

CONNECTING THE DOTS: TRUMP ADMINISTRATION EFFORTS TO CREATE A LICENSE TO DISCRIMINATE ACROSS THE COUNTRY

How the Trump Administration is Expanding Religious Exemptions to Gut Civil Rights Protections and Codify Discrimination Against People of Minority Faiths, Women and People who are LGBTQ

Since Trump's inauguration, the Administration has repeatedly undermined important civil rights protections, including by expanding religious exemptions. In the name of religious liberty, Trump and his allies have pursued a strategy to legalize discrimination based on religion and sex — including sexual orientation and gender identity — and other personal characteristics.

Freedom of religion is a fundamental American value, so fundamental that it is protected by the First Amendment to our nation's Constitution. But that freedom does not give institutions or individuals the right to harm others, including by discriminating and especially with taxpayer dollars.

Following is an overview of actions this Administration has taken to authorize or expand religious exemptions that enable institutions, businesses, and individuals to refuse to comply with laws they assert interfere with their religious beliefs — including nondiscrimination laws, health care laws, and adoption and foster care laws.

DEPT. OF HEALTH AND HUMAN SERVICES

Using religious exemptions to create a license to discriminate against women, LGBTQ people, and minority faiths.

- **Rolling Back Nondiscrimination Protections in the ACA** — In May 2019, the Trump administration [proposed a rule](#) that would directly undermine the nondiscrimination protections in Section 1557 of the Affordable Care Act (ACA), also called the Health Care Rights Law. The proposed regulations would erase existing regulatory protections that make explicit that discrimination based on sex includes discrimination against transgender people and discrimination based on reproductive healthcare decisions; and would dramatically expand the religious exemption by broadening the range of entities that would be exempt from the nondiscrimination provisions. **Status: Awaiting final rule.**
- **Issuing a broad Health Care Refusal Rule** — In May 2019, HHS [published a new rule](#) that aims to dramatically expand the ability of health care institutions and workers with religious or moral objections to refuse to provide particular medical services, and even information, to patients. **Status: Litigation filed; rules currently enjoined.**



ACLU client Evan Minton was turned away from a religious hospital for being transgender. In February 2020, he shared his story at a House oversight hearing on the Trump Administration's "Religious Liberty Assault on LGBTQ Rights." CREDIT: ACLU

- Embracing Discrimination in HHS Programs** — In May 2019, [it was leaked](#) that Trump’s HHS was working on a plan to make it easier for federally funded adoption agencies to discriminate by allowing child placement agencies to refuse placements based on their religious beliefs. News of the plan came shortly after [HHS granted South Carolina a waiver](#) permitting federally funded adoption agencies to turn away prospective foster families on the basis of faith. In November 2019, the administration released a [proposed rule gutting existing HHS nondiscrimination protections](#) for sexual orientation and gender identity for many HHS programs, religious protections for prospective foster and adoptive parents; and sex protections in HHS programs designed to care for older adults. **Status: Awaiting final rule.**
- Refusal to Provide Insurance Coverage for Contraception** — In November 2018, the administration issued rules that exempt any employer that objects on religious grounds, and virtually any employer that objects on moral ground, from complying with the Affordable Care Act’s requirement that employers must provide contraceptive coverage in their health insurance plans. **Status: Litigation filed; rules currently enjoined and awaiting SCOTUS decision.**
- Undermining/Decimating Title X Family Planning Program** — In March 2019, HHS issued a [new rule](#) that undermines the Title X family planning program by allowing providers to exclude the option of abortion and pregnancy counseling (even when asked directly by a patient), prohibiting providers from directly referring a patient to an abortion provider, and imposing “physical separation” requirements between all Title X activities and any activities that support access to abortion care. The administration justifies the rule in part by claiming it provides more flexibility for programs that objected on religious grounds to providing nondirective counseling and referrals. **Status: Litigation filed; rule in effect.**
- Creation of ‘Conscience and Religious Freedom Division’** — In January 2018, the Trump Administration [announced](#) the creation of the Conscience and Religious Freedom Division within the Office of Civil Rights (OCR) at the Department of Health and Human Services. This office receives higher prioritization than divisions which focus on civil rights and privacy complaints. For example, in its [fiscal year 2021 budget justification](#), HHS admitted to funding the Health Information Privacy Division and the Civil Rights Division of OCR at lower levels than the Conscience and Religious Freedom Division. These requests were made even though HHS experienced increases in civil rights and privacy cases since FY 2016 and admitted in court that they only had [10 complaints and 3-4](#) requiring investigation by the Conscience and Religious Freedom Division.



Eden Rogers (left) and Brandy Welch (right) were turned away by a government-funded foster care agency for failing to meet the agency’s religious criteria which exclude prospective foster parents who are not evangelical Protestant Christian or who are same-sex couples of any faith. The ACLU and Lambda Legal sued on their behalf. Here they are with their children Jenny and Olivia. CREDIT: NADIA AWAD/LAMBDA LEGAL



Tamesha Means miscarried and was denied appropriate medical treatment because the only hospital in her county is required to abide by religious directives. The directives, written by the United States Conference of Catholic Bishops, prohibited that hospital from complying with the applicable standard of care in this case. The ACLU sued. CREDIT: DANNA SINGE/ACLU

DEPT. OF HOUSING AND URBAN DEVELOPMENT

Denying transgender and gender nonconforming people access to federally funded homeless shelters.

