

THE ABORTION EXCEPTION: A RESPONSE TO  
“ABORTION AND RELIGIOUS LIBERTY”

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*This Piece responds to recent critiques of litigation articulating a religious liberty right to access abortion. It argues that under current and expansive religious liberty doctrine, patients seeking a religious right to abortion have standing to sue even prior to pregnancy, their sincerity should not be unfairly disputed, and existing secular exemptions in abortion laws undermine the state’s alleged compelling government interest in prohibiting abortion. The Piece concludes by noting that if legislators and courts are unwilling to apply the religious rights they created in cases like *Burwell v. Hobby Lobby*, *Tandon v. Newsom*, and *Fulton v. Philadelphia* to abortion litigation, then existing religious-exemption laws should be reconsidered. The alternative—a regime in which only expansive RFRA claims made by religious conservatives are granted—is both constitutionally problematic and normatively unfair.*

## INTRODUCTION

In October 2021, the Law, Rights, and Religion Project (LRRP) at Columbia Law School hosted a panel titled *A Religious Right to Abortion?*<sup>1</sup> With the potential end of *Roe v. Wade* in sight, the discussion explored whether two parallel trends in U.S. law—“[the] vast expansion of the right to religious exemptions and total bans on abortion access”—were on a collision course.<sup>2</sup>

Seven months later, in May 2022, the draft decision in *Dobbs v. Jackson Women’s Health Organization* was leaked to the public.<sup>3</sup> Since that time,

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1. Law, Rts. & Religion Project and Inst. for Religion, Culture & Pub. Life, *A Religious Right to Abortion?*, YouTube (Dec. 13, 2021), <https://www.youtube.com/watch?v=QYLdGeNpmeI> (on file with the *Columbia Law Review*).

2. *Id.* at 3:18.

3. See Amy Howe, *Supreme Court Investigators Fail to Identify Who Leaked Dobbs Opinion*, SCOTUSBLOG (Jan. 19, 2023), <https://www.scotusblog.com/2023/01/supreme-court-investigators-fail-to-identify-who-leaked-dobbs-opinion/> [<https://perma.cc/5GXX-FM9Y>]

there has been an ongoing debate among legal academics and others about whether and how religious liberty laws might protect a right to access, provide, or facilitate abortion care.<sup>4</sup> There have also been lawsuits filed in a handful of states challenging abortion restrictions on religious grounds.<sup>5</sup> This Piece will add to this dialogue on religious liberty and abortion by responding to a recent article that critiques attempts to gain

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(“The unprecedented leak last May revealed that the court was privately poised to overturn the court’s landmark decisions establishing a constitutional right to an abortion.”).

4. See, e.g., Law, Rts. & Religion Project, *A Religious Right to Abortion: Legal History & Analysis 2–4* (2022), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/LRRP%20Religious%20Liberty%20%26%20Abortion%20Rights%20memo.pdf> [<https://perma.cc/7AC7-U48R>]; Caroline Mala Corbin, *Religious Liberty for All? A Religious Right to Abortion*, 2023 *Wis. L. Rev.* 475, 497–506; Jennifer O’Rourke, *When Life Begins: A Case Study of the Unitarian Universalism Faith and Its Potential to Combat Anti-Abortion Legislation*, 91 *U. Cin. L. Rev.* 1172, 1187–95 (2023); Olivia Roat, *Free-Exercise Arguments for the Right to Abortion: Reimagining the Relationship Between Religion and Reproductive Rights*, 29 *UCLA J. Gender & L.* 1, 8–29 (2022); David Schraub, *Liberal Jews and Religious Liberty*, 98 *N.Y.U. L. Rev.* 1556, 1578–86 (2023); Micah Schwartzman & Richard Schragger, *Religious Freedom and Abortion*, 108 *Iowa L. Rev.* 2299, 2316–19 (2023); Ari Berman, Note, *The Religious Exception to Abortion Bans: A Litigation Guide to State RFRAs*, 76 *Stan. L. Rev.* (forthcoming 2024), <https://ssrn.com/abstract=4618163> [<https://perma.cc/5TJ6-EKC3>]; Isaac Weiner, *Responding to the Dobbs Decision: American Jews and Religious Freedom*, Sources, Spring 2023, <https://www.sourcesjournal.org/articles/responding-to-the-dobbs-decision-american-jews-religious-freedom> [<https://perma.cc/U68R-TC4C>]; Josh Blackman, *Tentative Thoughts on the Jewish Claim to a “Religious Abortion”, Reason: Volokh Conspiracy* (June 20, 2022), <https://reason.com/volokh/2022/06/20/tentative-thoughts-on-the-jewish-claim-to-a-religious-abortion/> [<https://perma.cc/TX3U-Y2AM>]; Alan Brownstein, *Opinion, Does Religious Liberty Protect the Exercise of Choice?*, *The Hill* (Apr. 11, 2023), <https://thehill.com/opinion/judiciary/3944129-does-religious-liberty-protect-the-exercise-of-choice/> [<https://perma.cc/KEP2-MPPQ>]. For a pre-*Dobbs* discussion of the religious liberty right to abortion access, see Violet Rush, *Comment, Religious Freedom and Self-Induced Abortion*, 54 *Tulsa L. Rev.* 491, 492 (2019).

5. See, e.g., *Complaint, Satanic Temple v. Labrador*, No. 1:22-cv-411 (D. Idaho Jan. 31, 2024), 2022 WL 4599129; *Complaint, Satanic Temple v. Rokita*, No. 1:22-cv-01859-JSMG (S.D. Ind. Oct. 25, 2023), 2022 WL 4378551; *Complaint Seeking Declaratory & Injunctive Relief, Satanic Temple Inc. v. Young*, 681 F. Supp. 3d 685 (S.D. Tex. July 3, 2023), No. 4:21-cv-00387, 2021 WL 410748; *Complaint for Declaratory Relief, Sobel v. Cameron*, 645 F. Supp. 3d 691 (W.D. Ky. Dec. 14, 2022), No. 3:22-cv-570-RGJ (C.R. Litig. Clearinghouse, Cases and Documents); *Complaint for Declaratory & Injunctive Relief, Planned Parenthood Ass’n. of Utah v. Utah*, No. 220903886 (Utah Dist. Ct. June 25, 2022), 2022 WL 2314099; *Verified Complaint, Pomerantz v. Florida*, 2022-014373-CA-01 (Fla. Cir. Ct. filed Aug. 1, 2022), 2022 WL 3155358; *Amended Complaint for Declaratory Relief & for Temp. & Permanent Injunction Declaring House Bill 5, Invalid Unconstitutional & Unenforceable, Generation to Generation, Inc. v. Florida*, No. 2022 CA 000980 (Fla. Cir. Ct. filed June 16, 2022), 2022 WL 2388239; *Class Action Complaint for Declaratory & Injunctive Relief, Anonymous Plaintiffs 1–5 v. Individual Members of Med. Licensing Bd. of Ind.*, No. 49D01-2209-PL-031056 (Super. Ct. Ind. filed Sept. 8, 2022) (Civil Rights Litigation Clearinghouse, Cases and Documents).

