



Advancing Progressive Religious Liberty in 2016

By Carolyn Davis March 30, 2016

Center for American Progress



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Introduction and summary

On March 23, 2016, the U.S. Supreme Court took up *Zubik v. Burwell*. Supreme Court justices once again heard from those challenging the employer contraceptive coverage mandate in the Affordable Care Act, or ACA. The plaintiffs argue that the law violates their religious freedoms, even though the ACA allows them to avoid actually providing the insurance if they fill out a simple form.¹ *Zubik* is an example of cynical efforts by extreme conservatives to exploit religion as a smokescreen for policies that discriminate and endanger the rights of Americans everywhere. It is a version of religious freedom that allows certain religious beliefs to trump the rights of others, cause harm, and allow one group to impose their religion on another. This bears little resemblance to the liberty our country's founders intended.

Religious liberty has always been a core American value, enshrined in the First Amendment and central to maintaining the democratic experiment in our perennially diverse society. But contrary to the intent of the country's founders, state legislatures across the country are advancing bills that create harmful, imbalanced religious liberty protections for business owners, government officials, and even private parties opposed to national marriage equality, certain health care decisions, lesbian, gay, bisexual, or transgender, or LGBT, adoption, and more.² Conservative congressional lawmakers have pledged their support to the First Amendment Defense Act, or FADA—which would allow marriage equality opponents and those with objections to premarital sex to refuse to follow laws without penalty or intervention from the government.³ Conservative activists and media figures also continue to advance a “war on religion” narrative to justify resisting civil rights for LGBT Americans and denying women legally mandated health care—while also regularly questioning whether Muslims and other religious minorities deserve religious liberty protections.⁴

Extreme conservatives cannot and should not have the monopoly on defining religious liberty. Current efforts to twist religious liberty distort the very meaning of one of the country's founding freedoms: Religious liberty belongs to all Americans. This report demonstrates that Americans of faith and conscience

across the ideological spectrum reject the use of religion to discriminate and justify harm against others. Furthermore, it articulates a hopeful, progressive understanding of religious liberty that restores balance and inclusion for religious and nonreligious Americans alike—a framework that is critical to reaching increasingly influential demographics, including Millennials:

- Religious liberty is a core value that belongs to all Americans and serves to ensure that one group cannot impose its beliefs or practices on another.
- Religious liberty should exist in a balanced relationship with the other freedoms that are afforded to all Americans. It should not be interpreted to permit harm to others or limit civil rights.
- Religious liberty protections should be enforced for all Americans and not only for those of a specific religious faith.

Finally, this report offers four recommendations to lawmakers, candidates, advocates, and stakeholders to advance progressive religious liberty in 2016 and beyond:

- Highlight the support of the faith community for progressive policies, such as reproductive health care access and comprehensive nondiscrimination protections, in conjunction with opposition to overly broad religious exemptions
- Demonstrate that abuses of religious liberty protections can have a disproportionate negative impact on vulnerable communities, such as women of color and LGBT youth
- Call out the hypocrisy of war on religion narratives by framing anti-Muslim bigotry as a religious liberty issue and calling it what it is—discrimination against Muslim citizens and immigrants alike
- Fight overly broad religious exemptions on the state and federal levels; support comprehensive nondiscrimination protections; and advance legislation that affirms a progressive vision of religious liberty that is balanced with protections against harm to others

Misusing religious liberty to defend discrimination and intolerance

If many current conservative lawmakers and activists are to be believed, the threat of religious persecution lurks around every corner of American life. The conservative media machine and its pundits have worked tirelessly to spin the advent of common sense progressive policies as an “assault on religious liberty.”⁵ The constant so-called war on religion has proven to be particularly effective to certain audiences. Republicans are now twice as likely as Democrats to believe that religious liberty is under attack in the United States.⁶ Moreover, more than 80 percent of white evangelical Protestants believe that religious liberty is under threat in the United States, whereas 55 percent of Catholics and 53 percent of white mainline Protestants believe the same.⁷

The effect of the war on religion narrative is being felt in both federal and state policy. In 2015, conservative congressional lawmakers introduced FADA and the Health Care Conscience Rights Act. Both bills are designed to carve out broad exemptions for government officials and employees, health care workers, business owners, and others who wish to use religion as a defense to ignore local, state, and federal nondiscrimination protections, as well as legally mandated health care coverage requirements. The Health Care Conscience Rights Act would, among other actions, amend the ACA—allowing employers to refuse to provide employee insurance coverage for medical services or prescription medications, to which the employer objects on religious or moral grounds. FADA would prohibit the federal government from taking “any discriminatory action against a person” who “believes or acts in accordance with a religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.”⁸

