

Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Thursday, November 8, 2018 2:00 PM
To: Kupec, Kerri (OPA)
Subject: RE: Is the Religious Liberty Task Force continuing?

Copy.

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b)(6)

From: Kupec, Kerri (OPA)
Sent: Thursday, November 8, 2018 1:58 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: RE: Is the Religious Liberty Task Force continuing?

Say business as usual – no further info at this point.

From: Laco, Kelly (OPA)
Sent: Thursday, November 8, 2018 1:49 PM
To: Kupec, Kerri (OPA) (b) (6)
Subject: FW: Is the Religious Liberty Task Force continuing?

(b)(5)

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b) (6)

From: Dominic Holden <dominic.holden@buzzfeed.com>
Sent: Thursday, November 8, 2018 10:56 AM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: Is the Religious Liberty Task Force continuing?

Hi, Kelly.

I'm wondering if the Religious Liberty Task Force that Sessions announced earlier this year is still moving forward under AAG Whitaker.

Who will be the chair, if not Sessions? Any other info you can share?

Thanks!

Dominic

~~CONFIDENTIAL~~

Dominic Holden | Political Reporter | **BuzzFeed**

Desk: (b) (6) | Mobile: (b) (6) | [@dominicholden](#)

111 East 18th St, New York, NY 10003

Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Thursday, November 8, 2018 11:09 AM
To: Kupec, Kerri (OPA)
Subject: FW: Is the Religious Liberty Task Force continuing?

(b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b) (6)

From: Dominic Holden <dominic.holden@buzzfeed.com>
Sent: Thursday, November 8, 2018 10:56 AM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: Is the Religious Liberty Task Force continuing?

Duplicative Material

[REDACTED]

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Tuesday, October 30, 2018 6:45 PM
To: Laco, Kelly (OPA)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

Looks good to me.

From: Laco, Kelly (OPA)
Sent: Tuesday, October 30, 2018 6:44 PM
To: Kupec, Kerri (OPA) (b)(6)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

This look okay to send?

Hi Samantha,

The following responses are on background as a DOJ official:

FOIA: For inquiries regarding the status of a FOIA request submitted to the Department of Justice, please contact the Office for Information Policy. Contact information can be found at www.justice.gov/oip.

Who is on the taskforce: Representatives from the following DOJ components: the Office of the Deputy Attorney General, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, and Office of Legal Counsel, and Office of Legal Policy, the Office of Public Affairs, a U.S. Attorney's Office, and other components designated from time to time.

What it has been doing: As Attorney General Sessions mentioned [in his remarks yesterday](#), the taskforce is currently reviewing whether the executive agencies are implementing [the legal guidance on religious liberty](#) the Attorney General issued last Fall.

An example of this –last year, the Supreme Court decided *Trinity Lutheran*, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment. The Court declared that a state may not expressly discriminate against otherwise eligible religious entities by disqualifying them from a public benefit solely because of their religious character. The taskforce is now examining whether there are instances in which this kind of discrimination is occurring at the federal level.

Whether it was suggested by groups on the outside: No. This was 100% an internal decision. When President Trump was campaigning for office, he said that protecting religious liberty would be a top priority of his administration. Shortly after he took office, he directed Attorney General Sessions to issue legal guidance to ensure that all executive agencies would faithfully apply the federal laws that protect religious liberty. The Attorney General's guidance [lays out twenty fundamental principles](#) that the Constitution and federal statutes require of the Executive Branch.

The creation of a taskforce to ensure the implementation of the guidance was a logical next step.

Thanks!

Kelly

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b)(6)

From: no-reply@usdoj.gov <no-reply@usdoj.gov>
Sent: Tuesday, October 30, 2018 4:19 PM
To: Press <Press@jmd.usdoj.gov>
Subject: Media Inquiry from Samantha Allen - The Daily Beast

Date Tuesday, October 30, 2018 - 4:18pm EDT

Name: Samantha Allen

Email Address: Samantha.Allen@thedailybeast.com

Topic: Civil Rights

Media Outlet: The Daily Beast

Deadline: 5 PM (PT) today

Inquiry:
Hi DOJ,

I'm Samantha Allen, senior reporter for The Daily Beast covering LGBT stories. I'm writing an article about the Human Rights Campaign's ongoing FOIA about the "Religious Liberty Task Force" and I'm wondering if the DOJ can provide any updates on its progress in responding to the FOIA? Can the DOJ at this time say who is on the task force, what it has been doing, or whether or not it was suggested by groups outside the administration?

Thanks so much for your time.

All best,
Samantha

Flores, Sarah Isgur (OPA)

From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 30, 2018 6:40 PM
To: Laco, Kelly (OPA); Kupec, Kerri (OPA)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

xxx

Sarah Isgur Flores
Director of Public Affairs

(b)(6)

From: Laco, Kelly (OPA)
Sent: Tuesday, October 30, 2018 6:39 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Kupec, Kerri (OPA) (b)(6)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b)(6)

From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 30, 2018 6:38 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Kupec, Kerri (OPA) (b)(6)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

xxx

Sarah Isgur Flores
Director of Public Affairs

(b)(6)

From: Laco, Kelly (OPA)
Sent: Tuesday, October 30, 2018 6:37 PM
To: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>; Kupec, Kerri (OPA) (b)(6)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

Kelly Laco
Office of Public Affairs
Department of Justice

Office: 202-353-0173
Cell: (b)(6)

From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 30, 2018 6:36 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>; Kupec, Kerri (OPA) (b)(6)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

xxx
Sarah Isgur Flores
Director of Public Affairs

(b)(6)

From: Laco, Kelly (OPA)
Sent: Tuesday, October 30, 2018 6:07 PM
To: Kupec, Kerri (OPA) (b)(6)
Cc: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: RE: Qs from Daily Beast on religious freedom taskforce

(b)(5)

Kelly Laco
Office of Public Affairs
Department of Justice
Office: 202-353-0173
Cell: (b)(6)

From: Kupec, Kerri (OPA)
Sent: Tuesday, October 30, 2018 6:05 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Cc: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Qs from Daily Beast on religious freedom taskforce

If Sarah is okay with this, I'd provide the following answers to Samantha on background (mainly because I want to put this outside groups thing to rest, once and for all):

FOIA: For inquiries regarding the status of a FOIA request submitted to the Department of Justice, please contact the Office for Information Policy. Contact information can be found at www.justice.gov/oip.