religious exemptions from abortion bans. That piece, *Abortion and Religious Liberty* by Professor Josh Blackman, Howard Slugh, and Professor Tal Fortgang, claims that such efforts should fail as a matter of legal doctrine.<sup>6</sup> More broadly, the authors—all members of the Jewish Coalition for Religious Liberty (JCRL)—argue that these claims threaten to undermine religious liberty protections in other areas.<sup>7</sup> They focus their analysis on a current suit in Indiana in which plaintiffs of various faiths are seeking exemptions from the state abortion ban under the Indiana Religious Freedom Restoration Act (RFRA).<sup>8</sup>

This Piece will challenge several of the arguments made by Blackman, Slugh, and Fortgang (hereinafter “the authors”), including their analyses regarding standing, religious sincerity, and application of the strict scrutiny test. The Piece ends by noting that if policymakers are unwilling to grant religious exemptions on a neutral basis to religious adherents across the political and theological spectrums, then limiting the scope of the right to religious exemptions is in fact the appropriate course of action. Like all constitutional rights, the right to religious liberty must be granted in a neutral way; favoring the religious beliefs and practices of some over others creates its own constitutional problem.

#### I. STANDING

The doctrine of legal “standing” is intended to prevent unnecessary litigation by requiring parties to show that they are actually being affected by the law, policy, or action at issue in the suit. A person may not challenge a statute merely because they oppose it; instead, they must show that the statute harms them and that a court decision in their favor would alleviate this harm.<sup>9</sup>

The authors of *Abortion and Religious Liberty* make several errors in their lengthy analysis of standing in cases challenging abortion bans on

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6. Josh Blackman, Howard Slugh & Tal Fortgang, *Abortion and Religious Liberty*, 27 *Tex. Rev. L. & Pol.* 441, 443–48 (2023).

7. See *id.*

8. See *id.* (citing Class Action Complaint, *Anonymous Plaintiffs 1–5*, *supra* note 5). Shortly before the publication of this Piece, the Indiana Court of Appeals issued a ruling, affirming that the plaintiffs in this case were entitled to a religious exemption from the abortion ban. *Individual Members of the Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, at \*68, No. 22A-PL-2938, 2024 WL 1452489 (Ind. Ct. App. Apr. 4, 2024). Among other things, the opinion found that all the plaintiffs had standing, *id.* at \*3, \*11–23, and that the abortion ban was not narrowly tailored to further a compelling government interest. *Id.* at \*69. The government may appeal the case to the Indiana Supreme Court.

9. See *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (listing the requirements of standing).

religious grounds. First, they ignore recent Supreme Court decisions that weigh in favor of finding that claimants challenging abortion bans have standing, even prior to becoming pregnant. Second, they dramatically mischaracterize the religious beliefs about reproductive decisionmaking asserted by many people of faith, including the plaintiffs in the Indiana case (despite quoting those very beliefs in the article), in a way that limits their ability to show standing. Third, they ignore the many circumstances in which religious institutions seek religious exemptions on behalf of their members. Finally, the authors' conception of standing in the abortion context would make it impossible for any individual to gain a religious exemption from any pregnancy-care-related policy, no matter how meritorious the religious claim and no matter how weak the government interest promoted by the policy. It is unlikely that such an impossible standard would be applied in almost any other context.

A. *Recent Supreme Court Cases Weigh in Favor of Finding Standing*

The authors argue that “only pregnant women who are in fact denied an abortion that their religious beliefs require or recommend” have standing to bring a RFRA suit.<sup>10</sup> This is because, according to the authors, “It is entirely speculative whether a woman who is not yet pregnant may ever suffer a burden on her religious beliefs.”<sup>11</sup> In so claiming, however, the authors ignore recent Supreme Court decisions in which the Court held that religious institutions had standing to challenge COVID-19 gathering restrictions even when those restrictions were no longer in effect but could potentially be reinstated. An additional Supreme Court case issued after the publication of “Abortion and Religious Liberty”—*303 Creative v. Elenis*,<sup>12</sup> discussed in more detail below—also weighs in favor of finding standing.

In *Roman Catholic Diocese of Brooklyn v. Cuomo*,<sup>13</sup> houses of worship challenged New York's COVID-19 regulation that strictly limited gatherings in geographic areas considered to be high risk because of increasing local rates of positive COVID-19 infections.<sup>14</sup> Prior to the Court's ruling, however, a lack of notable COVID-19 case increases caused the state to lower the risk categorization of the neighborhoods at issue,

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10. See Blackman et al., *supra* note 6, at 446.

11. See *id.*

12. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2022).

13. 141 S. Ct. 63 (2020) (*per curiam*).

