

THE PUBLIC RIGHTS/PRIVATE CONSCIENCE PROJECT
CENTER FOR GENDER AND SEXUALITY LAW
COLUMBIA LAW SCHOOL
435 WEST 116TH STREET
NEW YORK, NY 10027
TEL: 212.854.0167
HTTP://TINYURL.COM/PUBLICRIGHTS



Press Advisory: May 4, 2017

From: Columbia Law School, [The Public Rights/Private Conscience Project \(PRPCP\)](#)

Contact: Ashe McGovern | amcgovern@law.columbia.edu | 212.854.0167

Potential Consequences of Trump’s “Religious Freedom” Executive Order

President Trump is set to sign a far-reaching and constitutionally problematic executive order today. Although a draft of the final order has not yet been released, it will likely mirror, at least in part, a [similar draft](#) that was leaked earlier this year. While more detailed analysis will be necessary once the final order has been released, the leaked order raises the following issues. Specifically, the order:

Defines “people” to include for-profit corporations—even corporations that do not have an exclusively religious purpose. The order defines a “person” to be consistent with 1 U.S.C 1, which includes for-profit corporations. This means that where the order affirms the right of “people” to act in accordance with a particular set of religious beliefs, including opposition to LGBTQ equality, it enables for-profit corporations to act in a discriminatory manner. These companies would be shielded from government intervention and enforcement of otherwise applicable laws, as long as they assert that their behavior is in keeping with a particular set of “religious beliefs.” The order also defines “religious organization” to include closely held for-profit corporations “operated for a religious purpose even if its purpose is not exclusively religious and is not controlled by or associated with a house of worship.” Thus an organization that is primarily engaged in secular activities, but claims to have some set of guiding religious principles—which the order fails to limit or define—could qualify as a religious organization. It would then be granted the protections religious organizations are given under this order.

Grants broad exemptions from federal civil rights and nondiscrimination laws to private and nonprofit organizations that are funded by the federal government to provide social services, education, healthcare, employment opportunities or other services to the general public. The order states that “persons and organizations do not forfeit their religious freedom” when contracting with the federal government in delivering services to the general public. This means that private organizations, *even those that are funded by the federal government*, will be shielded from claims that they have violated civil rights and nondiscrimination law as long as they claim their behavior is in accordance with a set of religious beliefs that they are free to define. This also means that the federal government will be unable to require religious grantees to provide publicly-funded services on a nondiscriminatory basis.

Enables federal contractors to impose their religious beliefs on their workers as a condition of employment. The order states that all agencies must provide exemptions to federal contractors and grantees consistent with religious exemptions found within the Civil Rights Act and Americans with Disabilities Act. These exemptions have been carefully tailored and limited by the courts, and do not currently apply to federal contractors. Applying them to federal contractors would impermissibly expand the exemptions, and allow federally-funded organizations to require that their employees follow particular religious beliefs or behaviors in order to remain employed.

Grants broad religious exemptions to federal employees acting in their official capacities as government workers, including workers that regularly interact with the public. The order requires agencies to “accommodate” the religious beliefs of federal employees, even where those beliefs conflict with their official duties as government employees. This could mean that a federal employee, who works for the Social Security Administration, for example, could refuse to process an application for a same-sex couple, a transgender person or a person of different faith, by stating that their religious beliefs prohibit them from doing so.

Directs relevant federal agencies to exempt any organization, whether religious or secular, from having to provide comprehensive reproductive services and healthcare to their workers. The order directs the Departments of Health and Human Services, Labor, and Treasury to issue an immediate interim rule that “exempts from the preventative care mandate...all persons and religious organizations that object to complying with the mandate for religious or moral reasons.” The order also directs HHS to take “appropriate actions” to ensure that “any individuals” who purchase health insurance on the individual markets, including federally facilitated and state sponsored health insurance, have the ability to purchase insurance that does not provide coverage for abortion and “does not subsidize plans that do provide such coverage.” This means that any for-profit employer can be granted a religious exemption from the requirement that they or their health plans provide contraceptive and family planning services. This would substantially broaden the Supreme Court’s holding in *Burwell v. Hobby Lobby*, which applied only to closely-held corporations. The order would also require state and federal exchanges to include plans that prohibit family planning services. Furthermore, it would preempt state laws that require health plans to cover birth control and abortion.

Allows federally-funded child welfare services and agencies to discriminate on any basis, including on the basis of race or religion, if doing so would “conflict with the organization’s religious beliefs.” This includes organizations that “provide federally funded child-welfare services, including promoting or providing adoption, foster, or family support services for children, or similar services.” This means that organizations that provide foster or adoptive services would be empowered to discriminate against same-sex couples, people of other faiths, unmarried people, or others whose relationships or behaviors do not conform to the organization’s particular religious beliefs.

Allows religious organizations and houses of worship to engage in political lobbying, while still maintaining their tax-exempt status. Specifically, this order would allow an organization that is speaking on a “moral or political issue from a religious perspective” to endorse or support political candidates. Currently, the tax code prohibits all 501(c)(3) organizations from endorsing

or opposing political candidates. This provision would exempt religious organizations—and only religious organizations—from that mandate. The order also prohibits the Department of Treasury from imposing any tax penalty or burden to any organization that acts in accordance with beliefs that “marriage is or should be recognized as the union of one man and one woman, sexual relations are properly reserved for such a marriage, male and female and their equivalents refer to an individual’s immutable biological sex as objectively determined by anatomy physiology or genetics at or before birth, and that human life begins at conception and merits protection at all stages of life.”

Enacts far-reaching requirements on all federal departments and agencies to promptly rescind any rulings, directives, regulations, guidance, positions, or interpretations that are inconsistent with the order. This means that directives, rulings, regulations, guidance and interpretations that do not provide expansive religious exemptions may be rescinded or withdrawn by any agency or department of the federal government. This could include already existing protections enacted under the Obama administration for LGBTQ communities, women, and people of color, in their ability to seek access to reproductive services, employment, healthcare, education or social services.