Similar versions of these federal bills are also appearing on the state level. Already this year, state FADA bills have been introduced in Georgia, Hawaii, Illinois, South Dakota, Virginia, and Washington state, as well as less expansive versions in states such as Missouri.⁹ Bills providing religious or conscience exemptions for health care providers have been recently introduced in Florida, Michigan,

Oklahoma, Pennsylvania, and Tennessee.¹⁰ Mississippi has introduced a bill that offers protections similar to those enumerated in FADA in both public accommodations and health care provision, among others.¹¹ Bills such as these join the increasing and steady effort to advance overly broad Religious Freedom Restoration Acts, or RFRAs, and attach sweeping religious exemptions to other areas of policy—such as adoption services—which have already been discussed in detail in previous Center for American Progress reports.¹²

Sadly, fearmongering, discriminatory rhetoric also appears to be gaining traction among Americans resistant to religious diversity and tolerance. In 2015, one poll demonstrated that 82 percent of Americans strongly favor religious liberty for Christians.¹³ However, far fewer Americans—just 67 percent—supported protecting the religious freedom of American Muslims.¹⁴ This lack of support for Muslims in America has too often translated to harassment and discrimination, challenging the right of Muslims to believe and worship freely. In some cases, Muslims must walk past armed protesters to simply attend regular services at their mosques.¹⁵ Meanwhile, some politicians are calling for bans on Muslim immigration.¹⁶ Disgracefully, a majority of conservative Republicans believe that Muslims in the United States “should be subject to greater scrutiny than those in other religious groups.”¹⁷ As a consequence, mosques and gurdwaras, where Sikhs—a religious group that is distinct from yet often confused with Muslims—gather to worship, are being targeted by protesters and vandals.¹⁸ Muslim children express increased fear that they will be detained or deported.¹⁹ This spike in bigotry and suspicion is simply incompatible with cherished American values.

Progressive religious liberty restores balance between belief and the rights of others

In 2016, some conservatives continue to cynically abuse the concept of religious liberty in order to impose regressive restrictions on reproductive health access and LGBT civil rights, while refusing to extend religious liberty to Muslims and other religious minorities. However, a growing number of Americans on both sides of the aisle—including, most notably, young evangelical Millennials—are simply growing tired of how religion is used and abused in America’s culture wars.²⁰ And while they may not agree on every issue, most mainline Protestant denominations—as well as a multitude of faith leaders and theologians—have found that reproductive health care access, protections for LGBT people, and combatting Islamophobia are not only compatible with their freedom of religious belief and practice but are also essential to their religious identities. Some examples include:

- The United Church of Christ: “Systematic attempts to undermine the status of women can be seen in: efforts to deny women reproductive rights which are the law of the land, the passage of legislation that inserts government into health care choices which should be personal and private; state legislation which overturns equal pay laws, failure at the national level to renew equal pay laws. ... We believe it is important for the United Church of Christ to again bear witness to the presence of another theological perspective on these issues – one that challenges the assumption of inferior-superior relationships between genders.”²¹
- The Episcopal Public Policy Network of the Episcopal Church Office of Government Relations: “Equality under the law is a constitutional right for every citizen of the United States. Presiding Bishop Elect Michael Curry said, ‘I believe, as the scripture says, that all people are created in the image and likeness of God, and that all are therefore to be accorded the rights and dignity that befit a child of God’... So that LGBT persons may live healthy and full lives, these rights should include access to marriage, housing, and public accommodations such as usage of public restaurants, restrooms, and other spaces.”²²

- Rev. Richard Cizik, president, New Evangelical Partnership for the Common Good: “Do not be seduced by the racialized demagoguery being used to whip up resentment towards refugees and our fellow Americans who are of Muslim faith. This is nothing more than unjustified fear being used by politicians for their own political gain. The twin evils of fear and the manipulation of political power ought to prompt immediate alarm bells and a rejection of such tactics.”²³

The inclusive articulations of religious liberty offered above have much in common with progressive aims. They incorporate a respect for religious belief—and nonbelief—balanced with the rights of others and the freedoms that are fundamental to the country’s democracy. Furthermore, this progressive interpretation of religious liberty opposes the use of religion to justify intolerance.