14. Governor Cuomo Details COVID-19 Micro-Cluster Metrics, Governor Kathy Hochul (Oct. 21, 2020), <https://www.governor.ny.gov/news/governor-cuomo-details-covid-19-micro-cluster-metrics> [<https://perma.cc/WRG8-FH23>].

allowing the plaintiffs far greater leeway to hold religious services.<sup>15</sup> Nevertheless, the Supreme Court held that “injunctive relief is still called for because the applicants remain under a constant threat” that narrower restrictions could be reimposed if local COVID-19 rates rose or if the Governor implemented stricter benchmarks.<sup>16</sup> “If that occurs again,” the Court noted, “the reclassification will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained . . . [and] there may not be time for applicants to seek and obtain relief from this Court before another Sabbath passes.”<sup>17</sup> Since there was “no guarantee that we could provide relief before another weekend passes . . . there is no reason why [the claimants] should bear the risk of suffering further irreparable harm.”<sup>18</sup> This reasoning was later reiterated by the Court in another COVID-19 religious liberty case, *Tandon v. Newsom*.<sup>19</sup>

The Supreme Court found in *Roman Catholic Diocese* that the threat of a future closure due to rising COVID-19 rates was sufficient to grant houses of worship standing, even though existing COVID-19 rates allowed them to hold religious services.<sup>20</sup> Like the houses of worship in that case, the claimants in the Indiana litigation, and others who hold similar beliefs, live under the “constant threat” that they will not have the ability to act on their religious commitments in the time-sensitive event of an unwanted pregnancy.<sup>21</sup> And like in the COVID-19 cases, there is “no guarantee” that a court could provide relief before the claimants suffered the irreparable religious harm of being forced to carry to term a pregnancy that their

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15. *Id.*

16. *Roman Cath. Diocese*, 141 S. Ct. at 68.

17. *Id.*

18. *Id.* at 68–69.

19. 141 S. Ct. 1294, 1297 (2021) (per curiam) (“[E]ven if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case.”); see also *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2565–66 (2019) (finding that adding a question about citizenship to the census involved a “predictable” chain of events whereby the question might cause some residents to avoid the census, which would grant standing).

20. See *Roman Cath. Diocese*, 141 S. Ct. at 74.

21. See *Blackman et al.*, supra note 6, at 451 (discussing that the Indiana plaintiffs argue that “Indiana’s abortion law may violate that religious obligation or recommendation in the future should they become pregnant”). But see *id.* at 451–52 (“It is simple enough for women to assert that their religion compels, or at least recommends, them to have an abortion in certain circumstances. It is a very different matter for a court to enforce that claim.”).

religious commitments motivate them to end.<sup>22</sup> The authors themselves acknowledge the fact that courts would be unlikely to make a decision quickly enough to grant pregnant claimants the relief they seek.<sup>23</sup>

Furthermore, the JCRL authored a brief in favor of another religious litigant whose standing to sue was highly contested and whose injury was entirely speculative.<sup>24</sup> *303 Creative v. Elenis*—decided by the Supreme Court after the publication of the authors’ piece—involved a Colorado website designer who challenged the state’s civil rights law that barred businesses from discriminating on the basis of their customers’ sexual orientation.<sup>25</sup> The designer claimed that she had a First Amendment right (both under the Free Speech and Free Exercise Clauses, though the Court considered only the former) to refuse services to any same-sex customers who may come to her seeking a customized wedding website—an event that had not yet, and may never have, occurred.<sup>26</sup>

Because of this, the district court ruled that the designer lacked standing on some of her claims. The court explained, “[T]o violate the Accommodation Statute there are many conditions precedent to be satisfied. The Plaintiffs must offer to build wedding websites, a same-sex couple must request Plaintiffs’ services, the Plaintiffs must decline, and then a complaint must be filed. This scenario is more attenuated and thus more speculative.”<sup>27</sup> Despite this attenuation, the JCRL did not suggest

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22. Compare *id.* (describing the Indiana plaintiffs’ arguments), with *Roman Cath. Diocese*, 141 S. Ct. at 67 (“There can be no question that the challenged [COVID-19] restrictions, if enforced, will cause irreparable harm.”).

23. See Blackman et al., *supra* note 6, at 455 (“We recognize that the pace of litigation may extend beyond the nine months of pregnancy.”).

24. Brief for the Jewish Coalition for Religious Liberty as Amicus Curiae in Support of Petitioners at 1–3, *303 Creative LLC v. Elenis*, 143 S. Ct. 2298 (2023), No. 21-476, 2022 WL 2047739.

25. See *303 Creative*, 143 S. Ct. at 2307–09.

26. *Id.* at 2308–10. While some (though not all) of the legal papers filed by *303 Creative* mentioned an online request that she received to create a wedding website for a same-sex couple, journalist Melissa Gira Grant later uncovered that the name attached to the request belonged to a man who was already married to a woman. See Melissa Gira Grant, *The Mysterious Case of the Fake Gay Marriage Website, the Real Straight Man, and the Supreme Court*, *New Republic* (June 29, 2023), <https://newrepublic.com/article/173987/mysterious-case-fake-gay-marriage-website-real-straight-man-supreme-court> [<https://perma.cc/CR9S-4XH2>].

27. *303 Creative LLC v. Elenis*, No. 16-cv-02372, 2017 WL 4331065, at \*6 (D. Colo. 2017), appeal dismissed, 746 Fed. App’x 709 (2018).

that the designer lacked standing and in fact stated that she was experiencing a “great . . . frontal assault on conscience.”<sup>28</sup>

In June 2023, the Supreme Court sided with the designer, holding that she faced a “credible threat that Colorado will seek to use [its antidiscrimination law] to compel her to create websites celebrating marriages she does not endorse.”<sup>29</sup> The Court acknowledged that she had not been asked to create a wedding website she opposed—let alone been punished by the state for doing so—but found it sufficient to show standing that the designer “worries that . . . Colorado will force her to express views with which she disagrees.”<sup>30</sup> If a web designer who has never been asked to create a wedding website for a same-sex couple nevertheless faces a “credible threat” of a civil rights lawsuit, a sexually active person who may become pregnant should also be understood to face a “credible threat” of an unintended pregnancy that they cannot terminate if they are in a state that has banned abortion. This possibility is far from remote given that approximately half of pregnancies in the United States are unplanned.<sup>31</sup>

As discussed further below, a requirement that claimants be pregnant to bring a religious liberty challenge to an abortion ban makes bringing such a claim effectively impossible (or at least useless).<sup>32</sup> Further, the

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28. Brief for Amici Curiae Institute for Faith and Family and Jewish Coalition for Religious Liberty in Support of Petitioners at 21, *303 Creative*, 143 S. Ct. 2298 (No. 21-476), 2021 WL 5053156.

29. *303 Creative*, 143 S. Ct. at 2309.

30. *Id.* at 2308.

31. See Lawrence B. Finer & Mia R. Zolna, Declines in Unintended Pregnancy in the United States, 2008–2011, 374 *New Eng. J. Med.* 843, 845 (2016) (finding that the proportion of unintended pregnancies in the United States decreased from fifty-one percent in 2008 to forty-five percent in 2011).

