

**POLITICAL  
RESEARCH  
ASSOCIATES**

Challenging the Right,  
Advancing Social Justice

# WHEN EXEMPTION IS THE RULE

The Religious Freedom Strategy  
of the Christian Right

by Frederick Clarkson



## EXECUTIVE SUMMARY

**THE EVANGELICAL PROTESTANT** Christian Right and U.S. Roman Catholic bishops are intensifying their campaign to carve out arenas of public life where religious institutions, individuals, and even businesses may evade civil rights and labor laws in the name of religious liberty. By creating zones of legal exemption, the Christian Right seeks to shrink the public sphere and the arenas within which the government has legitimacy to defend people's rights, including reproductive, labor, and LGBTQ rights. In this, it is often aligned with the antigovernment strategy of free market libertarians and some business interests, who for a variety of reasons also seek to restrict arenas where government can legally act.

This conservative Christian alliance is challenging a century or more of social advances and many of the premises of the Enlightenment underlying the very definition of religious liberty in the United States. Its long-range goal is to impose a conservative Christian social order inspired by religious law, in part by eroding pillars of undergirding religious pluralism that are integral to our constitutional democracy.

Since Political Research Associates' March 2013 report, *Redefining Religious Liberty: The Covert Campaign Against Civil Rights*,<sup>\*</sup> a remarkable string of cultural, legislative, and legal victories by the LGBTQ community have further animated the Right's defensive strategy aimed at exempting conservative Christians from having to accept certain advances in human and civil rights. However, the Christian Right's religious freedom strategy is part of its long-game and is not merely an anti-LGBTQ tactic.

Among this report's findings:

- The network of Christian Right legal institutions advancing the redefinition of religious freedom is growing in its capacity to affect legal, political and cultural change.
  - › The Becket Fund, which has litigated landmark Supreme Court cases like *Hobby Lobby* and *Hosanna-Tabor*, grew 86 percent in just four years, from FY2009

to FY2012.

- › The national legal network Alliance Defending Freedom increased its annual revenues by \$5 million during the same period (a 21% increase) while also expanding its effort to seek influential legal precedents in international courts.
- › In an important mainstreaming move, the conservative John Templeton Foundation funneled \$1.6 million through the Becket Fund to establish a religious liberty clinic at Stanford University Law School. It opened in January 2013.
- The Christian Right's appropriation of religious freedom to justify discrimination is plainly visible in the U.S. Supreme Court's 2014 *Hobby Lobby* ruling, which for the first time recognized limited religious rights for closely held, private corporations to deny the Affordable Care Act's contraceptive mandate. This ruling has transformed not only federal jurisprudence, but the national conversation about the meaning and scope of religious freedom. One result was that the religious beliefs of the owners trumped the consciences and health interests of their employees.
- The Christian Right is seeking to undermine and evade civil rights law beyond the courts by "religifying" organizations. This means rewriting mission statements, contracts, and job descriptions to claim that the entire organization or jobs within it are essentially religious in nature and subject to the long-standing exemption of clergy from the Civil Rights Act. Under this logic, a religified business or nonprofit would have the right to discriminate against an LGBTQ client, or others with whom they may religiously disagree, by excluding people who do not conform to their doctrines. The groups promoting this tactic, such as Alliance Defending Freedom and Liberty Institute, have issued handbooks to help organizations protect against "dangerous antireligious attacks."
- Religification efforts are attempting to build on the 2012 U.S. Supreme Court ruling in *Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission* (EEOC) that the religious duties of a teacher fired in a discriminatory way insulated the mainline church school from antidiscrimination laws under the longstand-

---

<sup>\*</sup> Jay Michaelson, *Redefining Religious Liberty: The Covert Campaign Against Civil Rights* (Somerville, MA: Political Research Associates, March 2013). <http://www.politicalresearch.org/resources/reports/full-reports/redefining-religious-liberty/#sthash.VFqG8kCB.dpbs>.

ing clergy exemption. The ruling opened the door to expanding the definition of ministry, so that many more institutions—and their employees—can be exempted from the protections of the law.

