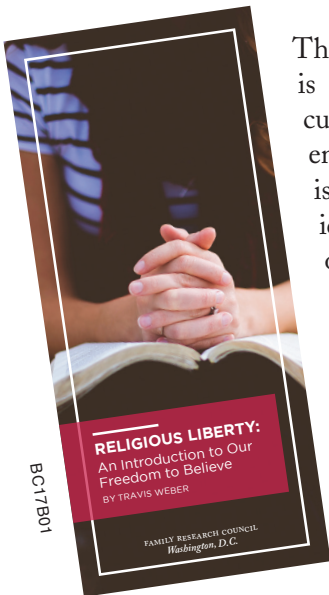




RELIGIOUS LIBERTY:

An Introduction to Our Freedom to Believe

BY TRAVIS WEBER, ESQ.



The issue of religious liberty is everywhere in the news and current events. The term often emerges alongside hot button issues like abortion and sexual identity. “Religious liberty” or “religious freedom” is often placed in quote marks throughout news stories, as if to signify there’s more going on than meets the eye. What is going on? The public discussion of this issue wasn’t always this way; religious liberty used to be fairly uncontroversial. So what happened?

As we begin to answer this question, we will explain (1) what we mean by religious liberty, (2) who is affected, (3) why this is happening, (4) why you should care, and (5) what you can do about it. We will follow up with some answers to common questions.

What is Religious Liberty?

Simply put, it is the freedom to hold religious beliefs of one’s choice, and to live out those beliefs. Religious freedom laws protect those of all faiths against government actions which suppress their religious practice.

The First Amendment to our Constitution begins with “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .” The first half of this excerpt is what is known as the Establishment Clause, and the latter half is known as the Free Exercise Clause. This is the primary legal protection of religious freedom, and it has been in place since America’s founding. In addition, state constitutions contain protections for religious freedom, and laws at the federal, state, and local levels protect religious freedom.

One of the most prominent of these is the Religious Freedom Restoration Act, enacted in 1993 with

broad, bipartisan support to require the government to meet a high burden before infringing on religious practice.

Our country has had a proud history of protecting religious liberty, but we must be continually vigilant to remain on this path. We do this by passing legislation and taking executive action to protect religious liberty, and ensure that the courts uphold constitutional and statutory rights to religious freedom.

Who Does Religious Liberty Affect?

Generally speaking, those affected by religious liberty are those who hold religious beliefs and want to freely exercise them—yet face government action restricting their ability to do so. Recently, the government has increasingly restricted religious practice derived from the belief that abortion is sinful, or that sexual activity is only permissible within a marriage between a man and a woman. These beliefs are held by large numbers of faithful Christians, along with Jews, Muslims, and others. Here are a few of their stories:

NAVY CHAPLAIN WES MODDER



Lieutenant Commander Wesley Modder has been called the “best of the best” of Navy chaplains.¹ However, when Chaplain Modder expressed Christian views on sexuality in the context of a private counseling session, and several sailors complained that they disagreed with the chaplain’s beliefs, the Navy removed him from his unit. The views he expressed in private counseling were in complete agreement with his endorsing church, the Assemblies of God.² His commander subsequently sought to remove Chaplain Modder from the Navy promotion list, and send him to a Board of Inquiry in order to remove him from the Navy.³ Thankfully, Chaplain Modder is one of the few success stories in the battle being waged

against religious liberty. In September 2015, he was exonerated by the Navy, and retired honorably.

AARON AND MELISSA KLEIN



Melissa and Aaron Klein owned Sweet Cakes by Melissa, a bakery located in Gresham, Oregon. They declined, because of their religious beliefs, to bake a wedding cake for a same-sex wedding. The same-sex couple took legal action and filed a complaint against Aaron and Melissa with the Oregon Bureau of Labor and Industries (BOLI). BOLI ruled against Aaron and Melissa, and issued an administrative decision saying that Sweet Cakes engaged in sexual orientation discrimination against the same-sex couple. Due to threats and fearing for their safety, Aaron and Melissa closed Sweet Cakes in September 2013.⁴ After subsequent legal proceedings, they were forced to pay \$135,000 for refusing to bake the cake that violated their beliefs.⁵ Aaron and Melissa have now completely closed their business, and can't ever see the prospect of opening another business in Oregon again.⁶



LITTLE SISTERS OF THE POOR

The Little Sisters of the Poor are a group of nuns who care for the elderly poor in 30 countries around the world, and have been doing so for more than a hundred years.⁷ Yet the Obama administration's Department of Health and Human Services refused to exempt them and similar organizations from being forced to provide abortion-causing drugs and services through their health plans—despite the fact that this was against their religious beliefs. The Little Sisters have never sought to prevent the government from providing these services, but have simply asked that the government pick a way that doesn't force them to deliver services that violate their faith. The government remained steadfast, forcing the Little Sisters to choose between violating their religious beliefs or paying crippling fines of up to \$100 per day per employee.⁸ This matter is tied up in litigation and still not resolved.