32. Even if a court acted with unusual speed, the time-sensitive nature of pregnancy would make getting timely relief an extraordinary challenge. Even in states that have not banned abortion, getting prompt abortion care can be difficult. Mabel Felix & Laurie Sobel, A Year After *Dobbs*: Policies Restricting Access to Abortion in States Even Where It’s Not Banned, KFF (June 22, 2023), <https://www.kff.org/policy-watch/year-after-dobbs-policies-restricting-access-to-abortion/> [https://perma.cc/Y2FU-WNMN] (detailing how state abortion regulations—such as gestational limits early in pregnancy, mandatory waiting periods and ultrasounds, bans on telehealth for abortion care, parental consent requirements for minors, and restrictions on the pool of providers—serve to limit abortion access in states that have not instituted outright bans). Medication abortion, for instance, may be taken only in the early weeks of pregnancy. The Availability and Use of Medication Abortion, KFF (Sept. 28, 2023), <https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/> [https://perma.cc/62FR-JMZM]. Some clinics do not perform abortions after fifteen weeks of pregnancy, or even earlier. Shefali Luthra & Jasmine Mithani, Even in States Where It Is Legal, Abortion Isn’t as Accessible as the Laws Make It Seem, *The 19th* (June 22, 2023), <https://19thnews.org/2023/06/dobbs->

requirement that plaintiffs be *currently* barred from practicing their religion conflicts with recent Supreme Court cases finding that a *threat* or *worry* of a religious burden—especially one that could not be promptly vindicated—was sufficient to show standing. It is also in tension with JCRL’s own claim that the mere possibility a web designer could one day be asked to perform a service to which she objects represents a “frontal assault on conscience” that must be immediately rectified.<sup>33</sup>

B. *Plaintiffs’ Religious Beliefs Go Beyond a Need for Abortion Care During Urgent Medical Complications*

According to the JCRL authors, even most pregnant claimants would not have standing to challenge an abortion ban on religious grounds. The authors claim that there are not one but “two events that would have to occur” before a claimant challenging an abortion law could possess standing.<sup>34</sup> In addition to being pregnant, “a tragedy would need to occur such that not having an abortion would harm [the plaintiff’s] health.”<sup>35</sup> Even more sweepingly, the authors claim that “no one argues that their faith requires them to abort entirely healthy fetuses with no complicating factors.”<sup>36</sup>

This assertion is decidedly false, both as a general matter and in the Indiana case specifically—as a statement included in the authors’ own article shows. The authors quote one of the plaintiffs (Doe #2) who states in the complaint that her nondenominational spiritual beliefs would motivate her to obtain an abortion not just in the case of medical complication (or “crisis pregnancies,” the term used by the authors) but any time “a pregnancy or the birth of another child would not allow her to fully realize her humanity and inherent dignity.”<sup>37</sup>

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anniversary-abortion-access-legality/ [https://perma.cc/2HKJ-SHBH]. Some people, especially younger people, often learn that they are pregnant at a later gestational age. One in Three People Learn They’re Pregnant Past Six Weeks’ Gestation, Advancing New Stds. Reproductive Health (Nov. 10, 2021), <https://www.ansirh.org/research/research/one-three-people-learn-theyre-pregnant-past-six-weeks-gestation> [https://perma.cc/57KS-5NS7] (finding that almost two in three young people (ages fifteen to nineteen) discover pregnancy at six weeks or later). And since *Dobbs* forced many clinics to close, operating clinics across the country are now experiencing extreme delays. Kristen Schorsch, Health Care Workers Burned Out During the Pandemic. That Could Impact Illinois’ Abortion Care., NPR-WBEZ (May 12, 2022), <https://www.wbez.org/stories/staffing-shortages-in-illinois-for-abortion-care/d76b96b1-78fd-4917-93e2-d48a8e8fe72c> [https://perma.cc/5L8P-PVQZ].

33. Brief for Amici Curiae, *supra* note 28, at 21.

34. Blackman et al., *supra* note 6, at 446.

35. *Id.*

36. *Id.* at 456.

37. Complaint by Anonymous Plaintiffs 1–5, *supra* note 5, at 17.



Several Jewish litigants in the Indiana case (Does #1, 4, and 5) wrote that they believe, “according to Jewish law and teachings, that the life of a pregnant person, including their physical *and mental health and wellbeing*, takes precedence over the potential for life embodied in a fetus. Therefore, according to their Jewish beliefs, if a pregnant person’s health *or wellbeing*—physical, *mental, or emotional*—were endangered by a pregnancy . . . she must terminate the pregnancy.”<sup>38</sup>

A Muslim plaintiff (Doe #3) in the case, who said she “does not want to have children at any point in the foreseeable future,” similarly explained that “if her health *or wellbeing*—physical, *mental, or emotional*—were harmed by a pregnancy or a pregnancy-related condition, she should terminate the pregnancy.”<sup>39</sup> She notes that there are “many circumstances” in which an abortion would be directed by her religious beliefs, including “circumstances involving a pregnancy that was simply unwanted.”<sup>40</sup> This is a far cry from the extremely limited circumstances in which the authors claim litigants might seek a religiously motivated abortion.

Beyond the Indiana litigation, other cases further explain the wide range of circumstances in which a patient’s religious beliefs may motivate them to seek abortion care.<sup>41</sup> In a challenge to Utah’s abortion ban brought under the freedom of conscience provision of the state constitution, for example, the challengers explain in a brief that “[s]ome Utahns are called as a matter of conscience to end their pregnancies, determining, for example, that they have an obligation to do so where they cannot economically or emotionally care for a child.”<sup>42</sup> And numerous religious scholars, theologians, and faith leaders have written about how pregnant people in many different situations may come to the conclusion

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38. *Id.* at 11–12, 22 (emphasis added).

39. *Id.* at 19 (emphasis added). This plaintiff was later removed from litigation. *Individual Members of Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, No. 22A-PL-2938, 2024 WL 1452489, at \*1 n.1 (Ind. Ct. App. Apr. 4, 2024) (“Since Plaintiffs filed their Complaint, one of them—Anonymous Plaintiff 3—has been voluntarily dismissed from the case.”).

