



Religious Liberty Should Do No Harm

By Emily London and Maggie Siddiqi April 2019

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Introduction and summary

Twenty-five years ago, the federal Religious Freedom Restoration Act (RFRA) was signed into law to clarify and expand upon the right to religious liberty. RFRA outlines that the government “should not substantially burden religious exercise without compelling justification” and that it should only do so if it furthers a compelling governmental interest in the least restrictive way possible.¹ The purpose of this law is “to protect the free exercise of religion” while clearly defining and more robustly protecting the right of religious liberty for all Americans.² It passed with widespread, bipartisan support and was triumphed among faith communities, civil rights advocates, and politicians alike.³ Since the passing of the federal RFRA, 21 states have mirrored the federal statute to adopt similar legislation.⁴

In 2014, however, the U.S. Supreme Court decision in *Burwell v. Hobby Lobby* marked a major shift in the interpretation of religious exemptions from religiously neutral laws. Rather than simply protecting the rights of religious people, RFRA was expanded and misused to discriminate. By treating two for-profit corporations—craft chain Hobby Lobby and furniture-maker Conestoga Wood Specialties—like individuals with the right to free exercise of religion, the ruling allowed the religious beliefs of the company owners to override those of their employees, rescinding employees’ access to no-cost contraceptive health coverage to which they are entitled under federal law.⁵ The ruling affected thousands of employees, and it expanded the use of religious exemptions by redefining the scope of federal RFRA protections to include for-profit corporations. The legacy of the *Hobby Lobby* decision has continued under the Trump administration as religious liberty is misused to discriminate against vulnerable communities, such as religious minorities, nonreligious people, people of color, women, and the LGBTQ community.⁶

The United States was founded on the principle of religious liberty—a principle that is now under threat. At the nation’s outset, lawmakers established a unique society without a government-established religion, which is cemented in the First Amendment to the Constitution, and sanctioned rights for religious people.⁷ They also protected the rights of religious institutions and ensured that all Americans could express a diverse range of beliefs without interference from the government.⁸ In recent years, however,

the right to religious liberty has increasingly been exploited and misused in order to favor the interests of select, privileged conservative Protestant Christians over the basic rights of the most vulnerable Americans.⁹

The principle of religious liberty should extend to all people, not only ones who come from a specific set of religious beliefs. A 2014 study from the Pew Research Center reveals that the religious landscape in the United States is changing.¹⁰ As the Christian population is declining—particularly among mainline Protestants and Catholics—the number of adults who do not identify with a specific religion is growing.¹¹ With the changing demographics of Americans and their religious connections, it is even more important that people of all faiths and people of no faith are granted the fundamental right to religious liberty.

Protecting religious liberty continues to be a priority for a majority of Americans: Almost two-thirds believe that there should be a “strict separation” between church and state, and nine out of 10 agree that the United States was founded with universal religious freedom that extends to people of all religions.¹² Policymakers have an opportunity and a responsibility to enact policies that will ensure the right of religious liberty for all Americans without infringing on the rights and religious freedoms of others. This report provides a menu of administrative and legislative options at the federal, state, and local levels to ensure that the right to religious liberty extends to all Americans—not solely those with the loudest voices, most power, or strongest political connections. In America—a country that has codified the necessity of freedom of religion for all—religious liberty policies should reflect the moral values of equality, inclusion, and freedom for all to live without fear of discrimination.

The Trump administration's widespread reinterpretation of the law

Though the U.S. Supreme Court has long recognized that religious freedom should not be interpreted to permit harm on others, the Trump administration has redefined the extent of religious liberty protections, establishing a broad license to discriminate.¹³ Former Attorney General Jeff Sessions' guidance on "Federal Law Protections for Religious Liberty"—which he claimed would clarify the existing protections regarding religious liberty—serves as the groundwork for writing discriminatory actions into law. The guidance prioritizes religious exemptions over all other rights, and it defines the constitutional and statutory protections of religious liberty broadly so that they can be widely implemented. For example, previous analysis by the Center for American Progress found at least 87 regulations, 16 agency guidance documents, and 55 federal programs and services that the guidance could undermine—most of which the Obama administration created to advance LGBTQ equality and prohibit federally funded programs from discriminating, including on the basis of religion.¹⁴ The guidance establishes an overarching license to discriminate for the federal government. Moreover, it puts vulnerable populations at risk of being denied equal treatment under the law.

