

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

## How the Trump Administration Expanded Religious Exemptions to Gut Civil Rights Protections and Codify Discrimination Against People of Minority Faiths, Women, and People Who Are LGBTQ

The Trump administration repeatedly undermined important civil rights protections, including expanding religious exemptions in many areas of federal law. Under the guise of religious liberty, Trump and high level government officials 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 not with taxpayer dollars.

The following is an overview of actions the Trump administration took 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.

### DEPARTMENT 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 June 2020, the Trump administration finalized a rule directly undermining the nondiscrimination protections in Section 1557 of the Affordable Care Act (ACA), also called the Health Care Rights Law. The regulations erase previously existing regulatory protections that make explicit that discrimination based on sex includes discrimination against transgender people and discrimination based on reproductive health care decisions; and dramatically expand the religious exemption by broadening the range of entities that are exempt from the nondiscrimination provisions. **Status: Litigation filed; rule partially enjoined.**
- **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; rule currently vacated.**



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 January 2019, 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 notice of nonenforcement for key nondiscrimination provisions for many HHS programs. In January 2021, the administration released a final 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, among other impacts. **Status: Litigation filed; [Rule in effect.](#)**

- **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 grounds, from complying with the Affordable Care Act’s requirement that employers must provide contraceptive coverage in their health insurance plans. **Status: Litigation filed; rules in effect following SCOTUS decision. [Religious exemption.](#) [Moral exemption.](#)**

- **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 justified 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 HHS. This office received 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, even though HHS experienced increases in civil rights and privacy cases since FY 2016 and admitted in court that the Conscience and Religious Freedom Division only had 10 complaints, and only 3-4 requiring investigation.



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

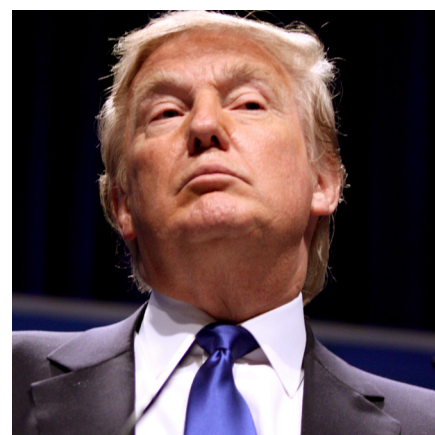


Tamesha Means miscarried and was denied appropriate medical treatment because the only hospital in her county is required to abide by religious directives. The directives, written by the United States Conference of Catholic Bishops, prohibited that hospital from complying with the applicable standard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

## DEPARTMENT 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' Right to Discriminate** — In September 2017, the DOJ 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. 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, in February 2020, the DOJ filed a statement of interest 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: Injunction granted against ordinance as applied to business; case is pending in federal district court.**
- **Arguing Against Employees who are Fired for Being Gay** — In September 2019, the DOJ filed statements 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.**
- **Arguing that Government Contractors Have a License to Discriminate Against Same-Sex Couples** — In June 2020, the DOJ filed a [brief](#) before the U.S. Supreme Court in *Fulton v. City of Philadelphia* arguing that a Catholic child welfare agency that contracted with the city of Philadelphia to provide foster care services has a right to discriminate against same-sex couples. The brief argued that Philadelphia had displayed hostility towards religion by enforcing a nondiscrimination requirement, and that the existence of any exemptions rendered the nondiscrimination policy unenforceable in light of the agency's religious objection. **Status: Awaiting SCOTUS decision.**
- **Requiring Federal 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 scales heavily in favor of religion claims in a myriad of 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 the religious liberty executive order as well as Sessions' guidance and memorandum within 120 days. **Status: As noted throughout this document, various agencies worked 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 government denied requests for information even as to who was on the task force.



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

## DEPARTMENT OF LABOR

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

- **Authorizing Federal Contractors to Discriminate** — In December 2020, the DOL issued a final rule that significantly expands the ability of federal contractors to discriminate against employees with taxpayer dollars. The rule permits 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:** **Litigation filed; [rule in effect.](#)**

## DEPARTMENT OF STATE

### Sidelining rights for all women and the LGBTQ community.

- **Creating a Commission on Unalienable Rights** — In July 2019, then-Secretary of State Mike Pompeo unveiled a new Commission on Unalienable Rights. It purported 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 issued a report that prioritizes religious liberty over other civil and political rights, and dismisses rights such as “abortion, affirmative action, [and] same-sex marriage” as “divisive social and political controversies.”

## DEPARTMENT OF EDUCATION

- **Forcing Public Colleges and Universities to Support Discrimination by Campus Groups** — In September 2020, the ED finalized a rule that requires public colleges and universities to exempt religious student clubs, which are officially recognized by the schools and funded through activity fees paid by students, from nondiscrimination provisions that apply to all other student clubs. The rule is an attempt to circumvent the Supreme Court’s decision in *Christian Legal Society v. Martinez*, which recognized that religious clubs have no First Amendment right to preferential treatment when it comes to nondiscrimination rules. As a result of the rule, colleges wishing to ensure that extracurricular opportunities are inclusive and open to all students would lose their federal funding if they refuse to exempt religious groups from general rules that prohibit discrimination. **Status:** **Litigation filed; [rule in effect.](#)**
- **Expanding Educational Institutions’ Ability to Claim a Title IX Religious Exemption** — Title IX of the Education Amendments of 1972 prohibits educational programs and activities receiving federal financial assistance from discriminating against anyone on the basis of sex, although the law includes an exemption for educational institutions that are “controlled by a religious organization.” In September 2020, the ED issued a final rule that provides a list of factors that an institution may point to in order to demonstrate that it is “controlled by a religious organization.” The factors included in the rule could end up allowing educational institutions with no connection to any religious denomination to claim a religious right to discriminate at the expense of LGBTQ students, pregnant or parenting students, and/or students who make decisions about their reproductive health. **Status:** **[Rule finalized.](#)**

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- In January 2021, the EEOC published its Compliance Manual on Religious Discrimination. The [guidance document](#) replaces the 2008 version and purports to clarify for the public and investigators the existing requirements under the law and EEOC policy. Though not legally binding, the guidance misleadingly characterizes certain religious exemptions for employers as broader than they are, and it downplays the protections in place for employees and others in the workplace who face religiously based harassment based on their race, color, religion, national origin, and sex — which includes discrimination based on sexual orientation and transgender status.

## WIDE SWEEPING 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 regulations revoke key safeguards incorporated in 2015 that were designed to protect people accessing government-funded services at faith-based service providers from discrimination on the basis of religion. For example, the new regulations eliminate the requirement that social service providers notify beneficiaries of their rights and refer beneficiaries who ask to a non-religious provider. Although the specifics of each rule vary, the rules will also make it more difficult for some individuals using vouchers to access critical government-funded social services by eliminating the prohibition on providers imposing religious requirements on individuals seeking help where no secular alternative provider was available. Under the new rules, providers may require beneficiaries to engage in religious activities that effectively turn away LGBTQ people or those who follow a different faith even if there is no secular option available in a voucher-funded aid program. **Status: Litigation filed; [rules](#) in effect.**