Resisting dangerous, overly broad interpretations of religious liberty affirms progressive values by ensuring that the American dream remains in reach of all Americans, and it reflects the values of people of faith who are committed to equality and opportunity for all. In short, a progressive vision of religious liberty affirms three things:

- Religious liberty is a core value that belongs to all Americans and serves to ensure that one group cannot impose its beliefs or practices on another.
- Religious liberty should exist in a balanced relationship with the other freedoms afforded to all Americans. It should not be interpreted to permit harm to others or to limit civil rights.
- Religious liberty protections should be enforced for all Americans and not only for those of a specific religious faith.

Faith voices demonstrate popular support for progressive religious liberty

Progressive ideas and policies emerge out of, and not in spite of, diverse American religious and ethical commitments. Progressive people of faith and conscience—religious and nonreligious alike—already speak from their values in favor of full access to reproductive health care, comprehensive nondiscrimination protections, and the fostering of religious tolerance. Moreover, when it comes to religion,

freedom and policy can be mutually reinforcing. Below are several examples that detail the strong popular support among key voting demographics—including women and Millennials—for a progressive interpretation of religious liberty that is compatible with these policies.

Women support comprehensive reproductive health care access—which includes protecting employees from the religious beliefs of their employers

Women voters are demonstrating their conviction that the ACA contraception mandate reflects the government’s compelling interest in protecting women voters’ ability to make family planning decisions that are right for them. Support for the ACA contraceptive mandate cuts past religious and partisan lines. Majorities of Protestant women—66 percent—and Catholic women—63 percent—are even more likely than nonreligious women—59 percent—to support the ACA contraceptive mandate. In making critical health care decisions, women prioritize using their own faith values and conscience—and they oppose the real government overreach that occurs when politicians or employers are permitted to insert themselves into a woman’s health care decisions. Less than one-fourth of all women believe that employers should be exempted from the ACA mandate on the basis of religious beliefs regarding contraception.²⁴ Moreover, 6 in 10 millennial women agree that “access to contraception is critical for the financial security of women.”²⁵

Ensuring that religious liberty cannot be used to limit women’s reproductive health care is especially important for economically vulnerable communities, regardless of gender. Ninety-two percent of black Americans and 85 percent of Hispanic Americans favor expanding birth control access for women who cannot afford it.²⁶

Many faith leaders also believe that employers and politicians should not interfere with a woman’s health care access. A 2014 open letter signed by more than 1,000 faith leaders from 45 states and 35 religious traditions—and rereleased by the Religious Institute in response to challenges to the ACA contraceptive mandate—affirmed:

*No single religious voice can speak for all faith traditions on contraception, nor should government take sides on religious differences. We oppose any attempt to make specific religious doctrine concerning pregnancy, childbirth, or contraception the law of any country in the world. Religious groups themselves must respect the beliefs and values of other faiths, since no single faith can claim final moral authority in domestic or international discourse.*²⁷

LGBT rights and nondiscrimination protections free of discriminatory exemptions enjoy wide support

Faith leaders and everyday Americans have overwhelmingly declared that LGBT Americans deserve nondiscrimination protections. Majorities of both political parties and independents, as well as majorities of all major religious groups, favor LGBT nondiscrimination laws.²⁸ Moreover, many also resist excusing business owners and other providers from their responsibilities to serve everyone equally—regardless of religious beliefs—including 58 percent of Hispanic Protestants; 58 percent of white Catholics; 56 percent of white mainline Protestants; 72 percent of Jewish Americans; and 71 percent of religiously unaffiliated Americans.²⁹

Progressive religious organizations have often been the first to speak out against discriminatory uses of religious liberty—as did the Christian Church (Disciples of Christ) in 2015 when Indiana passed its controversial state RFRA law. A letter signed by Sharon E. Watkins, the Christian Church (Disciples of Christ) general minister and president, as well as additional church officials stated:

*Purportedly a matter of religious freedom, we find RFRA contrary to the values of our faith – as well as to our national and Hoosier values. Our nation and state are strong when we welcome people of many backgrounds and points of view. The free and robust exchange of ideas is part of what makes our democracy great. ... Our members and assembly-goers are of different races and ethnicities, ages, genders and sexual orientations. They have in common that they love Jesus and seek to follow him.*³⁰

