



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.

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	Executive Summary	4
	Introduction	9
I.	An Overview of Religious Liberty Law	12
II.	Sikhs and Satanists, Sanctuary and Safe Drug Use: Religious Liberty Law Beyond the Christian Right	22
	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
III.	The Christian Right and the Redefinition of "Religious Liberty"	65
	Legislative Efforts	67
	Administrative Efforts	68
	Judicial Efforts	71
IV.	Charting a Path Forward: Protecting Religious Liberty for Everyone	72
	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
	Conclusion	84
	Endnotes	86
	Photography Credits	105

III The Christian Right and the Redefinition of “Religious Liberty”



Photo courtesy of Columbia University School of Law.

As the prior section demonstrates, no single group or ideology has had a monopoly on religious faith, or religious liberty litigation. Nevertheless, the Christian right has been enormously successful at conflating popular understandings of “religious liberty” with particular conservative religious views around sex, sexuality, marriage, and reproduction. Through strategic legislative, administrative, and litigation campaigns—as well as aggressive media coverage—the religious right has come to dominate the ways in which we talk about, and enshrine into law, religious liberty protections. This dominance has pushed other important religious liberty developments, such as the increasing criminal prosecution of faith practitioners discussed above, out of the spotlight.

When courts, the media, and politicians give prominent attention to the religious liberty claims made by socially conservative actors, while comparatively ignoring claims made by socially progressive actors, the effect is to reinforce the notion that socially conservative religious traditions are more deserving of constitutional and statutory religious freedom protections. Indeed, this dynamic can create and/or reinforce a belief that conservatives are legitimately religious while progressives’ beliefs are—as the Department of Justice argued in the *Safehouse* case—merely “socio-political” rather than religious.¹

Perhaps the most troubling aspect of this phenomenon, however, is that many of the religious exemption proposals advanced by the right do not actually protect “religious liberty” at all, but rather advance the cause of conservative Christian hegemony. They do so in at least three ways:

First, by providing enormously broad and absolute legal protections for particular conservative religious beliefs—protections that are designed to override every other relevant secular and religious right with which they may conflict—the exemptions improperly put the government’s stamp of approval on certain religious beliefs.

Second, by requiring third parties to bear the costs of religious exemptions for those with conservative religious beliefs about sex and sexuality—beliefs that these third parties do not themselves hold—many exemptions actually infringe on the religious liberty rights of more people than they protect.

Third, many of the proposed religious exemptions would erode antidiscrimination laws that protect people of faith, and especially religious minorities, from bias and persecution on account of their faith.

This section will provide a brief overview of the legislative, administrative, and judicial activism undertaken by the Christian right in the name of “religious liberty.” It will also touch upon the ways in which these efforts actually undermine religious liberty.

Legislative Efforts

Over the past several years, conservative policymakers have introduced and passed dozens of religious exemption laws that are billed as protecting “religious freedom” in general, but in reality only benefit those with anti-LGBTQ or anti-choice religious beliefs. Since 2015, exemption laws that protect those opposed to LGBTQ rights have been passed in Indiana,² Florida³, Tennessee⁴, Kansas⁵, Kentucky⁶, Alabama⁷, South Dakota⁸, Texas,⁹ and Oklahoma.¹⁰ In the most recent 2018-2019 legislative session, several states passed bills aimed at allowing student clubs at public universities to restrict their membership based on religion, sexual orientation, or gender identity.¹¹ Many of these proposed and enacted state bills are outlined in “Project Blitz,” a detailed legislative playbook authored by the Congressional Prayer Caucus and other groups that contains model bills on a range of issues, including the insertion of religious symbols and classes into schools, bills that would “define public policies of the state in favor of biblical values concerning marriage and sexuality,” and religious exemptions from antidiscrimination and other laws.¹²

Examples of proposed and enacted laws advanced by the Christian right include:

- Mississippi’s H.B. 1523, passed in 2016, creates a sweeping exemption from compliance with state law if the law conflicts with one of three specific religious beliefs: that “(a) Marriage is or should be recognized as the union of one man and one woman; (b) Sexual relations are properly reserved to such a marriage; and (c) Male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.”¹³ This exemption is absolute. In other words, the State must grant exemptions to persons who hold those three religious beliefs, rather than weighing the possible benefits and costs of a requested exemption and then deciding whether to grant it.
- If passed, the federal First Amendment Defense Act, or FADA,¹⁴ would limit enforcement of a wide range of health, labor, and antidiscrimination protections to

the extent that they conflict with religious opposition to sex between unmarried parties or LGBTQ identities.¹⁵ Again, this exemption would be absolute, regardless of any harm it imposes on others.

- The federal government and nearly every state have enacted laws that allow doctors, insurers, and hospitals to refuse to provide abortion and other reproductive healthcare based on religious or moral objections to these services, regardless of the religious beliefs of their patients.¹⁶ These laws almost never protect the religious beliefs of medical providers who support reproductive rights.¹⁷ While hospitals may not infringe on the beliefs of anti-choice providers, they may require those who feel morally obliged to provide comprehensive care—like Dr. Wilfred E. Watkins, who unsuccessfully challenged his employer’s prohibition on sterilization and abortion in 1973—to violate their consciences. In addition, the exemptions do not always have clear exceptions for medical emergencies.
- Alabama’s S.B. 185, passed in 2017, extended the state’s religious refusal law to cover “[a]ny individual who may be asked to participate in any way in a health care service.”¹⁸ It defines “health care service” somewhat confusingly as “[p]atient medical care, treatment or procedure that is limited to abortion, human cloning, human embryonic stem cell research, and sterilization, and is related to: Testing, diagnosis or prognosis, research, instruction, prescribing, dispensing or administering any device, drug, or medication, surgery, *or any other care or treatment rendered or provided by health care providers.*” In 2019, Indiana similarly expanded its religious refusal law to cover additional medical providers, including pharmacists.¹⁹

Administrative Efforts

The Christian right has encouraged administrative agencies—especially at the federal level—to promulgate rules, policies, and guidance that offer special legal protections for those with conservative religious ideologies. Many of these rules protect only conservative religious beliefs, often at the expense of the rights (religious and otherwise) of others, including women, LGBTQ people, and religious minorities. To give just a brief overview, the Trump administration has thus far:

- Issued an executive order instructing the Attorney General to issue policy guidelines on religious liberty,²⁰ as well as subsequent guidelines suggesting that RFRA should be interpreted to exempt religious objectors from antidiscrimination laws and policies.²¹ The administration then created a “Religious Liberty Task Force” to implement the guidance;²²
- Signed an executive order eliminating language from an earlier executive order that protected beneficiaries of government grants from unwanted religious coercion and proselytizing;²³
- Expanded the circumstances under which federal contractors can claim a religious exemption from antidiscrimination requirements, undermining civil rights protections for workers—especially religious minorities;²⁴
- Issued a rule to cease enforcing a prior bar on contracting with religious organizations to provide federally funded educational services to private schools;²⁵
- Proposed a rule, under review by the Office of Management and Budget as of November 2019, that is reported to allow religiously affiliated homeless shelters to turn away transgender people;²⁶
- Issued rules allowing employers and universities to cut off access to birth control coverage for their employees and students—regardless of their own religious beliefs— if allowing this coverage would violate the religious or moral beliefs of the employer/university;²⁷
- Issued a rule expanding the ability of healthcare providers, insurers, and employers with religious objections to sexual and reproductive healthcare to deny access to such care to patients and employees;²⁸
- Issued a rule which encourages medical providers that place religious restrictions on the provision of reproductive healthcare to nevertheless participate in the Title X national family planning program;²⁹
- Proposed a rule inserting broad religious exemptions into a nondiscrimination provision of the Affordable Care Act;³⁰