Since the announcement of the guidance on May 4, 2017—the National Day of Prayer—the Trump administration has continued to use religious liberty to justify discrimination.¹⁵ In July 2018, former Attorney General Sessions announced the creation of a Religious Liberty Task Force, which, according to Sessions, will ensure that "all Justice Department components are upholding that guidance in the cases they bring and defend, the arguments they make in court, the policies and regulations they adopt, and how we conduct our operations."¹⁶ The purpose of the task force is to enforce the 2017 religious liberty guidance from the U.S. Department of Justice, yet such enforcement could promote a license to discriminate on the basis of religious liberty. These and similar initiatives erode the original intent of religious liberty—ironically, in the name of religious liberty—in order to validate discrimination against the most vulnerable communities.

The exploitation of religious liberty to deny access to health care

Trump administration officials such as Roger Severino, director of the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS), have tried to codify the favoring of religious liberty over other rights.¹⁷ Much of the push behind these efforts has stemmed from Severino's Conscience and Religious Freedom Division, which was announced in January 2018.¹⁸ His stated objective is to allow health care workers and institutions to deny patients access to health care if they claim that providing such care would be in conflict with their religious beliefs.¹⁹ Conscience protections for health care workers—codified in the Weldon Amendment and others—date back to the 1970s, yet they have evolved over time to privilege religious beliefs over all other rights.²⁰ Health care institutions also have a responsibility to protect patients' well-being, which should not be neglected via policies that privilege religious beliefs over patient health and safety.

The role of religion in health care exemptions is no more striking than in Catholic hospitals. According to a 2016 count, Catholic hospitals hold 1 in 6 hospital beds in the United States.²¹ This number has increased over time because of the high numbers of Catholic and secular hospital mergers that have taken place in recent years.²² When hospitals merge, oftentimes some or all of their policies will also merge. Policies that govern Catholic hospitals, also known as "directives," are issued by the U.S. Conference of Catholic Bishops (USCCB) for the hundreds of Catholic hospitals in the United States.²³ The directives can be implemented differently at varying hospitals, as the local bishop is responsible for interpreting the guidelines.²⁴ Although federal law prohibits hospitals from denying emergency care to patients through the Emergency Medical Treatment and Active Labor Act (EMTALA), some Catholic hospitals will limit essential reproductive health services—including contraception, sterilization, abortion, and treatments for infertility—even in circumstances of miscarriage or other pregnancy complications, such as bleeding, infection, or excruciating pain.²⁵

Of course, a health care institution's grounding in a certain faith is not inherently harmful. Rather, it becomes a concern if the institution lacks transparency on how its faith background may affect its policies in ways that could have repercussions on patients' ability to access necessary health-related services. A *New York Times* analysis of 652 websites of U.S. Catholic hospitals found that on nearly two-thirds of the websites, "it took more than three clicks from the home page to determine that the hospital was Catholic."²⁶ And in many cases, hospitals are portraying themselves more secularly by removing religious icons and imagery and by changing their names.²⁷ For example, San Francisco-based Catholic Healthcare West changed its name to Dignity Health in 2012,

and as a result, patients may not be aware that they are seeking services at a Catholic hospital.²⁸ Women may unknowingly plan to deliver their babies at hospitals that do not offer tubal ligation services due to policies based on religious objections.²⁹ Tubal ligations, which are safe and commonly performed contraceptive procedures,³⁰ are safest and most effective when they are performed directly after delivery.³¹ Yet some women have learned that these services were not offered at the hospital while on the operating table after an emergency cesarean section.³² Moreover, it is important that this information is transparent for the women who most often seek care at Catholic hospitals. In 19 states, women of color are more likely than their white counterparts to go to a Catholic hospital to give birth.³³ As a population that already faces health disparities—including high rates of infant and maternal mortality—women of color enter hospitals at a higher risk of having poor outcomes during their pregnancy and delivery than their white counterparts.³⁴ Hospitals should be transparent with current and potential patients regarding the extent to which the directives are followed. Access to such information could lead a patient to gather more details about the directives and how they may limit the care provided to them.

