This ruling could easily be extended to other large, religiously affiliated organizations such as religious hospital systems, which employ thousands of people. Moreover, recent court cases have extended some religious exemption policies to cover even for-profit companies. In Burwell v. Hobby Lobby, the Supreme Court held that RFRA exempted a large, for-profit chain of crafting stores from a provision of the Affordable Care Act mandating that employers cover contraceptives in employee health plans.

Thus, we may see exceptions from labor laws like the NLRA extend far beyond nonprofit religious schools. Enormous faith-based healthcare systems and other nonprofits—and even for-profit companies with religious owners—could claim that recognizing unions would violate their religious faith.

7. Public Services

Several cases have been brought by public employees who, for religious reasons, refuse to perform certain duties of their position. In 2014, for example, a police captain in Oklahoma brought suit alleging a religious objection to attending a “Law Enforcement Appreciation Day” at a mosque. Among many other cases, two police officers refused to stand guard outside an abortion clinic or arrest anti-abortion protestors, a public school biology teacher refused to teach evolution, and an IRS agent refused to certify groups that supported abortion or LGBTQ rights as tax exempt. Since marriage equality was broadly recognized in 2015, clerks and judges have brought suits demanding religious exemptions from the duty to marry same-sex couples.

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46 Duquesne Univ. of the Holy Spirit v. N.L.R.B., 947 F.3d 824 (5th Cir. 2020).
48 Caroline Mala Corbin, Government Employee Religion, 49 ARIZ. ST. L.J. 1193.
49 Fields v. City of Tulsa, 753 F.3d 1000 (10th Cir. 2014).
51 High Court Won’t Take Up Ex-Kentucky Clerk Kim Davis’ Case, AP NEWS (Oct. 5, 2020), https://apnews.com/article/lawsuits-kentucky-us-supreme-court-kim-davis-marriage-9d57d84ffa0b9a7fc9bbb42c6f7a1b24; Patrick Dorrian, Judge Who Won’t Oversee Same-Sex Weddings Wants Suit
8. Public Health

Almost every state allows religious exemptions from vaccination requirements for schoolchildren. Over the past several years, however, several states have repealed religious exemptions from their vaccine laws in order to reduce the transmission of serious diseases, including measles.

In most states and at the federal level, religious exemption laws also shield medical providers, including large hospital systems, which refuse to offer certain health services – most commonly contraception, sterilization, and abortion. These exemptions have even been applied to withhold care during medical emergencies, such as when a patient who is miscarrying needs to fully remove a pregnancy to prevent excessive bleeding and possible sepsis. When one patient was turned away from a Catholic hospital in Michigan while miscarrying, she sued and subsequently lost her case, in part because the court determined it did not have jurisdiction over the religious defendants.

Advocates in several states have fought for a number of different legislative measures to help mitigate the harms of religious medical refusals. For example, in 2017, a bill was introduced in New Mexico to require hospitals to provide reproductive healthcare during a medical emergency regardless of their religious identity. In 2019, Washington enacted a law requiring hospitals to provide notice of what reproductive health services are available at their facilities. And in 2021, Oregon passed the “Equal Access to Care Act,” which among other things will

54 GUTTMACHER INSTITUTE, REFUSING TO PROVIDE HEALTH SERVICES (2021), https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services.
58 Rutman, supra note 11.
create a rigorous review process for any healthcare mergers (including ones involving religiously owned corporations) that could impact access to reproductive healthcare.\textsuperscript{59}

