



# Whose Faith Matters? The Fight for Religious Liberty Beyond the Christian Right



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## **Note**

Much of the litigation described in this report is ongoing. We therefore apologize for any legal developments that occurred after our editing process was finalized, but before the report was released.

## **Cover Image**

For Freedoms (Hank Willis Thomas and Emily Shur in collaboration with Eric Gottesman and Wyatt Gallery of For Freedoms), Freedom of Worship, 2018. Archival pigment print, 42 x 52.5 in.

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# Executive Summary



*Interfaith clergy bless an abortion clinic in the Rio Grande Valley, Texas, 2019. Photograph by Jeff Antons.*



*Whose Faith Matters? The Fight for Religious Liberty Beyond the Christian Right* seeks to correct two widespread misconceptions: that the political left has abandoned the fight for “religious liberty,” seeing religion as a threat to its values, and that Christian conservatives are resolutely dedicated to protecting religious liberty.

The battle over “religious liberty” in the U.S. is far more complex than many journalists, advocates, and politicians would have you believe. Far from abandoning this fundamental right, people of faith outside the conservative movement have taken up the fight for religious freedom in a wide variety of contexts. And while the Christian right has positioned itself as the sole defender of “religious liberty,” this movement’s strategy is to substitute the beliefs of a narrow band of conservative Christians for the nation’s broad and pluralistic religious traditions. Right-wing Christians’ troublingly successful capture of “religious liberty” has resulted in the rapid erosion rather than protection of this right, as policymakers have enshrined particular theological beliefs into U.S. law and policy while erasing or even denigrating other religious traditions.

This report first documents the many contexts in which people of faith engaged in humanitarian and social justice work have fought for the right to exercise their religion. In recent years, members of many different religious groups have fought for the right to act out their faith by providing food and shelter to immigrants, performing marriages for same-sex partners, accessing abortion, protesting war and the death penalty, and protecting the environment—despite federal and state laws that sometimes restrict these activities. This rich history debunks the notion that religious liberty rights primarily advance the interests of right-wing conservative Christians.

Second, the report illuminates an underappreciated truth about the right’s investment in defending religious liberty: in fact, this movement ardently supports the free exercise of religion only for parties who hold conservative views regarding sexuality, marriage, reproduction, or the family. Thus, the kind of religious liberty its members promote is often antagonistic to the liberty rights of people in other faith traditions.

By offering a sweeping account of religious liberty activism being undertaken by numerous progressive humanitarian and social justice movements, and uncovering how right-wing activists have fought for conservative Christian hegemony rather than “religious liberty” more generally, this report challenges the leading popular narrative of religious freedom.

It is not difficult to understand how the two misconceptions described above have developed. The Christian right has spent vast resources positioning itself as the leading defender of religious freedom against a hostile, secular left. In particular, it has advanced the idea that the expansion of reproductive and LGBTQ rights—two hugely important progressive social movements of the past half century—represent an existential threat to the right to religious liberty. In response to this alleged attack, its members have proposed laws and policies that purport to protect “religious liberty,” though typically such laws only protect people of faith who hold conservative views regarding sex, sexuality, marriage, and reproduction.

Unfortunately, some supporters of LGBTQ and reproductive justice have accepted this idea of a zero-sum conflict between religious liberty and the right to equality. Instead of seeing how the policies proposed by the Christian right in fact erode, rather than defend religious freedom, some advocates on the left have limited their arguments to the idea that antidiscrimination laws should take precedence over any asserted right to religious liberty. For example, the commonly held position that “religious liberty should not be a license to discriminate” seems to accept at face value the notion that carve-outs from antidiscrimination law for religious conservatives do in fact protect religious liberty in the first instance. As we explain in this report, the very opposite is true: weakening civil rights law necessarily weakens religious freedom. Ceding the domain of “religious liberty” to the Christian right overlooks the ways in which equality and religious freedom are mutually reinforcing rights, each dependent on the other.

The popular media, too, have enabled and reinforced the Christian right’s capture of “religious liberty.” The vast majority of reporting on religious liberty issues has been limited to discussions of the ways in which sexual and reproductive rights threaten the beliefs of conservative Christians. Meanwhile, dozens of religious liberty rights lawsuits brought by people of faith who seek a right to assist immigrants, offer harm reduction services to drug users, resist government surveillance, or engage in other forms of humanitarian or social justice work, have been largely overlooked or framed as matters of political opinion rather than religious freedom.

Together, advocates, legislators, courts, and journalists have contributed to a climate in which only the religious liberty claims of conservative people of faith “count” as religious, while the claims and rights of progressive people of faith are dismissed or ignored as “merely” political in nature. That said, it is important to acknowledge that not all religious beliefs may be fully or fairly described in political terms, and that the report’s references to religious “progressives,” “conservatives,” “left,” and “right” may not be terminology that all people of faith identify with or embrace.

**Section I** of this report provides a concise history of the right to religious liberty in the U.S. over the past two and a half centuries. It outlines how the meaning of this right has evolved several times over since the very first religious freedom laws were enacted by colonial governments even prior to the founding of the United States. For those unfamiliar with contemporary religion law, it offers important context for understanding the legal theories and arguments discussed in sections II and III.

**Section II** provides a detailed overview of the many people of faith engaged in humanitarian and social justice work who have gone to court seeking the right to exercise their religious beliefs. Examples include:

- Humanitarian aid workers who are being prosecuted by the federal government for providing food, water, and other aid to migrants in southern Arizona, allegedly in violation of U.S. immigration and other laws, and who have defended their actions as an exercise of their religious liberty;
- “Mary Doe,” who argued that her religious belief in bodily autonomy should permit her to access abortion services without having to undergo a state-mandated ultrasound and 72-hour waiting period, and;
- Safehouse and the Church of Safe Injection, interfaith religious nonprofits that are seeking to open supervised injection sites for drug users—withstanding federal drug laws that may prohibit such sites—as part of their religious mission.

Section II also contains a short discussion envisioning additional religious liberty arguments that might be made in other contexts. It offers a clear rebuttal to the claim that conservatives are the only contemporary advocates for religious liberty in the public square.

**Section III** provides a brief account of the various legislative, administrative, and litigation activities of the modern Christian right, including the ways in which these campaigns aim to enact into law conservative religious views about sex, sexuality, marriage, reproduction, and the family—all in the name of “religious liberty.”

Finally, **Section IV** provides a set of overarching guidelines for how to assess the extremely diverse “religious liberty” claims that have been made across the theological and political spectrums. It provides a framework for understanding how we might best protect the

fundamental right to religious liberty—not for some religious believers, but for everyone. It also explains how the protection of those rights need not undermine other fundamental rights, such as the right to equality.

The report concludes with a call to rethink how the fundamental right to religious liberty in an increasingly pluralistic nation is understood, discussed, and protected.