

TALKING ABOUT



Religious Exemptions Laws



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INTRODUCTION

Religious freedom is a fundamental American value, so fundamental that it is protected by the First Amendment to our nation's Constitution. And historically, religious exemptions have protected the tried-and-true American values of freedom of belief, worship and religious exercise. For example, state liquor laws include a religious exemption for the sacramental use of wine by religious organizations, and prisons are required to provide kosher meals to Jewish inmates who request and follow kosher diets.

However, in recent years some people have begun to distort this historical understanding of religious freedom by claiming that religious exemptions should allow people to impose their religious beliefs on their employees, their customers, their patients, their constituents, and others. As a result, religious exemptions have in many cases become a vehicle for harming others or refusing to follow any number of laws that individuals and/or companies claim interfere with their religious beliefs—including nondiscrimination laws, health care laws, and even laws that protect public safety and prevent abuse.

This guide provides approaches for elevating effective conversations about the ways these kinds of harmful religious exemptions threaten not only laws that protect lesbian, gay, bisexual and transgender (LGBT) people from discrimination,

Terminology: *Religious Exemptions Laws*

In this guide we focus on the recent push to pass overly broad *religious exemptions* and *religious exemptions laws* to allow people to harm others and refuse to follow laws they claim interfere with their religious beliefs.

While some have described these proposals using terms like “religious refusals,” a focus on *religious exemptions* provides a clearer description that allows audiences to understand what we're discussing. For example, we can talk about *harmful religious exemptions* (for example, those that are created and intended specifically to permit discrimination against LGBT people), or *broad religious exemptions laws* (like proposed state RFRAs).

While those pushing these kinds of religious exemptions often describe them as “religious freedom” laws, this terminology feeds a false and unhelpful impression. In fact, these kinds of religious exemptions seek to restrict freedom by encouraging some people to impose their religious beliefs on others.

but also health care and women's reproductive freedom, public safety, and the rule of law itself.

The guide is divided into four sections: *Talking About Broad Religious Exemptions Laws*, an in-depth focus on *Broad Religious Exemptions Laws & Women's Reproductive Health*, approaches for *Talking About LGBT-Specific Religious Exemptions*, and a discussion of *Things to Avoid*.

At the outset, it's important to note that various religious exemptions laws can be quite different in scope and effect, and the ways we talk about them always depend on the specifics of the proposal. Even similar-sounding religious exemptions proposals can be worded quite differently—and as a result, not all the harms and consequences described in this document will apply in every case. These issues can be challenging to discuss, and understanding the details is crucial before talking publicly about any religious exemption or religious exemptions law. Consult with a legal or policy expert or organization (such as the ACLU) to fully understand the nuances of a particular religious exemptions proposal or law before speaking about it publicly.

TALKING ABOUT BROAD RELIGIOUS EXEMPTIONS LAWS

There are three key approaches for effective conversations about broad proposed religious exemptions laws (otherwise known by the misleading name “Religious Freedom Restoration Acts,” or “RFRAs”):

First, we start with our shared belief in the importance of freedom of religion and also the rule of law, pointing to existing Constitutional protections for freedom of religion. Second, we explain that these broad religious exemptions laws are vague, ripe for abuse, and open the floodgates to a broad array of unintended consequences. And third, we can look in more detail at some of the specific harms these kinds of proposed laws can inflict on a wide range of Americans.

1. Emphasize that Religious Freedom Is Important—and It's Already Protected

Religion is a vital part of most Americans' daily lives. Religion is central to people's sense of identity, values and decision-making, and freedom of religion is central to who we are as Americans.

Conversations that elevate concerns about broad religious exemptions laws should be grounded in the common values and beliefs we share—particularly when it comes to the importance of religion, religious freedom, and the rule of law. These conversations are rooted in the following expressions of our shared values and beliefs:

- *“Freedom of religion is important; it’s part of what makes America great. That’s why it’s already protected by the First Amendment to the Constitution.”*

Affirming the importance of religion in so many people’s lives is the foundation for any conversation about religious exemptions. While this may seem like an obvious starting point, it’s also a critically important one. Without this affirmation, those who back harmful religious exemptions can create a false sense that those who oppose such religious exemptions are anti-religion. And as we affirm our respect for religious beliefs, it’s also important to emphasize the fact that religious freedom is currently protected by the First Amendment to the Constitution.

