



Addressing Challenges to Progressive Religious Liberty in North Carolina

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North Carolina is a state rich with diversity. Its motto, “Esse quam videri”—to be, rather than to seem—challenges its residents to act, not just speak, to uphold the state’s values. The state’s diversity must be protected and nourished to ensure progressive values and maintain a true democracy. When the rights of lesbian, gay, bisexual, and transgender, or LGBT, people; women; and religious minorities are threatened—as they have been in North Carolina—the state is falling short on its commitment to its residents and its own values.

The North Carolina Legislature has seen a flood of bills designed to limit the rights of LGBT Americans by legalizing discrimination in public accommodations, employment, and more—all in the name of religion. In 2016, the state called a special session—at a cost of \$42,000 per day—to pass H.B. 2, which severely limited the rights of LGBT residents of North Carolina.¹ The law preempted the right of local municipalities to institute LGBT nondiscrimination protections. H.B. 2 also directly targeted transgender North Carolinians by prohibiting them from using the public bathroom that most closely aligns with their gender identity. Analysis suggests that H.B. 2 is based upon model legislation introduced in several states that was created by the conservative Christian legal fund Alliance Defending Freedom.²

Meanwhile, other state legislation poses a significant risk to the health and well-being of North Carolinians. Women and young people in the state are seeing their reproductive health care options continue to narrow as certain conservatives impose their religious beliefs through laws that limit sexuality education and make abortion access increasingly difficult.³ The state now boasts the nation’s longest waiting period for an abortion.⁴ And legislators have attempted to prevent public schools from teaching children about emergency contraception and requiring that their sexual education curricula be approved by experts in the field.⁵ These types of legislative efforts tout the support of extremely conservative religious groups like the North Carolina Family Policy Council, an offshoot of the Family Research Council, which is labeled as a hate group by the Southern Poverty Law Center.⁶

North Carolina is also a state rich with religious diversity. It is home to growing populations of Arab Americans and practicing Muslims, who have felt the intense sting of violence and harassment resulting from a national upswing in anti-Muslim bigotry.⁷ The murder of three Muslim American college students last year continues to be investigated as a hate crime.⁸ The negative, potentially violent environment created by anti-Muslim bigotry challenges the ability of the state's Muslims to freely practice their faith.⁹

When religion can be used as a weapon to limit the rights of women, young people, and LGBT Americans, or when religious minorities come under attack, true religious liberty is at stake. In order to create an economically prosperous, healthy, and equitable North Carolina, the state must achieve a proper balance between religious beliefs and the rights of its diverse population.

North Carolina is also home to a significant number of people who classify themselves as religiously unaffiliated—roughly 1 in 5 of the state's residents identify as such.¹⁰ As in the rest of the United States, a commitment to religious liberty in North Carolina must respect the right of all Americans to freely express their religious and spiritual beliefs—as well as to practice no religion.

Properly applied, religious liberty rejects the use of religion to harm or discriminate and embraces religious pluralism, which is essential to maintaining a vibrant, free, and economically strong society. However, some conservative North Carolina lawmakers are attempting to enshrine discrimination and religious beliefs into state law.

This issue brief details the challenges to the true notion of religious freedom posed by overly broad and discriminatory versions of religious liberty, as well as the rise of anti-Muslim bigotry. It is up to leaders, lawmakers, advocates, and stakeholders to reclaim religious liberty in North Carolina as a progressive value. They must promote an understanding of religious liberty that resists discrimination and embraces a dynamic plurality of beliefs; illustrate how discriminatory bills disproportionately harm vulnerable communities, such as LGBT individuals, young people, and women of color; condemn anti-Muslim bigotry as a violation of religious liberty; and oppose overly broad religious exemptions that threaten equal rights for many Americans.

A shrinking number of reproductive health care options

Women make up 51 percent of North Carolina's population but only 27 percent of its elected officials.¹¹ When it comes to women of color, the gap grows even wider: Women of color make up 18 percent of the state's population but only 6 percent of its officeholders, illustrating the troubling gender gap in the state Legislature that more than likely plays a role when it comes to prioritizing women's health and wellness.¹²

In North Carolina, strains of conservatism have had a major effect on state legislation that affects women’s reproductive health. In addition to having the longest abortion waiting period in the country—72 hours—the state mandates that doctors who perform abortions send measurements on the estimated gestational age of the fetus as well as an ultrasound image of the fetus to the state’s Department of Health and Human Services. Perhaps most egregious, the ban was rolled into two otherwise strong sex crimes bills, resulting in bipartisan support for critical measures that otherwise might have failed to pass.