Who is on the taskforce: Representatives from the following DOJ components: [Kelly, can you fill in the components?]

What it has been doing: As Attorney General Sessions mentioned [in his remarks yesterday](#), the taskforce is currently reviewing whether the executive agencies are implementing [the legal guidance on religious liberty](#) the Attorney General issued last Fall.

An example of this –last year, the Supreme Court decided *Trinity Lutheran*, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free

policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment. The Court declared that a state may not expressly discriminate against otherwise eligible religious entities by disqualifying them from a public benefit solely because of their religious character. The taskforce is now examining whether there are instances in which this kind of discrimination is occurring at the federal level.

Whether it was suggested by groups on the outside: No. This was 100% an internal decision. When President Trump was campaigning for office, he said that protecting religious liberty would be a top priority of his administration. Shortly after he took office, he directed Attorney General Sessions to issue legal guidance to ensure that all executive agencies would faithfully apply the federal laws that protect religious liberty. The Attorney General's guidance [lays out twenty fundamental principles](#) that the Constitution and federal statutes require of the Executive Branch.

The creation of a taskforce to ensure the implementation of the guidance was a logical next step.

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Sent: Tuesday, October 30, 2018 4:19 PM

To: Press <Press@jmd.usdoj.gov>

Subject: Media Inquiry from Samantha Allen - The Daily Beast

Date Tuesday, October 30, 2018 - 4:18pm EDT

Name: Samantha Allen

Email Address: Samantha.Allen@thedailybeast.com

Topic: Civil Rights

Media Outlet: The Daily Beast

Deadline: 5 PM (PT) today

Inquiry:

Hi DOJ,

I'm Samantha Allen, senior reporter for The Daily Beast covering LGBT stories. I'm writing an article about the Human Rights Campaign's ongoing FOIA about the "Religious Liberty Task Force" and I'm wondering if the DOJ can provide any updates on its progress in responding to the FOIA? Can the DOJ at this time say who is on the task force, what it has been doing, or whether or not it was suggested by groups outside the administration?

Thanks so much for your time.

All best,
Samantha

Kerri Kupec
U.S. Department of Justice
Office of Public Affairs

(b)(6)

(office)

(b)(6)

(cell)

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From: Flores, Sarah Isgur (OPA)
Sent: Tuesday, October 30, 2018 6:38 PM
To: Kupec, Kerri (OPA); Laco, Kelly (OPA)
Subject: RE: Qs from Daily Beast on religious freedom taskforce

yes

xxx

Sarah Isgur Flores
Director of Public Affairs

(b) (6)

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Sent: Tuesday, October 30, 2018 6:05 PM
To: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Cc: Flores, Sarah Isgur (OPA) <siflores@jmd.usdoj.gov>
Subject: Qs from Daily Beast on religious freedom taskforce

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Sent: Tuesday, October 30, 2018 4:19 PM
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Subject: Media Inquiry from Samantha Allen - The Daily Beast

Date Tuesday, October 30, 2018 - 4:18pm EDT

Name: Samantha Allen

Email Address: Samantha.Allen@thedailybeast.com

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Media Outlet: The Daily Beast

Deadline: 5 PM (PT) today

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Thanks so much for your time.

All best,
Samantha

Kerri Kupec
U.S. Department of Justice
Office of Public Affairs

(b)(6)
(b)(6) (office)
(b)(6) (cell)

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Tuesday, October 30, 2018 5:00 PM
To: Allen, Samantha
Subject: RE: Media Inquiry from Samantha Allen - The Daily Beast

Oh good, that works.

From: Allen, Samantha <Samantha.Allen@thedailybeast.com>
Sent: Tuesday, October 30, 2018 4:50 PM
To: Kupec, Kerri (OPA) (b)(6)
Subject: Re: Media Inquiry from Samantha Allen - The Daily Beast

Oh, sorry! I should have specified in the request that I'm working on Pacific time

From: Kupec, Kerri (OPA) (b)(6)
Sent: Tuesday, October 30, 2018 1:48 PM
To: Allen, Samantha
Subject: RE: Media Inquiry from Samantha Allen - The Daily Beast

Sounds good – just as a fyi, your request came in at 4:18 ET, so it's a bit of a challenge to turn something around fast enough for your 5 pm ET deadline.

From: Allen, Samantha <Samantha.Allen@thedailybeast.com>
Sent: Tuesday, October 30, 2018 4:44 PM
To: Kupec, Kerri (OPA) (b)(6)
Subject: Re: Media Inquiry from Samantha Allen - The Daily Beast

Thanks, Kerri—I'll take information on background. I'll have filed the story by then, but should be able to make any adjustments before it gets published.

From: Kupec, Kerri (OPA) (b)(6)
Sent: Tuesday, October 30, 2018 1:43 PM
To: Allen, Samantha
Subject: Re: Media Inquiry from Samantha Allen - The Daily Beast

Hey, Samantha – can give you some answers on background if that works. On a call now and won't be finished until probably 5 pm though.

Kerri

Name: Samantha Allen

Email Address: Samantha.Allen@thedailybeast.com

Topic: Civil Rights

Media Outlet: The Daily Beast

Deadline: 5 PM today

Inquiry:

Hi DOJ,

I'm Samantha Allen, senior reporter for The Daily Beast covering LGBT stories. I'm writing an article about the Human Rights Campaign's ongoing FOIA about the "Religious Liberty Task Force" and I'm wondering if the DOJ can provide any updates on its progress in responding to the FOIA? Can the DOJ at this time say who is on the task force, what it has been doing, or whether or not it was suggested by groups outside the administration?

Thanks so much for your time.