These are only a few of the many who have suffered religious liberty violations over the past number of years, many of them quite recently. To learn more about those who have been affected, please reference:

- FRC's compilation of everyday Americans fighting for their religious liberty: freetobelieve.com
- FRC's publication on Hostility to Religion: frc.org/hostilityreport

While the incidents referenced previously happened right here in the United States, the suppression of religious freedom internationally is even more serious and widespread, and many violations remain ongoing. Large numbers of people around the world often suffer drastically higher costs for simply *holding* certain beliefs—whether Christians in ISIS territory in the Middle East, Ahmadiyya Muslims in Pakistan, or the Falun Gong in China. Religious liberty is a worldwide issue for people of all faiths.

Why is This Happening?

Within the United States, government actions and laws have historically affected minority faiths (if they affected any at all)—not widely-held Christian beliefs. Indeed, from the beginning, our laws were based on a moral and philosophical foundation consistent with Christian beliefs, and thus religious liberty concerns historically did not draw the attention of large segments of Christianity (and thus a large segment of the American population) like they do today—at least on basic matters like sexual ethics. For this reason religious liberty was historically never too controversial—politically or socially. Indeed, when the federal Religious Freedom Restoration Act (RFRA) was passed in 1993, a coalition of groups from across the religious, political, and legal spectrum—from the Southern Baptists to the ACLU—came together to support stronger protections for religious liberty. The law has always protected those of *all* faiths; this is not the point of controversy. So what has changed since the passage of RFRA?

In a nutshell: The cultural ideal of individual sexual autonomy, which has slowly and steadily grown since first significantly emerging during the sexual revolution of the 1960s, has rapidly expanded into a powerful cultural and political force, primarily embodied in the lesbian/gay/bisexual/transgender (LGBT) advocacy movement. As this occurred, largely Christian

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segments of the country found their beliefs being displaced in law to give way to LGBT policies. The minority faiths who have always needed religious liberty protections still need them. But now, in addition, perhaps for the first time in American history, *Christians* need religious liberty protections—as their beliefs are adversely impacted by federal, state, and local laws and government actions.

In addition, successful efforts by abortion advocates to ensure the law mandates support for the practice have led Christians and others to see their need for religious liberty in this area too. Abortion and sexual identity issues are the two primary areas which see controversy when mentioned in the context of religious liberty today.

The thread tying together today’s controversial religious liberty issues is the issue of sex. This makes sense in light of the fact that the powerful, growing agenda of radical individual sexual autonomy is colliding with the beliefs of many Christians, Jews, Muslims and others on this topic today. Thus, the fight is not really between religious liberty and government, as it may appear on the surface. Rather, it is between traditional Christianity and the idea of sexual autonomy.

But I Don’t See How This Affects Me— Why Should I Care About Religious Liberty?

At this moment, it may not affect you. But current trends that are undermining religious liberty don’t occur in a vacuum. The forces antagonistic to traditional Christian beliefs on marriage and sexuality are never satisfied—the legalization of same-sex civil unions was followed by the Supreme Court’s declaring a constitutional “right” to same-sex marriage; now these same forces are demanding acceptance of “gender fluidity” and transgenderism, which is resulting in the upending of school locker and bathroom

policies. At this point, these debates are only directly impacting certain individuals—those in the public square, those trying to live out their faith through their businesses, and those interacting with the government by receiving grants or contracts. But it will not remain this way forever.



Chaplain Wes Modder, the Kleins, and the Little Sisters of the Poor might have also asked how it would affect them—until it did! They just wanted to live their lives in peace, and didn’t ask for controversy to come to their doorstep. But they had to deal with it once it arrived.

