



Countering the Misuse of Religion to Discriminate

The First Amendment right of religious freedom guarantees every American the ability to make their own decisions about religion – to affirm, embrace, and practice the religion of their choice or to reject it as a matter of conscience and conviction. This right protects us from government intrusion into our personal beliefs and religious expression – up to a point. One person’s religious freedom necessarily ends when my free exercise would harm your wellbeing, be it physically, emotionally, or spiritually.

But, from employment to child welfare, the concept of religious freedom has increasingly been distorted to justify actions that harm others. It can be challenging to bring attention to these harms clearly and effectively. Here are a few common myths – and the truth behind the spin.

Myth: The First Amendment guarantees the freedom *of* religion, not *from* religion.

The framers understood that, at the heart of freedom, lies choice. Therefore, the First Amendment ensures that each person can choose to adhere to a particular religious tradition or to none at all. President Franklin Roosevelt spoke to this issue with great clarity, saying, “The traditional Jeffersonian principle of religious freedom was so broadly democratic that it included the right to have no religion at all – it gave the individual the right to worship any God [they] chose or no god.”

Even for people of faith, freedom from religion is important. To believe as we choose, we also must have the secure knowledge that we are free from religious coercion. Under this principle, no other person or government entity can condition your participation in public life on adherence to their faith.

Myth: Religious freedom includes the right to refuse service to those who believe or live differently than you do.

Religious freedom has a specific meaning, rooted in our rich but imperfect history. Over many decades our first freedom has been understood to protect personal belief and free exercise, up until the point that one person’s free exercise would begin to harm others.

It’s important not to confuse this history with a concerted rhetorical campaign to elevate the freedom of some over the rights of all. This is a distortion of true religious freedom that focuses exclusively on our freedom *of* religion at the expense of our freedom *from* religion. Whether it’s a boss looking to fire an LGBTQ+ employee or a doctor turning away a patient in need, this rhetoric is ultimately about power – and it’s a danger that our founders foresaw.

As Justice Ruth Bader Ginsburg noted, “Approving some religious claims while deeming others unworthy of accommodation could be ‘perceived as favoring one religion over another,’ the very risk the Establishment Clause was designed to preclude.” In *Hobby Lobby v. Burwell*, an often-cited victory in the campaign to redefine religious freedom, she cautioned, “The court, I fear, has ventured into a minefield.”



Myth: The *Masterpiece Cakeshop* decision gave private businesses the right to turn away customers for religious reasons.

No, the Court didn't even dig into this issue. The 2018 *Masterpiece Cakeshop* decision is very narrow, dealing only with the bakery owner's experience in an initial proceeding before the Colorado Civil Rights Commission. Privately-owned businesses like restaurants and bakeries are still covered by the federal Civil Rights Act of 1964, prohibiting segregation in public places, as well as subsequent federal, state, and local non-discrimination laws. The personal religious beliefs of owners or employees cannot be used to refuse service to customers who look, believe, or live differently than they do.

Myth: Faith-based organizations have a *right* to government contracts.

By law, faith-based groups cannot be excluded from federally-funded programs because of their religious nature – this would violate the constitutional prohibition on favoring religion over non-religion or vice versa. But they generally must comply with the same operating standards as non-religious groups and they cannot subject program beneficiaries to involuntary religious activities.

Hundreds of faith-based agencies comply with these requirements every day, playing an integral role in communities across the country. From connecting new parents with WIC to providing services for the elderly, faith-based agencies often step in to fill the gap for people in need. Agencies that receive at least some public funding – through federal, state, or local government contracts – are required to serve all members of the public that meet their program requirements. But many do so not because the law requires it, but because their faith guides them to.

Myth: If faith-based agencies aren't allowed to discriminate, those they serve will be left in the cold.

This argument is often made by faith-based child welfare agencies seeking permission to impose a religious litmus test on prospective foster and adoptive parents. Not only is there no evidence to support this claim, but these tests artificially shrink the pool of well-qualified parents and force children to remain in foster care longer than necessary. Child welfare workers are required to put the best interests of the children they serve first, including timely placement in a safe and loving home. An agency's religious views should never come between a child and their forever home.

Non-discrimination laws ensure that publicly-funded services remain open to all. But, in 2018, South Carolina received a special exemption for faith-based child welfare agencies in the state, spurred by the request of one publicly-funded agency that requires all parents to take a pledge of Evangelical faith. As a result, religious minorities and secular people, LGBTQ+ individuals, and others who fail South Carolina agencies' religious litmus tests are turned away from taxpayer-funded services.

The South Carolina waiver may be the first of its kind, but it's likely not the last. If a faith-based agency receives public funding, it should serve the public – not just those who share the group's religious beliefs. Taxpayer dollars should not fund discrimination.

Interfaith Alliance is a national policy and advocacy organization committed to protecting true religious freedom, strengthening the wall of separation between religion and government, and combatting the misuse of religion to discriminate. Please contact Katy Joseph, federal policy advisor, at kjoseph@interfaithalliance.org for more information.