- Issued a directive allowing religious displays and symbols in Veterans Affairs facilities;³¹
- Granted a request from South Carolina Governor Henry McMaster to allow foster care agencies in the state to violate antidiscrimination laws while remaining eligible for federal funding.³²
- In contrast, the administration has not made any efforts to accommodate religious beliefs that run contrary to its political priorities. For instance, in response to public comments expressing concern that a proposed “public charge” rule—which would allow the government to withhold legal permanent resident status from immigrants who use public programs like food stamps and Medicaid—would harm religious workers, the U.S. Citizenship and Immigration Services (USCIS) declined to insert a religious exemption into the final rule.³³ In explaining its denial, the agency claimed that “RFRA does not create a wholesale ‘exemption’ to a generally applicable regulation” but rather requires “a case-by-case determination.”³⁴

Notably, this assertion explicitly conflicts with the administration’s own religious liberty guidelines discussed above, which state that “[i]n formulating rules, regulations, and policies, administrative agencies should...proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens,” and that the decision to “consider requests for accommodations on a case-by-case basis rather than in the rule itself” requires the agency to “provide a reasoned basis for that approach.”³⁵ It is also worth mentioning that since publishing the rule, but before its effective date, the Administrative Appeals Office of USCIS has denied at least two RFRA claims made by immigrants seeking to be classified as religious workers.³⁶

- The administration also threatened to withdraw federal grant funding from two university Middle East Studies programs because, according to the administration, they place “a considerable emphasis...on the understanding the positive aspects of Islam, while there is an absolute absence of any similar focus on the positive aspects of Christianity, Judaism or any other religion.”³⁷

Judicial Efforts

Finally, lawsuits involving anti-LGBTQ and anti-choice religious exemption claims have proliferated over the past several years. The growth in these cases has been, in large measure, the result of the growth of well-funded conservative religious liberty groups such as the Alliance Defending Freedom, Liberty Counsel, and the Becket Fund, who have brought the majority of these cases. In addition to *Burwell v. Hobby Lobby*³⁸ and *Masterpiece Cakeshop, Inc. v. Colorado Civil Rights Commission*,³⁹ discussed in the religious liberty timeline, there have been dozens of additional claims filed by conservative religious adherents seeking exemptions from health, antidiscrimination, and related laws and policies.⁴⁰ In September 2019, the Supreme Court of Arizona became the first high court to grant a religious exemption from sexual orientation antidiscrimination law to a for-profit company. The ruling, *Brush & Nib Studio v. City of Phoenix*, was predicated on the state constitution's free speech provision and state RFRA. The court ruled that a local civil rights ordinance could not be applied to require a small stationery and printing business to "create custom wedding invitations celebrating same-sex wedding ceremonies in violation of their sincerely held religious beliefs."⁴¹ Many other cases are still being litigated.

Over the past two years, the U.S. Department of Justice has also filed a large number of friend-of-the-court briefs in federal lawsuits involving religious liberty issues—largely in support of conservative Christian claimants, including a bakery that refused to serve a same-sex couple and an anti-abortion clinic that objected to certain state health regulations.⁴²

As is evident from the examples discussed above, many of the "religious liberty" policies embraced by the Christian right 1) provide broad and absolute protections only for a narrow set of conservative religious beliefs and fail to protect those with alternative religious views; 2) require LGBTQ people, women, and others to forgo their own rights (for example, to equal employment opportunities or healthcare access) in order to accommodate the religious beliefs of others, and/or; 3) would permit discrimination against religious minorities. Such religious exemptions do not enhance, but instead undermine religious liberty. Rather than protecting a particular set of religious believers at the expense of others, religious freedom has been traditionally understood by the framers of the Constitution and by the courts to mean religious freedom for everyone. This means, in contemporary terms, including the non-religious, religious minorities, LGBTQ people of faith, and those with progressive religious beliefs.

