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February 27, 2020

The Honorable Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Jordan
Ranking Member
House Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Re: Full Committee Hearing on “The Administration’s Religious Liberty Assault on LGBT Rights”

Dear Chairwoman Maloney and Ranking Member Jim Jordan:

We write to provide the views of the ADL (Anti-Defamation League) for the House Committee on Oversight and Reform hearings on “The Administration’s Religious Liberty Assault on LGBT Rights,” and ask that this statement be included as part of the official hearings record.

ADL (Anti-Defamation League)

Founded in 1913 in response to an escalating climate of anti-Semitism and bigotry, ADL is a leading anti-hate organization with the mission to protect the Jewish people and to secure justice and fair treatment for all. Today, we continue to fight all forms of hate with vigor and passion. A global leader in exposing extremism, delivering anti-bias education, and fighting hate online, ADL ultimately works towards a world in which no group or individual suffers from bias, discrimination, or hate. To this end, ADL opposes efforts to employ our nation’s religious freedom safeguards as a sword to discriminate against or harm others, instead of the Founders’ notion of the First Amendment as a shield for faith.

For more than a century, ADL has been an active advocate for religious freedom for all Americans – whether in the majority or minority. ADL has been a leading national organization promoting interfaith cooperation and intergroup understanding. Among our core beliefs is strict adherence to the separation of church and state effectuated through both the Establishment Clause and the Free Exercise Clause of the First Amendment. As an organization with deep roots in the Jewish community, we do not come to this position out of hostility towards religion. Rather, our position reflects a profound respect for religious freedom and a deep appreciation for America’s extraordinary diversity of religious communities. We believe a high wall of separation between government and religion is essential to the continued flourishing of religious practice and belief in America, and to the protection of all religions and their adherents.

ADL believes that true religious freedom is best achieved when all individuals are able to practice their faith or choose not to observe any faith; when government neutrally accommodates religion, but does not favor any particular religion; and

when religious belief is not used to harm or infringe on the rights of others through government action or others in the public marketplace. ADL advances these principles through education, coalition building, collaboration, interfaith dialogue, and the media. Where necessary, ADL advocates in the legislatures and courts to oppose coercive, exclusionary, discriminatory, or harmful laws, regulations, or policies.

To this end, ADL has filed an *amicus* brief in nearly every major religious freedom case before the U.S. Supreme Court since 1947, as well as numerous briefs in lower appellate and trial courts. In Congress, we have played a lead role in working to enact significant religious freedom protection legislation, such as the Religious Freedom Restoration Act (“RFRA”) and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”).

Discrimination in the Guise of Religious Freedom

ADL firmly believes that the “play in the joints” between the Establishment Clause and Free Exercise Clause allows and, in many instances, mandates government to accommodate the religious beliefs and observances of citizens. Religious accommodation, however, has its limitations. In a pluralistic society, religious accommodation cannot be used to trample the rights of others. Therefore, the federal government or any other government entity should not sanction or fund discrimination in the name of religion.

Discrimination in Foster Care

Although ADL was a lead advocate for RFRA, we have repeatedly submitted testimony opposing misapplication of the law. Of particular concern is the Department of Health and Human Services (HHS) invocation of RFRA to grant a waiver to South Carolina from federal regulations prohibiting religious discrimination by federally funded, faith-based foster care agencies¹. The waiver was specifically requested because Miracle Hill Ministries sought to discriminate against prospective foster parents on the basis of its religious beliefs.² No child should be denied a loving foster home simply because a prospective parent is LGBTQ+, Jewish, of another faith, , or otherwise deemed religiously unfit by a taxpayer-funded child placement agency.³

Discrimination in HHS Grant-Funded Services

ADL opposed other proposed HHS regulations wrongly using RFRA to sanction wholesale discrimination against LGBTQ+ people and members of other marginalized groups in the provision of federal grant-funded services. These changes repealed explicit, regulatory anti-

¹ “Re: Request for Deviation or Exception from HHS Regulations 45 CFR 75.300(c),” U.S. Department of Health and Human Services, Administration for Children & Families, Jan. 23, 2019, <https://governor.sc.gov/sites/default/files/Documents/newsroom/HHS%20Response%20Letter%20to%20McMaster.pdf> (web-page last visited February 26, 2020).

² “Scrutiny of Miracle Hill’s faith-based approach reaches new level,” Angelia Davis, Greenvilleonline.com, March 1, 2018, <https://www.greenvilleonline.com/story/news/2018/03/01/miracle-hill-foster-care/362560002/> (web-page last visited February 26, 2020).

³ ADL, June 25, 2019, <https://www.adl.org/media/13042/download> (web-page last visited February 26, 2020).

discrimination protections, limiting anti-discrimination safeguards only to those categories covered by federal statute.