Millennials are especially likely to embrace progressive religious liberty

Shifting religious attitudes among Millennials—coupled with strong affinities for progressive policies and ideals—mean that a progressive vision for religious liberty might especially resonate among this key voting demographic. Millennials represent approximately 30.5 percent of all eligible voters in 2016.³¹ Sixty-seven percent of Millennials overwhelmingly reject discriminatory religious exemptions for business owners, and 80 percent of Millennials favor nondiscrimination protections for LGBT Americans.³² Moreover, 71 percent of young adults ages 18 to 29 support the ACA contraceptive mandate, and 64 percent reject the idea that for-profit employers should receive exemptions for religious beliefs.³³ An increasing number of Americans identify as Muslims, Hindus, Buddhists, and members

of other non-Christian religions. And more and more Americans do not identify with a religious faith at all. These religiously unaffiliated Americans, or “nones,” represent almost 20 percent of all Americans and more than one-third of all Millennials ages 18 to 33.³⁴

When it comes to religious tolerance and diversity, eight out of ten Millennials do not support government scrutiny of Muslims solely because of their religious faith.³⁵ According to the Public Religion Research Institute:

*Nearly three-quarters (73 percent) of Millennials say that they would be comfortable with a Muslim teaching elementary school in their community, compared to only 36 percent of seniors. More than 6-in-10 (61 percent) Millennials say they would be comfortable with a mosque being built near their home, compared to only 37 percent of seniors.*³⁶

Leaders and stakeholders who aim to make a progressive impact in 2016 and beyond must realize the extent to which Millennials apply values of tolerance and equality to support progressive policies. Millennials support religious freedom rights for religious minorities while also resisting the use of religion to interfere with access to comprehensive health care and LGBT nondiscrimination protections. Majorities of Millennials also support requiring religiously affiliated employers to provide health care plans that include contraceptive coverage—including colleges, hospitals, and privately owned corporations.³⁷ As reported by the Center for American Progress, “Millennials in every region of the country support LGBT nondiscrimination protections, including 80 percent of Millennials in the Northeast; 66 percent of Millennials in the West; 66 percent of Millennials in the Midwest; and 57 percent of Millennials in the South.”³⁸ And Millennials, at 67 percent, are the largest voting-eligible demographic group to oppose allowing small business owners to refuse service to LGBT people on religious grounds.³⁹

Recommendations

Successfully advancing progressive health care laws, nondiscrimination policies, and religious tolerance depends on restoring a progressive interpretation of religious liberty that maintains the balance between that core American value and the government's compelling interest in protecting others from harm or the imposition of religious beliefs. This needs to happen not only in progressive legislative and judicial action but also as a part of the broader cultural conversation. Progressive lawmakers and advocates—as they engage the fight against discriminatory laws and judicial interpretation—should proactively articulate the relationship between this progressive vision of religious liberty and the support that vision already holds among both people of faith and the religiously unaffiliated. As a core American value, an understanding of religious liberty that resists harm to others also has the capacity to strengthen progressive reform. To that end, we recommend that progressive leaders, lawmakers, and advocates do the following:

Include progressive religious liberty in issue advocacy

A progressive vision for religious liberty is not only compatible with, but also essential to, a broader progressive social agenda. Lawmakers, candidates, advocates, and stakeholders who are committed to the values of nondiscrimination, expanded health care access, diversity, and tolerance should incorporate a positive understanding of a religious liberty inclusive of these values into their advocacy. This means advancing the fact that progressive social values and progressive religious liberty are mutually reinforcing. Resisting discrimination and embracing diversity strengthens the ability of all Americans to freely exercise their belief or nonbelief according to their values.

For example, speaking on behalf of comprehensive reproductive health care access can and should include both a rejection of the right of employers to use religion to restrict the health care decisions of their employees and an affirmation of the rights of employees to use their conscience to make the health care decisions that

are right for them. Employers and politicians have no right to play the part of spiritual adviser or trusted health care provider. The government is constitutionally charged with protecting citizens from such an imposition of religious belief and the corresponding harms it would create.

Demonstrate that religious liberty has an intersectional effect on vulnerable communities

Progressives must be willing to see religious liberty as an intersectional issue that transcends interest-group politics. The use of religious liberty as a cover for discrimination and restricted health care access will always hit already vulnerable populations the hardest. It is no coincidence that women of faith from communities of color demonstrate disproportionate levels of support for protecting access to contraception in the ACA; they are often the same communities most in need of access to affordable comprehensive care.