- *“And the rule of law is also important, and we can’t just create sweeping religious exemptions that encourage people to pick and choose which laws they’re going to follow.”*

An important positive value that people hold quite strongly is that laws are meant to be followed, and people shouldn’t be able to pick and choose which laws they’re going to follow based on whatever religious beliefs they offer at a given moment in time. When people can see how broad religious exemptions run contrary to this value, their support for such proposals erodes.

- *“I believe in treating others the way I want to be treated. Religious freedom is one of our country’s fundamental values, and following the teachings of one’s faith is important, but that freedom doesn’t give any of us the right to impose our beliefs on others.”*

When we connect with shared beliefs like the importance of treating others as we want to be treated, we can ground our conversations in shared religious values. People are rightly concerned that broad religious exemptions will result in some people’s religious beliefs being forced on others, and we can help remind people that it goes against their own deeply held values to allow people to impose their beliefs on others.

2. Focus on How Broad Religious Exemptions Laws Open a Can of Worms

After rooting our conversation in shared beliefs, the next step is to focus on the negative effects of broad religious exemptions and the floodgates (or the can of worms) that such laws open. In general terms, the potential harms of such laws include opening the door to abuse and frivolous lawsuits, legal chaos, the risk of unintended consequences

Elevating Religious Voices

Religious voices such as pastors and clergy are essential in conversations about harmful religious exemptions. They can help ground the discussion in shared personal and faith values and elevate it above our opponents’ efforts to divide and polarize. For example:

“I’ve been a pastor for 22 years. Faith is at the center of my life, and the life of my family. My wife and I believe in treating others as we would want to be treated, and that’s what we’re teaching our kids. We are all God’s children.

“Freedom of religion is deeply important to me. But this law would allow businesses to refuse to serve those who don’t share their beliefs. That just doesn’t sit right with me.

“Religion shouldn’t be used to hurt people, to impose one’s beliefs on others, or to discriminate.”

and more. Start by describing what is likely to happen in broader terms, rather than immediately focusing on specific scenarios (which we discuss in the next section). The following concerns are particularly relevant:

These religious exemptions laws are vague and ripe for abuse. They create exemptions for virtually anything that a person contends is part of their religion, and they make our laws harder to follow. These exemptions would invite people to game the system or make up religious beliefs to get out of following a particular law. Broad religious exemptions open the door for people to claim they have a right to decide which laws they will and won’t obey, creating uncertainty for law enforcement.

These religious exemptions laws could open the floodgates to legal chaos and frivolous lawsuits at taxpayer expense. It would take years of lawsuits to sort out the problems that these religious exemptions would create. And there is no way to know how state courts would interpret a particular state’s exemptions.

These religious exemptions laws will result in a troubling range of intended and unintended consequences that may take years to resolve. While we can predict some of the harmful effects of these exemptions, even more troubling is the fact that these vague laws could be used and manipulated in ways that we can’t yet foresee.

Also, it can be helpful to point out that broad religious exemptions laws aren’t just about florists wanting to refuse

to sell flowers to same-sex couples, and that they also result in a wider array of harms. This both reminds people that such laws are often intended to discriminate against LGBT people, while at the same time expanding the discussion to include and consider other people who can be hurt by the law—as well as other harmful intended and unintended consequences.