40. *Id.* at 20.

41. For an excellent discussion of how some people of faith are religiously obligated to make an informed moral *choice* about pregnancy and abortion—rather than being compelled to take a specific course of action in any given pregnancy—see Schraub, *supra* note 4, 1583 (“Her freedom to choose is what is religiously compelled; not being able to follow through with her free choice represents a failure to discharge the demands of her faith.”); see also Brownstein, *supra* note 4 (discussing how abortion laws impose a limit to the religious liberty of choosing based on faith).

42. Brief of Respondent at 44–45, *Planned Parenthood Ass’n of Utah v. State*, No. 20220696-SC (Utah filed Jan. 20, 2023), 2023 WL 5670732.

that their religious and moral beliefs weigh in favor of ending a pregnancy.<sup>43</sup>

In addition to requiring that claimants be pregnant to bring a religious liberty suit, the authors would impose an additional barrier to standing—plaintiffs would need to be facing a medical complication. This argument is unsupported by the religious claims asserted by the plaintiffs in Indiana and other suits, and makes it even more unlikely that any plaintiff would ever be able to win even the strongest possible religious liberty claim related to pregnancy care.

### C. *Organizations Routinely Bring RFRA Claims*

In specifically disputing the standing of the one organizational plaintiff in the Indiana case, Hoosier Jews for Choice, the authors wrote that “[s]incerity of belief is a deeply personal notion and cannot be imputed to organizations or classes.”<sup>44</sup> While skepticism towards institutional RFRA claims and the imputing of “conscience” rights to an organization can be warranted, it’s difficult to square the authors’ opposition to offering religious liberty protection to Hoosier Jews for Choice with the Supreme Court’s decision to grant RFRA rights to for-profit companies like Hobby Lobby and 303 Creative.<sup>45</sup> If religious sincerity cannot be imputed to members of a faith-based nonprofit organized around a particular religious belief, why should sincerity be imputed to a corporation founded to sell crafting materials?

It’s true enough, as the authors state, that “[g]iven the diversity of Jewish approaches to most issues and the variety of views encompassed by the moniker ‘pro-choice,’” members of Hoosier Jews for Choice may not sincerely hold “the same religious beliefs with regard to abortion.”<sup>46</sup> Nevertheless, it is hardly unusual for a religious nonprofit to legally represent the interests of its membership. Presumably, not every member of the many churches that challenged COVID-19 gathering bans shared

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43. See, e.g., *Abortion and Religion: Jewish, Christian, and Muslim Perspectives* 6 (Rebecca Todd Peters & Margaret D. Kamitsuka eds., 2023); Rebecca Todd Peters, *Trust Women: A Progressive Christian Argument for Reproductive Justice* 94–95 (2018); Katey Zeh, *A Complicated Choice: Making Space for Grief and Healing in the Pro-Choice Movement* 14 (2022).

44. Blackman et al., *supra* note 6, at 452.

45. See *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2315 (2023) (holding that the religious rights of a website owner would be infringed by the Colorado Civil Rights Commission); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 690 (2014) (holding that the HHS regulations to provide health-insurance coverage violated RFRA).

46. Blackman et al., *supra* note 6, at 456.

the belief that the churches needed to remain open or that they were religiously required to worship in person.<sup>47</sup>

Furthermore, a recent Sixth Circuit case, *Doster v. Kendall*, granted class action certification to members of the Air Force who objected to vaccination—without conducting an individual assessment of sincerity.<sup>48</sup> The authors attempt to distinguish *Doster* from religious-right-to-abortion cases by explaining that “states have not adopted any policy of categorically denying religious-based exemptions to their abortion statutes.”<sup>49</sup> Unstated is the fact that there is no extrajudicial process or mechanism in any state to *ask* for an exemption from an abortion ban. Thus, the authors seem to suggest that there is a greater right to standing in circumstances where there is an existing religious exemption process that isn’t being granted than when there isn’t any exemption process at all. This feels less like a consistent approach to standing than a means to reject any attempt to seek a religious right to abortion.

D. *The Authors’ Approach to Standing Would Make Any Religious Liberty Challenge in This Area Futile*

Finally, as a matter of practical application, the authors’ insistence that claims be individually litigated once a claimant is already pregnant makes it effectively impossible for any religious liberty challenge to a law affecting pregnancy to succeed. As the authors themselves admit, “[T]he pace of litigation may extend beyond the nine months of pregnancy.”<sup>50</sup> They attempt to minimize the impact of this by citing to the federal “capable of repetition, yet evading review” exception to the mootness standard, which “permits a woman to continue litigating over an abortion ban even after she gives birth.”<sup>51</sup> While this mootness exception may be helpful in litigation which could *overturn* an abortion ban, and therefore have a wider impact on all pregnant people, it is useless in RFRA cases, which as the authors argue above, must be litigated individually to assess each claimant’s sincerity. In essence, the authors argue that no RFRA case may be brought until it is too late for the claimant (or anyone else) to gain any relief.

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47. See *supra* notes 10–23 and accompanying text. For another example of a religious organization representing the interests of its congregants, see *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006).

48. 48 F.4th 608, 612 (6th Cir. 2022).

49. Blackman et al., *supra* note 6, at 457.

50. *Id.* at 455.

51. *Id.*

This standard would make it impossible for any religious person to gain a RFRA exemption from any law affecting pregnancy care, no matter how powerful their religious burden or how weak the government's reasoning for the policy. For example, say a state passed an abortion ban with *no* exception for abortions necessary to save the life of the patient—and in fact explicitly banned abortion even when the fetus had no chance of survival and the patient was facing a medical emergency. Even acknowledging the wide diversity of Jewish thought on abortion, there is broad consensus that such a law would conflict with Jewish practice and that Orthodox rabbis might advise a pregnant person to seek an abortion to preserve their own life.<sup>52</sup> The authors' rule, however, would leave a pregnant person unable to bring suit until they were in medical crisis—by which point it would be too late to protect their religious practice or, indeed, their life.

