

June 21, 2011

Mr. Barack Obama  
The President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20510

Dear Mr. President:

We, the undersigned religious, civil rights, labor, health, women's, and other organizations, write to remind you of the upcoming seventieth anniversary of Executive Order 8802, which was the first executive order prohibiting government contractors from engaging in employment discrimination. In honor of this anniversary, we urge you to fully restore this civil rights protection by rescinding the language in Executive Order 13279 that permits religious organizations that contract with the government to discriminate against federally funded employees on the basis of religion.

Many of the undersigned organizations are members of the Coalition Against Religious Discrimination (CARD), which is a broad and diverse coalition formed in the mid-1990s to oppose legislative and regulatory efforts that eliminate the traditional safeguards that protect civil rights and religious liberty when government partners with faith-based organizations.

One of these traditional safeguards is the guarantee that otherwise qualified people are not disqualified from federally funded jobs because of their religion. This safeguard was first put in place by President Franklin D. Roosevelt when he signed Executive Order 8802 on June 25, 1941. The executive order prohibited employment discrimination by defense contractors based on "race, creed, color, or national origin."<sup>1</sup> This was the first action taken by the government to promote equal opportunity for all Americans, and the start of our longstanding, national commitment to barring even private organizations from discriminating in hiring using federal funds.

In subsequent executive orders, Presidents Roosevelt, Truman, Eisenhower, Kennedy, and Johnson expanded the protections. Indeed, Executive Order 11246, signed by President Lyndon B. Johnson in 1965, prohibits discrimination in *all* government contracts.<sup>2</sup> These executive orders led to the enactment of scores of civil rights statutes that prohibit discrimination, especial

services *for its own use*, must not fund discrimination.<sup>4</sup> President John F. Kennedy explained the importance of guaranteeing equal opportunity in government contracts: “[I]t is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment . . . on government contracts. . . .”<sup>5</sup> From 1941 until 2002 this had been the law of the land. And since 1941, our values have reflected a strong commitment to ensuring that no one is disqualified from government-funded jobs because of his or her religion.

Restoring Executive Order 11246 for all government contractors would be an important first step toward fulfilling the campaign promise you made on July 1, 2008, in Zanesville, Ohio. In that speech you stated that you would reform the Faith-Based Initiative so that “if you get a federal grant, you can’t use that grant money to proselytize to the people you help and you can’t discriminate against them – or against the people you hire – on the basis of their religion.” Yet, even though officials from your administration have said that the issue is being reviewed by the Justice Department<sup>6</sup> and have expressed a commitment to ensuring that partnerships with religious organizations are consistent with our law and values, we have seen no forward movement on this issue.<sup>7</sup>

Accordingly, we urge you to honor this anniversary by rescinding Executive Order 13279’s amendment of Executive Order 11246 that exempted religious organizations that contract with the government from the prohibition against employment discrimination on the basis of religion. This would restore key civil rights protections that were first established seventy years ago and is consistent with our nation’s values.

Sincerely,

African American Ministers In Action  
American Association of University Women (AAUW)  
American Civil Liberties Union (ACLU)  
Americans for Religious Liberty  
American Humanist Association  
American Jewish Committee  
Americans United for Separation of Church and State  
Anti-Defamation League  
Asian American Justice Center  
Baptist Joint Committee for Religious Liberty  
Bazelon Center for Mental Health Law  
B’nai B’rith International  
Catholics for Choice  
Center for American Progress Action Fund

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<sup>4</sup> See 31 U.S.C. § 6303 (“the principal purpose of [a government contract] is to acquire . . . property or services for the direct benefit or use of the United States Government”).

<sup>5</sup> Exec. Order No. 10,925, 26 F.R. 1977 (Mar. 8, 1961).

<sup>6</sup> Attorney General Eric Holder, however, recently said that a particularly troubling component of the policy permitting hiring discrimination by religious organizations, the June 29, 2007, Office of Legal Counsel Memorandum regarding RFRA, was *not under review*. *Oversight Hearing on the United States Department of Justice Before the H. Comm. on Jud.*

Center for Inquiry  
Central Conference of American Rabbis  
Council for Secular Humanism  
Disciples Justice Action Network  
Equal Partners in Faith  
Family Equality Council  
Friends Committee on National Legislation  
Gay & Lesbian Advocates & Defenders (GLAD)  
Hindu American Foundation  
Human Rights Campaign  
Interfaith Alliance  
Jewish Council for Public Affairs  
Lambda Legal  
Lawyers' Committee for Civil Rights Under Law  
Leadership Conference on Civil and Human Rights  
NA'AMAT USA  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Council of Jewish Women  
NCLR (National Council of La Raza)  
National Education Association  
National Employment Lawyers Association  
National Gay and Lesbian Task Force  
National Organization for Women  
People For the American Way  
PFLAG National (Parents, Families, and Friends of Lesbians and Gays)  
The Rabbinical Assembly  
Religious Coalition for Reproductive Choice  
Secular Coalition for America  
Sikh American Legal Defense and Education Fund (SALDEF)  
Texas Faith Network  
Texas Freedom Network  
Transgender Law Center  
Union for Reform Judaism  
Unitarian Universalist Association of Congregations  
United Church of Christ, Justice and Witness Ministries  
United Methodist Church, General Board of Church and Society  
Women of Reform Judaism