The Affordable Care Act (ACA) requires that hospitals provide their health care services to all people, regardless of their race, sexual orientation, gender identity, or sex. Yet the expansion of exemptions in health care disproportionately harms vulnerable communities, such as women—particularly women of color—and LGBTQ individuals. Previous CAP research analyzed closed complaints of discrimination based on sexual orientation, sex stereotyping related to sexual orientation, and gender identity.³⁵ The analysis revealed that the majority of patients who filed these complaints were denied care that was unrelated to transition-related treatments solely because of their gender identity.³⁶ For transgender patients, such exemptions could create challenges to accessing proper health care. In a recent example, a transgender patient was scheduled for a hysterectomy at Dignity Health, yet the procedure was considered to be sterilization and therefore was canceled.³⁷ According to the doctor in private practice who scheduled the procedure, the hospital routinely allows hysterectomies for cisgender patients.³⁸ The American Civil Liberties Union sued the hospital, arguing that withholding necessary medical services based on a patient's identity violates California's Unruh Civil Rights Act;³⁹ the case is still active.⁴⁰

The gradual dismantling of the Affordable Care Act

Two final rules on religious and moral exemptions to the contraceptive coverage requirement set forth under the ACA carve out conscience protections for employers that allow them to withhold contraceptive coverage requirement services to their employees based

on “sincerely held religious beliefs” and “non-religious moral convictions.”⁴¹ The Trump administration moved forward with finalizing the rules, even though two federal district courts enjoined them.⁴² In January 2019, two federal judges ruled against the birth control rule—one in California with a partial injunction, and another in Pennsylvania with a nationwide injunction.⁴³ Judge Wendy Beetlestone, the federal judge in the Pennsylvania case, cited that RFRA does not allow for this carve-out of contraceptive coverage. These types of exemptions could create a path for health care providers to pick and choose to whom services are provided and which types of services are offered. The exemptions from these rules would be applicable to many types of institutions, including higher education institutions.⁴⁴ For example, some institutions have conflated abortion and contraception in order to justify the reduction of available birth control services via religious exemptions. In early 2018, the University of Notre Dame—a private Catholic university—stated in a letter that it would only include “simple contraceptives (i.e., drugs designed to prevent conception)” in its contraception coverage under the school’s health insurance plans and that it would not offer what it calls “abortion-inducing drugs,” which include emergency contraceptives such as ella, Plan B, and some intrauterine devices (IUDs).⁴⁵ The letter notes that the decision was made based on the university’s “fidelity to [its] Catholic mission.”⁴⁶ This letter does not clarify what constitutes “simple” contraception and reinforces the misconception that certain contraceptives—such as Plan B and IUDs—induce abortion.⁴⁷ In addition, individuals cannot always seek health care services at the hospital of their choosing, and a patient’s decision to seek care at a certain hospital is often done out of necessity due to a lack of other options.⁴⁸ Religious exemptions should not be used to override nondiscrimination protections in any venue, particularly in the case of health care.

The Trump administration will likely continue these efforts by rewriting religious liberty protections in new rules. The administration has recently lauded their efforts in a press release from HHS “to protect life and conscience” by curtailing abortion rights and promoting overly broad religious exemptions.⁴⁹ Moreover, a rule entitled “Ensuring Equal Treatment for Faith-Based Organizations” is on the regulatory agenda for HHS.⁵⁰ The rule is based on input from a request for information (RFI) in which some medical providers stated that their faith was in conflict with providing health services to everyone. For example, one commenter representing a faith-based medical school, Liberty University College of Osteopathic Medicine, said, “We cannot comply with the Obama-era transgender mandate that requires us to put aside conscience convictions and medical judgment.”⁵¹ Another commenter outlined concerns about “the transgender mandate” and the harms of “hormonal treatment and possibly surgical treatment for gender dysphoria,” noting that due to her affiliation with a faith-based organization,

Catholic Health Initiatives, she would likely face little repercussion if she declined a patient's request to "provide gender-changing treatments."⁵² The Christian Medical Association and Freedom2Care submitted a comment on behalf of almost 50,000 members and constituents, raising concerns that nondiscrimination measures in the ACA "opened the door to widespread discrimination against individuals and organizations of faith."⁵³ HHS plans to issue a new rule in line with the administration's official statements on protections for religious liberty, which includes Sessions' guidance.⁵⁴ The guidance has served as a blueprint for the Trump administration to chip away at nondiscrimination protections under the guise of protecting religious liberty.