- The Christian Right is seeking to pass state-level Religious Freedom Restoration Acts (RFRA) that would allow for-profit businesses to seek religious exemptions in the way the *Hobby Lobby* case made possible under the federal RFRA. The Right has succeeded in Mississippi, and, controversially, in Indiana, where the state RFRA was revised under pressure to make clear that it did not justify discrimination against LGBTQ people.
- Today's arguments echo those made by opponents of civil rights advances for African Americans in the 20th century—notably the fundamentalist Bob Jones University when it defended its policy against interracial dating because of its religious beliefs. In a major defeat for the nascent Christian Right, the U.S. Supreme Court ruled in 1983 that the Greenville, SC, college was not entitled to a federal tax exemption if it maintained this racist policy because the government's interest in eradicating racial discrimination in education trumped the school's claim to the First Amendment right to religious freedom.
- President Obama has failed to rescind a George W. Bush-era legal memo that allows federal contractors and grantees to discriminate in their hiring on religious freedom grounds.
- The Christian Right has carved out these victories following decades of building its political and institutional power. To avoid fighting within its frame and definition of religious liberty, progressives and their allies must build their own long game. One of the ways to do this is to avoid dualisms that distort the issue and play to the Christian Right framing, such as suggesting that LGBTQ civil rights (or reproductive rights) and religious freedom are somehow mutually exclusive.

While winning many victories, the Christian Right has lost some important battles in its campaign to redefine religious freedom. This is particularly so when other religious groups have taken the lead in opposing the Right. The United Church of Christ successfully sued to overturn a 2012 amendment to the North Carolina

state constitution asserting not only that same-sex marriages were invalid, but effectively criminalizing same-sex marriage ceremonies. Coalitions involving religious groups have also thwarted the passage of state RFRA that justify discrimination in Georgia and North Carolina. Elsewhere, workers and pension advocates took the lead. In December 2015, a federal appeals court ruled that the St. Peter's Catholic health system in New Jersey was not exempt on religious grounds from following federal law protecting pensioners and that it needed to fully fund its pension.

Contrary to the vision of much of the Christian Right, religious freedom is for everyone. We need fresh perspectives and coalitions to meet these challenges. Other sectors of society, from moderate Republicans to civil rights and labor activists, to religious and nonreligious organizations, need to discover how to do this, even though they may not be accustomed to working together. This will certainly mean envisioning and acting on short-term and long-term strategies, both inside and outside of the courts. We need 21st century coalitions and strategies to meet the challenges and opportunities of our time.

Among our other recommendations, we must,

- **Reclaim religious freedom as a fundamental democratic value.** This means embracing religious freedom as emphasizing the equality of all people, including everyone's right to believe and to practice faith (or not) as we will, and to change our minds—free from the undue influence of powerful religious institutions and government. The right to believe differently from the rich and the powerful is a prerequisite for free speech and a free press, the other two elements of the First Amendment of the U.S. Constitution.
- **Increase our capacity to respond to religious freedom-related issues.** This would include but not be limited to resourcing a network of researchers, writers, political thinkers, and scholars to develop and inform strategy with respect to religious liberty and civil rights.
- **Expand and refresh historic alliances that have extended civil and labor rights** in the 20th century more widely and deeply than at any other time in our history.
- **Expand celebrations of Religious Freedom Day on January 16th** and other events to of-

fer a clear, consistent, positive, and historically rooted alternative to the Christian Right's redefinition of religious liberty.

- **Counter misinformation.** Many conservative religious liberty claims rely on falsehoods, bogus history, and scare tactics. For example, clergy have never been forced under the law to perform any marriage of which they do not approve.
- **Urge candidates and elected officials to end legal justifications for all forms of discrimination** under the rubric of religious freedom. This includes demanding that President Obama end discrimination by faith-based contractors justified by the Bush-era legal memo.
- **Consider international human rights standards** regarding religious freedom and the rights of conscience. They are very strong and are consistent with a domestic agenda, and are part of the growing international dimension to this struggle.
- **Develop electoral answers** to the Right's long-term efforts to control various levels of government.

*For a full list of recommendations, see page 27.*