Encl.

cc: Eric H. Holder, Jr., Attorney General  
Hilda L. Solis, Secretary of Labor  
Melody Barnes, Director of the Domestic Policy Council  
Patricia A. Shiu, Director, Office of Federal Contract Compliance Programs  
Robert F. "Bob" Bauer, White House Counsel

**REQUEST FOR REVIEW AND WITHDRAWAL OF  
JUNE 29, 2007 OFFICE OF LEGAL COUNSEL MEMORANDUM RE: RFRA**

September 17, 2009

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. Attorney General:

The undersigned religious, education, civil rights, labor, and health organizations are committed to protecting religious liberty, and working to do so at all levels of the government. We write today to request that you direct the Office of Legal Counsel (“OLC”) to review and withdraw its June 29, 2007 Memorandum (“OLC Memo”).<sup>1</sup> The OLC Memo’s interpretation that the Religious Freedom Restoration Act of 1993<sup>2</sup> (“RFRA”) provides for a blanket override of statutory nondiscrimination provisions is erroneous and threatens core civil rights and religious freedom protections.

Some of us were leaders in the Coalition for the Free Exercise of Religion, which led the effort to persuade Congress to enact remedial legislation after the United States Supreme Court sharply curtailed Free Exercise Clause protections in *Employment Div. v. Smith* in 1990.<sup>3</sup> This effort culminated in 1993, when then-President William J. Clinton signed RFRA into law.<sup>4</sup> In essence, RFRA was intended to provide robust protection of free exercise rights, restoring a standard of strict scrutiny to federal laws that substantially burden religion.<sup>5</sup>

Many of us also are members of the Coalition Against Religious Discrimination (CARD), which formed in the mid-1990s specifically to oppose insertion of the legislative proposal commonly known as “charitable choice” into authorizing legislation for federal social service programs. Upon taking office, the Bush Administration sought to impose “charitable choice” on nearly every federal social service program. Stymied in its legislative efforts to do so,<sup>6</sup> the Administration instead issued Executive Orders and federal regulations to allow religious

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<sup>1</sup> Memorandum for the General Counsel, Office of Justice Programs, from John P. Elwood, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act* (June 29, 2007).

<sup>2</sup> 42 U.S.C. § 2000bb *et seq.* (2000).

<sup>3</sup> 494 U.S. 872 (1990).

<sup>4</sup> The Coalition for the Free Exercise of Religion, chaired by the Baptist Joint Committee for Religious Liberty, also led the effort to enact the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000bb-2(4) (2000).

<sup>5</sup> Although RFRA, as enacted, reached both federal and state law, the Court held in

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organizations to participate directly in federal grant programs without the traditional safeguards that protect civil rights and religious liberty.

Not all statutory provisions barring religious discrimination in the workplace could be obviated by Executive Order,<sup>7</sup> and the Bush Administration's attempts to repeal them in Congress were repeatedly rejected. Failing in its attempts to repeal these laws in Congress, the Administration

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Americans for Religious Liberty  
Americans United for Separation of Church and State  
Anti-Defamation League  
Baptist Joint Committee for Religious Liberty  
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B'nai B'rith International  
Center for Inquiry  
Central Conference of American Rabbis  
Disciples Justice Action Network  
Equal Partners in Faith  
Friends Committee on National Legislation  
Interfaith Alliance  
Hadassah, the Women's Zionist Organization of America  
Hindu American Foundation  
Human Rights Campaign  
Japanese American Citizens League  
Jewish Council for Public Affairs  
Lambda Legal  
Leadership Conference on Civil Rights  
Legal Momentum  
NAACP  
NA'AMAT USA  
National Center for Lesbian Rights  
National Community Action Foundation  
National Council of Jewish Women  
National Council of La Raza  
National Gay and Lesbian Task Force  
National Education Association  
National Employment Lawyers Association  
National Ministries, American Baptist Churches USA  
National Organization for Women  
National Partnership for Women and Families  
National Women's Law Center  
OMB Watch  
People For the American Way  
The Rabbinical Assembly  
Rainbow PUSH Coalition  
Religious Coalition for Reproductive Choice  
Secular Coalition for America  
Sexuality Information and Education Council of the U.S. (SIECUS)  
Sikh American Legal Defense and Education Fund (SALDEF)  
Sikh Council on Religion and Education  
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