

Columbia Law School

Scholarship Archive

Center for Gender & Sexuality Law

Research Centers & Programs

10-2017

Columbia Law Experts Denounce DOJ Religious Liberty Guidance as Attack on Religious Liberty and Fundamental Equality Rights

Public Rights/Private Conscience Project

Follow this and additional works at: https://scholarship.law.columbia.edu/gender_sexuality_law



Part of the [Civil Rights and Discrimination Commons](#), and the [Religion Law Commons](#)

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 Statement: **October 6, 2017**

Subject: **Columbia Law Experts Denounce DOJ Religious Liberty Guidance as Attack on Religious Liberty and Fundamental Equality Rights**

Contact: **Liz Boylan, eboyla@law.columbia.edu, 212.854.0167**

Columbia Law School’s Public Rights/Private Conscience Project (PRPCP) denounces the memorandum released today by the Department of Justice (DOJ) entitled the “Federal Memorandum for Religious Liberty Protections.” This document, and its implementation guidance misinterpret the meaning and scope of religious liberty under the Constitution and the federal Religious Freedom Restoration Act (RFRA), demonstrating this administration’s continued commitment to elevating a particular set of religious beliefs over the safety and equality rights of women, LGBTQ people, people of color, and religious minorities.

As we have previously [noted](#), we are concerned that this guidance will lead to the inappropriate and destructive under or non-enforcement of a host of essential health, labor, and antidiscrimination laws and policies. “Today’s DOJ guidance will have tangible consequences for a range of communities, including LGBTQ communities, particularly those who rely on government-funded services and programs to live and survive,” said Ashe McGovern, PRPCP’s Legislative and Policy Director. “This guidance essentially requires all federal agencies to incorporate the Department of Justice’s flawed interpretation of religious liberty law when considering new rules, programs, or guidance, and will undoubtedly lead to discrimination and denial of services, by granting legal impunity to organizations and programs that discriminate with taxpayer funds.”

PRPCP is also concerned that the regulation oversteps the boundaries of DOJ’s power, by improperly encroaching onto the judiciary’s duty to interpret important and sensitive questions regarding the meaning and scope of religious liberty. RFRA was passed by Congress in 1993 as an effort to support and protect religious minorities who experience discrimination, and to ensure that courts carefully balance religious liberty rights with other fundamental rights to equality and justice. “The DOJ has decided to put its thumb down on a scale that Congress carefully designed by enacting RFRA, and that courts have since interpreted as such, in a way that disregards the fundamental rights of those experiencing religious-based discrimination,” says McGovern.

The DOJ’s misinterpretation of RFRA and religious liberty law generally is likely to decrease rather than increase religious plurality. Inappropriately-broad exemptions run the risk of allowing

religious *objectors* to become religious *enforcers*, permitting employers, health care providers, landlords, and service providers to impose their religious views on others who do not share them. “PRPCP is especially wary that complex questions regarding religious freedom and its limits are being made by cabinet members that appear to oppose the separation of church and state, and have supported discrimination against religious minorities,” said Elizabeth Reiner Platt, Director of the PRPCP. “Jeff Sessions has long sought to narrow the reach of the Establishment Clause, even suggesting in 2016 that states could establish an official religion. He has been an adamant supporter of the President’s anti-Muslim travel ban. This raises questions about his commitment to true religious freedom and plurality.”

“Ultimately,” McGovern says, “the DOJ’s guidance not only enables what advocates are calling a ‘License to Discriminate’ against LGBTQ communities, although that intent is clear. This guidance is also an attack on our Constitution, and the careful balance it strikes between religious liberty and other fundamental rights to equality and justice.”

Access a .pdf of this statement here: <http://tinyurl.com/PRPCP-Release-DOJ-10-6>

Learn more about PRPCP’s staff here: <http://tinyurl.com/PRPCP-Staff>

For more information on the PRPCP, visit our website: <http://tinyurl.com/PRPCP-Columbia>