It's doubtful that the authors would apply such a rigorous standing requirement in other contexts. For instance, a Jewish ritual circumcision, or *bris*, traditionally takes place only eight days after a baby is born. Would the authors argue that a parent could not challenge a state circumcision ban until a baby is actually born, as the religious harm is purely speculative prior to birth? Given the broad right to religious exemptions that RFRA was intended to provide, it's hard to imagine another context in which such a narrow conception of standing could be used to, in effect, carve out an entire area of the law from RFRA's scope.<sup>53</sup>

## II. SINCERITY

While this Piece has only modest quibbles with the authors' doctrinal approach to religious sincerity, the tone of their discussion was infused with an inappropriate skepticism of any religious claims related to abortion. The authors acknowledge that only in "certain extreme circumstances" do courts typically hold that "concrete evidence may

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52. Press Release, Statement by the Union of Orthodox Jewish Congregations of America on U.S. Supreme Court's Ruling in *Dobbs v. Jackson*, Overturning *Roe v. Wade*, Orthodox Union Advoc. Ctr. (June 24, 2022), <https://advocacy.ou.org/ou-statement-roe-wade/> [<https://perma.cc/72YW-AZBP>] (explaining that Jewish law prioritizes the life of the pregnant person over that of the fetus "such that where the pregnancy critically endangers the physical health or mental health of the mother, an abortion may be authorized, if not mandated, by Halacha").

53. An abortion carveout was in fact considered and rejected during the passage of RFRA. Kelsey Dallas, Does Religious Freedom Law Give You a Right to Abortion?, Deseret News (May 14, 2022), <https://www.deseret.com/2022/5/14/23069017/does-religious-freedom-law-give-you-a-right-to-abortion-roe-v-wade-supreme-court/> [<https://perma.cc/2SDS-DQQE>].

suggest that a claimed belief was fabricated for litigation.”<sup>54</sup> In fact, sincerity is rarely disputed by opposing counsel or analyzed at all by courts, and there is extensive support for using an extremely light judicial touch when it comes to the thorny question of whether claimants are sincere or, instead, trying to perpetuate a “fraud on the court.”<sup>55</sup> Nevertheless, the authors seem to express significant suspicion of the claimants in the Indiana suit and other abortion cases.

In discussing the sincerity of claimants bringing abortion litigation, the authors provide several sharp warnings. First, a “litigant whose entire set of religious beliefs happens to coincide with her stated legal position should raise red flags.”<sup>56</sup> Second, they state, “There should be similar suspicions of a religion that is a matter of abstract ethical directives and has exactly one divine law regarding specific conduct.”<sup>57</sup> These pronouncements are reasonable enough in theory (though they may be a better fit for evaluating whether the claimants’ beliefs are *religious* rather than political or moral in nature, not whether their beliefs are sincerely held). But they have little connection to the facts of the Indiana case at the heart of the article. The authors fail to mention that the Indiana claimants included extensive information on their religious identities in their complaint. The litigants discussed engaging in numerous religious practices—such as observance of holidays including Shabbat, personal prayer, membership in religious congregations, adherence to a kosher or halal-style diet, wearing a hijab, having a Jewish wedding ceremony, and hanging a mezuzah at the entryway of their house—in addition to the more general ways in which the claimants explained that their “religious beliefs impact and inform much of their lived experiences, including their regular lifestyles, moral and ethical decisionmaking . . . and family life.”<sup>58</sup> None of this was included by the authors in their discussion of the litigants’ sincerity, which focused instead on an imagined scenario in which a claimant held only one religious belief: the need to access abortion.<sup>59</sup>

In light of the authors’ overly exacting approach to standing, it’s particularly vexing that they argue courts should be especially skeptical of

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54. Blackman et al., *supra* note 6, at 463.

55. *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014) (describing the sincerity test as a “modest one, limited to asking whether the claimant is (in essence) seeking to perpetrate a fraud on the court—whether he actually holds the beliefs he claims to hold”). For more on the sincerity test, see Kara Loewentheil & Elizabeth Reiner Platt, *In Defense of the Sincerity Test*, in *Religious Exemptions* 247 (Kevin Vallier & Michael Weber eds., 2018).

56. Blackman et al., *supra* note 6, at 465.

57. *Id.*

58. *Complaint, Anonymous Plaintiffs 1–5 v. Individual Members of Med. Licensing Bd. of Ind.*, *supra* note 5, at 10, 18, 21.

59. See Blackman et al., *supra* note 6, at 464–66.

the sincerity of pregnant people in urgent need of immediate abortion care. They claim that “some women may adopt these religious beliefs [regarding abortion] in an opportunistic fashion. This risk is most acute for pregnant women who are unable to obtain an abortion; they may rapidly discover these religious beliefs and profess sincerity.”<sup>60</sup> Thus, according to the authors, patients must wait to pursue a RFRA claim until they are pregnant and have been denied care in order to show standing. But once they do so, courts should question their sincerity given their urgent need for care. This is not only doctrinally unsound and unsupported by courts’ typical approach to sincerity, but it also plays on stereotypes of women, especially pregnant women, as untrustworthy and manipulative.

Finally, one should be wary of the authors’ suggestion that a “possible approach” to evaluating religious sincerity in abortion cases “would be to inquire whether the woman adheres to any other religious tenets that are not at issue in the case.”<sup>61</sup> This is not how the sincerity test works. The sincerity test is meant to scrutinize whether litigants are sincere with regards to the particular religious beliefs and practices at issue. As I have written previously, “[B]eliefs and practices on unrelated religious issues are not relevant to their sincerity . . . [W]hether or not a Jewish claimant keeps kosher or uses technology on Shabbat is not relevant to the question of whether they are sincere in their belief that they are religiously obligated to provide abortion care.”<sup>62</sup> Similarly, a Catholic healthcare provider seeking a religious exemption from providing abortion services should not be judged insincere if she is willing to prescribe contraception or does not regularly attend mass.<sup>63</sup> Looking to whether and how litigants have adhered to *other* religious practices risks opening the door to improper assessments of whether any claimants’ religious practices are “acceptable, logical, . . . or comprehensible to others.”<sup>64</sup>

The authors argue that courts should be especially skeptical of religious-right-to-abortion claims at the moment that (according to the authors) plaintiffs gain standing, and that courts should look to plaintiffs’ religious beliefs and practices *other* than those at issue in the case. In essence, the authors are proposing a new sincerity test specifically for

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60. *Id.* at 465.

