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Columbia Law Experts Denounce Federal Guidance Allowing Religious and Moral Discrimination in Contraceptive Coverage

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Press Statement: **October 6, 2017**

Subject: **Columbia Law Experts Denounce Federal Guidance Allowing Religious and Moral Discrimination in Contraceptive Coverage**

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Columbia Law School’s Public Rights/Private Conscience Project (PRPCP) condemns the Trump administration for issuing sweeping new rules today that roll back the Affordable Care Act (ACA)’s birth control benefit, by broadening exemptions for employers who claim religious or moral objections to offering birth control to their workers. These regulations place the religious and moral views of employers above the health and wellbeing of their workers and gut the contraceptive coverage provision of the ACA by dramatically reducing access to affordable birth control. Rather than protecting religious freedom for all Americans, these regulations are part of the current administration’s ongoing effort to advance a limited set of conservative religious beliefs while limiting the liberty and equality rights of women, LGBTQ people, people of color, and religious minorities.

For over seven years, the religious right has waged a battle to limit the scope of preventive health care services covered by the ACA, including essential reproductive health care. In 2014, they won a significant victory when the Supreme Court ruled in *Burwell v. Hobby Lobby* that secular for-profit companies could assert religion-based waivers from the duty to include health care coverage for contraceptives in their employee health plans. The Court’s opinion hinged, however, on the fact that women would still have access to such care, which would be covered by their insurance plan rather than their employer. After another three years of litigation and intense lobbying, anti-choice advocates have at long last succeeded in making it possible for employers to entirely cut off their employee’s access to contraceptive coverage, not only because of their religious objections, but now because of their moral objections as well.

In depriving workers and their families of essential health care coverage, the regulation violates both the First Amendment’s Establishment Clause and the Fourteenth Amendment’s Equal Protection Clause. By requiring workers to bear the cost of their employer’s religious beliefs, the regulation conflicts with a clear line of Supreme Court cases which hold that where a government-created religious accommodation imposes serious harms on others, it ceases to be a valid protection of personal faith and instead becomes an unconstitutional establishment of religion.

“With these new rules, the federal government is giving the green light to employers to discriminate against their women workers, and those seeking access to reproductive care, in the name of religious liberty or individual moral belief,” said Katherine Franke, Sulzbacher Professor of Law at Columbia Law

School and Faculty Director of the Public Rights/Private Conscience Project. “The fundamental health care needs of working women are now held hostage by right wing interest groups,” Franke concluded.

As PRPCP’s Racial Justice Program (RJP) has [noted](#) in the past, these types of rules have an especially devastating impact on women of color. Women of color have higher unintended pregnancy rates than their white counterparts and face increasing difficulties in accessing care. Eliminating these disparities requires increasing access to contraception and family planning resources, which allow women of color to plan whether and when they have a child, which research has shown provides them with greater financial stability and freedom. “Research shows that teen pregnancy rates have dropped to an all-time low in recent years due to increased access to affordable, quality contraception and education about family planning,” said Kira Shepherd, Director of PRPCP’s Racial Justice Program. “Native Americans, Black communities and Latinas, who have the highest teen pregnancy rates of all communities, stand to be harmed the most by these new rules, which limit young women’s and people’s ability to make informed choices about their reproductive health and lives. Here, the Trump administration has once again shown that it cares little about the health and wellbeing of communities of color.”

“President Trump’s repeated efforts to ban immigration from majority-Muslim countries—which a circuit court said drips ‘with religious intolerance, animus, and discrimination’—demonstrate that the administration is not concerned with protecting religious freedom for everyone,” said Elizabeth Reiner Platt, Director of PRPCP. “These rules are just another demonstration of the ongoing effort to push conservative religious beliefs about sex, marriage, and reproduction onto others who do not share those beliefs.”

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

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