The exploitation of religious liberty to discriminate against foster and adoptive parents

On the state level, religious liberty has been used to discriminate in taxpayer-funded child welfare programs such as adoption and foster care services. In response to marriage equality, states have begun to pass laws that allow these child welfare programs to deny services through religious exemptions.⁵⁵ As a result, LGBTQ parents have been refused the opportunity to adopt and foster children from faith-based child welfare providers. In the past three years alone, seven states have passed laws to allow taxpayer-funded child welfare programs to refuse to work with LGBTQ prospective parents if they assert a refusal based on religious reasons.⁵⁶

Most recently, the Trump administration announced that South Carolina foster agencies are not required to comply with federal nondiscrimination rules barring discrimination on the basis of religion, even if they receive federal funding.⁵⁷ This is a clear violation of the separation of church and state. As a result, prospective foster parents from Jewish, Catholic, and other non-Protestant Christian backgrounds have been denied the opportunity to welcome foster children into their homes.⁵⁸ While the administration claims to be advancing religious liberty by supporting the Protestant foster care agency, it is in fact condoning the violation of the religious liberty of numerous prospective foster parents.

In addition, some state laws allow child welfare programs to refuse certain medical treatments to LGBTQ children.⁵⁹ This issue of religious liberty and child welfare was brought to the federal level in July 2018 with the introduction of the so-called Aderholt amendment, which sought to allow child welfare providers to discriminate on the basis of religion.⁶⁰ Ultimately, it was removed from the House appropriations bill in the final vote.⁶¹

It is against the best interests of children to deny them potential loving families and proper medical care.⁶² In addition, taxpayers save nearly \$29,000 per year for every child that is adopted from foster care and therefore does not age out of the child welfare system.⁶³ An organization's stated religious values should not take precedence over children having access to loving families and proper health care services.

Threats to the separation of church and state

By threatening to erode the separation of church and state at both the federal and state levels, the Trump administration has privileged a certain set of religious beliefs and political goals over the rights of many. This has not only laid the groundwork to redefine the extent of the law and the scope of religious exemptions, but also threatened the very definition of America's foundational principles of religious liberty and the separation of church and state.

Eroding religious liberty in order to form dark money channels

At the 2017 National Prayer Breakfast, President Donald Trump declared his intention to repeal the Johnson Amendment, a critical measure that ensures that houses of worship can maintain their sanctity by being free from political influence.⁶⁴ He said, "I will get rid of, and totally destroy, the Johnson Amendment and allow our representatives of faith to speak freely and without fear of retribution."⁶⁵ The amendment's repeal would allow houses of worship to accept tax-deductible monetary contributions for partisan purposes, including political endorsement or opposition of candidates.⁶⁶ Moreover, more than 100 religious groups, 4,000 faith leaders from all 50 states, and 5,000 nonprofits oppose the repeal of the Johnson Amendment.⁶⁷ It would distort the core mission of houses of worship from sacred spaces of prayer, healing, comfort, and community to partisan venues with a political agenda.

Republican members of Congress and conservative activists such as Liberty University President Jerry Falwell Jr. and Faith & Freedom Coalition Chairman Ralph Reed advocated for its repeal through a provision in the 2017 Tax Cuts and Jobs Act.⁶⁸ Ultimately, the bill did not include a repeal of the Johnson Amendment, but President Trump has continued to advocate for its repeal.⁶⁹ He proclaimed at a White House dinner for evangelical leaders that it is "interfering with your First Amendment rights."⁷⁰ Trump and his administration threaten to eliminate a protection that is crucial for all Americans, whether or not they are self-identifying people of faith.