All best,
Samantha

Kerri Kupec
U.S. Department of Justice
Office of Public Affairs

(b)(6)

(b)(6) (office)

(b)(6) (cell)

PAO (SMO)

From: PAO (SMO)
Sent: Monday, October 29, 2018 4:31 PM
To: PAO (SMO)
Subject: DOJ Daily Communications Report 10/29/18

U.S. Department of Justice

WASHINGTON

October 29, 2018

FROM: Office of Public Affairs
SUBJECT: DOJ Daily Communications Report

Top Stories

Not Responsive Record



Sessions details next steps for Justice Department's religious liberty task force

“Attorney General Jeff Sessions on Monday announced next steps for the Justice Department's Religious Liberty Task Force, inspired by one of the Supreme Court's most important rulings on religious rights in decades. After the nation's highest court ruled last year that states cannot refuse all financial aid to churches, Sessions said Monday that the task force would focus on rooting out ‘other instances’ of discrimination at the federal level...” ([NBC](#))

Not Responsive Record



Champoux, Mark (OLP)

From: Champoux, Mark (OLP)
Sent: Monday, October 29, 2018 1:31 PM
To: Lichter, Jennifer (OLP)
Subject: RE: ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST SOCIETY

Good work!

MC

(202) 514-6131

From: Lichter, Jennifer (OLP)
Sent: Monday, October 29, 2018 1:24 PM
To: Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>
Subject: RE: ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST SOCIETY

Thanks! (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

From: Champoux, Mark (OLP)
Sent: Monday, October 29, 2018 12:45 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST SOCIETY

MC

(202) 514-6131

From: USDOJ-Office of Public Affairs <USDOJ-OfficeofPublicAffairs@public.govdelivery.com>
Sent: Monday, October 29, 2018 12:42 PM
To: Champoux, Mark (OLP) <mchampoux@jmd.usdoj.gov>
Subject: ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST SOCIETY



FOR IMMEDIATE RELEASE
MONDAY, OCTOBER 29, 2018

**ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO
THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST
SOCIETY**

Boston, MA

In July, I announced our Religious Liberty Task Force, to ensure our legal guidance document is being properly enforced.

Today, I am announcing our next step.

As many of you know, last year, the Supreme Court decided a case called Trinity Lutheran, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment.

The Court declared that a state may not expressly discriminate against otherwise eligible religious entities by disqualifying them from a public benefit solely because of their religious character. This is a significant ruling.

Today I am ordering the Religious Liberty Task Force to examine—in light of the Supreme Court's ruling—whether there are other instances in which this kind of discrimination is occurring at the federal level. If so, it must, and will, stop.

Remarks as prepared for delivery

Thank you Andy for that kind introduction, for your 18 years of service to the Department of Justice and for your leadership as United States Attorney. I think that you'll agree with me that it's the best job in the world.

It is great to be back in Boston, the Cradle of Liberty and the Hub of the Universe.

Thank you all for being here. I know you're probably tired from watching the World Series.

I want to thank the Boston Lawyers Chapter of the Federalist Society for inviting me to be here with all of you today, especially Michael Sullivan—former U.S. Attorney and former Acting Director of the ATF, and Jordan Lorence of ADF.

I have admired and appreciated the Federalist Society's mission from its beginning in 1982. I was a young, United States Attorney under Ronald Reagan then. And I cheered its courage in challenging activist orthodoxy—with not much expectation of any real change, frankly. But I was wrong.

I cannot name any other group over the last 35 years that has come close to the policy achievements of the Federalist Society in their area of emphasis.

The jurisprudence of the “neutral umpire” is on the ascendancy and activism and ideology are on the defensive intellectually. A stunning reversal.

And indeed, thanks to President Donald Trump, there are two more Federalist Society members sitting on the Supreme Court.

It is an honor to be here with you in this historic building, the Parker House. It has hosted figures like Thoreau, Emerson, Hawthorne, Longfellow, Oliver Wendell Holmes, and John F. Kennedy. And it’s where the Boston cream pie was invented.

But perhaps more relevant to our discussion, Boston is where John Adams defended British soldiers in a jury trial before the American Revolution. That tells us something very important about how law develops.

That we are heirs to such a legal system, that has protected our safety, our prosperity and liberty for so long, should fill us with awe and energize our determination to preserve, protect and enhance it. Every generation is honor bound to defend our magnificent rule of law.

On the 150th anniversary of the Declaration of Independence, the President of the United States—a former Massachusetts Governor named Calvin Coolidge—asserted: “[T]he American Revolution represented the informed and mature convictions of a great mass of independent, liberty-loving, God-fearing people who knew their rights, and possessed the courage to dare to maintain them.”

President Coolidge argued that the revolution began in the pulpits. In particular, he cited the preachers Thomas Hooker of Connecticut and John Wise of Massachusetts.

Generations—even a century—before the Revolution, they preached that all men are created equal: they are equals before the state because they are equals before God. And if men are equal then no man has the right to rule another without his consent.

That is why one Boston lawyer named John Adams wrote in his old age, “The War...was no part of the Revolution. It was only an Effect and Consequence of it. The Revolution was in the Minds of the People, and this was effected before a drop of blood was drawn at Lexington.”

The American ideas of self-government, equality, and liberty were in the air—and they were in the air in large part because of theological traditions that were planted, took root, and blossomed in colonial America.

Given the colonial experience in fleeing religious persecution, the centrality of religion in promoting the ideas embodied in the Constitution, and the belief that public virtue was critical to the American experiment, it is no wonder that the Founders took care to enact robust and strong protections for religious liberty in this country.

And so it is fitting that we gather here today to talk about religious freedom in this country. And it could not come at a more important time.

We are all still reeling from the murderous rampage in Pittsburgh that took the life of 11 congregants targeted because of their faith—worshiping faithfully in their own synagogue. This was not just an attack on the Jewish faith. It was attack on all people of faith. And it was an attack on America’s values of protecting those of faith. It cannot—it will not—be tolerated.

So today, I want to talk some about the current condition of religious expression in America and what we at DOJ are doing about it.

