

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

August 20, 2015

The Honorable Barack H. Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

The 130 undersigned religious, education, civil rights, labor, LGBT, women's, and health organizations write to request that you direct the Attorney General to instruct the Office of Legal Counsel (OLC) to review and reconsider its flawed June 29, 2007 Memorandum titled, Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act (OLC Memo). The OLC Memo reaches the erroneous and dangerous conclusion that the Religious Freedom Restoration Act of 1993 (RFRA) provides a blanket override of a statutory non-discrimination provision. If left in place, the OLC Memo will tarnish the legacy of your work to advance fairness and equal treatment under the law for all Americans.

Some of us were members of the Coalition for the Free Exercise of Religion, which led the effort to persuade Congress to enact legislation after the United States Supreme Court sharply curtailed Free Exercise Clause protections in *Employment Division v. Smith*, 494 U.S. 872 (1990). This effort culminated in 1993, when then-President William J. Clinton signed RFRA into law.

RFRA was intended to provide protection for free exercise rights, applying strict scrutiny, on a case-by-case basis, to federal laws that substantially burden religious exercise. RFRA was not intended to create blanket exemptions to laws that protect against discrimination.

Yet, in contrast to this, the OLC Memo relies on flawed legal analysis and wrongly asserts that RFRA is "reasonably construed to require" a federal agency to categorically exempt a religiously affiliated organization from a grant program's explicit statutory non-discrimination provision, thus permitting the grantee to discriminate in hiring with taxpayer funds without regard to the government's compelling interest in prohibiting such discrimination.

The OLC Memo's broad and erroneous interpretation of RFRA has far-reaching consequences. For example, although the OLC Memo's conclusion is focused on one grantee in one Justice Department program, the Department has implemented it as a categorical exemption – that does not even require an individualized inquiry – to all religious hiring discrimination bans, most recently in the reauthorization of the Violence Against Women

Act (VAWA). The Department of Labor has also cited the OLC Memo to adopt a categorical prohibition. Moreover, some have cited the OLC Memo in arguing that RFRA should broadly exempt religiously affiliated contractors from the nondiscrimination requirements in Executive Order 11246, including those you added just last year that bar government contractors from discriminating against LGBT workers. And, some are trying to extend its reach beyond the context of hiring: Several grantees and contractors have cited the OLC Memo to support their arguments that the government should create a blanket exemption that would allow them to refuse to provide services or referrals required under those funding agreements, specifically in the context of medical care for unaccompanied immigrant children who have suffered sexual abuse.

Throughout your presidency, you have committed to uphold this Nation's laws and values. Indeed, in March, when discussing the Indiana RFRA, your Press Secretary said discrimination is "not consistent with our values as a country that we hold dear." Even before you were elected President in 2008, you promised to end federally funded hiring discrimination, because of the government's profound and enduring commitment to upholding the civil rights principle that it must not fund discrimination. The deeply harmful OLC Memo severely undermines this commitment.

Contrary to the conclusion in the OLC Memo, RFRA is not a tool to categorically override statutory protections against religious hiring discrimination. Nor does it create an absolute free exercise right – without regard to countervailing compelling interests, as required by RFRA – to receive government grants without complying with applicable regulations that protect taxpayers and participants in federally funded programs.

We accordingly request that the OLC Memo be reviewed and its erroneous and dangerous interpretation of RFRA be reconsidered as soon as possible.

Thank you in advance for your consideration of our views.

Most respectfully,

9to5, National Association of Working Women
Advocates for Youth
African American Ministers In Action
AFSCME
AIDS United
AJC (American Jewish Committee)
American Association of University Women (AAUW)
American Atheists
American Baptist Home Mission Societies
American Civil Liberties Union
American Federation of Teachers
American Humanist Association
American Sexual Health Association

American-Arab Anti-Discrimination Committee (ADC)
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Asian Americans Advancing Justice-AAJC
Association of University Centers on Disabilities (AUCD)
B'nai B'rith International
Baptist Joint Committee for Religious Liberty
Bend the Arc Jewish Action
California Women's Law Center
Catholics for Choice
Center for Inquiry
Center for Reproductive Rights
CenterLink: The Community of LGBT Centers
Central Conference of American Rabbis
Clearinghouse on Women's Issues
Coalition of Labor Union Women
Concerned Clergy for Choice
The Council for Secular Humanism
DignityUSA
Disciples Justice Action Network
Equal Partners in Faith
Equality Federation
Family Equality Council
Feminist Majority Foundation
FORGE, Inc.
Forward Together
Freedom to Marry
Friends Committee on National Legislation
Gay & Lesbian Advocates & Defenders (GLAD)
Gay and Lesbian Activists Alliance of Washington, D.C.
GLSEN
Hadassah, The Women's Zionist Organization of America, Inc.
Healthy Teen Network
Hindu American Foundation
Human Rights Campaign
Institute for Science and Human Values
Interfaith Alliance
Japanese American Citizens League
Jewish Council for Public Affairs
JWI

Keshet
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
League of United Latin American Citizens
Legal Momentum
Los Angeles LGBT Center
Many Voices: A Black Church Movement for Gay & Transgender (LGBT) Justice
Marriage Equality USA
MergerWatch
Methodist Federation for Social Action
Military Association of Atheists & Freethinkers
Movement Advancement Project
Muslim Advocates
Muslims for Progressive Values
NA'AMAT USA
NAACP
NARAL Pro-Choice America
National Abortion Federation
National Asian Pacific American Women's Forum
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition Against Domestic Violence
National Coalition of Anti-Violence Programs (NCAVP)
National Congress of Black Women
National Council of Jewish Women
The National Crittenton Foundation
National Education Association
National Employment Law Project
National Employment Lawyers Association
National Family Planning & Reproductive Health Association
National Latina Institute for Reproductive Health
National LGBTQ Task Force
National Network to End Domestic Violence
National Organization for Women
National Partnership for Women & Families
National Resource Center on Domestic Violence
National Women's Health Network
National Women's Law Center
Nehirim

People For the American Way
PFLAG National
Physicians for Reproductive Health
Planned Parenthood Federation of America
Political Research Associates
Population Connection Action Fund
Pride at Work
Pro-Choice Resources
The Rabbinical Assembly
The Religious Coalition for Reproductive Choice
Religious Institute
Reproductive Health Technologies Project
Secular Coalition for America
Secular Policy Institute
Services and Advocacy for GLBT Elders (SAGE)
Sexuality Information and Education Council of the U.S. (SIECUS)
Sikh American Legal Defense and Education Fund (SALDEF)
The Sikh Coalition
Sikh Council on Religion and Education (SCORE)
South Asian Americans Leading Together (SAALT)
Southern Poverty Law Center
Texas Faith Network
Texas Freedom Network
Transgender Law Center
UltraViolet
Union for Reform Judaism
Unitarian Universalist Association
United Church of Christ Justice and Witness Ministries
United Methodist Church, General Board of Church and Society
UNITED SIKHS
URGE: Unite for Reproductive & Gender Equity
Women of Reform Judaism
Women's Alliance for Theology, Ethics, and Ritual (WATER)
Women's Law Project
YWCA USA

cc: The Honorable Loretta E. Lynch, Attorney General of the United States
The Honorable Thomas E. Perez, Secretary of Labor