61. *Id.*

62. Law, Rts. & Religion Project, *A Religious Right to Abortion: Legal History and Analysis*, *supra* note 4, at 11.

63. Thanks to Micah Schwartzman for this example.

64. *Thomas v. Review Bd. of the Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

abortion claims—one that is far more stringent than the standard applied to other people of faith, including religious opponents of abortion.<sup>65</sup>

### III. COMPELLING GOVERNMENT INTEREST AND NARROW TAILORING

In analyzing the question of whether abortion bans are narrowly tailored to advancing a compelling government interest (even if they do burden religious practice), the authors mischaracterize the impact of the recent Supreme Court case *Tandon v. Newsom* on religious-right-to-abortion litigation. *Tandon v. Newsom* involved a challenge to California’s COVID-19 policies that restricted in-home gatherings—whether religious or secular in nature—to no more than three households.<sup>66</sup> The plaintiffs, who sought to host a larger in-home bible study group, argued that the policy violated their Free Exercise rights.

In ruling for the plaintiffs, the Supreme Court altered existing Free Exercise doctrine in two distinct ways. First, the decision expanded the circumstances in which laws that burden religious exercise have to meet the strict scrutiny test—meaning the state must show that the burden it imposed is narrowly tailored to achieving a compelling government interest. Under the rule adopted in the 1990 case *Employment Division v. Smith*, religious adherents are not entitled to exemptions from laws that are “neutral” and “generally applicable”; such laws need not meet strict scrutiny even if they incidentally burden religious practice.<sup>67</sup> While California’s in-home gathering cap *was* neutral with regards to religion, the Court held that the fact that larger groups were allowed to gather at *other locations* such as restaurants made the COVID-19 policy discriminatory.<sup>68</sup> As such, the objectors were entitled to a religious exemption unless the COVID-19 policy met the strict scrutiny test.

Beyond changing *when* the strict scrutiny test applied, however, *Tandon v. Newsom* also affected *how* the test was applied. The *Tandon* Court held that “[w]here the government permits other activities to proceed with precautions”—for example, gatherings at restaurants—“it must show that the religious exercise at issue is *more dangerous* than those activities even when the same precautions are applied. Otherwise, precautions that

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65. This proposed standard is reminiscent of “abortion exceptionalism,” which has been identified throughout U.S. law. See Caroline Mala Corbin, *Abortion Distortions*, 71 *Wash. & Lee L. Rev.* 1175, 1176–77 (2014) (describing abortion exceptionalism as courts’ failure to apply “normal doctrine” when abortion is at issue).

66. 593 U.S. 61, 63 (2021) (per curiam).

67. *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 880–81 (1990).

68. See *Tandon*, 593 U.S. at 63.

suffice for other activities suffice for religious exercise too.”<sup>69</sup> As applied to the abortion cases, this would mean that the salient question in applying strict scrutiny to an abortion ban would be whether an exemption to protect religiously motivated abortion is “more dangerous” to the government’s asserted interest in potential life than any existing exemptions for, say, pregnancies that pose a risk to the health of the pregnant person or that are the result of rape or incest.

Blackman, Slugh, and Fortgang are only willing to acknowledge the first of these two discrete impacts that *Tandon* had on religious exemption law. They write that “*Tandon v. Newsom* and related cases held that the existence of exceptions was proof that COVID-19 lockdown measures were not generally applicable, thus triggering the application of strict scrutiny.”<sup>70</sup> They claim, however, that once strict scrutiny is triggered, “the mere existence of exceptions is neither necessary nor sufficient to render an abortion ban unlawful.”<sup>71</sup> While the “mere existence” of some other secular exception from a law may not be sufficient to require a religious exemption, *Tandon v. Newsom* did insist that a religious exemption be granted when doing so would not be “more dangerous” to the relevant government interest than existing secular exemptions.<sup>72</sup>

This rule is consistent with the opinion of the Indiana Court of Appeals in *Blattert v. State*, which the authors cite in support of their claim. *Blattert* involved a rejected attempt by a parent to gain a religious exemption from a state law banning battery.<sup>73</sup> The authors explain that:

[T]he state’s battery laws had an exception for “parental privilege.” In other words, parents could use reasonable corporal punishment against their children. Despite this exception, the court of appeals found that the battery laws were *still* the least restrictive means to further the state’s compelling interest in protecting children from physical abuse.<sup>74</sup>

This ruling meets the *Tandon* standard because the requested religious exemption—the ability to inflict severe abuse on one’s child—was in fact “more dangerous” than the existing secular exemption, which allowed only “mild forms of corporal punishment.”<sup>75</sup> In contrast, it’s

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69. *Id.* (emphasis added).

70. Blackman et al., *supra* note 6, at 445.

71. *Id.*

72. See *Tandon*, 593 U.S. at 63.

73. See *Blattert v. State*, 190 N.E.3d 417, 419 (Ind. Ct. App. 2022).

74. Blackman et al., *supra* note 6, at 476–77 (footnotes omitted).

75. *Id.* at 477; see also *Blattert*, 190 N.E.3d at 423 (“[T]he parental privilege is an exception to a criminal prohibition on some corporal punishment which might otherwise



difficult to argue that an exemption from an abortion to protect religious freedom is “more dangerous” to fetal life than an exemption for pregnancies resulting from rape or incest.

While the argument that the state has a compelling interest in the protection of “fetal life” may seem legitimate, the Supreme Court has seen fit to grant religious exemptions in at least one other area with obvious life-or-death implications: the COVID-19 cases. As Professor Andrew Koppelman wrote of religious exemptions to COVID-19 vaccination requirements, “Human sacrifice is protected as long as it is actuarial.”<sup>76</sup> The same could be said for the Court’s opinions in *Roman Catholic Diocese* and *Tandon*, which found a religious liberty right to hold large gatherings during a global pandemic despite the opinion of public health experts that this was likely to increase transmission of a deadly virus.<sup>77</sup> Furthermore, longstanding and increasingly broad “conscience clause” laws enacted at the federal and state levels have for years granted cover for medical providers, including large healthcare conglomerates, to rely on their religious beliefs in denying healthcare services to pregnant people facing medical emergencies.<sup>78</sup> Such exemptions at least threaten to place religious practice above patients’ lives and may well have already contributed to patient deaths.

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be prohibited even though it is *reasonable*. But the compelling governmental interest the State seeks to advance here is protecting children from physical abuse . . .”).