The Constitution contains several protections for religion: Article VI guarantees that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” The First Amendment guarantees the free exercise of religion, bans laws respecting an establishment of religion, and secures the freedom of speech so that citizens can always speak their faith.

But, respect for religious liberty and for people of faith has eroded significantly in recent decades.

Some people argue not only that government must not endorse particular religious views, but that religion must be banished from the public square entirely. Challenges to the “free exercise” of religious faith have become acute.

In recent years, we’ve seen nuns ordered to pay for contraceptives.

We’ve seen a United States Senator interrogate a judicial nominee about her religious “dogma,” even though, as noted, the Constitution explicitly forbids a religious test for public office.

We’ve witnessed the ordeal—still ongoing—faced so bravely by a Colorado baker who simply doesn’t want the government to force him to create art that offends his religious beliefs.

We’ve seen a state tell a religious organization that it cannot receive the same funding for playgrounds that everyone else receives simply because it is religious.

We’ve seen a federal district court strike down a 65-year-old tax exemption for clergy housing because it reasoned that not forcing religion to pay the government somehow means the government is establishing religion.

We’ve seen groups that defend religious freedom—including a certain organization that is undefeated at the Supreme Court—labeled as “hate groups.”

These are deeply troubling incidents that should concern anyone—religious or otherwise—who cares about our Constitution.

Those pushing this worldview overlook the fundamental fact that the framers understood: A constitutional republic can only survive if its citizens are committed to a shared set of principles—most importantly the principle that all people are created equal—and religion is a key foundation for those virtues. While no government should ever require anyone to abide by a particular creed, a free government must vigilantly protect the rights of its citizens to exercise, and educate, others in their faith.

Madison and Jefferson’s ideas were clear and carried the day. The relationship of

Mason and Jefferson's ideas were clear and carried the day. The relationship of an American with his or her God transcends civil authority and the government cannot even "take cognizance" of it.

That is why the Department of Justice is taking action to defend religious liberty.

Shortly after he took office, the President directed me to issue legal guidance to ensure that all executive agencies would faithfully apply the federal laws that protect religious liberty.

Our team embraced that challenge. I issued that guidance one year ago Friday. It lays out 20 fundamental principles that the Constitution and federal statutes require of the Executive Branch.

Those include the principle that free exercise means a right to reasonably act, not just meditate in secret. Faith constantly demands action.

The guidance tells the Executive Branch how to follow the Religious Freedom Restoration Act, or RFRA.

A few years ago, that would not have been controversial. But now it is.

RFRA was originally supported by the ACLU, Chuck Schumer, Joe Biden, John Kerry, Harry Reid, Chris Dodd, and Ted Kennedy—hardly Federalist Society members. It passed 97 to 3 in the Senate before it was signed into law by President Clinton.

It doesn't get much more bipartisan than that.

As we approach the 25th anniversary of RFRA next month, many of its original supporters, including the ACLU, have denounced this important law. They argue that the federal government should not protect a citizen's right to freely exercise his or her religion if that exercise offends or inconveniences others. That simply provides an objector's veto. That is not freedom. Clearly, Americans are free to exercise their religious convictions openly, in speech and action, within reasonable limits.

So, we are concerned.

Under President Donald Trump, the Department of Justice is going to court across America to defend the rights of people of faith, including under RFRA.

And, we are aggressively and appropriately enforcing our civil rights laws, our hate crimes laws, and laws protecting churches and faith groups. Let me give you a report.

Since January 2017, we have obtained 14 indictments and 10 convictions in cases involving arson or other attacks or threats against houses of worship and against individuals because of their religion.

Over the last 12 months, the Department has obtained 30 hate crime convictions, and since January 2017, has indicted 50 more such defendants. And this weekend, we added once again to this list. We charged Robert Bowers with 29 federal counts for the heinous murders at the Tree of Life Congregation.

We have also used civil litigation and statements of interest to protect the rights of the American people.

In January, we filed a brief in a Montana court to defend parents who claim that the state barred their children from a private school scholarship program because they attend a religious school.

We got involved in a lawsuit filed by Alliance Defending Freedom against Georgia Gwinnett College, a taxpayer-funded school that punished a student for sharing his faith outside of a designated “free speech zone.”

In this case, the free speech zone was just 0.0015 percent of campus — and even inside the free speech zone, you need permission. Give me a break.

We also filed an amicus brief on behalf of the Archdiocese of Washington, D.C., which was refused advertising space for having a religious message.

And, we were argued in support of the Colorado baker, Jack Phillips.

Over the past year we have taken new steps to be even more effective in defending these rights.

In June, I announced the Place to Worship Initiative. Under this initiative, the Department of Justice is holding public events across America and improving training for federal prosecutors about legal protections for houses of worship.

When I was in the Senate, we passed a law called the Religious Land Use and Institutionalized Persons Act, or RLUIPA, under which the Department of Justice can file a civil action in court when religious groups are discriminated against in zoning laws. It’s a bigger problem than you might think.

During my tenure as Attorney General, we have filed five amicus briefs in RLUIPA cases, including one regarding a Catholic church and one regarding a Hindu temple, we have sued on behalf of an Orthodox Jewish congregation in New Jersey, and settled four cases involving mosques. The head of our Civil Rights Division is going to court on Wednesday to defend an evangelical church in Maryland.

In July, I announced our Religious Liberty Task Force, to ensure our legal guidance document is being properly enforced.

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As many of you know, last year, the Supreme Court decided a case called *Trinity Lutheran*, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment.

The Court declared that a state may not expressly discriminate against otherwise eligible religious entities by disqualifying them from a public benefit solely because of their religious character. This is a significant ruling.

Today I am ordering the Religious Liberty to Task Force to examine—in light of the Supreme Court’s ruling— whether there are other instances in which this kind of discrimination is occurring at the federal level. If so, it must, and will, stop.

We are going to keep going to court. We are going to keep winning. I say that because we are winning and because our superb legal team carefully reviews each case we take to ensure it is legally sound.