The following are a couple of concrete ways that you can pull together and elevate these concerns:

- *“These religious exemptions laws are vague and ripe for abuse. They could flood our courts with lawsuits, let people game the system, and lead to unintended consequences that may take years to resolve.”*
- *“These religious exemptions laws aren’t just about florists refusing to sell flowers to gay couples. They will open the floodgates to legal chaos and frivolous lawsuits at taxpayer expense, and legalize discrimination against unmarried couples, single mothers, religious minorities, and more.”*

3. Illustrate the Harmful Consequences

While talking about the can of worms opened by broad religious exemptions can often be enough, it can also be helpful in some cases to outline some more specific harmful consequences of a broad religious exemptions law. Specific examples can help paint a vivid picture of why such exemptions are so dangerous. Harmful religious exemptions can pose serious threats to, among other things, public safety; health care, including women’s reproductive health; nondiscrimination laws; and the rule of law itself.

There are three important things to keep in mind in cases where we need to illustrate specific consequences:

An Important Note About Illustrating Harmful Consequences

Always ensure that the religious exemption proposal you’re discussing opens the door to a specific consequence or broader harms before raising them in conversations.

Discussing specific potential consequences requires an in-depth familiarity with the details of particular proposed religious exemptions. Consulting with policy experts and legal organizations (for example, the ACLU) can be helpful in understanding the nuances of a particular religious exemptions proposal and the range of harms that can result.

First, broaden the discussion of consequences. While much attention has recently focused on the ways that broad religious exemptions are being used to discriminate against LGBT people, it is important to not allow our conversations to be defined solely by these harms. While conversations about discrimination can be helpful in some cases, talking only about how these laws allow discrimination does not leave room to discuss the range of harms related to public safety, health care access, reproductive freedom, and more.

Second, tailor discussions of consequences to the proposed religious exemptions. Whether you are talking about a broad religious exemptions law (like the ones discussed in this section) or a more specific religious exemptions proposal (like those discussed on pages 5-6 in *Talking About LGBT-Specific Religious Exemptions*), make sure you clearly understand the specifics of the proposal being discussed. It is very important to not mistakenly raise examples or consequences that could not flow from, or are not possible under, the religious exemptions law or proposal under discussion (see *An Important Note About Illustrating Harmful Consequences* below).

If you’re not sure about a particular example, or can’t consult with legal experts, focus your discussion on the first approach in this section (*Emphasize that Religious Freedom Is Important—and It’s Already Protected*).

Third, engage with spokespeople who can speak to specific issues. In many cases, specific examples of consequences are best discussed by those who have a direct tie to the underlying issues. For example, a child safety advocate would be best situated to talk about how a broad religious exemptions law could be used to avoid justice for serious crimes like child abuse. If the focus is on public safety concerns, think about whether law enforcement spokespeople (such as police officers or district attorneys) might be particularly helpful. If a particular example doesn’t seem a good fit for your voice and background, focus instead on broader, values-focused discussions and concerns.

The following are some examples of consequences that could result from the kinds of vague, broad religious exemptions laws that have been proposed in various states. The consequence examples fall into three categories: public safety and abuse prevention, harms to health care (including women’s reproductive health), and discrimination. **To avoid “overloading” people, cite potential consequences sparingly—no more than two or three in a conversation.**

Public Safety & Abuse Prevention. There are serious concerns about how religious exemptions laws might allow harms to life, limb and safety. The potential under these laws for abuse and interference with law enforcement is deeply troubling. For example:

- *Religious leaders could refuse to cooperate with investigations into child abuse by claiming their beliefs prevent them from testifying against members of their church.*
- *A man who abuses his wife and children could interfere with law enforcement by claiming that domestic violence laws don't apply to him because his religion teaches that a man has the right to discipline his wife and children as he sees fit.*

Health Care, Including Women's Reproductive Health.