Endnotes, Section III: The Christian Right and the Redefinition of “Religious Liberty”

- 1 Motion for Judgment on the Pleadings at 29-30, *United States of America v. Safehouse*, No. 2:19-cv-00519 (E.D. Pa. June 11, 2019).
- 2 S.B. 101, 119th Gen. Assemb., Reg. Sess., (Ind. 2015).
- 3 H.B. 43/S.B. 110, 2016 Leg., Reg. Sess. (Fla. 2016).
- 4 S.B. 1556/H.B. 1840, 109th Gen. Assemb., Reg. Sess. (Tenn. 2016).
- 5 S.B. 175, 86th Leg., Reg. Sess. (Kan. 2016).
- 6 S.B. 17, 2017 Leg., Reg. Sess. (Ky. 2017).
- 7 H.B. 24, 2017 Leg., Reg. Sess. (Ala. 2017).
- 8 S.B. 149, 92th Gen. Assemb., Reg. Sess. (S.D. 2017).
- 9 H.B. 3859, 85th Leg., Reg. Sess. (Tex. 2017).
- 10 S.B. 1140, 56th Leg., 2nd Sess. (Okla. 2018). In 2019, an Idaho lawmaker even introduced a resolution that would condemn what she considers to be “Christian persecution,” citing as evidence of such persecution the enforcement of civil rights laws on anti-LGBTQ Christians. See Ruth Brown, *Legislator Wants to End What She Calls Christian ‘Persecution,’ Cites Non-Idaho Examples*, IDAHO STATESMAN (Mar. 15, 2019), <https://www.idahostatesman.com/news/politics-government/state-politics/article227854124.html>.
- 11 S.B. 156, 92nd Gen. Assemb., Reg. Sess. (Ark. 2019); S.F. 274, 88th Gen. Assemb., Reg. Sess. (Iowa 2019); H.B. 1087, 2019 Leg. Reg. Sess. (S.D. 2019); H.B. 254, 2019 Leg. Reg. Sess. (Ky. 2019). See also S.B. 2320, 66th Leg. Assemb., Reg. Sess. (N.D. 2019).
- 12 Congressional Prayer Caucus Foundation, National Legal Foundation, and Wallbuilders, *Report and Analysis on Religious Freedom Measures Impacting Prayer and Faith in America* (2018-2019), CPCF (2018), <https://www.au.org/sites/default/files/2019-01/Project%20Blitz%20Playbook%202018-19.pdf>.
- 13 Miss. Code Ann. § 11-62-1 *et seq.* (2016). This law was found unconstitutional by a federal District Court judge, but that opinion was overturned on procedural grounds. *Barber v. Bryant*, 193 F.Supp.3d 677 (S.D. Miss. 2016), *overturned by* 860 F.3d 345 (5th Cir. 2017). These bills are designed to affirmatively condone religiously motivated denials of goods, services, and benefits to LGBTQ+ people as well as anyone who has had sex outside of a different-sex marriage, such as unmarried pregnant and parenting people or cohabitating unmarried couples. See *Unmarried and Unprotected: How Religious Liberty Bills Harm Pregnant People, Families, and Communities of Color*, Public Rights/Private Conscience Project (2017), https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/PRPCP/unmarried_unprotected_-_prpcp.pdf.
- 14 First Amendment Defense Act, S. 2525, 115th Cong. (2018).
- 15 *First Amendment Defense Act of 2016 Hearing on H.R. 2802 before the H. Committee on Oversight and Government Reform, 114th Cong.* (July 12, 2016) (statement of Katherine Franke, Sulzbacher Professor of Law, Gender, and Sexuality Studies, Columbia Law School), available at http://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/prpcp_fada_testimony.pdf.
- 16 *Refusing to Provide Health Services*, GUTTMACHER INST. (May 1, 2019), <https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services>. While the scope of these exemptions is not always clear, some medical providers, including Catholic hospitals, have refused to provide essential medical care even when a patient’s life is at risk. Julia Kaye, Brigitte Amiri, Louise Melling, and Jennifer Dalven, *Health Care Denied: Patients and Physicians Speak Out About Catholic Hospitals and the Threat to Women’s Health and Lives*, A.C.L.U. (May 2016), <https://www.aclu.org/report/report-health-care-denied?redirect=report/health-care-denied>.
- 17 One notable exception to this is the Church Amendment, passed in 1973, which prohibits certain healthcare entities from discriminating against healthcare personnel because they “performed or assisted in the performance of a lawful sterilization procedure or abortion” or because they refuse to perform these services. 42 U.S.C. § 300a–7.
- 18 S.B. 185, 2017 Leg. Sess., (Ala. 2017) (emphasis added).
- 19 S.E.A. 201, 121st Gen. Assemb., Reg. Sess. (Ind. 2019).
- 20 Exec. Order No. 13798, 82 C.F.R. § 21675 (2017).
- 21 Memorandum from U.S. Attorney General Jeff Sessions to All Executive Departments and Agencies, *Federal Law Protections for Religious Liberty*. (October 6, 2017), available at <https://www.justice.gov/opa/press-release/file/1001891/download>. For example, they state that “The government may be able to meet that standard [that a law be necessary to further a compelling government interest] with respect to race discrimination...but may not be able to with respect to other forms of discrimination.” *Id.* at 13a.
- 22 Jeff Sessions, Attorney General, Remarks at the Department of Justice’s Religious Liberty Summit (July 30, 2018), available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit>.
- 23 Exec. Order No. 13831, 83 C.F.R. § 20715 (2018); Melissa Rogers, *President Trump Just Unveiled a New White House ‘Faith’ Office. It Actually Weakens Religious Freedom*, WASH. POST (May 14, 2018), <https://www.washingtonpost.com/>