Redefining religious liberty as a right provided to only a select few

While the Trump administration claims to be in pursuit of religious liberty, it has instead prioritized a specific set of conservative Protestant Christian beliefs over all others. Its efforts have extended far beyond the precedents set by both *Burwell v. Hobby Lobby*, which expanded who is eligible for RFRA protections and how they will be granted,⁷¹ and *Trinity Lutheran Church v. Cromer*, which the Trump administration has attempted to expand in cases that pertain to when the government can or cannot exclude religious organizations from funding.⁷² In the 2017 Supreme Court case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, Charlie Craig and David Mullins sought to purchase their wedding cake at Masterpiece Cakeshop in Colorado, yet the baker refused to sell the cake after realizing that they were a same-sex couple. The Trump administration did not play a neutral role in determining whether the right to free speech permits businesses to discriminate in this case.⁷³ Through an amicus brief, the Department of Justice urged the U.S. Supreme Court to side with the baker, despite standing civil rights laws.⁷⁴ This argument is not in line with the fact that a majority of American people of faith are opposed to all forms of discrimination, including, specifically, business owners refusing to serve consumers when they object to their sexual orientation or gender identity.⁷⁵ Moreover, polling has consistently shown that a strong majority of Americans believe that businesses should not be allowed to deny services to potential customers based on gender identity or sexual orientation.⁷⁶ This is consistent with precedential U.S. Supreme Court decisions, which clarify that the scope of religious liberty stops when it begins to harm another individual.⁷⁷ Although it is not out of the ordinary for the federal government to file a brief in a constitutional case, it is unusual for the Justice Department to argue for the constitutional right to discriminate.⁷⁸ Ultimately, the Supreme Court's narrow ruling did not set precedence to allow businesses to discriminate against LGBTQ people, but it did narrowly rule in favor of the baker.

Soon after the *Masterpiece* decision, however, the U.S. Supreme Court chose to ignore President Trump's infringements upon religious liberty when it ruled that the United States can deny travel and entry from individuals from certain predominantly Muslim countries.⁷⁹ As one of the first defining acts of his then-new administration, Trump instituted a "total and complete shutdown of Muslims entering the United States."⁸⁰ While the religious liberty of the Christian baker in *Masterpiece* was prioritized over the rights of a same-sex couple, the freedom of Muslim individuals to travel and enter the United States was deemed a threat.

Data suggest a disconnect between which religious groups believe that their religious liberty is being threatened and those who are actually subject to the most harm due to religious discrimination. Most Americans do not believe that religious liberty is currently being threatened in America.⁸¹ However, a majority of white evangelical Protestants—69 percent—disagree and believe that religious liberty is under threat.⁸² In addition, 57 percent of white evangelical Protestants believe that Christians face discrimination in America, while only 44 percent of the same group believe that Muslims face discrimination.⁸³ Though white evangelical Protestants perceive victimization most strongly, other religious groups are being harmed by religious-based discrimination, and even hate crimes, more frequently. Analysis of FBI hate crime data from 2017 reveals that almost 80 percent of all incidents of religiously motivated hate crimes that year were motivated by anti-Jewish or anti-Muslim bias.⁸⁴ Yet both the executive and judicial branches of government have prioritized the alleged discrimination faced by some white evangelical Protestants over the outsized number of threats that other groups face.

Privileging conservative Christian views in state legislatures

Many of the same individuals who claim their religious liberty is under threat are actively working to enshrine their own religious beliefs into state law. Some conservative Christian organizations are working on an erosion of the separation of church and state through state legislatures. For example, Project Blitz, a campaign that showcases a playbook of 20 model bills created by a conglomerate of Christian-right groups—WallBuilders, the Congressional Prayer Caucus Foundation, and the National Legal Foundation—lays out a policy agenda to attack an inclusive vision of religious liberty.⁸⁵ The campaign’s stated purpose and mission includes protecting “traditional Judeo-Christian religious values and beliefs in the public square.”⁸⁶ Bills that require public spaces to privilege a specific set of religious beliefs do not respect the increasing diversity of religions and beliefs in America. Those who have vocalized their reasonable opposition to Project Blitz’s bills have been cast as anti-religious or unpatriotic.⁸⁷

