

Trump administration incurs LGBTQ wrath in bid to expand religious protections for contractors



Baker Jack Phillips, owner of Masterpiece Cakeshop, manages his shop after a U.S. Supreme Court issued a limited ruling in his favor after he refused to make a wedding cake for a same-sex couple, June 4, 2018. He is suing ... more >

By Valerie Richardson - *The Washington Times* - Wednesday, August 14, 2019

The Trump administration moved Wednesday to expand faith protections for federal contractors, the latest front in the ongoing battle between LGBTQ groups fighting discrimination and employers seeking to operate in accordance with their religious principles.

The proposed rule by the Labor Department Office of Federal Contract Compliance Programs would make clear that “religious organizations may make employment decisions consistent with their sincerely held religious tenets and beliefs without fear of sanction by the federal government.”

.@USDOL announced a notice of proposed rulemaking regarding religious organizations:
<https://t.co/0PILE1xP3g> #OFCCP

— US Labor Department (@USDOL) August 14, 2019

“The proposal also reaffirms employers’ obligations not to discriminate on the basis of race, sex, or other protected bases and does not exempt or excuse a contractor from complying with any other requirements,” said the agency in a statement.

Vowing to fight the proposed rule was a host of LGBT and civil-rights groups, including the ACLU, the Center for American Progress and the Human Rights Campaign, which accused the Trump administration of handing federal contractors a “license to discriminate.”





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“This is just the most recent in an ever-lengthening list of actions by this administration to authorize discrimination in name of religion,” said Louise Melling, ACLU deputy legal director and director of the Center for Liberty, on a press call.

The proposed rule, which is open for comment in the Federal Register until Sept. 16, would cover both non-profit and for-profit entities doing business with the federal government. About one in four U.S. employees works for a company involved in federal contracting.

Conservative groups cheered the proposed rulemaking for clarifying that religious employers may participate in federal-contract work “without being forced to violate their conscience rights,” said Mary Beth Waddell, senior legislative director of the Family Research Council.

“Family Research Council applauds the Department for taking steps to ensure that religious employers are free to operate according to their religious beliefs without fear of government punishment,” she said.

Harper Jean Tobin, policy director for the National Center for Transgender Equality, said the department “telegraphed” its intent with an August 2018 guidance on religious freedom in federal contracting, but that the proposed rule “expands on that and seeks to make it permanent.”

Asked if there had been instances of companies claiming a religious exemption to discriminate in the last year, Ms. Tobin said, “We do not know about that happening so far.”

“To date, we’re not aware of firings that are attributable to this, but we know employment discrimination against LGBTQ people and others is a serious problem,” Ms. Tobin said. “Those cases are before the Supreme Court, and this could make it worse for the millions of Americans who work for federal contractors.”

Fears of federal liability under Obama

The proposed rule cited as a reason for the update recent Supreme Court decisions on religious freedom, including the 2017 Masterpiece Cakeshop ruling overturning state sanctions against Colorado baker Jack Phillips refusing to create a cake for a same-sex union.

The Alliance Defending Freedom, which represented Mr. Phillips, said that religious freedoms “don’t disappear when a university, charity, or international nongovernmental organization enters into a contract with the federal government.”

“For example, eliminating faith-based nonprofits means that fewer foster children will find a forever home, fewer impoverished citizens will benefit from shelter and job training, and fewer people will receive compassionate assistance,” said ADF senior counsel Gregory S. Baylor. “It also leaves overtaxed communities without the vital services they provide.”

In its proposed rule, the agency said that some religious organizations reported being “reluctant to participate as federal contractors because of uncertainty regarding the scope of the religious exemption.”

Under President George W. Bush, an exemption was added allowing religious entities to favor those of their own faith in hiring. In 2014, President Barack Obama signed executive orders adding sexual orientation and gender identity to the list of protected classes on federal employment and contractors.

Winnie Stachelberg, executive vice president for external affairs at the Center for American Progress, said the rule would allow discrimination “under the flimsy guise of religious liberty even though it does absolutely nothing to actually strengthen religious freedom.”

She accused President Trump of breaking his promise to leave the Obama executive orders intact, which the White House denied.

“In no way does today’s announcement by the Department of Labor undermine the President’s promise and commitment to the LGBTQ community,” said the White House in a statement. “The proposed rule will continue to responsibly protect religious freedom and members of the LGBTQ community from discrimination.”

BREAKING: The Trump-Pence administration has announced a proposal that would rip massive holes in existing protections for LGBTQ employees of contractors and more.

pic.twitter.com/IBKqxNOw9M

— Human Rights Campaign (@HRC) August 14, 2019

Included under the proposed rule were not just churches but employers that are “organized for a religious purpose, hold themselves out to the public as carrying out a religious purpose, and engage in exercise of religion consistent with, and in furtherance of, a religious purpose.”

That would apparently encompass companies like Hobby Lobby — or even Masterpiece Cakeshop — whose owners operate in line with their faith, prompting critics to argue that the proposed rule would allow virtually any entity to claim a faith exemption.

Rachel Laser, president and CEO of Americans United for Separation of Church and State, accused the department of “bending over backwards to give federal contractors claiming a religious right to discriminate the benefit of the doubt at all turns.”

“If they say they’re religious, they are. If they say their belief is sincerely held, it is,” she said. “And if they say they’re firing someone on the basis of religion, they’re allow it.”

#BREAKING: The Department of Labor proposed new regulations this morning clarifying #ReligiousFreedom protections for federal contractors. This is an excellent development for several reasons (THREAD): <https://t.co/X9ubwJc9xQ> #OFCCP 1/

— Luke Goodrich (@LukeWGoodrich) August 14, 2019

Luke Goodrich, vice president and senior counsel at Becket, said that some religious groups ended their government contracts during the Obama administration for fear of incurring “severe liability under federal law.”

That including religious-based organizations involved with the military; universities conducting federal research, and social-service groups working with the homeless and fighting human trafficking.

“This allows religious organizations to continue serving the needy without compromising their sincere religious beliefs — which is a win for religious freedom,” Mr. Goodrich tweeted. “But even more, it’s a win for vulnerable populations receiving vital services from religious groups.”