news/acts-of-faith/wp/2018/05/14/president-trump-just-unveiled-a-new-white-house-faith-office-it-actually-weakens-religious-freedom/?utm_term=.43996900803f. It's worth noting that the White House has long awarded significant grants—such as contracts to provide care to unaccompanied minors—to faith based organizations that refuse to provide sexual and reproductive health care to beneficiaries. This practice was unsuccessfully challenged in 2018 as a violation of the Establishment Clause. *See ACLU v. Azar*, 2018 WL 4945321 at *1 (N.D. Cal. Oct. 11, 2018) (holding that “A reasonable person would not view the government, which facilitated access to abortion by transferring unaccompanied minors who want abortions to shelters where they can obtain them, to be endorsing the Conference’s anti-abortion views.”).

24 U.S. DEPARTMENT OF LABOR, *Office of Federal Contract Compliance Programs*, Directive (DIR) 2018-03 (Aug. 10, 2018), https://www.dol.gov/ofccp/regs/compliance/directives/dir2018_03.html; *Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption*, 84 C.F.R. § 41677 (2019), <https://www.federalregister.gov/documents/2019/08/15/2019-17472/implementing-legal-requirements-regarding-the-equal-opportunity-clauses-religious-exemption>.

25 *Title I-Improving the Academic Achievement of the Disadvantaged and General Provisions; Technical Amendments*, 34 C.F.R. § 200, 34 C.F.R. § 299 (2019).

26 Veronica Stracqualursi, *HUD Proposes Rule that Would Roll Back Protections for Transgender Homeless*, CNN (May 24, 2019), <https://www.cnn.com/2019/05/23/politics/hud-rule-transgender-homeless-shelters-ben-carson/index.html>; *Revised Requirements Under Community Planning and Development Housing Programs*, 24 C.F.R. § 5 (2019).

27 *Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act*, 83 C.F.R. § 57536 (2019); *Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act*, 83 C.F.R. § 57592 (2019). The religious, but not the moral exemption applies to publicly traded companies. *Fact Sheet: Final Rules on Religious and Moral Exemptions and Accommodation for Coverage of Certain Preventive Services Under the Affordable Care Act*, DEP’T HEALTH & HUM. SERV. (Nov. 7, 2018), <https://www.hhs.gov/about/news/2018/11/07/fact-sheet-final-rules-on-religious-and-moral-exemptions-and-accommodation-for-coverage-of-certain-preventive-services-under-affordable-care-act.html>. The rule is currently the subject of numerous legal challenges. Katie Keith, *ACA Litigation Round-Up: Contraceptive Coverage Mandate*, HEALTH AFF. (May 22, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20190522.119710/full/>; Katie Keith, *Contraceptive Mandate Litigation: Latest Developments*, HEALTH AFF. (Oct. 7, 2019), <https://www.healthaffairs.org/doi/10.1377/hblog20191007.228426/full/>.