But let me just say this: religious freedom is not absolute—no one argues that. There is no right to do wrong and there is no right to deprive others of their rights. There is no right to demand that the state advance one’s religious beliefs over others.

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Thomas Jefferson famously scoffed that “it neither picks my pocket nor breaks my leg” if someone else has the wrong religion. Certain people seem to have forgotten that.

That is why, in the short-term, winning in court is necessary.

But, we also need a recovery of respect for one another.

I well remember that my father once corrected me, saying, “Never make fun of someone’s religion.” He was entirely serious about it. It was good advice. He explained that religion was very important to people, and to criticize their faith was to attack them as a person.

But today many people are getting a different message from the culture. They are being told to wage total cultural war.

Not everything needs to be decided in court. We don’t have to get offended over everything.

Maybe what we need is not more litigation but more tolerance, or simple patience, for others.

And so, no matter what your creed may be, we all would do well to recover that mutual respect and a certain humility about our own righteousness.

As we work toward that good and lawful goal, a goal President Donald Trump gave to us, we are going to continue to uphold the Founders’ respect for religious liberty—and we will keep defending the rights of the American people. We will never fail to protect the American right—to freely exercise their faith.

We will steadfastly defend those rights with all our skill and determination. We will not acquiesce in the diminishment of this heritage. We ask for your support in this work.

#

AG

18 - 1406

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▪

Flores, Sarah Isgur (OPA)

From: Flores, Sarah Isgur (OPA)
Sent: Monday, October 29, 2018 11:27 AM
To: Pettit, Mark T. (OPA)
Cc: Kupec, Kerri (OPA); Laco, Kelly (OPA); Sutton, Sarah E. (OPA); Stafford, Steven (OPA)
Subject: Re: ****DRAFT** ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST SOCIETY**

Good here

On Oct 29, 2018, at 11:25 AM, Pettit, Mark T. (OPA) <mtpettit@jmd.usdoj.gov> wrote:

Let me know how the title and blurb look!

 [The United States Department of Justice](#)

**FOR IMMEDIATE RELEASE
MONDAY, OCTOBER 29, 2018**

**ATTORNEY GENERAL SESSIONS DELIVERS REMARKS TO
THE BOSTON LAWYERS CHAPTER OF THE FEDERALIST
SOCIETY**

Boston, MA

In July, I announced our Religious Liberty Task Force, to ensure our legal guidance document is being properly enforced.

Today, I am announcing our next step.

As many of you know, last year, the Supreme Court decided a case called Trinity Lutheran, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment.

The Court declared that a state may not expressly discriminate against otherwise eligible religious entities by disqualifying them from a public benefit solely because of their religious character. This is a significant ruling.

Today I am ordering the Religious Liberty to Task Force to examine—in light of

the Supreme Court's ruling— whether there are other instances in which this kind of discrimination is occurring at the federal level. If so, it must, and will, stop.

Remarks as prepared for delivery

Thank you Andy for that kind introduction, for your 18 years of service to the Department of Justice and for your leadership as United States Attorney. I think that you'll agree with me that it's the best job in the world.

It is great to be back in Boston, the Cradle of Liberty and the Hub of the Universe.

Thank you all for being here. I know you're probably tired from watching the World Series.

I want to thank the Boston Lawyers Chapter of the Federalist Society for inviting me to be here with all of you today, especially Michael Sullivan—former U.S. Attorney and former Acting Director of the ATF, and Jordan Lorence of ADF.

I have admired and appreciated the Federalist Society's mission from its beginning in 1982. I was a young, United States Attorney under Ronald Reagan then. And I cheered its courage in challenging activist orthodoxy—with not much expectation of any real change, frankly. But I was wrong.

I cannot name any other group over the last 35 years that has come close to the policy achievements of the Federalist Society in their area of emphasis.

The jurisprudence of the “neutral umpire” is on the ascendancy and activism and ideology are on the defensive intellectually. A stunning reversal.

And indeed, thanks to President Donald Trump, there are two more Federalist Society members sitting on the Supreme Court.

It is an honor to be here with you in this historic building, the Parker House. It has hosted figures like Thoreau, Emerson, Hawthorne, Longfellow, Oliver Wendell Holmes, and John F. Kennedy. And it's where the Boston cream pie was invented.

But perhaps more relevant to our discussion, Boston is where John Adams defended British soldiers in a jury trial before the American Revolution. That tells us something very important about how law develops.

That we are heirs to such a legal system, that has protected our safety, our prosperity and liberty for so long, should fill us with awe and energize our determination to preserve, protect and enhance it. Every generation is honor bound to defend our magnificent rule of law.

On the 150th anniversary of the Declaration of Independence, the President of the United States—a former Massachusetts Governor named Calvin Coolidge—asserted: “[T]he American Revolution represented the informed and mature convictions of a great mass of independent, liberty-loving, God-fearing people who knew their rights, and possessed the courage to dare to maintain them.”

President Coolidge argued that the revolution began in the pulpits. In particular, he cited the preachers Thomas Hooker of Connecticut and John

Generations—even a century—before the Revolution, they preached that all men are created equal: they are equals before the state because they are equals before God. And if men are equal then no man has the right to rule another without his consent.

That is why one Boston lawyer named John Adams wrote in his old age, “The War...was no part of the Revolution. It was only an Effect and Consequence of it. The Revolution was in the Minds of the People, and this was effected before a drop of blood was drawn at Lexington.”

The American ideas of self-government, equality, and liberty were in the air—and they were in the air in large part because of theological traditions that were planted, took root, and blossomed in colonial America.

Given the colonial experience in fleeing religious persecution, the centrality of religion in promoting the ideas embodied in the Constitution, and the belief that public virtue was critical to the American experiment, it is no wonder that the Founders took care to enact robust and strong protections for religious liberty in this country.

And so it is fitting that we gather here today to talk about religious freedom in this country. And it could not come at a more important time.

We are all still reeling from the murderous rampage in Pittsburgh that took the life of 11 congregants targeted because of their faith—worshiping faithfully in their own synagogue. This was not just an attack on the Jewish faith. It was attack on all people of faith. And it was an attack on America’s values of protecting those of faith. It cannot—it will not—be tolerated.