Their beliefs are the same beliefs held by millions of Christians who attend churches across America every Sunday, and espoused in their private lives and homes every day of the week. Yet they remain blissfully unaware that hostile forces would happily trample on such beliefs if they could—and may try to do so in the foreseeable future; there has already been speculation among some progressives about targeting the tax-exempt status of churches that don’t modify their theology and capitulate to the radical sexual agenda. The church may be free for now, but won’t remain free forever—especially if millions of Christians remain apathetic simply because no controversy has come to their doorstep yet.



What Can I Do About It?

Remain Knowledgeable and Engaged

This includes understanding the issue, and the people being affected by it. FRC and our allies are constantly drawing attention to the latest developments on religious liberty—in politics, the news, and the courts. You can remain informed of these issues by visiting our website at frc.org and signing up to receive alerts and other communications. Some of these alerts include efforts to support those whose religious liberty is being suppressed. While FRC doesn't litigate cases, we can connect you with allies which do if you need legal help with a religious liberty issue.

In addition, it is important to understand how this issue plays out through government and politics. While you may not be able to directly affect how a certain judge rules on an issue, you can affect this issue in the voting booth. So vote! Know which elected officials support religious liberty and which ones do not,

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and let them know what you think of their stance. In addition, call or write your elected officials at the federal, state, and local level on religious liberty issues of concern (which we often call attention to).

Help Maintain a Culture of Religious Freedom

Legal protections for religious freedom are important, but so are cultural freedoms: the expectation and acceptance of people living out their faith in the

public square. We maintain a culture of religious freedom by all doing our part; exercising our legal rights to express and live out our faith, and sharing that faith with coworkers, neighbors, and others when given the opportunity. This creates a cultural climate where religious liberty is normal and talking about such matters of faith is expected.

Remain Hopeful and Aware of Opportunities to Share God's Truth More Broadly

As conflict occurs and religious liberty increasingly becomes a topic for discussion, there will be opportunities for conversation we did not have before. We should look beyond the conversation about policy, and consider whether there is an opportunity to share the very faith we are arguing we should be free to share! Often there is a spiritual need beyond a material conversation, and conversations and points of conflict are opportunities to share why there is a conflict: Christians believe that all human beings are separated from God, but he sent his son to die on a cross as a sacrifice for our sins.

Points of conflict between Christians and others—often in the LGBT community—are opportunities to proclaim God's truth clearly: that all people have dignity in the eyes of God, and that our beliefs about human sexuality are driven by a belief that God's ways are best for all human beings, whether we recognize it or not. All of us, *regardless* of our sexual choices, are in need of salvation from God. This is the true Christian message, but it often gets lost in the public debate. Every time we can shed light on it, we should take the opportunity. As these conversations add up, we can change the culture and the law, and in turn, change our country—while proclaiming God's kingdom.

Keep a frame of reference, and remember that God is in control, and his kingdom ultimately pertains to eternal matters, regardless of what happens to religious liberty in the next few years. God may be using a conversation (regardless of whether the person agrees with you on religious freedom) to convict someone and draw them to his kingdom. Be ready to share about your faith. As you do this, someone may become more open to religious freedom—even if they don't agree with your faith.



Common Questions About Religious Liberty

How Do Legal Protections for Religious Liberty Work?



Depending on how they are designed, they could work in several ways—through clear exemptions, or a balancing test framework.

Exemptions

The primary way religious liberty is protected in law is through a clear exemption. An example of this is in a federal statute protecting against religious discrimination. The Civil Rights Act of 1964 prohibits employers from discriminating on the basis of religion in hiring and firing, but Section 702 of Title VII of this law exempts religious organizations from this requirement. If these religious organizations are not permitted to hire only people who share their beliefs as they seek to carry on their work, they would be eroded from the inside out and would be at the mercy of anyone trying to destroy their religious mission and purpose. Thus, this exemption is crucial for their religious freedom to mean something.

Balancing Tests

The second is through a balancing test, which doesn't dictate a certain result in law, but processes the claim through a balancing test framework. Sometimes the religious claim wins, and sometimes it loses, depending on the government's interest on the other side. The Religious Freedom Restoration Act (RFRA) is an example of a law which uses a balancing test. When we understand this, we can see the absurdity of claims that RFRA is a "license to discriminate." RFRA doesn't permit anything; it applies a framework which makes sure the government has a good reason for any infringement on religious beliefs.

Under a RFRA, an individual first has to prove they have:

- A religious belief, *and*
- That this belief is sincere, *and*
- That this belief has been substantially burdened by the government action in question.

Only if the person making the religious claim satisfies those three elements does the claim move to the second stage. At this stage, the government must show that:

- It has a compelling interest in burdening the religious practice, *and*
- It has only burdened the practice in the least restrictive way possible.

