



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



## **Acknowledgements**

The Law, Rights, and Religion Project thanks the brilliant advocates, attorneys, faith leaders, and academics who participated in our convenings over the past two years for their valuable contributions to, and thoughts on, this important issue. Special thanks to the teams at No More Deaths/No Más Muertes, The Kings Bay Plowshares, Rev. Kaji Douša, and Safehouse, and to their attorneys. For editing assistance, thanks to Tessa Baizer. Finally, thanks for the generous support of the Alki Fund of the Rockefeller Family Foundation and the Rockefeller Brothers Fund.

## **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.

## **Authors**

Elizabeth Reiner Platt, Katherine Franke, Kira Shepherd, Lilia Hadjiivanova

## **Research Assistants**

Tessa Baizer, Caitlin O'Meara Lowell, Isabelle M. Canaan

## **Report Design**

Haki Creatives

<b>Executive Summary</b>	<b>4</b>
<b>Introduction</b>	<b>9</b>
<b>I. An Overview of Religious Liberty Law</b>	<b>12</b>
<b>II. Sikhs and Satanists, Sanctuary and Safe Drug Use: Religious Liberty Law Beyond the Christian Right</b>	<b>22</b>
Religious Minority Rights	24
Immigration & Immigrants' Rights	26
Reproductive Rights	36
LGBTQ Rights	40
Economic Justice	42
Religious Drug Use	44
Harm Reduction Services	46
Government Surveillance, Profiling, & Discrimination	48
Environmental Justice	50
Conscientious Objection & Anti-War Activism	54
Capital Punishment	59
Atheists' Rights & Church-State Separation	60
<b>III. The Christian Right and the Redefinition of "Religious Liberty"</b>	<b>65</b>
Legislative Efforts	67
Administrative Efforts	68
Judicial Efforts	71
<b>IV. Charting a Path Forward: Protecting Religious Liberty for Everyone</b>	<b>72</b>
Religious Liberty Must Be Neutral	73
Religious Liberty Must Be Noncoercive	76
Religious Liberty Must Be Nondiscriminatory	77
Religious Liberty Cannot Be Absolute	80
Religious Liberty Must Be Democratic	81
Religious Liberty Must Be Pluralistic	82
<b>Conclusion</b>	<b>84</b>
<b>Endnotes</b>	<b>86</b>
<b>Photography Credits</b>	<b>105</b>

# Introduction



Photo Courtesy of Columbia University Law School.



Over the past several years, immeasurable ink has been spilled examining the clash between conservative Christianity and sexual and reproductive liberty. Media coverage of “religious liberty” issues has been overwhelmingly dominated by articles dissecting the impact of marriage equality and reproductive rights on conservative Christian practitioners. As one report on religion in the media put it: “[t]hrough the use of their own media outlets, but perhaps even more so through the assertive presentation of their viewpoints in the mainstream media, conservative evangelical spokespeople have positioned themselves as the voice of Christianity—if not religion as a whole—in the public square.”<sup>1</sup> This limited focus on the religious beliefs and practices of social conservatives paints a deeply misleading portrait of both religion and religious freedom. For one, it ignores the fact that there are many today whose religious beliefs compel them to act in ways that would be labeled liberal or progressive.

The three most closely watched Supreme Court religious liberty cases since 2014 have all been brought by socially conservative Christian claimants seeking to be exempted from laws intended to protect reproductive health and LGBTQ civil rights. During this same time, however, people of faith across the country have brought religious liberty lawsuits involving the right to seek an abortion, perform same-sex marriages, protest the death penalty, protect refugees within the U.S., fight nuclear proliferation, provide harm reduction services to drug

users, shelter the homeless, prevent environmental degradation, and resist ethnic and religious profiling.



*Scott Warren receives a blessing from clergy before his trial. Photograph by Ash Ponders, courtesy of the Unitarian Universalist Service Committee.*

**“My conscience...is what drives me to act. It’s what drives me to show up fully for those who are suffering.”**

~Scott Warren

Take Scott Warren, who was arrested in 2018 for providing food and water to two migrants in the Arizona desert and charged with several felonies for “harboring” undocumented immigrants. Warren has argued in federal court that he has a religious right to provide humanitarian aid to migrants at the U.S. border. In Georgia, Martha Hennessy was among a group of Catholics arrested the same year for breaking into and symbolically disarming a nuclear facility. Like

Warren, Hennessy has brought a legal defense based on her right to religious liberty. And in Arkansas, after state judge and Baptist minister Wendell Griffen was barred from hearing death penalty cases in 2017 because of his religious opposition to capital punishment, he argued that this bar amounted to a violation of his religious liberty. These three claimants are far from the only religious practitioners that defy the narrative of religious freedom fighter as conservative Christian.

