

The Washington Post

Democracy Dies in Darkness

Religious freedom for me, but not for thee



Vice President Pence at the 2018 Values Voter Summit in Washington on Sept. 22. (Susan Walsh/AP)

By **Katherine Franke**

September 28, 2018

URL: https://www.washingtonpost.com/opinions/religious-freedom-for-me-but-not-for-thee/2018/09/28/297fffb4-c340-11e8-8f06-009b39c3f6dd_story.html

Katherine Franke is the Sulzbacher Professor of Law, Gender and Sexuality Studies at Columbia University, where she also directs the [Center for Gender and Sexuality Law](#) and is the faculty director of the [Public Rights/Private Conscience Project](#).

The Catholic sisters in the order of the Adorers of the Blood of Christ **announced** this month that they plan to petition the Supreme Court to consider whether their religious-freedom rights are being violated by the construction and pending use of a natural-gas pipeline on their land in Pennsylvania. They argue their faith commits them to “believe that God calls humans to treasure land as a gift of beauty and sustenance that should not be used in an excessive or harmful way.” Lawyers representing the federal government have vigorously opposed the nuns’ right to assert a religious-liberty claim in federal court.

The government’s position in the Adorers case is surprising, given that **Vice President Pence announced** in July that “religious freedom is a top priority of this administration.” Attorney General Jeff Sessions **echoed** those remarks a few days later: Under “this administration, the federal government is not just reacting – we are actively seeking, carefully, thoughtfully and lawfully, to accommodate people of faith. Religious Americans are no longer an afterthought.”

You can count on the government’s support if you’re a [cake baker](#) who considers same-sex marriage to be an abomination, or a nun who believes that contraception is murder, or a school administrator whose faith tells him that a person’s sex is fixed by God at birth. In these cases, Justice Department lawyers will show up like the cavalry, ready to go down fighting.

But not so much for [Unitarians](#), whose faith drives them to leave water and food in the desert for migrants who will die without help. Or [Catholic activists](#) who believe that nuclear weapons are a death pact with the devil. Or the “Adorers,” who oppose the building of a gas pipeline on their property. Or Muslims in almost any context.

When you pay close attention to the litigation strategy pursued by the federal government’s lawyers, what you see is that this administration is not committed to an overarching principle of religious liberty – or even rights for Christians, in general. Like so much of the current political climate under President Trump, the administration is not defending a neutral constitutional principle – religious liberty – for all people, but rather only for those who share the administration’s political perspective. In fact, this government has weaponized the notion of religious liberty, not for its own sake, but rather to advance a blatantly partisan, conservative agenda.

For instance, the Justice Department is aggressively prosecuting faith-based humanitarian volunteers with the organization [No More Deaths](#), a group affiliated with the Unitarian Church in southern Arizona. Its mission includes leaving water and food for migrants crossing the scorching-hot Sonoran Desert, where hundreds of people die every year. The government lawyers have trivialized these faith-based humanitarians’ religious-liberty claims, calling them scoundrels. This prompted a group of law professors who are experts in law and religion, myself included, to file a friend-of-the-court [brief](#) in the case, pointing out to the judge how the Justice Department has misconstrued religious liberty law in this case.

The No More Deaths volunteers have been criminalized for “feeding the hungry and caring for the sick” – the same activity Pence praised of religious groups in July. Now, faith-based groups in the Southwest that run soup kitchens and homeless shelters worry they’ll be targeted if they provide food and shelter to undocumented people as an act of humanitarian aid.

With one hand, Sessions has become the standard-bearer of the administration’s aggressive defense of religious liberty, arguing in case after case that a person’s sincerely held religious beliefs entitle them to an exemption from laws that conflict with those beliefs. Yet with the other hand, his office is ridiculing faith-based actors, parsimoniously interpreting the reach of religious-liberty rights to defend the administration’s partisan policy goals.

When citizens are moved to act as an exercise of their religious beliefs to challenge the Trump administration’s “zero tolerance” immigration policies – policies that degrade the environment or the government’s massive funding for the instruments of war – the administration seems to forget its pledge that “an individual’s relationship to God is a natural right and precedes the existence of the state, and is not subject to state control . . . There can be no doubt that we are stronger as a nation because of the contribution of religious Americans,” as Sessions declared.

The Supreme Court has repeatedly noted that religious-liberty rights are not absolute, yet they should be given serious consideration in light of the government’s other compelling interests. What we see from this government is the evangelization of its own policy goals, accompanied by the demonization of its critics. In no way was this what religious liberty meant to the nation’s founders, nor should it be what it means today.