Religiously motivated conservatism is also reflected in sexuality education legislation. (see Textbox) The carryover bill H.B. 596 prohibits public schools from teaching about emergency contraception, falsely asserting that the medication causes “spontaneous abortions.” The bill also removes a requirement that sexuality education criteria be approved by experts in the field of sexual health.²⁷ Meanwhile, legislation that actually would have improved the lives of North Carolina women—such as H.B. 546, the Pregnant Workers Fairness Act, which would have prevented discrimination against pregnant women in the workplace—failed to make this session’s crossover deadline.

Religiously motivated sexuality education legislation harms North Carolina youth

The dominance of conservative ideology in North Carolina's state Legislature has grave effects on the health and well-being of public school students. Religiously motivated sexuality education legislation prevents young people from receiving the resources they need to make informed decisions about their sexual and reproductive health.

The state's general sexuality education policy stresses abstinence rather than offering an unbiased, comprehensive curriculum.¹³ In 2014, North Carolina received \$1,603,856 in federal Title V funding for sexuality education programming that specifically promotes abstaining from sexual activity until marriage. Such programs are consistently denounced by medical experts as unproven to be effective at preventing unintended teen pregnancy.¹⁴ What is more, North Carolina's program fails to address information regarding sexual orientation and gender identity.¹⁵

In North Carolina, 45 percent of female high school students and 49 percent of male high school students report having had sexual intercourse.¹⁶ North Carolina's teen pregnancy rate is notably higher than the national average, with even higher-than-average birth rates for women of color in the state.¹⁷ Beyond a greater risk of pregnancy, youth of color and LGBT youth in North Carolina face a disproportionate risk for negative sexual outcomes such as sexually transmitted infections, including HIV.¹⁸

Under the state's current sexuality education policy, educators are required to explain the effectiveness of various birth control options. However, pregnancy prevention devices—such as condoms—are banned from being distributed on school property.¹⁹ And currently, only 53.7 percent of high school students in North Carolina report having used a condom the last time

they had sexual intercourse.²⁰ Allowing school-based health centers to dispense contraceptives could help reduce the rate of unplanned pregnancies—especially for low-income students.

The carryover bill H.B. 596 would change North Carolina's current sexuality education policy to make a flawed law even worse.²¹ If enacted, schools effectively would be allowed to design their own sexuality education curricula.²² Previous legislative language mandated that course material be approved by sexual health professionals and experts. Under the new proposal, "credentialed experts" that are not classified as medical- or health-specific experts can sign off on materials.²³ These laxer regulations allow religiously motivated, conservative organizations to propagate misleading information about sexual and reproductive health in public schools. The conservative North Carolina Values Coalition, for instance, supports the bill's medically inaccurate stance that emergency contraception, such as Plan B, can cause fertilized eggs to spontaneously abort.²⁴ And Focus on the Family, which has close ties to North Carolina Republican legislators and endorses "values-based" sexuality education, could use the bill to push LGBT conversion therapy or anti-abortion programming in schools, for which it has previously advocated.²⁵

S.B. 132, a law enacted in 2013, requires sexuality education curricula in public, private, home, and charter schools to teach that having an abortion procedure increases one's future risk of preterm birth.²⁶ Enshrining such scientifically disputed information into law threatens to impose a state-sponsored ideology in North Carolina. Instead, requiring evidence-based, comprehensive sexuality education in schools and working to increase young people's access to effective contraceptives would help to curb the reproductive health disparities that persist in the state.

LGBT residents and their families face discriminatory legislation

Since the 2015 *Obergefell v. Hodges* U.S. Supreme Court decision that affirmed marriage equality nationwide, conservative state lawmakers have attempted to limit LGBT rights through the introduction of a variety of discriminatory bills that sanction discrimination based on religious beliefs.

North Carolina became a lightning rod for controversy when the state Legislature went into a special session to pass H.B. 2 in a single day. Gov. Pat McCrory (R) signed the bill within hours. The resulting law nullified existing LGBT nondiscrimination protections passed by Charlotte and several other North Carolina cities and also banned municipalities from passing any new protections. H.B. 2 also prohibits transgender people from using restrooms in accordance with their gender identities in all public facilities, including schools.²⁸

The outcry from North Carolina residents, the business community, and faith leaders swiftly brought the state into the national spotlight as an unfortunate symbol of LGBT discrimination. Rev. William Barber, leader of the progressive Moral Mondays movement as well as the North Carolina NAACP, has spoken out strongly against discrimination in the state, calling North Carolina's H.B. 2 "an unholy alliance of racism, classism, and homophobia."²⁹ Faith leaders also collected 170,000 signatures demanding the repeal of the bill.³⁰ And the economic impact of the law is severe; within weeks of the law's passage, North Carolina suffered from millions of dollars of lost or at-risk business activity.³¹

H.B. 2 attracted national attention in 2016, but it is not the first time in recent years that conservative North Carolina lawmakers have attempted to legislate discrimination into law.