28 *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 C.F.R. § 23170 (2019). Several lawsuits have already been filed to challenge the regulation. Sanjana Karanth, *Legal Challenges Pour In Against Trump’s Faith-Based Denial-Of-Care Rule*, HUFFINGTON POST (June 12, 2019), https://www.huffpost.com/entry/legal-challenges-trump-conscience-protection_n_5d0190a4e4b0985c41978d31.

29 Kinsey Hasstedt, *What the Trump Administration’s Final Regulatory Changes Mean for Title X*, HEALTH AFF. (Mar. 5, 2015), <https://www.healthaffairs.org/doi/10.1377/hblog20190304.267855/full/>; *Compliance with Statutory Program Integrity Requirements*, 84 C.F.R. § 7714 (2019).

30 MaryBeth Musumeci and Jennifer Kates, *et al.*, *HHS’s Proposed Changes to Non-Discrimination Regulations Under ACA Section 1557*, KAISER FAM. FOUND. (July 1, 2019), <https://www.kff.org/disparities-policy/issue-brief/hhss-proposed-changes-to-non-discrimination-regulations-under-aca-section-1557/>.

31 *VA Overhauls Religious and Spiritual Symbol Policies to Protect Religious Liberty*, DEP’T VETERANS AFF. (July 3, 2019), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5279>.

32 Letter from Steven Wagner, Principal Deputy Assistant Secretary, HHS Administration for Children and Families, to South Carolina Governor Henry McMaster (Jan. 23, 2019), available at <https://governor.sc.gov/sites/default/files/Documents/newsroom/HHS%20Response%20Letter%20to%20McMaster.pdf>. Governor McMaster’s request was made on behalf of Miracle Hill Ministries, a government-funded Christian foster care agency that has refused to place children with Jewish, Catholic, and same-sex families. Laura Meckler, *Trump Administration Grants Waiver to Agency that Works Only with Christian Families*, WASH. POST (Jan. 23, 2019), https://www.washingtonpost.com/local/education/trump-administration-grants-waiver-to-agency-that-works-only-with-christian-families/2019/01/23/5beafed0-1f30-11e9-8b59-0a28f2191131_story.html.

33 *Inadmissibility on Public Charge Grounds*, 84 C.F.R. §§ 41292, 41331-32 (2019).

34 *Id.* at 41332.

35 Memorandum from U.S. Attorney General Jeff Sessions to All Executive Departments and Agencies, *Federal Law Protections for Religious Liberty*, *supra* Section III note 21 at 7.

36 Matter of T-R-C-C-O-G-V-H-, ID# 3933126 (AAO Sept. 19, 2019); Matter of T-B-C-O-T-U-S-/-C-P-T-, ID# 4194528 (AAO Sept. 25, 2019).

37 Erica L. Green, *U.S. Orders Duke and U.N.C. to Recast Tone in Mideast Studies*, N.Y. TIMES (Sept. 19, 2019), https://www.nytimes.com/2019/09/19/us/politics/anti-israel-bias-higher-education.html?fbclid=IwAR339xcCGLXAUHV6UMM78Y_C1W4-BPnd9DsQxtJBt8hKcZEFAFfxH4GBRy4.

38 *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

39 *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 584 U.S. ___, 138 S. Ct. 1719 (2018).

