

The free exercise right to life

New scholarship from the California Constitution Center at Berkeley Law:

David A. Carrillo, Allison G. Macbeth & Daniel Bogard, *The Free Exercise Right to Life* (2024) 104 B.U. Law Review Online 19.

This publication is part of the Advancing Pregnant Persons' Right To Life Symposium presented by the Boston University School of Law Program on Reproductive Justice, Northeastern Law Center for Health Policy and Law, and Center for Reproductive Rights, hosted by Boston University Law Review Online. On February 8, 2024 scholars of law, medicine, and religion from across the world came together at Boston University School of Law to discuss the potential of promoting and protecting reproductive justice through advancing pregnant persons' right to life. Stemming from that event are six articles and an annotated bibliography from leading legal scholars.

In the lead article of the volume, California Constitution Center scholars argue that the federal constitution's free exercise of religion clause can protect abortion rights by requiring states to allow abortion access for those with a sincerely held belief that their religion requires it, even when state law otherwise bans or restricts abortion. In at least one religion — Modern American Judaism, for example — abortion can be a religious requirement. That person's sincerely held religious belief requires an abortion. A state statute that bars their abortion must bend to the federal constitution's free exercise right and accommodate the religious exercise.

This approach exploits the fact that states with abortion restrictions likely have state versions of the Religious Freedom Restoration Act (RFRA), where any attempt by the state to rebuff a religious exercise claim would be subject to strict scrutiny. This approach applies even in states with state constitutional "no aid" provisions that require strict state neutrality in religious matters; those provisions are all now likely dead letters. To support religious exemptions from state abortion restrictions, advocates can leverage the current focus on history and tradition in constitutional interpretation by federal courts, and rely on the many historical examples of those courts permitting or requiring religious accommodations.