Federal law specifically provides no anti-discrimination protections to HHS grant-funded beneficiaries based on gender identity or sexual orientation. Yet, these proposed rules would be applicable throughout HHS grant-funded programs and services, including foster and adoption programs, childcare, senior, mental health, legal, and substance abuse services, and other critical forms of assistance for millions of the most vulnerable Americans. The vital services HHS and its grantees and contractors provide must be available to any eligible person in need, regardless of their sexual orientation, gender identity or expression, or other personal characteristic.⁴

These proposed rules also undermine existing Federal regulations prohibiting federal contractors and subcontractors from discriminating against applicants for taxpayer-funded jobs on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Indeed, they open the door to discrimination against LGBTQ+ people and religious minorities. Given government's compelling state interest in workplace equality, particularly within the public sector, the federal government should comprehensively prohibit discrimination in all taxpayer-funded jobs.

Discrimination by Faith-Based Providers of Taxpayer-Funded Social Services

Recently, the Administration proposed a series of disturbing, sweeping changes to federal rules governing provision of taxpayer-funded social services by faith-based organizations, which threaten the religious freedom of marginalized communities. ADL joined 38 other organizations on the Americans United-led Coalition Against Religious Discrimination (CARD) in submitting comments opposing these regulations.⁵

Currently, directly funded religious social service providers are required to notify beneficiaries of their religious freedom rights, including (1) they can choose to receive services from an alternative religious or secular provider; (2) they cannot be compelled to participate in worship or other religious activities; (3) they cannot be denied services based on personal religious beliefs; and (4) they must be informed on how to report a violation of these rights. To ensure these rights, the rules also require religious providers to make reasonable efforts to refer a beneficiary to an alternative provider with which the person is comfortable – whether religious or secular.

The proposed rules strike these critical religious freedom safeguards and make it much less likely that most people who are in critical need of food, shelter, counseling or other services will be aware of their rights. The consequence is that many beneficiaries will feel compelled to receive services from a religious institution whose faith is different from or even contrary to theirs – and

⁴ “Re: RIN 0991-AC16,” ADL, December 19, 2019, <https://www.adl.org/sites/default/files/pdfs/2019-12/adl-comments-opposing-hhs-rule-removing-protections-lgbtq-and-religious-minorities-2019-12-19.pdf> (web-page last visited February 26, 2020).

⁵ Coalition Against Religious Discrimination (CARD) Comments on Trump's Faith-Based Regulations, Americans United for Separation of Church and State, February 18, 2020, <https://www.au.org/coalition-against-religious-discrimination-card-comments-on-trumps-faith-based-regulations> (web-page last visited February 26, 2020).

LGBTQ+ beneficiaries will feel compelled to receive services from a religious institution whose faith may condemn their very existence. Beneficiaries also may believe, inaccurately, that attending worship services or other religious activities is a requirement for obtaining social services. If a religious provider denies services to a person because of their religious beliefs, the individual seeking the services may believe there is no recourse. And for beneficiaries who are aware of their rights, the proposed rules make it much harder for them to secure services from an alternative provider.⁶

Additionally, under the current rules, religious institutions that are indirectly funded by vouchers or certificates can make participating in worship and other religious activities a part of the services they provide, but the federal government must ensure that “adequate secular provider[s]” of the same kind of services are available to beneficiaries. The proposed rules strike that requirement, increasing the likelihood that beneficiaries will have to choose between receiving critical services or being true to themselves or their religious beliefs.

Conclusion

Safeguarding religious freedom requires constant vigilance, and it is especially important to guard against one group or sect seeking to impose its religious doctrine or views on others. As George Washington wrote in his famous letter to the Touro Synagogue in 1790, in this country “all possess alike liberty of conscience.” He concluded: “It is now no more that toleration is spoken of, as if it was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights. For happily the Government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.”

We appreciate the opportunity to provide our views on this issue of high priority to our organization. Please do not hesitate to contact us if we can provide additional information or if we can be of assistance to you in any way.

Sincerely,



Max Sevillia
Vice President,
Government Relations,
Advocacy & Community
Engagement
Anti-Defamation League



Steven M. Freeman
Vice President, Civil Rights
Anti-Defamation League



David L. Barkey
Senior & Southeastern Area
Counsel, National Religious
Freedom Council
Anti-Defamation League

⁶ “Proposed Federal Rules Threaten the Religious Freedom of America’s Needy,” ADL, February 13, 2020, <https://www.adl.org/blog/proposed-federal-rules-threaten-the-religious-freedom-of-americas-needy> (web-page last visited February 26, 2020).