In 2015, the North Carolina House of Representatives overrode Gov. McCrory's veto of S.B. 2, a law that allows public officials to excuse themselves from performing same-sex marriages.³⁹ In 2015, the failed S.B. 550 would have instituted a state Religious Freedom Restoration Act with vague, overly broad protections allowing even for-profit corporations to use religion to justify discrimination.⁴⁰

The good news is that public opposition to this kind of discrimination is high. Nationally, 59 percent of Americans oppose allowing small business owners to refuse to serve individuals because of their sexual orientation, even if doing so violates owners' religious beliefs.⁴¹ In North Carolina, 56 percent of voters oppose this kind of discrimination.⁴² Moreover, a majority of those from the state—64 percent—favor laws that protect LGBT people from discrimination in jobs, public accommodations, and housing.⁴³ And more than 1 in 6 Americans now believe that same-sex couples should have the right to adopt children.⁴⁴

H.B. 2 attempts to restrict the rights of LGBT North Carolinians

In March 2016, the North Carolina Legislature went into a special session to pass the Public Facilities Privacy and Security Act, commonly referred to as H.B. 2. The law was enacted in just one day in response to a Charlotte ordinance that would have extended nondiscrimination protections on the basis of sexual orientation and gender identity and allowed transgender people to use the bathroom or locker room of the gender with which they identify.³² H.B. 2 has been erroneously compared to the Americans with Disabilities Act, or ADA, a law that prohibits discrimination based on disability and requires employers to reasonably accommodate those with disabilities. North Carolina Lt. Gov. Dan Forest (R) stated that just like the ADA, H.B. 2 is “a bill of reasonable accommodation,” as it is necessary to accommodate people who fear for their safety in public restrooms because of transgender people.³³ A groundswell of opposition to the discriminatory law ensued: Businesses, athletic organizations, residents, communities of faith, and others denounced the legislation for singling out LGBT people for discrimination. What is more, as the Center for American Progress identified, H.B. 2 would cause North Carolina to potentially lose out on \$567.5 million in private-sector economic activity through 2018.³⁴ In response to the law’s passage, the U.S. Department of Justice, or DOJ, notified Gov. McCrory that the bill likely violated the Civil Rights Act of 1964 and threatened the state’s federal funding for engaging in sex discrimination.³⁵

H.B. 2’s blatant codification of discrimination into law prompted the DOJ to file a formal complaint against the state. The DOJ’s lawsuit challenges one provision of the law requiring schools, government buildings, and other public agencies to deny transgender people access to bathrooms and changing facilities consistent with their gender identities. The suit accuses the defendants—the state of North Carolina; Gov. McCrory; the University of North Carolina, or UNC; the board of governors of UNC; and the North Carolina Department of Public Safety—of sex discrimination under Title VII, Title IX, and the Violence Against Women Act.³⁶ According to Attorney General Loretta Lynch, by implementing H.B. 2, North Carolina’s GOP-controlled General Assembly “created state-sponsored discrimination against transgender individuals who simply seek to engage in the most private of functions in a place of safety and security.”³⁷ In August 2016, U.S. District Judge Thomas Schroeder blocked UNC from enforcing this provision.³⁸ Even though UNC had already stated its intention not to enforce H.B. 2, this preliminary injunction ensures that students will not face consequences when using restrooms consistent with their gender identities.

Muslims face religious discrimination and violence

North Carolina has one of the fastest growing Arab American populations in the country, more than doubling since 1980 and increasing by 58 percent between 2000 and 2010.⁴⁵ Muslims are also the largest non-Christian religious group in North Carolina.⁴⁶

Sadly, fearmongering and anti-Muslim bigotry also appear to be gaining traction among Americans. In 2015, one poll demonstrated that 82 percent of Americans strongly favored religious liberty for Christians, but far fewer, just 67 percent, supported protecting the religious freedom of American Muslims.⁴⁷ Disturbingly, a majority of conservative Republicans believe that Muslims in the United States “should be subject to greater scrutiny than those in other religious groups,” according to another 2015 poll.⁴⁸ After Duke University announced plans to broadcast the Muslim call to prayer from its chapel bell tower on Friday afternoons, the ensuing controversy highlighted deep tensions between religious conservatism in the state and growing public support for religious pluralism in North Carolina.⁴⁹