- **Threatening Equal Access Rule** — On May 22, 2019, HUD announced that it will be proposing [a new rule](#) to allow federally funded shelters to exclude transgender and gender nonconforming people from appropriate shelters, including on the basis of the shelter's religious beliefs. We anticipate the new proposal will essentially eliminate protections that ensured that women who are transgender would be able to access shelter that conforms with their gender identity. **Status: Awaiting proposed rule**

DEPT. OF JUSTICE

Attacking civil rights protections for LGBTQ people and enforcing sweeping policy to undermine civil rights under the guise of religious liberty.

- **Arguing on behalf of a business's right to discriminate** — In September of 2017, [the Justice Department filed an amicus brief](#) with the Supreme Court in Masterpiece Cakeshop v. Colorado Civil Rights Commission in support of a business that claimed a constitutional right to discriminate against same-sex couples (in violation of state non-discrimination protections), based on the business owner's religious objection.

Status: In June 2018, the U.S. Supreme Court issued a narrow ruling in support of the business but did not grant the sweeping right to discriminate sought by DOJ. More recently, the Justice Department [filed](#) a statement of interest in February 2020 in another [case](#) challenging a local nondiscrimination ordinance in Louisville, Kentucky. The business in that case again argues that it has a free exercise and free speech right to refuse service to same-sex couples. **Status: The case is pending in Kentucky federal district court.**

- **Arguing against employees who are fired for being gay** — In September 2019, the U.S. Department of Justice (DOJ) [filed](#) a statement of interest in a [lawsuit](#) brought by a teacher in Indiana state court against the Archdiocese of Indianapolis for directing one of its Catholic schools to fire the teacher for being gay. The teacher claims the Archdiocese intentionally interfered with his contractual and employment relationship with the school. **Status: The case is pending in an Indiana state trial court.**
- **Requiring administration departments and agencies to implement a distorted interpretation of religious liberty** — In October 2017, following Trump's signing of a religious liberty executive order, then-Attorney General Jeff Sessions released a [memorandum on religious liberty for all executive departments and agencies](#) and [guidance to Department of Justice staff](#) on how to implement this memorandum. The guidance and memorandum tip the



The Trump administration is working to roll back nondiscrimination protections overseen by virtually every federal department — all in the name of religious liberty. CREATIVE COMMONS PHOTO: GAGE SKIDMORE / FLICKR

scales heavily in favor of religion claims in myriad contexts. DOJ also [amended the U.S. Attorney's manual](#) to instruct all 93 U.S. Attorney's offices to implement the guidance and directing each one to assign an individual to coordinate religious liberty litigation. In January, 2020, the [Office of Management and Budget](#) directed all federal agencies to publish policies detailing how they will administer Federal grants to comply with EO 13798 as well as Sessions' guidance and memorandum within 120 days. **Status: As noted throughout this document, various agencies are working to implement this executive order.**

- **Creating a Religious Liberty Task Force** — In July 2018, then-Attorney General Jeff Sessions announced the creation of a Religious Liberty Task Force that would implement the [“religious liberty” guidance](#) he issued a year prior. The task force and guidance could open the door to widespread discrimination in employment and government-funded services — against LGBTQ people, women seeking healthcare, and religious minorities, but the government has [denied requests](#) for information even as to who is on the task force.

DEPT. OF LABOR

Permitting federal contractors to cite religious and moral beliefs to discriminate against employees.

- **Authorizing Federal Contractors to Discriminate** — In August 2019, the Department of Labor issued a proposed rule that significantly expands the ability of federal contractors to discriminate against employees with taxpayer dollars. The [proposed rule](#) would permit religious associations — including for-profits — to obtain federal contracts despite discriminating in employment against anyone who does not follow the tenets of the employer's faith, even if it leads to discrimination based on sex, sexual orientation, or gender identity. **Status: Awaiting final rule.**

DEPT. OF STATE

Sidelining rights for all women and the LGBTQ community.

- **Creating a Commission on Unalienable Rights** — In July of 2019, Secretary of State Mike Pompeo unveiled a new Commission on Unalienable Rights. It purports to provide “fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights,” however it appears focused on [restricting human rights](#) and undermining the rights and protections of women, LGBTQ people and any others to which the administration objects.

WIDESWEEPING PROPOSED RULES IMPLEMENTING EXECUTIVE ORDER 13831

Executive Order 13831 was issued in May 2018. It established the White House Faith and Opportunity Initiative, with the stated goal of allowing faith-based and community organizations to receive federal funds through grants, contracts, and program funding “to the fullest opportunity permitted by law.” Implementing this Executive Order, in January and February 2020, the Trump administration published a series of

nine proposed rules revising the regulations that guide how religious organizations operate and engage with federally funded services and programs directed at reducing poverty and empowering low-income populations. The impacted programs are administered by nine agencies that manage programs touching the lives of millions of people:

[Agency for International Development \(USAID\)](#)
[Department of Agriculture](#)
[Department of Education](#)
[Department of Health and Human Services](#)
[Department of Homeland Security](#)
[Department of Housing and Urban Development](#)
[Department of Justice](#)
[Department of Labor](#)
[Department of Veterans Affairs](#)

These proposed regulations strip safeguards incorporated in 2015 that are designed to protect people accessing government-funded services at faith-based service providers from discrimination on the basis of religion, including requiring such organizations to notify beneficiaries of their rights (such as the right to be referred to a non-religious provider). Although the specifics of each rule vary, under the new proposed rules service providers receiving federal voucher payments could display religious iconography and require beneficiaries to engage in religious activities. Under the proposed Department of Education regulations, many more schools could claim a religious exemption to discriminate at the expense of LGBTQ students, pregnant or parenting studies, and/or students who make decisions about their reproductive health.

Status: Final rules pending.