76. Andrew Koppelman, Opinion, Has the Supreme Court Been Infected With Long Trump Syndrome?, *The Hill* (Nov. 2, 2021), <https://thehill.com/opinion/judiciary/579406-the-supreme-court-and-long-trump-syndrome/> (on file with the *Columbia Law Review*).

77. See supra notes 10–23 and accompanying text. While the Court claimed that its decisions would not affect public health, it did so against the opinion of public health experts—including what one lower court called a “mountain of scientific evidence.” *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1147 (9th Cir. 2021); see also Elizabeth Reiner Platt, Katherine Franke & Lilia Hadjiivanova, Law, Rts. & Religion Project, *We the People (of Faith): The Supremacy of Religious Rights in the Shadow of a Pandemic* 28–31 (2021), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/We%20The%20People%20of%20Faith%29%20Report.pdf> [<https://perma.cc/DDT9Y64J>].

78. See, e.g., Elizabeth Reiner Platt, Katherine Franke, Candace Bond-Theriat, Lilia Hadjiivanova & Amy Littlefield, Law, Rts. & Religion Project, *The Southern Hospitals Report: Faith, Culture, and Abortion Bans in the U.S. South* 10 (2021), [https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/The\\_Southern\\_Hospitals\\_Report.pdf](https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Reports/The_Southern_Hospitals_Report.pdf) [<https://perma.cc/7MCJ-DQ7Y>]; Elizabeth Sepper, *Taking Conscience Seriously*, 98 Va. L. Rev. 1501, 1503–04 (2012). For a discussion of policies limiting the reproductive services that Catholic hospitals provide, see Lori Freedman, *Bishops and Bodies: Reproductive Care in American Catholic Hospitals* 9, 11–12 (2023).

## IV. RELIGIOUS LIBERTY, NEUTRALITY, AND ABORTION

In addition to their skepticism that religious-right-to-abortion claims should prevail as a matter of law, the authors include another reason they oppose such claims—they could end up limiting the broader right to religious exemptions. The authors write, “We worry that a ruling for the plaintiffs . . . would, in the long run, weaken or even eliminate religious liberty protections.”<sup>79</sup> If religious-right-to-abortion claims succeed, “state legislatures may seek to modify or even repeal their state RFRA, thus abandoning heightened protections for religious exercise. Other states that are looking to enact RFRA may reconsider if faced with the choice between protecting religious liberty and enforcing other compelling interests.”<sup>80</sup>

In other words, if religious progressives are covered by RFRA, then RFRA will be reformed or eliminated, curtailing the right to religious exemptions for other (presumably more worthy) people of faith. Of course, this is not how the authors frame the matter—they claim that religious-right-to-abortion litigation misinterprets religious exemption law by “effectively eliminat[ing] the deliberate legislative balance contained within RFRA[].”<sup>81</sup> But as this Piece and others have explained, religious-right-to-abortion suits are at least as justified under current doctrine as many other claims that have succeeded and that the authors themselves have supported.<sup>82</sup> Like the litigants in the COVID-19 cases, those seeking the right to engage in religious decisionmaking around reproduction and abortion argue that they should not have to wait until it is too late to protect their religious exercise, that the exemptions they seek are no more dangerous to the government’s asserted interest than existing secular exceptions, and that their religious practice must be protected even in contexts raising complicated matters of life and death.

If legislators and courts are unwilling to apply the rules they created in cases like *Burwell v. Hobby Lobby*, *Tandon v. Newsom*, *Fulton v. Philadelphia*, and *303 Creative v. Elenis* in religious-right-to-abortion litigation, then existing religious-exemption laws *should* be reconsidered. The alternative—a regime in which only expansive RFRA claims made by

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79. Blackman et al., *supra* note 6, at 480.

80. *Id.*

81. *Id.* at 447.

82. See, e.g., Schwartzman & Schragger, *supra* note 4, at 2323 (“[T]here is a compelling case that abortion bans violate religious liberty under the Roberts Court’s free exercise jurisprudence.”).

religious conservatives are granted—is both constitutionally problematic and normatively unfair.<sup>83</sup>

#### CONCLUSION

While the authors of *Abortion and Religious Liberty* have argued for a broad approach to standing for opponents of LGBTQ rights and COVID-19 restrictions, they argue that plaintiffs should not have the right to challenge abortion laws until it would be too late for them to access care. While they support religious rights for for-profit corporations selling goods in the public marketplace, they argue against granting religious rights to a Jewish nonprofit created specifically to represent those who share a particular religious belief. While they acknowledge that courts hardly ever question claimants' religious sincerity and have not argued for doing so in other contexts, they claim a special need to rigorously evaluate the sincerity of people of faith who support abortion access—including by evaluating their religious beliefs and practices on other issues. While they have supported religious exemptions that threatened to exacerbate the COVID-19 crisis that has killed millions, they argue that the state's interest in fetal life should prevail against requested exemptions.

Taken together, it is hard not to see these arguments as motivated by opposition to abortion rather than a commitment to the correct interpretation of religious liberty law. The trend of courts granting increasingly broad religious exemptions from laws intended to protect civil rights, public health, and other important state interests is deeply troubling.<sup>84</sup> But now that these cases are on the books, it is legally and morally essential that religious exemptions be awarded neutrally. A system that sets the bar low for those opposed to abortion while creating impossible legal hurdles for those whose faith motivates them to seek abortion care does not advance religious liberty. To the contrary, such a regime would place the religious and moral commitments of antiabortion judges above the constitutional commitment to religious freedom.

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83. For a discussion of other religious liberty lawsuits brought outside the Christian Right context—many of which have been rejected—see Elizabeth Reiner Platt, Katherine Franke, Kira Shepherd & Lilia Hadjiivanova, Law, Rts. & Religion Project, *Whose Faith Matters? The Fight for Religious Liberty Beyond the Christian Right* 22–64 (2019), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Images/Whose%20Faith%20Matters%20Full%20Report%2012.12.19.pdf> [<https://perma.cc/JB7N-PF33>].

84. See, e.g., Law, Rts. & Religion Project, *Parading the Horribles: The Risks of Expanding Religion Exemptions 1* (2022), <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Parading%20the%20Horribles%20-%20Sept%202022%20Update.pdf> [<https://perma.cc/D38K-774L>].