

September 19, 2011

The Hon. Barack H. Obama  
President of the United States  
The White House  
1600 Pennsylvania Ave  
Washington, DC 20500

Dear Mr. President:

The 56 undersigned religious, education, civil rights, and health organizations write to express our deep concern about your recent comments at the July 22, 2011 Town Hall Meeting in College Park, Maryland, regarding your Administration's policies on federally funded employment discrimination. Your statement suggested that you may now support allowing religious organizations to hire and fire based upon religion in federally funded positions. This would flatly contradict your 2008 campaign promise to end such discrimination. Your recent statement, combined with the Administration's failure to take concrete steps thus far to restore anti-discrimination protections, causes us great disappointment. We write, therefore, to ask that you clarify your July 22 remarks and take steps to fulfill your commitment to end federally funded employment discrimination.

On July 1, 2008, in Zanesville, Ohio, you stated 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."<sup>1</sup> A campaign document distributed regarding the Zanesville speech clarified your position even further:

Q: Does Senator Obama believe that religious groups should be able to discriminate in their hiring practices? The AP suggests that he be [sic] open to this.

A: Not for government-funded programs that receive taxpayer dollars. Senator Obama's position on this is clear: If a faith-based group receives a federal contract or grant to provide a service, they should not be discriminating with taxpayer dollars. Period.

He firmly believes in the principle of non-discrimination in our hiring laws—principles that have been on the books for over four decades. Taxpayer dollars should not be used to support hiring discrimination and religious organizations that receive federal dollars cannot discriminate with respect to hiring for government-funded social service programs—just like any other federal contractor.

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<sup>1</sup> Emphasis added.

Whatever uncertainty there is about employment rights here reflects Bush administration executive orders, which Senator Obama would promptly reverse.<sup>2</sup>

We welcomed these statements and looked forward to the Administration's prompt reform of the Faith-Based Initiative. We appreciate the important role religiously affiliated institutions historically have played in addressing many of our nation's most pressing social needs, as a complement to government-funded programs. Indeed, many of us are directly involved in this work. We also recognize that the separation of church and state is the linchpin of religious freedom. In our view, effective government collaboration with faith-based groups requires us neither to abandon robust protection of church-state separation nor to allow federally funded religious discrimination.<sup>3</sup>

Unfortunately, the optimism prompted by your campaign statements regarding the Faith-Based Initiative has turned to disappointment. Federal funds are being expended every day under the same inadequate constitutional protections that were imposed by the previous Administration. Most recently, at the July 22 Town Hall Meeting, you responded to a question regarding taxpayer-funded religious discrimination by stating that religious organizations have "more leeway" to "hire somebody who is a believer of that particular faith." We hope that this statement does not reflect a reversal of your commitment to end federally funded religious discrimination.

Our frustration is compounded by other instances in which we believe the Administration could have taken steps to overturn or otherwise address the troubling hiring discrimination policies adopted by the previous Administration, but did not. For example:

- Both your February 5, 2009<sup>4</sup> and November 17, 2010<sup>5</sup> Executive Orders failed to address the hiring discrimination issue in any way.
- Despite repeated requests—including a September 2009 letter to Attorney General Eric Holder signed by 58 national civil rights, religious, labor, health, and education organizations—it is our understanding that the Administration has not taken any action to review and rescind a deeply flawed Office of Legal Counsel (OLC) Memorandum that interprets the federal Religious Freedom Restoration Act (RFRA) as providing religious organizations a very broad exemption from statutory provisions barring federally funded employment discrimination.<sup>6</sup> Indeed, at a

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<sup>2</sup> Q&A Concerning This Morning's AP Story, attached.

<sup>3</sup> It has been generally accepted that religious organizations may hire on the basis of religion with their private funds. However, we believe that there is an urgent need to reverse the prior Administration's policy on federally funded discrimination in hiring on the basis of religion.

<sup>4</sup> Exec. Order No. 13,498, 74 Fed. Reg. 6,533 (Feb. 9, 2009).

<sup>5</sup> Exec. Order No. 13,559, 75 Fed. Reg. 71,317 (Nov. 22, 2010).

<sup>6</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).