Rising anti-Muslim incidents create fear and anxiety about violence against members of the Muslim community, even if that violence may not be motivated by anti-Muslim bias. This was felt acutely in North Carolina, where young American Muslims Deah Barakat, Yusor Abu-Salha, and Razan Abu-Salha were shot and killed by their Chapel Hill neighbor in 2015. While reports indicated that the crime was not specifically motivated by the victims’ faith, other members of the North Carolina Muslim community felt unsafe in the following weeks.⁵⁰ Hate crimes against Muslims and Arab Americans continue to increase.⁵¹ At the same time, some politicians continue to call for bans on Muslim immigration and increased surveillance of Muslim communities.⁵² Mosques, as well as gurdwaras—where Sikhs, a religious group whose adherents are distinct from but often confused for Muslims, gather to worship—are being targeted by protesters and vandals.⁵³ Muslim children express increased fear that they will be rounded up and detained or deported.⁵⁴ Such events and attitudes challenge the right of Muslims to believe and worship freely in North Carolina and across the United States.⁵⁵

However, many in North Carolina have shown themselves to be supporters of the Muslim community. There was a groundswell of interfaith efforts for remembrance, public service, and dialogue in response to the deaths of Barakat, Abu-Salha, and Abu-Salha.⁵⁶ Gov. McCrory’s request to not receive any more Syrian refugees following the 2015 Paris attacks was met with progressive opposition. Dozens of businesses across the Research Triangle—an area of North Carolina encompassing Raleigh, Durham, and Chapel Hill—posted signs reading “Refugees are Welcome Here” and “Stop Profiling Muslims” in their shop windows.⁵⁷ Such movements provide evidence that North Carolina leaders and people of faith and conscience are motivated to mobilize in support of the civil and religious rights of American Muslims.

Recommendations for a progressive approach to religious liberty

Successfully advancing progressive health care laws, nondiscrimination policies, and religious tolerance depends on restoring a progressive interpretation of religious liberty. These laws and policies must maintain the balance between this core American value and the government's compelling interest in protecting people from harm or the burden of another's religious belief. This restoration needs to happen not only through progressive action that fights discriminatory laws and judicial interpretations but also as part of a broader cultural conversation.

In this critical conversation, progressive lawmakers and advocates should clearly articulate a progressive vision of religious liberty while simultaneously underscoring the fact that the vision already enjoys widespread support among both people of faith and the religiously unaffiliated. They must make clear that religious liberty is a core American value—a founding principle that is balanced with protections against harm to others and that shares a natural overlap with other progressive reforms. To that end, we recommend that progressive leaders, lawmakers, and advocates take the following four steps.

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 into their advocacy a positive understanding of religious liberty that is inclusive of these values. 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 beliefs or nonbelief according to their values.

For example, opponents of North Carolina's H.B. 596 should include in their arguments how religious liberty is also a reproductive justice issue. Young people's access to evidence-based, medically accurate sexuality education should not be jeopardized by politicians' efforts to impose their religious beliefs by promoting medically false information about medication or sexual practices. The government—both state and federal—is constitutionally charged with protecting citizens from the imposition of religious belief and the corresponding harms it creates.

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 vulnerable populations the hardest. That is why potentially discriminatory bills create such an enhanced risk to marginalized communities.

For example, because H.B. 2 likely violates Title IX protections, North Carolina schools stand to lose \$4.5 billion in federal funding if the law is enforced, which would disproportionately affect underfunded public schools in the state.⁵⁸ The disability community has also spoken out over the concern that legislating bathroom gender rules prevents caregivers of a different gender from assisting persons with disabilities in the restroom.⁵⁹

Frame anti-Muslim bigotry as a religious liberty issue

When condemning anti-Muslim bigotry and acts of violence, intimidation, and discrimination against religious minorities, it is imperative that progressive leaders frame such events as violations of religious liberty. Moreover, these leaders should call out the hypocrisy of the so-called war on religion narratives advanced by the same conservative circles that are also advocating 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 better serve constituents

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 in these unnecessary, unwanted, and dangerous laws. Progressives must continue to point out the threat that overly broad religious exemption bills pose to civil rights, comprehensive health care access, and the economic security of women and families, especially our nation's most vulnerable populations. These bills take valuable time and attention away from enacting policies that would truly strengthen North Carolina's democracy and the well-being of its citizenry—such as measures that would increase access to sexual and reproductive health care, implement nondiscrimination protections for LGBT Americans, and enforce religious and civil liberty protections for religious minorities.

Conclusion

Progressives have a long history of leadership when it comes to advancing fair, inclusive policies that seek to allow every American to achieve stability and experience a sense of well-being for themselves, their families, and their communities. Religious liberty is a core value that belongs to all Americans and serves to ensure that one group cannot impose its beliefs and practices on others. 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 in North Carolina.

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 counter messaging; it is a positive, hopeful declaration that reveres and restores the original core value of religious liberty, prevents harm, and affirms the right of all Americans to freely exercise their beliefs.

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