So today, I want to talk some about the current condition of religious expression in America and what we at DOJ are doing about it.

The Constitution contains several protections for religion: Article VI guarantees that “no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.” The First Amendment guarantees the free exercise of religion, bans laws respecting an establishment of religion, and secures the freedom of speech so that citizens can always speak their faith.

But, respect for religious liberty and for people of faith has eroded significantly in recent decades.

Some people argue not only that government must not endorse particular religious views, but that religion must be banished from the public square entirely. Challenges to the “free exercise” of religious faith have become acute.

In recent years, we’ve seen nuns ordered to pay for contraceptives.

We’ve seen a United States Senator interrogate a judicial nominee about her religious “dogma,” even though, as noted, the Constitution explicitly forbids a religious test for public office.

We’ve witnessed the ordeal—still ongoing—faced so bravely by a Colorado baker

who simply doesn't want the government to force him to create art that offends his religious beliefs.

We've seen a state tell a religious organization that it cannot receive the same funding for playgrounds that everyone else receives simply because it is religious.

We've seen a federal district court strike down a 65-year-old tax exemption for clergy housing because it reasoned that not forcing religion to pay the government somehow means the government is establishing religion.

We've seen groups that defend religious freedom—including a certain organization that is undefeated at the Supreme Court—labeled as “hate groups.”

These are deeply troubling incidents that should concern anyone—religious or otherwise—who cares about our Constitution.

Those pushing this worldview overlook the fundamental fact that the framers understood: A constitutional republic can only survive if its citizens are committed to a shared set of principles—most importantly the principle that all people are created equal—and religion is a key foundation for those virtues. While no government should ever require anyone to abide by a particular creed, a free government must vigilantly protect the rights of its citizens to exercise, and educate, others in their faith.

Madison and Jefferson's ideas were clear and carried the day: The relationship of an American with his or her God transcends civil authority and the government cannot even “take cognizance” of it.

That is why the Department of Justice is taking action to defend religious liberty.

Shortly after he took office, the President directed me to issue legal guidance to ensure that all executive agencies would faithfully apply the federal laws that protect religious liberty.

Our team embraced that challenge. I issued that guidance one year ago Friday. It lays out 20 fundamental principles that the Constitution and federal statutes require of the Executive Branch.

Those include the principle that free exercise means a right to reasonably act, not just meditate in secret. Faith constantly demands action.

The guidance tells the Executive Branch how to follow the Religious Freedom Restoration Act, or RFRA.

A few years ago, that would not have been controversial. But now it is.

RFRA was originally supported by the ACLU, Chuck Schumer, Joe Biden, John Kerry, Harry Reid, Chris Dodd, and Ted Kennedy—hardly Federalist Society members. It passed 97 to 3 in the Senate before it was signed into law by President Clinton.

It doesn't get much more bipartisan than that.

As we approach the 25th anniversary of RFRA next month, many of its original supporters, including the ACLU, have denounced this important law. They argue that the federal government should not protect a citizen's right to freely exercise his or her religion if that exercise offends or inconveniences others. That simply provides an objector's veto. That is not freedom. Clearly, Americans are free to exercise their religious convictions openly, in speech and action, within reasonable limits.

So, we are concerned.

Under President Donald Trump, the Department of Justice is going to court across America to defend the rights of people of faith, including under RFRA.

And, we are aggressively and appropriately enforcing our civil rights laws, our hate crimes laws, and laws protecting churches and faith groups. Let me give you a report.

Since January 2017, we have obtained 14 indictments and 10 convictions in cases involving arson or other attacks or threats against houses of worship and against individuals because of their religion.

Over the last 12 months, the Department has obtained 30 hate crime convictions, and since January 2017, has indicted 50 more such defendants. And this weekend, we added once again to this list. We charged Robert Bowers with 29 federal counts for the heinous murders at the Tree of Life Congregation.

We have also used civil litigation and statements of interest to protect the rights of the American people.

In January, we filed a brief in a Montana court to defend parents who claim that the state barred their children from a private school scholarship program because they attend a religious school.

We got involved in a lawsuit filed by Alliance Defending Freedom against Georgia Gwinnett College, a taxpayer-funded school that punished a student for sharing his faith outside of a designated "free speech zone."

In this case, the free speech zone was just 0.0015 percent of campus — and even inside the free speech zone, you need permission. Give me a break.

We also filed an amicus brief on behalf of the Archdiocese of Washington, D.C., which was refused advertising space for having a religious message.

And, we were argued in support of the Colorado baker, Jack Phillips.

Over the past year we have taken new steps to be even more effective in defending these rights.

In June, I announced the Place to Worship Initiative. Under this initiative, the Department of Justice is holding public events across America and improving training for federal prosecutors about legal protections for houses of worship.

When I was in the Senate, we passed a law called the Religious Land Use and Institutionalized Persons Act, or RLUIPA, under which the Department of Justice

INSTITUTIONALIZED PERSONS ACT, OR RLUIPA, under which the Department of Justice can file a civil action in court when religious groups are discriminated against in zoning laws. It's a bigger problem than you might think.

During my tenure as Attorney General, we have filed five amicus briefs in RLUIPA cases, including one regarding a Catholic church and one regarding a Hindu temple, we have sued on behalf of an Orthodox Jewish congregation in New Jersey, and settled four cases involving mosques. The head of our Civil Rights Division is going to court on Wednesday to defend an evangelical church in Maryland.

In July, I announced our Religious Liberty Task Force, to ensure our legal guidance document is being properly enforced.

Today, I am announcing our next step.

As many of you know, last year, the Supreme Court decided a case called *Trinity Lutheran*, in which it held that a state policy denying grant money to any applicant owned or controlled by a religious entity violated the free exercise clause of the First Amendment.

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#

AG

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Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Friday, October 26, 2018 10:05 AM
To: Jordan Lorence
Subject: RE: Questions with AG Sessions for Monday's Event in Boston

Great! I'll call you after.