If the government can make both of these showings, its law or regulation is allowed to infringe on the religious practice—even under RFRA. However, if the government fails to make both of these showings, the religious claim will prevail, and at that point the person is entitled to legal protection for their religious beliefs and practices. Even then, the person must look to the court's application of RFRA; in no cases does RFRA simply allow people to appeal to religion to act as they wish apart from judicial involvement.

It is important to remember there are limits to religious liberty, and this framework does not permit anyone to automatically do anything in the name of religion—they have to jump through all the hoops discussed above. For example, this RFRA framework will not "let EMTs refuse to serve gay people," as has been claimed.⁹ Claims that RFRA legalizes child abuse are also false. Child abuse and criminal assault cases are routinely prosecuted in states with RFRA, and defendants in these states have not been able to excuse their conduct by appealing to RFRA.

Why Should I Care About Religious Liberty Laws Which Protect Those of All Faiths?

What interest do I have in protecting the religious rights of others, including those I don't agree with? In a nutshell, what protects them protects us, and vice versa. The same laws which protect the person holding a faith we don't agree with are the laws which will

protect me. My protection is tied to theirs. As theirs grows stronger, so does mine. If not, mine weakens too. This is because our religious liberty laws protect all faiths equally. We stand or fall together.

There is a time and place for debating our religious beliefs on their merits, but it is not when crafting our religious liberty law, who it will protect, and how. The issue when crafting the law is freedom; not about whether we think the other person's beliefs are true. We know that true faith cannot be coerced, nor does God want this. Rather, God has given people the freedom to believe as they wish, and just and prosperous governments have recognized and protected this freedom. The law will protect all sorts of things we don't agree with, but it also protects us. We need the freedom to speak and live out our beliefs. That freedom then enables us to debate the truth of our beliefs.

In an age of differences, more freedom is the key to a prosperous and flourishing society. For example, a small business owner whose faith infuses his or her business should be free to run it as seen fit. Different business owners will have different beliefs, and if a customer cannot obtain an item from one, there will be another to provide it. It makes no sense to force them to create something that violates their beliefs. Do we really want people performing services for us which they are coerced to do? Do we think they will do a good job when their hearts are not in it? Or will they be motivated to do a lousy job because they don't support the cause?

**"IN AN AGE OF DIFFERENCES,
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A Christian small business owner should not be forced to create a cake for a same-sex wedding. Likewise, a bakery owner antagonistic to Christianity should not be forced to create a cake for a Christian church. Do we really want to force a Jewish craft shop owner to create banners for a Neo-Nazi parade organizer? Likewise, the Muslim shop owner should be free to refuse to sell clothing believed to violate the tenets of Islam due to its lack of modesty.

The biggest threat today is an overbearing secular government, looking to squash expressions of religious belief in general, but regarding marriage and family specifically, all in the name of "nondiscrimination." Conservative Christians, Jews, and Muslims share many of the same beliefs on marriage and family. Yet their ability to express and act on these beliefs is increasingly hampered by a large, intrusive government, which is growing more aggressively secular every day. This government is as much a threat to those of different faiths sharing a conviction on this issue as it is to them for religious beliefs and practices not shared. It is thus in their interest to band together against such government authorities, just as they did in 1993 when a diverse coalition worked together to pass the Religious Freedom Restoration Act.

Why "Religious" Liberty?

Ever wonder why this *religious* obligation to a higher power is treated so specially by law? The answer lies in the fact that if humans were not worshipping a higher power, there would be no need to guard the freedom to do so. The very fact that it even exists is all the evidence we need of its value.

The whole idea of religious freedom came from the notion that man has an obligation to laws higher than human laws—the laws of God.¹⁰ If religion is defined to include humanism or anything not drawing from a distinctly higher authority, it makes no sense, for human beings can't have an obligation to follow human laws over human laws, when both proceed from the same human source. Human beings can only have an obligation to follow God's law over human law.

What Conditions are Required for Religious Liberty to Exist?

Even though we permit claims of various faiths in our law (rightly so), and live in a pluralistic world, society requires certain conditions for religious liberty to exist at all. Primarily, we must have a certain

**“PRIMARILY, WE MUST HAVE
A CERTAIN LEVEL OF MORAL
AGREEMENT IN SOCIETY.”**

level of moral agreement in society; we need a certain cultural “floor” on which certain norms are followed.

