

**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).<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 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.<sup>3</sup>

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.<sup>4</sup> 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.

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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> 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>.

<sup>4</sup> 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