The denial of essential health care is another potential consequence of broad religious exemptions—and it's already happening in states with these kinds of laws. While harms to women and reproductive health continue to be among the leading consequences of religious exemptions laws, broadening the discussion around health care can also be helpful in clarifying just how far these laws can go in hurting an even wider range of Americans. For example:

- *Rape victims could be denied emergency birth control if they went to a Catholic hospital for treatment.*
- *A pregnant woman who was miscarrying and needed to end her pregnancy to save her life could be refused lifesaving care at a Catholic hospital.*
- *Employers could refuse to provide employees access to birth control or other medications they disagree with, or deny critical coverage for health care services based on whether the employer believes in things like blood transfusions.*
- *A doctor could withhold critical information about treatment options for a pregnant woman with a serious complication because he doesn't believe in ending pregnancies.*
- *Pharmacists in rural areas could refuse to fill prescriptions for daily birth control pills or HIV medications, leaving people without the medications they need.*
- *A health care provider could refuse to treat a pregnant woman who was unmarried.*

An important note: Before using any of the reproductive health examples listed above, please see the section titled *Talking About Broad Religious Exemptions Laws & Women's Reproductive Health* on page 5 for important information and guidance.

Broad Religious Exemptions, Discrimination and Business Concerns

As discussed in MAP's *Ally's Guide to Talking About Nondiscrimination Protections for LGBT People* (available online at www.lgbtmap.org/talkingaboutseries), polls have repeatedly shown that most people do not realize that it is still legal under the laws of most states to discriminate against LGBT people. Overcoming this misperception involves helping people understand that discrimination persists and why nondiscrimination protections are so important.

Many business leaders, on the other hand, are keenly aware of the discrimination that LGBT people still face. They've witnessed firsthand how the absence of nondiscrimination protections hurts their employees, makes it more difficult to attract the best workforce, and hinders a state's ability to attract new businesses.

So when it comes to talking about broad religious exemptions, a focus on discrimination can be effective with business leaders and some policymakers. They understand better than most how exemptions send a message that discrimination against LGBT people is tolerated and even encouraged, and they are much more likely than the broader public to understand how such exemptions harm a state's economy by creating a hostile climate for its workers.

However, for everyday Americans, talking about how broad religious exemptions laws create a "license to discriminate" is not helpful, and can in fact be distracting. Because many Americans still don't fully understand how commonplace discrimination against LGBT people is, a narrow focus on discrimination (or use of charged rhetoric like "license to discriminate") can distract them from the broader ways that exemptions hurt not only LGBT Americans, but many others as well—including women, children, unmarried couples, single mothers, and people of different religious faiths.

Finally, a narrow focus on discrimination does not highlight or help people understand many of the broader impacts of harmful religious exemptions. While a focus on discrimination can be effective in some instances—including potentially as one part of a broader conversation about consequences—making discrimination the entire focus of the conversation can make it very difficult to help people understand how broad religious exemptions can also jeopardize public safety, health and reproductive freedom, and the rule of law itself.

Discrimination. Broad religious exemptions have been used by some to justify discrimination against people who do not share an individual's religious beliefs. However, such harms are often less concerning to many people than the denial of health care and safety concerns. For that reason, avoid overfocusing on discrimination-related harms—and in any case, avoid an exclusive focus on LGBT-related discrimination harms. It can be more compelling to show a broader range of discrimination that can result from such laws—including, for example, the ways religious exemptions can lead to discrimination that hurts children, single mothers, unmarried couples and religious minorities:

- *A child welfare worker could decide to keep a child in foster care rather than place her with a loving, qualified lesbian couple who wants to adopt.*
- *A pediatrician could refuse to provide medical care for a child of a gay or lesbian couple.*
- *A landlord could refuse to rent an apartment to an unmarried couple or a single mother.*
- *A business owner could refuse to serve a customer of a different faith—such as a Jewish or Muslim customer—if they claim that doing so conflicts with their religious beliefs.*

IN FOCUS: TALKING ABOUT BROAD RELIGIOUS EXEMPTIONS LAWS & WOMEN'S REPRODUCTIVE HEALTH

Many broad religious exemptions laws have been created with the intention of interfering with women's health and reproductive freedom. These laws are often a dangerous step backward for women and families.

The previous section on *Talking About Broad Religious Exemptions Laws* (see pages 1-4) already addressed some of these concerns in a broader health context, but in some cases it can be helpful to home in on the ways such laws can put women's health and well-being at risk. These harms tend to fall under two categories: denial of access to birth control, and threats to the health of pregnant women. As always, ensure that each example of consequences could flow from the religious exemptions law under discussion.