From: Jordan Lorence <jlorence@adflegal.org>
Sent: Friday, October 26, 2018 10:00 AM
To: Kupec, Kerri (OPA) (b)(6)
Subject: RE: Questions with AG Sessions for Monday's Event in Boston

Kerri:

I am in a meeting from 11:00 am to noon today. I am free to talk to you before and after that.

I am working on some questions for the A.G. right now. I will send them to you, and I want your feedback.

Jordan Lorence

Work – (b)(6) or cell (b)(6)

From: Kupec, Kerri (OPA) (b)(6)
Sent: Thursday, October 25, 2018 10:04 PM
To: Jordan Lorence <jlorence@adflegal.org>
Subject: Re: Questions with AG Sessions for Monday's Event in Boston

I'll give you a call tomorrow!

Sent from my iPhone

On Oct 25, 2018, at 5:35 PM, Jordan Lorence <jlorence@adflegal.org> wrote:

Yes, I can do that. But can you tell me more about what he is going to talk about in his speech? The new DOJ religious liberty task force?

And I can come up with questions, but is there anything you would like me to ask him about? Maybe about points he is going to make in his speech?

Kerri knows me well, and I want to make sure I am acting in harmony with what General Sessions is desiring to accomplish by coming and speaking at this event in Boston.

Sent from my iPhone

[<logo_abdfb0ec-e06e-407a-a721-cd0e4f742400.png>](#)

Jordan Lorence
Sr. Counsel, Director of Strategic Engagement
(b)(6) (Office)
202-347-3622 (Fax)
jlorence@ADFlegal.org
ADFlegal.org

On Oct 25, 2018, at 5:20 PM, Sutton, Sarah E. (OPA) <Sarah.E.Sutton@usdoj.gov> wrote:

Hi Jordan,

Touching base with you about the questions for the Attorney General following his remarks on Monday. Could you get us these tomorrow by noon? We want to make sure we have plenty of time to prep the boss.

Thanks!

Sarah Sutton

Press Assistant

U.S. Department of Justice

Office of Public Affairs

Office: (202) 616-0079

Cell: (b)(6)

Email: sarah.e.sutton@usdoj.gov

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Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, October 26, 2018 9:24 AM
To: (b)(6) Jennifer Lichter
Subject: Fwd: RFRA - speech thoughts
Attachments: 181029 Boston.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Stafford, Steven (OPA)" <sstafford@jmd.usdoj.gov>
Date: October 25, 2018 at 11:51:02 PM EDT
To: "Lichter, Jennifer (OLP)" <jlichter@jmd.usdoj.gov>
Cc: "Tucker, Rachael (OAG)" <ratucker@jmd.usdoj.gov>
Subject: RE: RFRA - speech thoughts

Thank you very much

Here is a draft

Steven J. Stafford
U.S. Department of Justice

From: Lichter, Jennifer (OLP)
Sent: Thursday, October 25, 2018 11:14 AM
To: Stafford, Steven (OPA) <sstafford@jmd.usdoj.gov>
Cc: Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>
Subject: RFRA - speech thoughts

Steve, don't want to step on your toes, but I have a few more quick thoughts for your consideration (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
(b)(5)
[REDACTED]
[REDACTED]

I'm happy to brainstorm further with you if it would be helpful.

Thanks.

Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b)(6)
Jennifer.Lichter@usdoj.gov

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Friday, October 26, 2018 8:22 AM
To: Sutton, Sarah E. (OPA)
Subject: Re: Questions with AG Sessions for Monday's Event in Boston

Yep

Sent from my iPhone

On Oct 26, 2018, at 8:21 AM, Sutton, Sarah E. (OPA) <sesutton@jmd.usdoj.gov> wrote:

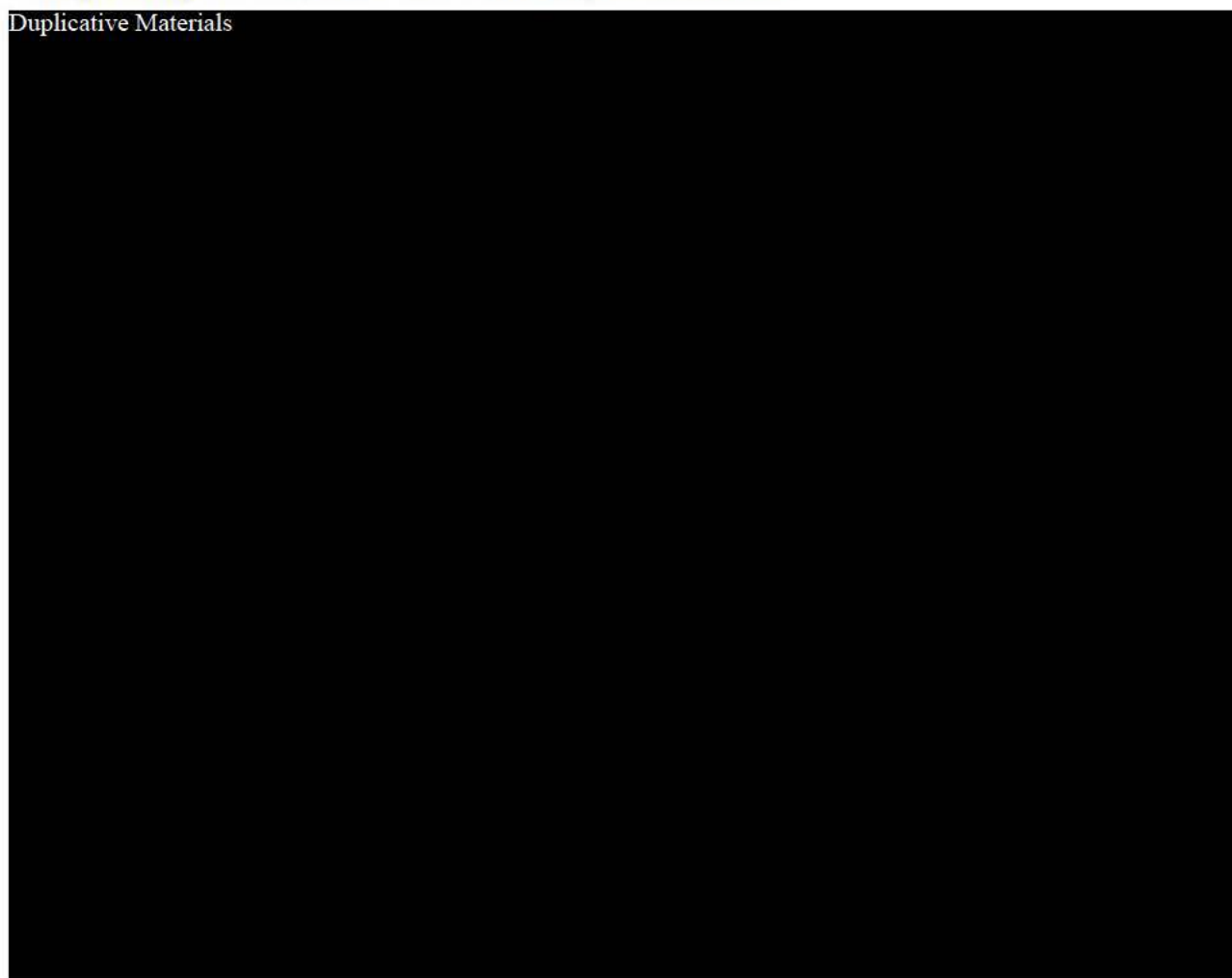
Is this something you can handle? I don't have a copy of the speech so may need to reach out to Steve.