Based on analysis from Americans United for Separation of Church and State, 74 bills were introduced in 2018 that followed Project Blitz’s model legislation or covered similar goals.⁸⁸ Among other things, these bills promoted religion in public schools, threatened marriage equality, and denied adoptive and foster homes on the basis of religion. The entities behind Project Blitz organize prayer caucuses in statehouses to ensure that state legislators hear their ideas.⁸⁹ By introducing seemingly innocuous bills, such as those that require public schools to post the national motto, “In God We Trust,” Project Blitz attempts to lay the groundwork for harmful legislation that privileges their conservative Christian views over all others.

The misuse of religious liberty has prioritized some political goals and religious beliefs over the importance of the separation of church and state. These efforts, spearheaded by the Trump administration, have affected houses of worship and religious institutions, the courts, and laws at both the federal and state level. Policies must be put in place to ensure that religious liberty is used to protect—not harm—communities across the country.

Policies and practices to reinstate a balanced and inclusive vision of religious liberty

Policymakers at all levels have the opportunity to create structures for a more balanced vision of religious liberty in America. Legislative options at the federal and state levels can explicitly codify nondiscrimination protections, while initiatives at the local level can pave the way for future policies and greater levels of public understanding. Most importantly, policies must respect religious beliefs without harming or infringing on the rights of others. Through options like the examples below, policymakers can create the framework for a balanced, inclusive vision of religious liberty throughout the United States.

Clarify that RFRA is not intended to be a tool to discriminate

The recently reintroduced Do No Harm Act would amend the federal RFRA to prohibit granting exemptions to civil rights laws that could cause third-party harm.⁹⁰ It would help to ensure that populations particularly vulnerable to the abuse of religious liberty are legally protected from such discrimination. Moreover, it would help to restore a balanced interpretation of religious liberty in which laws serve as a shield for religious freedom and religion cannot be used as a justification for discrimination.

State RFRA should explicitly balance religious protections with nondiscrimination language.⁹¹ For example, Texas' RFRA contains provisions to ensure that it is not used to avoid pre-existing civil rights protections, stating: "The protection of religious freedom afforded by this chapter is in addition to the protections provided under federal law and the constitutions of this state and the United States."⁹² New state RFRA should include specific language outlining the limits of the RFRA so that vulnerable communities are not put at risk. Meanwhile, existing state RFRA should look to add similar language.

Ensure that religious exemptions do not undermine patient health

All hospitals should be required to clearly provide a list of services that they do not offer. For example, Washington state requires that hospitals make this information accessible on their websites—only posting it on the corporate parent site is not acceptable. As is the case in Washington, this information should be “readily accessible to the public, without requiring a login or other restriction.”⁹³ In doing so, policymakers would ensure that health care providers are required to clarify the types of services they do and do not provide and would allow for patients to enter these hospitals better informed. In addition, local policymakers should clarify and explicitly state that it is against federal law to deny emergency reproductive health care.⁹⁴ States should also require that hospital mergers and acquisitions retain vital health services, including reproductive health care.⁹⁵

Prohibit for-profit business corporations from claiming exemptions from anti-discrimination laws

The Massachusetts No Excuses for Corporate Discrimination Act—also known as H. 767—attempts to provide a solution to businesses claiming religious or secular moral exemptions from anti-discrimination laws.⁹⁶ The bill, which is currently under consideration in the Massachusetts Legislature, would close the loophole that allows for-profit business corporations to use claims of religious freedom to challenge anti-discrimination law, which have only recently started to be successful following the 2014 *Hobby Lobby* decision.⁹⁷ H. 767 specifically applies to business corporations and not to nonprofit organizations, which include religious organizations. State law grants business corporations their existence, powers, and conditions of operations.⁹⁸ As a result, states have an opportunity to implement legislation to ensure that for-profit corporations are not using claims of religious freedom to justify discrimination. H. 767 also would protect people from being discriminated against on the basis of religion since, under current law, for-profit business corporations can discriminate against an individual during the hiring process only to claim later that the laws against discrimination in hiring do not apply because of the owner or corporation’s religious beliefs. Overall, this bill attempts to ensure that anti-discrimination laws are not subject to corporate claims for exemptions based on religious or moral beliefs.

