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What Comes Now? Religious Liberty and the End of Roe

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Subject: What Comes Now? Religious Liberty and the End of Roe

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New York, NY – [The Law, Rights, and Religion Project](#) at Columbia Law School, an academic think tank that conducts research and policy analysis on the complex ways in which religious liberty rights interact with other fundamental rights, has a number of materials that can help to shed light on three key issues around the possible end of *Roe v. Wade* in light of the draft Supreme Court opinion released yesterday:

1. The new tiering of constitutional rights:

The leaked draft opinion rejects the notion of a constitutional right to abortion, claiming it is neither “mentioned anywhere in the Constitution” nor “deeply rooted in [our] history and tradition.” The Court’s reasoning suggests that many other rights not explicitly included in the Constitution—including the right to contraception, intimate sexual activity, and marriage—may be next on the chopping block.

We predicted this approach to constitutional rights in our 2021 report [We the People \(of Faith\): The Supremacy of Religious Rights in the Shadow of a Pandemic](#), which explained how “the Supreme Court has adopted a view of the Constitution that ranks fundamental rights: religious liberty is now given top-tier protection, while other rights, such as equality and reproductive liberty, enjoy lower-tier status.” We called particular attention to an opinion by Justice Gorsuch which stated that “even if judges may impose emergency [COVID] restrictions on rights that some of them have found hiding” in the Constitution, “it does not follow that the same fate should befall the textually explicit right to religious exercise.”

For more on how the Supreme Court is creating an unprecedented hierarchy of constitutional rights, with free exercise rights for Christian conservatives at the top, read [We the People \(of Faith\)](#).

2. The future of abortion care:

Two LRRP reports on abortion restrictions within Catholic hospitals—as well as both [Protestant](#)

[and secular hospitals](#) across the South—provide a glimpse into the future of medical care after *Roe*. For example, our 2021 study [The Southern Hospitals Report: Faith, Culture, and Abortion Bans in the U.S. South](#) found that in many hospitals, decisions about when a medically necessary abortion would be permitted were made not by a patient’s doctor, but by specialized committees that could include non-physicians, and in some cases included religious leaders. One hospital pastor told us, “every abortion that is...given here at the hospital has to come before this committee of which I’m on.” Such “abortion committees” were common prior to *Roe*.

For more on how abortion bans—whether imposed by state governments or hospital boards—harm pregnant patients’ ability to access necessary medical care for conditions ranging from cancer to kidney disease to miscarriage to mental health needs, read [The Southern Hospitals Report](#) and [Bearing Faith](#).

3. Religious liberty after *Roe*:

Opponents of abortion have claimed that overturning *Roe* will reduce religious conflicts involving abortion. Nothing could be further from the truth. Most people who get abortions are religious, people of faith from many different religious traditions support the right to abortion, and there is a long and rich tradition of faith-based activism for abortion rights. For example, one LRRP [comment](#) explains how “several religious denominations hold that the right to reproductive health care is an essential aspect of religious freedom. In a resolution adopted in 1984, the Central Conference of American Rabbis, an association of Reform rabbis, stated that ‘freedom of choice in the issue of abortion is directly related to the First Amendment’s guarantee of religious freedom.’...the [Evangelical Lutheran Church in America] has stated that “[f]or some, the question of pregnancy and abortion is not a matter for governmental interference, but a matter of religious liberty and freedom of conscience protected by the First Amendment.”

In our 2019 report [Whose Faith Matters? The Right to Religious Liberty Beyond the Christian Right](#), we discussed the many people of faith who have brought religious liberty litigation asserting a religious right to access, provide, or assist with abortion care. These include several suits involving members of the Clergy Consultation Service on Abortion (CCS), a national network of faith leaders that provided counseling and referrals for abortion services prior to *Roe*. The religious reproductive rights movement has seen a [new flourishing](#) over the past year in response to relentless attacks on abortion rights.

For more on the Clergy Consultation Service and other faith-based abortion activism, read [Whose Faith Matters?](#)

The Law, Rights, and Religion Project's host organization, the Center for Gender and Sexuality Law at Columbia Law School, also issued a press advisory today, containing crucial information and statements from the Equal Rights Amendment (ERA) Project and the Racial Justice Project. [You can read it here.](#)