

This law professor argued that Reform Jews aren't devout enough to merit religious freedom

Blackman argued that a Florida synagogue asserting a religious freedom right to abortion doesn't have strict enough beliefs to need protection.

Mira Fox June 22, 2023



A protester carries a sign as they attend the "Jewish Rally for Abortion Justice" rally in May. Photo by Anna Moneymaker/Getty Images

With the Supreme Court expected to overturn *Roe v. Wade* any day now, a Florida synagogue, L'Dor Va-Dor, is suing. They are arguing that the state's law banning abortion after 15 weeks violates Jewish freedom of religion since Jewish law requires abortion in certain cases. But not everyone is convinced — and some of the arguments against the synagogue's case question the legitimacy of liberal Judaism at all.

This week, Josh Blackman, a professor at the South Texas College of Law Houston, [argued in the libertarian publication Reason](#) that L’Dor Va-Dor’s complaint was suspect because liberal movements within Judaism do not adhere to religious laws consistently. Therefore, he proposed, liberal Jews cannot claim their religion requires anything of them, and thus an abortion ban does not impinge upon their religious freedoms.

“If virtually every other facet of halacha is not binding on members of this congregation, how could it be that this one teaching on abortion is binding — so binding, that a state’s prohibition of that teaching actually substantially burdens the free exercise of religion?” Blackman wrote.

The [Florida law](#), which would ban abortions after 15 weeks, does not include exemptions for rape, incest or trafficking, though it does allow narrow exemptions for fetal abnormalities and if the pregnancy physically endangers the life of the mother. Signed by Florida governor Ron DeSantis in April, the law is scheduled to go into effect July 1 and is part of a wave trigger laws several states are signing; these laws would only be enforceable if Roe v. Wade is overturned.

L’Dor V-Dor’s complaint, brought by Rabbi Barry Silver, [hinges on the belief that Jewish law actively requires abortion](#) when the mother’s health, mental or physical, is at risk. The Florida law only allows a narrow group of exceptions, which Silver argues will impede religious practice. The suit faces an uphill climb, given the court’s makeup and the exemptions already built into the law, but represents an important shift in how progressives might leverage the right to freedom of religion in the courts.

Blackman, who is also a legal fellow at the conservative Tikvah Fund as well as a board member of the conservative [Jewish Coalition for Religious Liberty](#), roots his argument in the idea of sincerity. Only a sincere belief in religious law or repercussions is limiting enough to impose a “sufficient burden,” which is the legal standard for cases on the free exercise of religion.

Blackman does not opine on whether Jewish law in fact does or does not require abortion; he correctly observes that Judaism has different rulings on the topic. Instead, he focuses on judging the religiosity of various sects — including proposing the idea that, since Judaism lacks a clear concept of hell, the consequences of breaking religious laws are less motivating than they are to Christians, meaning that breaking them does not cause true distress.

This argument could set damaging precedents if it gains traction — allowing courts to scrutinize the legitimacy and sincerity of religious beliefs opens a dangerous door. And defining liberal religious practice as less legitimate could lead to a lack of protection for all but the strictest religious movements.

But I want to focus on an ahistorical part of Blackman's argument, which compares Judaism — particularly Reform Judaism — to Christianity, proposing that Reform Judaism's tenets are less binding, and thus more easily broken, than Christianity's.

Comparing liberal Judaism to Christianity in his article, Blackman declares the latter as more sincere. "The legal concept of a 'substantial burden,' which was developed in the context of Christian faiths, does not neatly map onto a Jewish faith that does not actually impose any requirements on congregants, but instead only offers aspirational principles," Blackman wrote. "Those who are less devout are less likely to be burdened by restrictions on religion."

Blackman does not break down or address the diversity within Christianity, which also includes many liberal and progressive movements, as well as conservative evangelical groups that follow pastors [who do not always stick to the biblical text](#). Many schools of Protestantism hold to a doctrine of *sola fides* or "by faith alone," holding that there is nothing required beyond belief in Jesus. All of these would be "less devout" by Blackman's logic.

But beyond that, he misunderstands how similar Reform Judaism's structure is to Christianity — in fact, Reform Judaism was modeled on Protestantism.

Arising in the 1800s in Germany and spreading from there, Reform Judaism, especially in the U.S., was [molded by and similar to the Protestant Christianity surrounding it](#). A rationalistic philosophy dominant at the time impacted both, and both emphasized individual conscience over ritual — Protestantism rejecting the pomp and circumstance of Catholicism, and Reform Judaism casting off the rigid ritual of Orthodox Judaism.

Blackman's proof as to the voluntary impact of law within Reform Judaism focuses on the fact that many Reform Jews do not keep kosher or strictly observe Shabbat in the way that Orthodox Jews do — thereby, he argues, ignoring halacha.

But [halacha has always evolved](#) and changed. When Reform Judaism's founding rabbis [made a choice to emphasize moral laws over ritualistic ones](#), they were in line with centuries of Jewish practice of changed traditions and rituals. Keeping kosher is neither forbidden nor presented as an aspiration, but [instead part of a more spiritual mission of holiness](#) — a mission that can include keeping kosher but can also be achieved through other means. Reform Jews who do not keep kosher are adhering to the tenets of their religion just as much as Protestants who do not take communion yet still believe in the resurrection of Jesus.

Blackman never mentions the stringency of his own religious practice, but his argument would require a close reading of each individual movement within any religion and a judgment as to whether they are dogmatic enough to truly count as “religious.” Said dogmatism would need to be judged based on an arbitrarily limited set of texts, discarding any writings or traditions established in, apparently, the last several centuries — which would also exclude most of America's dominant Protestant and Evangelical movements and even Conservative Judaism.

If the standard for devotion is being bound to strict laws instead of beliefs in moral tenets, very few of America's religious population — which is [dominated by Protestants](#) within Christianity and [Reform Jews within Judaism](#) — count as religious enough to need protection. Reform Judaism and Protestant Christianity both deserve religious freedom.