Thus, faith-based values are not the sole province of social conservatives, and conflicts between individuals' religious practices and the mandates of the law are far more diverse and nuanced than the popular media would suggest. By discussing free exercise claims brought by religious minorities and people of faith outside the Christian right, this report will confront and challenge the largely successful campaign to conflate "religious liberty" with conservative Christianity, and to paint those outside the right as irreligious or "anti-faith."<sup>2</sup>

The report will also take a critical look at the ways in which "religious liberty" has been used as a cover for laws and policies that in fact weaken religious freedom by elevating the beliefs and practices of conservative Christians above all other religious and secular rights. While the overwhelming popular focus on how laws affect conservative Christians is misrepresentative, government actors' intentional efforts to conflate "religious liberty" with conservative Christianity is far more troubling. Policymakers at the federal, state, and local levels in recent years have actively sought to redefine "religious liberty" in conservative Christian terms, elevating and providing special legal protections to the rights and beliefs of the religious right. At the same time, many of these same actors, including the current presidential administration, have been hostile towards the issues most important to progressive religious communities and religious communities of color, including economic inequality, racism, and harsh immigration policies.<sup>3</sup> The same Justice Department that, under President Donald Trump, has pledged to protect religious freedom "to the greatest extent practicable and permitted by law"<sup>4</sup> is criminally prosecuting some religious adherents for their faith-based activities that challenge U.S. government policies. And the administration has targeted religious minorities, particularly Muslims, with inflammatory rhetoric and discriminatory policies.

The report will conclude by offering a set of free exercise principles intended to ensure that, rather than treating "religious liberty" as a right exclusive to socially conservative Christians, we treat the religious beliefs and practices of all faith practitioners—including those of no religious faith—with the respect and neutrality that the Constitution demands.

## Endnotes, Introduction

1 Debra L. Mason and Cathy Ellen Rosenholtz, *Missing Voices: A Study of Religious Voices in Mainstream Media Reports About LGTBEquality* 6, U. OF MO. CTR. ON RELIGION & THE PROF. (2012), [http://www.glaad.org/files/GLAAD\\_MissingVoices\\_2012.pdf](http://www.glaad.org/files/GLAAD_MissingVoices_2012.pdf).

2 Mary Eberstadt, *Regular Christians Are No Longer Welcome in American Culture*, TIME (June 29, 2016), <https://time.com/4385755/faith-in-america/> (“This new vigorous secularism has catapulted mockery of Christianity and other forms of religious traditionalism into the mainstream”); Tony Perkins, *After Texas Shooting, the Secular Left’s Gospel of Condescension Continues*, DAILY SIGNAL (Nov. 8, 2017), <https://www.dailysignal.com/2017/11/08/after-texas-shooting-the-secular-lefts-gospel-of-condescension-continues/>; Joshua Gill, *Minnesota Conservatives Clash with ‘Anti-Faith’ Movement Over ‘In God We Trust’ Bill for Schools*, DAILY CALLER (May 7, 2018), <https://dailycaller.com/2018/05/07/minnesota-in-god-we-trust-bill/>; Jason Devany, *David Horowitz: The Left Hates Christianity—and America*, NEWSMAX (Mar. 17, 2019), <https://www.newsmax.com/newsfront/davidhorowitz-religion/2019/03/17/id/907404/>. Relatedly, there has been a wave of recent commentary claiming that “leftism” is *its own* form of secular religion opposed to more “traditional” religion. See, e.g., Jim DeMint & Rachel Bovard, *Progressive Politics Is the Left’s New Religion*, THE WASHINGTON EXAMINER (Sept. 24, 2019), <https://www.washingtonexaminer.com/opinion/progressive-politics-is-the-lefts-new-religion>; Dennis Prager, *Leftism as a Secular Religion*, DAILY SIGNAL (Aug. 28, 2018), <https://www.dailysignal.com/2018/08/28/explaining-the-left-part-iii-leftism-as-secular-religion/>; Brandon Showalter, *Is Leftism Now a Religion?*, CHRISTIAN POST (Apr. 3, 2017), <https://www.christianpost.com/news/leftism-religion-leftist-professive-jonathan-haidt-andrew-sullivan.html>; Rachel Lu, *When Left-wing Politics Becomes a Substitute for Religion*, CRISIS MAGAZINE (May 9, 2017), <https://www.crisismagazine.com/2017/leftist-politics-becomes-substitute-religion>.

3 Janelle Wong, *Untapping the Potential of Black, Latino, and Asian American Evangelical Voters*, THE AMERICAN PROSPECT (June 6, 2018), <https://prospect.org/article/untapping-potential-black-latino-and-asian-american-evangelical-voters>; Eliza Griswold, *Evangelicals of Color Fight Back Against the Religious Right*, NEW YORKER (Dec. 27, 2018), <https://www.newyorker.com/news/on-religion/evangelicals-of-color-fight-back-against-the-religious-right>. This narrow focus on the needs and beliefs of conservative white Christian communities has prompted some to label the administration’s ideology a form of “white Christian supremacy.” See, e.g., Kira Shepherd, Naomi Washington-Leapheart, and Rev. Alba Onofrio, *Trump’s New Birth Control Rules are White Christian Supremacy Veiled as Religious Freedom*, REWIRE (Oct. 18, 2017), <https://rewire.news/article/2017/10/18/trumps-new-birth-control-rules-white-christian-supremacy-veiled-religious-freedom/>; Terrell Jermaine Starr, *Donald Trump’s White Christian Supremacy*, THE ROOT (Sept. 13, 2017), <https://www.theroot.com/donald-trump-s-white-christian-supremacy-1803816026>.

4 Memorandum from the Attorney General to All Executive Departments and Agencies, *Federal Law Protections for Religious Liberty* 1 (Oct. 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.