May 3, 2011 House Judiciary Committee hearing, Attorney General Holder stated that the Department of Justice was not in the process of reviewing the memorandum.<sup>7</sup>

- The Administration declined a request from the House Judiciary Committee’s Subcommittee on the Constitution, Civil Rights, and Civil Liberties to testify regarding issues surrounding the Faith-Based Initiative, including the employment discrimination issue.<sup>8</sup> Thus, the public and Congress were denied information regarding what, if anything, the Administration is doing to reverse the former Administration’s hiring policies.
- The Administration did not respond to a letter<sup>9</sup> from 52 organizations requesting that it restore Executive Order 11246, which barred government contracts from funding positions in which religion is a factor in hiring.

For most of us, our concerns are not limited to the hiring discrimination issue. Instead, those concerns are just part of our interest in strengthening the legal footing on which the Faith-Based Initiative stands. We have been disappointed by the Administration's slow pace in implementing the reforms mandated by Executive Order 13559<sup>10</sup> and the fact that recent administration action actually seems inconsistent with the Order.<sup>11</sup> This has led some to question whether the restoration of church-state separation protections is an Administration priority.<sup>12</sup> Our community also seeks an open dialogue with the Administration regarding the implementation of the reforms encompassed by the Executive Order and other critical changes to the Faith-Based Initiative.

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<sup>7</sup> *Oversight Hearing on the United States Department of Justice: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. (2011) (“What I’m saying is that in terms of—with regard to that specific OLC opinion, we are not in the process of reconsidering it.”).

<sup>8</sup> *Faith-Based Initiatives: Recommendations of the President’s Advisory Council on Faith-Based and Community Partnerships and Other Current Issues Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 111th Cong. (2010).

<sup>9</sup> June 25, 2011 Letter from 52 national organizations to President Obama.

<sup>10</sup> Your November 17, 2010 Executive Order outlined “fundamental principles” to reform some, but not all, of the problems connected to the current Faith-Based Initiative. The most important reforms include protections for people in need who seek government-funded social services. Yet, the interagency working group established by the same executive order to report on how to implement these principles is five months behind in its work and these reforms have not been put into practice.

<sup>11</sup> The first “faith-based” regulation proposed by the Administration would strip church-state protections from current USAID regulations and contradict the principles set forth in Executive Order 13559. This would set a dangerous precedent showing other agencies that they too could propose regulations that contradict the uniform rules envisioned by the Executive Order, perhaps even undermining the more robust protections for people in need.

<sup>12</sup> For example, the Executive Director of the White House Office of Faith-based and Neighborhood Partnerships was recently quoted in *The Denver Post* as saying: “If your focus is first and foremost serving people in need, then there’s not a tremendous amount of time left to debate the finer points of the church-state relationship.” (Electra Draper, *White House Courts Religious Leaders to Help People in Need*, *Denver Post*, July 28, 2011.) An August 1 blog posting on that office’s website reasserted your Administration’s commitment to constitutional separation of church and state, but neither clarified nor corrected the statement made in Denver.

Mr. President, we have been patiently waiting. If you have reversed your policy position on the issue of government-funded religious discrimination, we need to know that. If not, we would ask you to take concrete steps to fulfill the commitment you made in 2008 in Zanesville.

We very much hope to explore these issues further through a meeting with White House Counsel Kathryn Ruemmler.

Respectfully,

African American Ministers in Action  
American-Arab Anti-Discrimination Committee (ADC)  
American Association of University Women (AAUW)  
American Civil Liberties Union (ACLU)  
American Humanist Association  
American Jewish Committee  
Americans for Religious Liberty  
Americans United for Separation of Church and State  
Anti-Defamation League  
Baptist Joint Committee for Religious Liberty  
Bazelon Center for Mental Health Law  
B'nai B'rith International  
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  
Gay & Lesbian Advocates & Defenders  
Hindu American Foundation  
Human Rights Campaign  
Institute for Science and Human Values  
Interfaith Alliance  
Japanese American Citizens League  
Jewish Council for Public Affairs  
Jewish Reconstructionist Federation  
Lambda Legal  
Lawyers' Committee for Civil Rights Under Law  
Muslim Advocates  
NA'AMAT USA  
National Center for Lesbian Rights  
National Community Action Foundation  
National Council of Jewish Women  
National Employment Lawyers Association  
National Gay and Lesbian Task Force  
National Organization for Women  
National Partnership for Women and Families

National Women's Law Center  
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)  
The Sikh Coalition  
South Asian Americans Leading Together (SAALT)  
Texas Faith Network  
Texas Freedom Network  
Transgender Law Center  
Union for Reform Judaism  
United Church of Christ, Justice and Witness Ministries  
United Methodist Church, General Board of Church and Society  
Women of Reform Judaism  
Women's Law Project