While some states are passing measures to reduce the impact of religious exemptions on public health, other states are creating new exemptions. In the wake of the COVID-19 pandemic, several states have introduced or passed laws broadly excusing religious activities and institutions from compliance with public health requirements.\textsuperscript{60} For example, in 2021, Texas passed two separate laws prohibiting public officials from ordering religious organizations to close – even during an emergency or disaster.\textsuperscript{61} In addition to state laws, dozens of lawsuits were filed during the pandemic to prevent government officials from enforcing stay-at-home health orders on religious activities.\textsuperscript{62} In April 2021, the Supreme Court issued a ruling in one of these cases that hugely expanded the right to religious exemptions – even from laws intended to prevent the spread of a deadly disease.\textsuperscript{63} Since then, new COVID religious exemption cases have been brought, including by a Catholic school in Michigan challenging a COVID mask mandate.\textsuperscript{64} Students have also sued for—and in at least one case, initially won—exemptions from COVID-19 vaccine mandates.\textsuperscript{65}

9. Criminal Laws

Religious exemption claims have been brought by claimants seeking a faith-based right to engage in serious criminal activities, including kidnapping, sexual assault, dissemination of child pornography, corporal punishment, and criminal threats.\textsuperscript{66}

For example, United States v. Epstein involved a group of Orthodox Jewish men charged with kidnapping husbands who refused to provide their wives with a document known as a “get,”


\textsuperscript{60} DANGEROUS EXEMPTIONS, https://www.dangerousexemptions.org/ (last visited Oct. 8, 2021).


\textsuperscript{63} Tandon v. Newsom, 141 S. Ct. 1294 (2021).

\textsuperscript{64} Quinn Klinefelter, Federal Appeals Court to Consider Whether Michigan Students Can Be Required to Wear Masks, MICHIGAN RADIO (Jul. 19, 2021), https://www.michiganradio.org/law/2021-07-19/federal-appeals-court-to-consider WHETHER MICHIGAN STUDENTS CAN BE REQUIRED TO WEAR MASKS.


which serves as a proof of divorce under Jewish law. The defendants submitted evidence that helping a woman obtain a get “is a ‘mitzvah’ or religious commandment, “even if force is necessary to secure the husband’s expression of consent.”67 In Diez v. Boyd, a defendant argued that “he is an adherent to ‘Creationist Naturism’ and his post of a nude child on Pinterest.com was religious in nature.”68 Thankfully, none of these cases have succeeded.

Claimants have also sought to use their religious identity as a defense in civil suits related to past criminal activity. In June 2021, a court ruled that religious liberty protections did not shield a Catholic Diocese in Massachusetts from a lawsuit brought by a man who alleged that he was sexually abused by a bishop and two priests in the 1960s.69

10. And More

Some religious exemption claims are less corrosive than confounding, or even irreverent. Exemption claims have been brought on behalf of people claiming a religious obligation to eat cat food in the workplace, dress “like a chicken” at a court hearing, and wear a colander on one’s head in a driver’s license photo.70 While not necessarily harmful, such claims underscore the challenges of a regime in which religious exemptions are too often seen as a license to get out from every conceivable law or policy.

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The “parade of horribles” that could result from broad religious exemption laws is not as far-fetched as it may initially seem. Religious exemptions have already been used to curb oversight of religious childcare facilities, limit union organizing, allow refusals of emergency medical care, and undermine laws prohibiting discrimination and harassment. Many more exemptions have been requested and denied under earlier legal standards far less protective of religious exercise than our current constitutional test.

None of this is to say that religious exemptions are never warranted. Religious exemptions have also been used, for example, to ensure that people in prison have access to kosher and halal food; that schoolchildren and members of the military are able to wear religious head coverings and hairstyles; and that members of small religious groups, including indigenous

religions, are not criminally prosecuted for the ritual use of substances like hoasca and peyote. Crucially, none of these exemptions threaten the rights of third parties. As the right to religious exemptions continually expands in ways that infringe on important rights and liberties, the public must be clear-eyed about the impact of broad exemptions across a wide swath of issues, from workers’ rights to child safety.

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The Law, Rights, and Religion Project is a law and policy think tank based at Columbia Law School that promotes social justice, freedom of religion, and religious pluralism. We analyze and develop strategies to address the complex ways in which religious liberty rights interact with other fundamental rights.