

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074  
<http://oversight.house.gov>

### Opening Statement

#### Subcommittee Chairman Jamie Raskin (MD-08)

#### House Committee on Oversight and Reform

#### Hearing on “The Administration’s Religious Liberty Assault on LGBTQ Rights”

#### February 27, 2020

Good morning. The extraordinary transformation that our country has experienced in the last decade on the question of marriage equality illuminates pretty much everything we need to know about how to reconcile the principles of individual religious freedom and equal protection under the law for all people.

Equal protection means that everyone—regardless of race, gender or sexual orientation—must enjoy equal rights under law. That means that the institution of civil marriage cannot be roped off to discriminate against millions of gay and lesbian citizens for no compelling reason. And, as the Court found in the *Obergefell* decision (*Obergefell v. Hodges*, 576 U.S. \_\_\_\_ (2015)), other people’s moral or religious disapproval of gay people getting married cannot constitute a compelling reason for canceling out their fundamental right to marry the person that they love.

So, we learned that—no matter how much same-sex marriage violates your religious scruples and beliefs—you have no “religious liberty” right to impose your position through law and government on other people to interfere with their freedom. This is a principle so powerful that the Supreme Court struck down discriminatory and exclusionary marriage provisions that had been on the books for centuries.

The successful struggle over marriage equality liberated millions of people to participate on an equal basis in this central institution in society. It also established a new norm for inclusion and equal rights that has encouraged the LGBTQ community to demand full equal rights across the board.

But it did not leave anyone in our country with diminished religious freedom. If a state or a city ordered a church, mosque or synagogue to conduct religious weddings for same-sex couples, the churches would absolutely win their right not to do so. They have a First Amendment free exercise right to marry or not marry exactly who they please within their own churches. The Constitution decides who gets married in city hall. But the church decides who gets married in the church hall. This is a central aspect of religious free exercise.

The big question has been whether private businesses in the stream of commerce—like restaurants, movie theaters and apartment buildings—or federally funded organizations—like

hospitals and foster care agencies—can decide not to serve, rent to, or do business with LGBTQ Americans if they are obligated to do so under law but assert that it would violate their religious beliefs to do so.

There may be a handful of close calls in harmonizing individual religious freedom and equal rights under law, but the vast majority of cases are, in fact, easy. Yet, alas, **the Trump Administration has been working zealously to turn the government into an instrument of hostility and opposition towards LGBTQ rights across the Executive Branch of government.**

**Since Inauguration day, the Trump Administration has worked to purge all mention of LGBTQ rights and to systematically roll back protections for that community in federal law and policy.** Following inauguration, agencies across the Executive Branch began undermining and stripping vital protections.

The Trump Administration Department of Justice has filed several amicus briefs advocating for legal interpretations that erode civil liberty protections.

DOJ also filed an amicus brief in the *Masterpiece Cakeshop* case, arguing that a cakeshop owner does not have to serve gay customers because it violates the First Amendment to force him “to create expression for and participate in a ceremony that violates his sincerely held religious beliefs.” This is the exact same argument that the Supreme Court rejected in the 1960s in cases repudiating the alleged constitutional right of restaurant and lunch counter owners to refuse to serve African-American and interracial parties as a burden on their religious or associational freedom.

The Trump Administration Department of Health and Human Services has similarly been instrumental in the campaign to end protections for LGBTQ individuals.

**The Administration has rapidly turned “religious liberty” into a pretext and excuse for denying LGBTQ citizens the ability to participate equally in all aspects of the economy and society.**

On May 2, last year, HHS finalized a rule that dramatically expanded the ability of health care providers to deny services based on religious or moral objections. The Administration cited the case of our witness, Evan Minton, as an example of the “need” for the rule in order to permit more discrimination against patients like him.

**The Trump Administration has used everything in its power, including executive orders, litigation decisions, amicus briefs, and agency guidance and regulations, to undermine protections for LGBTQ people and expand the availability of religious exemptions.**

These actions go against the true meaning of both religious liberty and equal protection under law. These two values stand best when they stand together. Indeed, the religious liberty of the people is protected by vigorous enforcement of Equal Protection and the Establishment

Clause. As Madison emphasized, the major threat to my religious freedom comes from another person or group's capture of state power and their use of government to impose their religious dogma and control on everyone else. Today, the equal rights of the LGBTQ community are threatened by the Trump Administration's determination to pass out licenses to discriminate based on its rampant misunderstanding of the meaning of religious liberty.

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Contact: Aryele Bradford, Communications Director, (202) 226-5181.