For example, we need agreement on what constitutes a “compelling government interest,” for this is part of the framework of religious liberty which enables it to function. As discussed above, one of the limits our society has agreed we can place on religious liberty is when there is a compelling government interest. But how is a compelling government interest determined? Society’s judgment on what is a “compelling interest” requires some degree of cultural unity and moral agreement. If agreement on this begins to unravel, we will see cultural conflict between large factions. What one deems a compelling interest, the other would not. Once we disagree on that as a society, the ability to have a religious freedom framework begins to break down.

Another example of a norm at an even deeper level is the belief in the separation of civil and religious authority. Without that, one can’t even have a religious freedom framework in civil government. For example, if adherents to radical Islam believe that civil authorities are beneath religious authorities, and those religious authorities demand submission to Islam, there can be no religious freedom as we understand it. Not all Muslims believe such principles, but some do—and they



occupy broad swaths of the Islamic world. The whole idea of RFRA, for example, with its protection of all religious claims by a civil government, would be dismissed from the outset by those holding such beliefs. For religious freedom to work, everyone must agree to the same standard of protection for everyone else—regardless of their faith.

But Don’t Religious Liberty Laws Permit Discrimination Against Minority Religions?

No; indeed, quite the opposite. Religious liberty laws protect those of all faiths (which includes minority faiths), a fact confirmed by their text and how they’ve been used. For example, RFRA’s text is neutral on its face, referring to “religion” generally. It therefore applies to everyone, and those of all faiths can avail themselves of its benefits. The history of RFRA confirms this: a review of RFRA and free exercise case law going back decades clearly shows its benefit to everyone from Muslims to Jews, Christians to Sante-ria adherents, and Native Americans to more obscure sects (among others), as they seek to protect their beliefs and consciences from being burdened by an ever-more intrusive government.

Should Those of All Faiths Join Forces to Support Religious Liberty?

Yes. Those of different faiths joined forces during the passage of the federal RFRA in 1993, and this is desperately needed now. Religious liberty never used to be (and still should not be) a partisan issue; it cuts across racial and social lines, and applies in a variety of factual scenarios, such as property disputes, social welfare (recently, the Texas RFRA served as protection for those seeking to care for the homeless), conscience objections to abortion, and restrictions on using controlled substances in religious ceremonies. These laws are not fact-specific. They are not race-specific. They are not religion-specific. And they are not political party-specific.

They protect Muslim prisoners seeking to grow a beard, Native Americans seeking to have long hair in school, Brazilian spiritualists seeking to drink a tea containing some elements of a controlled substance, and Christians seeking to feed the homeless in the face of a hostile local government relying on zoning laws to prevent them from doing so.



The biggest threat to American Christians, Jews, Muslims, and those of other faiths is an overbearing secular state, looking to squash expressions of religious belief in general, but regarding marriage and family specifically. Adherents of these faiths share many of the same beliefs on marriage and family. Yet their ability to express and act on these beliefs is increasingly hampered by a large, intrusive government, which is increasing in its militant secularism, and which is looking to enact a legal regime telling religious people how to act regarding marriage and family—irrespective of their specific faith. It is also a threat to many different types of Christians. Regardless of their theological disagreement, different groups of Christians are facing the same threat: increasing infringements on their free religious exercise. In the face of this threat, religious liberty laws are good for all.

Will Legal Protections Alone Maintain Religious Freedom?

No. We must also have a culture of religious freedom. Protecting this can be more difficult, but just as important. Laws don't regulate the culture, but it is important that the culture retain the freedom for people to hold and practice their religious beliefs.

For example, if in a certain workplace environment people believe they can't express their religious views without retaliation, it shows a certain culture in that

**"WE MAINTAIN CULTURAL
FREEDOM BY ALL
DOING OUR PART..."**

workplace which curtails religious expression. Certain developments overseas show this occurring in extreme ways; in Pakistan, for example, despite laws

which are somewhat protective of religious freedom, mobs of radical Muslims often whipped into a frenzy by radical Islamic preachers have administered "justice" to supposed perpetrators before they even reach the courthouse. While the law may protect religious freedom to some degree, it is not even given a chance to be carried out because of a culture quite intolerant of religious freedom.

We maintain cultural freedom by all doing our part; exercising our legal rights to express and live out our faith, and sharing that faith with coworkers, neighbors, and others when given the opportunity. This creates a cultural climate where religious liberty is normal and talking about such matters of faith is expected.

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