



“The Administration’s Religious Liberty Assault on LGBT Rights”

Hearing
House Committee on Oversight and Reform
February 27, 2020

The National Center for Lesbian Rights (NCLR) applauds the Committee for holding this important hearing. We respectfully submit this statement for the hearing record.

NCLR is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community, provides free legal assistance to LGBTQ people and their advocates, and conducts community education on LGBTQ issues. NCLR has been advancing the civil and human rights of LGBTQ people and their families across the United States through litigation, legislation, policy, and public education since its founding in 1977.

The Trump administration has been aggressively advancing an agenda that undermines LGBTQ equality, and many of the actions have been taken under the guise of protecting religious liberty. The administration has:

- Eliminated or scaled back existing nondiscrimination protections, such as the regulations implementing section 1557 of the Affordable Care Act (ACA), nondiscrimination provisions applying to grants administered by the Department of Health & Human Services, and joint Department of Education and Department of Justice guidance for schools to protect transgender students;
- Broadened religious exemptions to laws and regulations designed to ensure access to health care, such as the ACA’s birth control benefit, and sought to create a staggeringly broad religious exemption that would apply across the health care system;
- Sided with business owners and employers who discriminated against LGBTQ customers and employers in landmark Supreme Court cases; and
- Encouraged discrimination against LGBTQ people using taxpayer funds in adoption and foster care, health care, education, and a number of other areas.

By rescinding nondiscrimination rules, the administration is actively encouraging discrimination against our community. This discrimination is not hypothetical, as evidenced by the calls that come in to our Legal Helpline. By expanding religious exemptions in health care, the administration is placing a higher priority on enabling providers to deny care than it places on ensuring people’s access to basic, medically necessary health care. When it files legal briefs on behalf of business owners who would turn us away and employers who would fire us

because of who we are, the administration tells us that the religious beliefs of those business owners and employers are more important than our equal rights as citizens to participate in the economy. And when it allows organizations that contract with the government to provide services to vulnerable people to pick and choose whom they serve based on their religious beliefs, it places the desires of those organizations above the needs of those they are supposed to be serving.

Religious liberty is a bedrock principle in this nation, and as a result, our populace encompasses tremendous religious diversity. This religious diversity is reflected in the LGBTQ community broadly, and among those who seek to patronize businesses open to the public, find and hold a job, obtain health care, or access public assistance programs. No one should be turned away in any of those pursuits based on the religious beliefs of others. And yet this administration is allowing this to happen across multiple domains, as outlined below.

Health Care

- October 2017: [religious](#) and [moral](#) exemptions to ACA contraception benefit
- November 2017: [HHS RFI](#) regarding "Removing Barriers for Religious and Faith-Based Organizations To Participate in HHS Programs and Receive Public Funding."
- March 2018
 - [HHS religious refusal rule](#)
 - Creation of [conscience division](#) within HHS OCR
- Aug. 2019: Health Care Rights Law (ACA 1557 rule) – [addition of religious exemption](#)
- Dec. 2019: [rollback](#) of HHS grants nondiscrimination protections

Public Accommodations

- DoJ [filed](#) in support of the baker in [Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission](#)

Employment

- DoJ filed in support of employers that fired gay and transgender employees in three Title VII cases at U.S. Supreme Court
 - [Harris Funeral Homes v. EEOC](#)
 - [Altitude Express v. Zarda](#)
 - [Bostock v. Clayton County](#)

Labor

- Sept. 2019: Office of Federal Contract Compliance Programs (OFCCP) [proposed expanded religious exemption](#)

Multiple Agencies

- January -February, 2020 rules for faith-based organizations (9 agencies)
 - [Department of Agriculture](#)
 - [Department of Education](#)
 - [Department of Justice](#)
 - [Department of Health and Human Services](#)
 - [Department of Homeland Security](#)
 - [Department of Labor](#)
 - [Department of Veterans Affairs](#)
 - [Agency for International Development](#)
 - [Department of Housing and Urban Development](#)

While religious liberty is a key principle of our constitutional system, the policies described above endanger rather than promote it, by creating rules that infringe upon the equality of religious minorities. They also open the door to government-sponsored discrimination against LGBTQ people, women, and other vulnerable groups. Religious liberty is a cherished principle and need not be placed in opposition to the dignity and equality of the LGBTQ community. We are grateful to the Committee for holding this oversight hearing.