Extend nondiscrimination laws at the federal level

The passing of the recently reintroduced Equality Act would extend nondiscrimination laws at the federal level to apply to everyone, including LGBTQ people.⁹⁹ Seventy percent of Americans already agree that a federal law is necessary to protect LGBTQ people from discrimination in areas such as public accommodations, employment, housing, and credit.¹⁰⁰ The LGBTQ population has long been subject to discrimination on the basis of certain religious-based claims, and as a result, they should be included in specific nondiscrimination protections.

Consult faith communities in local policymaking and foster interfaith dialogue

Local faith communities should be consulted in local policymaking in order to respond to their concerns and establish a formalized path of communication. For example, Maryland's Montgomery County Office of Community Partnerships houses the Faith Community Advisory Council (FCAC), which "ensures that the county executive is well informed of and able to act effectively in responding to the needs and concerns of faith communities, and to work collaboratively with government, nonprofits, and community organizations."¹⁰¹ Through working groups like the Religious Land Use Working Group, the Faith Community Working Group, and the Neighbors in Need Working Group, the FCAC advises the county executive on the needs and concerns of members of the faith community in Montgomery County.¹⁰² The council represents a diverse range of faith traditions in order to ensure that the many voices of the faith community are considered in policymaking. Other counties and local governments should adopt a similar working group model while also ensuring that less-often heard voices are included in policymaking decisions—such as those of atheists, women, LGBTQ people, and people of color.

As the Christian-identifying population in the United States declines and populations of those who identify as other faiths or are religiously unaffiliated grow, interfaith education and understanding become even more important.¹⁰³ Local governments have the opportunity to implement paths for interfaith involvement and consultation on local religious liberty-related issues.

Several state and local governments are also engaging faith leaders on local issues through the creation of interfaith task forces. For example, New York Governor Andrew Cuomo (D) created an interfaith advisory council to receive input on achieving greater interreligious understanding and promoting inclusivity and open-mindedness.¹⁰⁴

Meanwhile, in Maryland, the Governor’s Office of Community Initiatives builds interfaith partnerships with local faith leaders and organizations on issues such as homelessness, poverty, and domestic violence prevention.¹⁰⁵ Groups like these should be consulted on addressing local interfaith issues—similar to how Atlanta Mayor Maynard Jackson (D) implemented the groundwork for an interfaith chaplaincy with the support of local, diverse clergy.¹⁰⁶ A successful interfaith task force should promote opportunities for listening and gathering. For example, the Interfaith Council of Southern Nevada’s Mayors Prayer Breakfast gathers more than 500 civic and religious leaders to celebrate the region’s diversity and explore solutions to community problems.¹⁰⁷ Local interfaith task forces provide an opportunity for consultation and engagement from local faith leaders and organizations, thus promoting an inclusive vision of religious liberty.

Conclusion

Administrative and legislative options exist at the federal, state, and local levels to ensure that religious liberty is not used as a justification for discrimination. Policymakers should ensure that laws like the Religious Freedom Restoration Act uphold the right to religious liberty while also ensuring that populations particularly vulnerable to the abuse of religious liberty are legally protected from such discrimination. This menu of policy options serves as a model to create and maintain protections ensuring that the original intentions of religious liberty are upheld. These policy options would protect many people from the potential harm of a warped application of religious liberty—particularly populations that are most vulnerable, such as women, people of color, religious minorities, and LGBTQ individuals.

Religious liberty must extend to the growing and changing diversity of the American public. Its misuse, currently spearheaded by the Trump administration, has prioritized certain political goals and religious beliefs and will have lasting impacts on houses of worship, religious institutions, the courts, and laws at the federal, state, and local levels. If policymakers do not ensure that religious liberty protects the free exercise of religion for all Americans, it will continue to be weaponized as a tool for discrimination and political gain and weaken nondiscrimination protections. Religious liberty must include the everyone; it should not be a tool to ensure that only a specific set of religious beliefs and communities are prioritized above others.

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