Consider your audience when thinking about a focus on these critical harms to women's health. Elevating harms to women's reproductive health can be helpful in conversations with like-minded audiences, and with some who are conflicted about broad religious exemptions laws. At the same time, however, it can unhelpfully activate people who are stridently against access to birth control or opposed to women's reproductive freedom.

1. Access to Birth Control

Doctors and patients rely on pharmacists to fill prescriptions based on the medical needs of the patient. But broad religious exemptions laws are often intended to expand the ways in which businesses, pharmacists and medical providers can refuse to provide access to medications or fill needed prescriptions by claiming that doing so violates their religious beliefs. Among the ways these laws can harm women:

- *Rape victims could be denied emergency birth control if they went to a Catholic hospital for treatment.*
- *Pharmacists could refuse to fill prescriptions for daily birth control pills.*
- *Employers could use their health insurance plans to deny female employees access to birth control.*

2. Health of Pregnant Women

Broad religious exemptions laws also could allow health care providers and hospitals to decide who they will and won't treat, and what information they will provide to patients, based on their religious beliefs. This can often pose a direct threat to the health and well-being of women who are pregnant. For example:

- *A health care provider could refuse to treat a pregnant woman who is unmarried.*
- *A pregnant woman who is miscarrying and needs to end her pregnancy to save her life could be refused lifesaving care at a Catholic hospital.*
- *A doctor could withhold critical information about treatment options for a pregnant woman with a serious complication because he doesn't believe in ending a pregnancy.*

TALKING ABOUT LGBT-SPECIFIC RELIGIOUS EXEMPTIONS

Recently, opponents have started pushing for religious exemptions specifically designed to harm LGBT people and circumvent nondiscrimination laws. These religious exemptions have taken a number of forms, among them:

- Laws that would allow public officials to refuse to provide marriage licenses to same-sex couples in states where they are legally permitted to marry.
- Laws that would allow child welfare workers to keep a child in foster care rather than place her with a loving, qualified gay or lesbian couple.
- Exemptions within proposed nondiscrimination laws that would permit discrimination against LGBT

people as long as it is justified by religious beliefs—for example, allowing a high school guidance counselor to refuse to help a gay teenager by saying it goes against her religious beliefs.

- Laws that would explicitly allow businesses to discriminate against same-sex couples.

This section details some approaches for talking about these forms of religious exemptions. Note that in most of these cases, conversations about these particular kinds of exemptions benefit from a more specific focus on discrimination and how LGBT people are harmed—unlike discussions about broad religious exemptions laws, where such a specific focus tends to be less helpful.

1. Religious Institutions

It's important to start these conversations with a positive emphasis on shared values, specifically regarding houses of worship and clergy, and the fact that churches and clergy are already protected. When a house of worship or pastor is acting in a religious capacity, their freedom of religion is rightly entitled to broad deference under the First Amendment to the Constitution—and this includes decisions about who churches and their clergy will marry:

- *Houses of worship and clergy have the constitutionally protected freedom to decide which marriages they will and won't perform in their faith traditions. No church or pastor could be forced to perform a marriage that goes against their religious teachings or beliefs—including, for example, marriages of same-sex couples, interfaith marriages, or marriages of people previously divorced.*

Because this is a fact that some people can be confused about—and because opponents of LGBT equality often try to create and inflame that confusion—it can be helpful to remind people of this simple truth while affirming the importance of religion and religious freedom in people's lives.