## **Partnering with Communities of Faith**

### **Obama will create a President's Council for Faith-Based and Neighborhood Partnerships**

- As Barack Obama has said many times, he believes that change comes not from the top-down, but from the bottom-up, and few are closer to the people than our churches, synagogues, temples, and mosques. And many of the challenges we face today—from saving our planet to ending poverty—are simply too big for government to solve alone. We need all hands on deck.
- That's why Obama will help draw on the strength of these groups through the creation of a new President's Council for Faith-Based and Neighborhood Partnerships. The new name will reflect a new commitment. This Council will not just be another name on the White House organization chart – it will be a critical part of Obama's administration.
- Obama does not believe that faith-based groups are an alternative to government or secular nonprofits, or that they're better at lifting people but. But what he does believe is that we all have to work together to meet the challenges of the 21st Century. Obama's Council for Faith-Based and Neighborhood Partnerships will help empower grassroots faith-based and community groups to help meet these challenges.

### **The partnership will not endanger the separation of church and state—but will harness the energy of these critical groups**

- The new partnership will not endanger the separation of church and state, so long as a few basic principles are followed. First, if an organization gets a federal grant, it will not be permitted to use that grant money to proselytize to the people it serves, and the group will be forbidden to discriminate against them on the basis of their religion.
- Groups will also be forbidden to discriminate against them on the basis of their religion. And groups will be required to comply with federal anti-discrimination laws in their hiring practices—including Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin.
- Second, federal dollars that go to faith-based organizations can only support secular programs. And Obama will ensure that taxpayer dollars only go to those programs that actually work.

## **Innovative new programs: training larger organizations to support smaller ones, and expanding summer learning programs to serve one million students**

- Barack Obama will work with the hundreds of religious and community groups that understand the process to train the thousands of groups that don't. The Council for Faith-based and Neighborhood Partnerships will "train the trainers" by giving larger faith-based partners like Catholic Charities and Lutheran Services—and secular nonprofits like Public/Private Ventures—the support they need to help other groups build and run effective programs.
- And the Council will target key challenges like closing the achievement gap. Obama will expand nonprofit summer learning programs to serve one million students by developing partnerships with faith-based and community groups. This partnership won't just help children learn—it will help keep them off the streets during the summer so they don't turn to crime.

### **Q&A Concerning This Morning's AP Story**

**Q: Does Senator Obama believe that religious groups should be able to discriminate in their hiring practices? The AP suggested this morning that he be open to this.**

Not for government-funded programs that that receive taxpayer dollars. Senator Obama's position on this is clear: If a faith-based group receives a federal contract or grant to provide a service, they should not be discriminating with taxpayer dollars. Period.

He firmly believes in the principle of non-discrimination in our hiring laws – principles that have been on the books for over four decades. Taxpayer dollars should not be used to support hiring discrimination and religious organizations that receive federal dollars cannot discriminate with respect to hiring for government-funded social service programs – just like any other federal contractor.

It's important to remember that many faith-based organizations already hire diverse staffs, including many who don't share their religious beliefs. Head Start is a good example of this.

Numerous studies demonstrate that the vast majority of religious nonprofits performing these services do not hire only people who share their particular religious views. And Senator Obama saw this in his own experience as a community organizer, when his work was funded in part by the Catholic Church – even though he was not a Catholic.

Whatever uncertainty there is about employment rights here reflects Bush administration executive orders, which Senator Obama would promptly reverse.

**Obama says he doesn't support discrimination in hiring or firing – what about on the basis of sexual orientation or gender identity?**

Let's be clear: Obama's position on religious hiring rights is a return to the state of the law before the Bush Administration took office and muddied the waters with various executive orders. There are of course difficult questions that will have to be worked out, but his position on the basic principle is clear.

At a minimum, Senator Obama believes that race-, sex- and pregnancy-based discrimination in federal funded programs are and should be prohibited. Moreover, federal funding recipients – including faith-based organizations – should have to comply with existing federal, state and local laws, including laws prohibiting discrimination based on religion, sexual orientation, or gender identity. To the extent that existing federal, state and local laws prohibit such discrimination in particular government-funded programs, the President Council's will help faith-based organizations comply with those laws.

Sexual orientation and gender identity are currently not protected categories under existing federal antidiscrimination law – and the Senator and others are working hard in Congress to ensure that we pass the Employment Non-discrimination Act (ENDA), so that employment discrimination on those bases is not permitted. He will continue to fight for ENDA's passage as president.