Additionally, federal and state funds enable religious and nonprofit organizations—such as homeless shelters and adoption and foster care agencies—to provide critical services. Statistics consistently show that LGBT populations appear disproportionately represented among homeless populations, particularly when it comes to homeless and runaway youth.⁴⁰ However, bills such as FADA could allow religious organizations receiving federal funds to deny services to LGBT-identified youth—including gender-identity appropriate housing and sexual assault response services. More than 400,000 young people currently live in the foster care system without permanent homes.⁴¹ At the same time, nearly half of childless LGB people have expressed an interest in adopting someday.⁴² Same-sex couples may be more likely to adopt children with disabilities, who are often harder to place in permanent homes.⁴³ However, state-level adoption bills—such as those introduced in Nebraska, Michigan, Florida, and Oklahoma—could prevent child placement agencies that wish to discriminate against LGBT parents from losing state funding.⁴⁴ These LGBT Americans and young people in need should not be forced to bear the burdens and harms of other's discriminatory religious beliefs by being denied the care that public funds are intended to provide.

Frame anti-Muslim bigotry as a religious liberty issue

Progressives acknowledge that religious liberty is a value afforded to all Americans. America has not been a majority Christian Protestant nation since 2014, and the population of Christians continues to ebb. As of 2016, white Christians are the minority in 19 states, and a substantial number of Americans do not claim a religious affiliation.⁴⁵ Therefore, progressive religious liberty must proactively ensure that religious liberty can be preserved for an increasingly diverse American population that must learn to live side by side.

When condemning anti-Muslim bigotry and acts of violence, intimidation, and discrimination against religious minorities, progressive leaders should frame such events as violations of religious liberty. Moreover, they should be willing to call out the hypocrisy of war on religion narratives that persist in the same extreme conservative circles that are also calling for discrimination against Muslim citizens and immigrants. At the same time, leaders should find opportunities to lift up the broad support for religious tolerance found across America's ideological spectrum. Doing so would serve as a powerful contrast to the rhetoric of hate that is advanced too often in conservative media and politics.

Fight overly broad religious exemptions and advance a progressive vision of religious liberty

Despite a significant lack of public support for new religious freedom bills on both the federal and state levels, lawmakers continue to disregard their constituents and invest their energies into these unnecessary and dangerous laws. Progressives must continue to point out the threat that laws—such as FADA, the Health Care Conscience Rights Act, and other overly broad religious exemption bills—pose to civil rights, comprehensive health care access, and the economic security of women and families, especially the most vulnerable communities. These bills take valuable time and attention away from policies that would truly strengthen America's democracy and the well-being of its citizenry—such as Medicaid expansion; the enforcement of the ACA comprehensive health care mandate; nondiscrimination protections for LGBT Americans; and the enforcement of religious and civil liberty protections for religious minorities.

At the same time, progressives should support federal legislation to amend the federal RFRA in order to ensure that it cannot be used to impose meaningful harms on others—such as violating nondiscrimination protections; refusing access to health care; disregarding child-welfare policies; denying equal opportunity; or otherwise preventing the provision of government services.

Conclusion

Progressives have a long history of leadership when it comes to just, inclusive policies that make it possible for every American to achieve stability and well-being for themselves and their families. A balanced approach to religious liberty—an approach that protects this fundamental right while refusing to relinquish other fundamental freedoms—should be amplified as a key component of a progressive agenda. Many Americans voice overwhelming support for a nation whose respect for religious liberty means allowing women to follow their conscience to determine the parenting and family planning decisions that are right for them; affirming the rights of LGBT people to nondiscrimination in employment, housing, and public accommodations regardless of the religious beliefs of proprietors or employers; and ensuring that Americans of all faiths can worship and practice as they choose.

As this report has demonstrated, the beliefs of extremely conservative activists are far from where everyday Americans and people of faith stand on the issue of religious liberty. This disconnect is particularly critical in 2016. Drawing clear lines between progressive policies and religious liberty could make the difference when it comes to electing progressive lawmakers who champion a balanced, inclusive vision of religious liberty rather than conservative lawmakers who would manipulate religious freedom in order to advance harmful and discriminatory policies.

Opportunities abound to integrate a progressive interpretation of religious liberty into current policy advocacy and responses to the radical rhetoric of fear and discrimination. This is more than countermessaging. It is a positive, hopeful declaration that restores the original value of religious liberty, prevents harm, and affirms the right of all Americans to freely exercise their beliefs.

About the author

Carolyn Davis is a Senior Policy Analyst for the Faith and Progressive Policy Initiative at the Center for American Progress, where she works on issues including religious liberty and reproductive justice. Prior to joining the Center, she taught courses on religion, gender, and sexuality at Andover Newton Theological School in Newton, Massachusetts, and at Wesley Theological Seminary in Washington, D.C. Davis holds a doctorate in religion from Vanderbilt University and is an ordained minister in The United Methodist Church.

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