

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

June 10, 2014

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 90 undersigned religious, education, civil rights, labor, LGBT, women's, and health organizations write today to request that you direct the Office of Legal Counsel (OLC) to review and withdraw its June 29, 2007 Memorandum (OLC Memo).¹ The OLC Memo's interpretation that the Religious Freedom Restoration Act of 1993² (RFRA) provides for a blanket override of statutory non-discrimination provisions is erroneous and threatens core civil rights and religious freedom protections. Indeed, the Department of Justice recently issued an FAQ indicating that the OLC Memo will be used to undermine the plain language of the non-discrimination provision in the Violence Against Women Act (VAWA), which Congress passed just last year.³

The passage of VAWA included real deliberation over its non-discrimination provision. After significant debate, Congress passed a bill that barred organizations from engaging in employment discrimination with VAWA funds. But, because the OLC Memo remains administration policy, the explicit intent of Congress is being ignored, and the administration is granting exemptions from this non-discrimination provision to religious organizations that wish to use religion as a criterion when hiring employees using taxpayer dollars.

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 1990.⁴ This effort culminated in 1993, when then-President William J. Clinton signed RFRA into law. In essence, RFRA was intended to provide protection of free exercise rights, restoring the pre-*Smith* standard of strict scrutiny to federal laws that substantially burden religion. It was not intended to create blanket exemptions to non-discrimination laws.

Yet, the OLC Memo wrongly asserts that RFRA is "reasonably construed" to require that a federal agency categorically exempt a religious organization from an explicit federal non-discrimination provision tied to a grant program. Although the OLC Memo's conclusion is focused on one Justice Department program, its overly-broad and erroneous interpretation of RFRA has been cited by other federal agencies and extended to other programs and grants, including, most recently, VAWA. The guidance in the OLC Memo is not justified under applicable legal standards and threatens to tilt policy toward an unwarranted end that damages civil rights and religious liberty.

¹ 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).

² 42 U.S.C. § 2000bb *et seq.* (2000).

³ U.S. Department of Justice, *Frequently Asked Questions: April 9, 2014: Nondiscrimination Grant Condition in the Violence Against Women Act of 2013*, <http://ojp.gov/about/ocr/pdfs/vawafaqs.pdf>.

⁴ 494 U.S. 872 (1990).

When President Barack Obama issued Executive Order 13498, amending former President George W. Bush’s Executive Order 13199 (Establishment of White House Office of Faith-Based and Community Initiatives), he underlined the importance of ensuring that partnerships between government and faith-based institutions can be created and maintained effectively while “preserving our fundamental constitutional commitments.” The OLC Memo, however, stands as one of the most notable examples of the Bush Administration’s attempt to impose a constitutionally erroneous and deeply harmful policy—RFRA should not be interpreted or employed as a tool for broadly overriding statutory protections against religious discrimination or to create a broad free exercise right to receive government grants without complying with applicable regulations that protect taxpayers.

The use of the OLC Memo to trump the recently adopted non-discrimination provision in VAWA demonstrates that its harm is more than speculative. We accordingly request that the administration publicly announce its intention to review the OLC Memo and, at the end of that review, withdraw the OLC Memo and expressly disavow its erroneous interpretation of RFRA.

Thank you in advance for your consideration of our views.

Respectfully,

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African American Ministers In Action
American-Arab Anti-Discrimination Committee (ADC)
American Association of University Women (AAUW)
American Baptist Home Mission Societies
American Civil Liberties Union
American Federation of State, County and Municipal Employees, AFL-CIO
American Humanist Association
American Jewish Committee (AJC)
Americans for Religious Liberty
Americans United for Separation of Church and State
Anti-Defamation League
Asian Americans Advancing Justice (AAJC)
B’nai B’rith International
Baptist Joint Committee for Religious Liberty
Bend the Arc: A Jewish Partnership for Justice
Catholics for Choice
Center for Inquiry
Central Conference of American Rabbis
Council for Secular Humanism
Disciples Justice Action Network
Equal Partners in Faith
Family Equality Council
Feminist Majority
Friends Committee on National Legislation
Gay & Lesbian Advocates & Defenders
Gay, Lesbian & Straight Education Network
GLBTQ Domestic Violence Project

Hadassah, The Women's Zionist Organization of America, Inc.
Hindu American Foundation
Human Rights Campaign
Institute for Science and Human Values, Inc.
Interfaith Alliance
Japanese American Citizens League
Jewish Council for Public Affairs
Jewish Women International
Keshet
Lambda Legal
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens
Legal Momentum
Marriage Equality USA
Methodist Federation for Social Action
Military Association of Atheists & Freethinkers
Muslim Advocates
NA'AMAT USA
NAACP
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women (NCJW)
National Education Association
National Gay and Lesbian Task Force
National Coalition Against Domestic Violence
National Congress of Black Women
National Employment Lawyers Association (NELA)
National Latina Institute for Reproductive Health
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
Parents, Families and Friends of Lesbians and Gays (PFLAG) National
People For the American Way
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 (SCORE)
Society for Humanistic Judaism
South Asian Americans Leading Together (SAALT)
Southern Poverty Law Center
Texas Faith Network
Texas Freedom Network

The Leadership Conference on Civil and Human Rights
The Rabbinical Assembly
The Solomon Project
The Trevor Project
Transgender Law Center
True Colors Fund
UltraViolet
Union for Reform Judaism
Unitarian Universalist Association
United Church of Christ Justice & Witness Ministries
United Methodist Church, General Board of Church and Society
V-Day
Women of Reform Judaism
Women's Alliance for Theology, Ethics and Ritual (WATER)
YWCA USA