2. Government Officials

A few recent religious exemptions proposals would allow government officials to refuse to provide marriage licenses to same-sex couples legally allowed to marry in their states. Some of these proposed laws would also allow officials to refuse to recognize the legally valid marriages of same-sex couples. Such attempts to invalidate or refuse government recognition to lawful marriages raise serious concerns about the responsibility of government officials to treat all Americans equally under the law. Consider emphasizing the following points when talking about these issues:

- *Government officials swear an oath to faithfully and impartially discharge the duties of their office. When public officials seek to deny services to taxpaying citizens based on their religious beliefs, they are not living up to that oath or serving the common good.*
- *In America we believe that the government should treat everyone equally under the law and not discriminate. Government officials who have sworn an oath to serve the public shouldn't be able to pick and choose who they're going to serve based on their religious beliefs.*

3. Business Services

Many opponents are seeking to enact laws that would allow businesses to refuse to serve LGBT customers by claiming a religious exemption from state and/or local laws that protect people from discrimination. Effective conversations about these efforts to undermine nondiscrimination laws focus on an important array of shared values:

- *As a nation, we decided a long time ago that businesses that are open to the public should be open to everyone on the same terms. Nobody should be turned away from a business or denied service in a restaurant simply because of who they are.*
- *Gay and transgender people are our friends, neighbors, family and co-workers. They work hard, serve in the military, and pay taxes. When they walk into a business that's open to the public, they should be treated like anyone else and not be discriminated against.*
- *Local businesses play an important role in our economy and in our communities; that's why it is so important that they serve all customers and not judge or refuse to serve them because of who they are. Owning a business is hard work, but no matter how one feels about people who are gay or transgender, it is important that businesses follow the law and treat customers fairly. It's good for business and good for the community.*
- *Protecting people from discrimination, including people who are gay or transgender, is about treating others as we want to be treated. It's not for me to judge. Even though we may have different beliefs, what's most important is focusing on what we have in common—taking pride in our work, respecting coworkers and serving customers, and getting the job done.*

THINGS TO AVOID

When talking about religious exemptions, don't raise consequences that are improbable, outdated or unrelated to a particular religious exemption. Focus on harms outlined in this guide instead, as appropriate.

Don't talk about broad religious exemptions laws as a "license to discriminate." While this term can resonate with the media and strong opponents of harmful religious exemptions, it is not helpful for many who are wrestling with the issues—particularly given that a number of the harms that stem from religious exemptions go beyond discrimination to issues of safety, health and the rule of law. See *Broad Religious Exemptions, Discrimination and Business Concerns* on page 4 for more information.

Don't focus on wedding-related discrimination against same-sex couples when talking about broad religious exemptions laws. Even though such discrimination is often a focus of media attention, it is much less compelling than other examples of harm (although a brief mention of the fact that "religious exemptions laws aren't just about florists refusing to sell flowers to gay couples" can be helpful in many cases).

Don't use polarizing language that creates partisan divisions. Many people on both sides of the aisle are troubled by vague religious exemption laws; they share our commitment to freedom of religion and our concerns about how these kinds of exemptions are ripe for abuse. Talk about the issues in ways that create common ground based on those shared values and concerns.

Don't talk about "rights," "civil rights," or make direct comparisons between different kinds of discrimination, especially when it comes to discrimination based on race. Comparisons of discrimination based on race with discrimination based on sexual orientation or gender identity can alienate many African Americans and others, creating unnecessary distance where there would otherwise be common ground.

Don't say things that our audience might view as argumentative or name-calling. Using terms like "bigotry" or "hate" can alienate those who are honestly wrestling with the issues. Use measured, relatable language to help people understand the troubling consequences of harmful religious exemptions.

ADDITIONAL MAP RESOURCES ON RELIGIOUS EXEMPTIONS LAWS



MAP's *LGBT Policy Spotlight: State and Federal Religious Exemptions and the LGBT Community* (published September 2015) provides an overview and analysis of broad state and federal religious exemptions laws, their components, their consequences, and their impact on the LGBT community. The report is available at MAP's website: www.lgbtmap.org/policy-spotlight-rfra.

For the latest information, MAP's **Equality Maps** (www.lgbtmap.org/equality-maps) are updated daily and provide state-by-state data on a range of laws and policies that affect LGBT Americans, including religious exemptions laws.

For detailed information on proposed religious exemptions laws, please consult with a legal or policy expert or organization (see *An Important Note About Illustrating Harmful Consequences* on page 3).