40 *See, e.g., EEOC v. R.G.*, 884 F.3d 560 (6th Cir. 2018) (for-profit funeral home sought an exemption under RFRA from federal employment discrimination law after firing a transgender employee), *cert granted on non-RFRA questions* in 139 S. Ct. 1599 (2019); *Buck v. Gordon*, 2019 WL 4686425 (W.D. Mich. Sep. 26, 2019) (preliminary injunction allowing a publicly funded,

religiously affiliated adoption agency to refuse to place children with same-sex couples); *DeOtte v. Azar*, Civil Action No. 4:18-cv-00825-O, 2019 WL 3788545 (N.D. Tex. June 5, 2019) (class action RFRA challenge to contraceptive mandate of ACA); *Torres v. Carter*, No. 5:19-cv-327 (E.D.N.C. July 31, 2019) (Title VII religious discrimination charge brought by state employee fired for refusing to train a female colleague because spending time alone with a woman violated his Christian beliefs); *Indiana Family Inst. v. City of Carmel*, No. 29D01-1512-MI-010207 (Hamilton Sup. Ct. Dec. 11, 2015) (challenge to legislative “fix” to Indiana’s RFRA, which prohibited discrimination); *Klein v. Or. Bureau of Labor & Indus.*, 289 Or. App. 507, 410 P.3d 1051 (2017) (bakery sought an exemption under the Free Exercise Clause from state antidiscrimination law after refusing to make a wedding cake for a same-sex couple); *State v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019), *appeal docketed*, No. 19-333 (U.S. Sept. 12, 2019) (florist shop sought an exemption under the Free Exercise Clause from state antidiscrimination law after refusing to make wedding flower arrangements for a same-sex couple); *Cervelli v. Aloha Bed & Breakfast*, 142 Haw. 177 (Ct. App. 2018), *cert denied*, 139 S. Ct. 1319 (2019) (bed and breakfast sought an exemption under the Free Exercise Clause from state antidiscrimination law after refusing a hotel room to a same-sex couple); *Telescope Media Grp. v. Lucero*, 2019 WL 3979621 (8th Cir. 2019) (wedding videography company opposed to providing services to same-sex couples sought pre-enforcement exemption under the Free Exercise Clause from state antidiscrimination law); *303 Creative Ltd. Liab. Co. v. Elenis*, 2017 WL 4331065 (D. Colo. Sep. 1, 2017), *appeal dismissed*, 746 Fed. App’x. 709 (10th Cir. 2018) (wedding website design company opposed to providing services to same-sex couples sought pre-enforcement exemption under the Free Exercise Clause from state antidiscrimination law); *Fulton v. City of Phila.*, 922 F.3d 140 (3rd Cir. 2019), *appeal docketed*, No. 19-123 (U.S. Jul. 25, 2019) (foster care agency opposed to working with same-sex couples seeks exemption from city antidiscrimination ordinance under Free Exercise Clause and Pennsylvania Religious Freedom Act); *Stormans, Inc. v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015), *cert denied*, 136 S.Ct. 2433 (2016) (Free Exercise Clause challenge to state rules requiring pharmacies to deliver all prescribed medication, including contraception, regardless of religious belief); *Caring Families Pregnancy Services v. City of Hartford*, No. 3:19-cv-00584 (D. Conn. Apr. 18, 2019) (federal and state constitutional challenge to a local ordinance requiring pregnancy centers to disclose whether or not they have licensed medical providers on site).

41 *Brush & Nib Studio, LC v. City of Phx.*, 2019 WL 4400328 at *1 (Sep. 16, 2019).

42 Adiel Kaplan, David Mora, Maya Miller and Andrew R. Calderon, *Trump Admin Files More Briefs in Religious Liberty Cases Than Obama, Bush*, NBC NEWS (Feb. 24, 2019), <https://www.nbcnews.com/politics/justice-department/trump-admin-files-more-briefs-religious-liberty-cases-obama-bush-n974531>; Arika Herron, *Justice Department Supports Indianapolis Archdiocese in Firing of Gay Cathedral Teacher*, INDIANAPOLIS STAR (Sept. 27, 2019), <https://www.indystar.com/story/news/education/2019/09/27/justice-department-backs-indianapolis-archdiocese-gay-teacher-firing/3788768002/>.