Sent from my iPhone

Begin forwarded message:

From: Jordan Lorence <jlorence@adflegal.org>
Date: October 25, 2018 at 17:34:45 EDT
To: "Sutton, Sarah E. (OPA)" <Sarah.E.Sutton@usdoj.gov>
Cc: "Kupec, Kerri (OPA)" (b)(6)
Subject: Re: Questions with AG Sessions for Monday's Event in Boston

Duplicative Materials



Laco, Kelly (OPA)

From: Laco, Kelly (OPA)
Sent: Wednesday, October 24, 2018 10:22 AM
To: Hudson, Andrew (OLP)
Cc: Williams, Beth A (OLP); Lichter, Jennifer (OLP); Kupec, Kerri (OPA); Crytzer, Katherine (OLP)
Subject: Re: Religious Liberty TF Interview Prep

Quick summary on use of RFRA in this case:

Also update - Trial is scheduled for November.

(b)(5)

A large rectangular area of the document is completely redacted with a solid black box. The redaction covers approximately seven lines of text.

On Oct 24, 2018, at 10:19 AM, Laco, Kelly (OPA) <klaco@jmd.usdoj.gov> wrote:

NPR article on the Arizona case (going to trial early next year): <https://www.npr.org/2018/10/18/658255488/deep-in-the-desert-a-case-pits-immigration-crackdown-against-religious-freedom>

(b)(5)

A large rectangular area of the document is completely redacted with a solid black box. The redaction covers approximately 25 lines of text.


Court's denial of Warren's motion to dismiss: <https://www.courtlistener.com/recap/gov.uscourts.azd.1081102/gov.uscourts.azd.1081102.81.0.pdf>

Hudson, Andrew (OLP)

From: Hudson, Andrew (OLP)
Sent: Wednesday, October 24, 2018 9:23 AM
To: Williams, Beth A (OLP)
Cc: Lichter, Jennifer (OLP); Kupec, Kerri (OPA); Laco, Kelly (OPA); Crytzer, Katherine (OLP)
Subject: Religious Liberty TF Interview Prep
Attachments: Religious Liberty TPs--Oct 24 interview DRAFT.docx

Good morning!

In advance of our prep meeting in a few minutes, I wanted to share the updated draft talking points (attached), (b)(5)



(b)(5)



-Drew

Kupec, Kerri (OPA)

From: Kupec, Kerri (OPA)
Sent: Friday, October 19, 2018 11:57 AM
To: Flores, Sarah Isgur (OPA)
Subject: RE: Are you going to religious freedom taskforce meeting at 1 pm? I'm around and was going to go but don't want to step on your toes.

Exactly – anything. I'll work on it.

From: Flores, Sarah Isgur (OPA)
Sent: Friday, October 19, 2018 10:55 AM
To: Kupec, Kerri (OPA) (b)(6)
Subject: Re: Are you going to religious freedom taskforce meeting at 1 pm? I'm around and was going to go but don't want to step on your toes.

Yeah anything is better than nothing--it's next Monday in Boston

On Oct 19, 2018, at 10:52 AM, Kupec, Kerri (OPA) (b)(6) wrote:

I'm not sure they realized the speech was Monday (I think Kelly said Friday) (b)(5) :

[REDACTED]

From: Flores, Sarah Isgur (OPA)
Sent: Thursday, October 18, 2018 8:13 PM
To: Kupec, Kerri (OPA) (b)(6)
Subject: Re: Are you going to religious freedom taskforce meeting at 1 pm? I'm around and was going to go but don't want to step on your toes.

Roger. This is very helpful. (b)(5)

[REDACTED]

On Oct 18, 2018, at 7:23 PM, Kupec, Kerri (OPA) (b)(6) wrote:

Meeting went well.

(b)(5)

[REDACTED]

(b)(5)



From: Flores, Sarah Isgur (OPA)

Sent: Thursday, October 18, 2018 12:16 PM

To: Kupec, Kerri (OPA) (b) (6)

Subject: Re: Are you going to religious freedom taskforce meeting at 1 pm? I'm around and was going to go but don't want to step on your toes.

Yes!!!! I can't go so kelly was going to go. You're here today??

On Oct 18, 2018, at 12:15 PM, Kupec, Kerri (OPA) (b) (6) wrote:

Kerri Kupec
U.S. Department of Justice
Office of Public Affairs

(b)(6)

(b)(6) (office)

(b)(6) (cell)

Pettit, Mark T. (OPA)

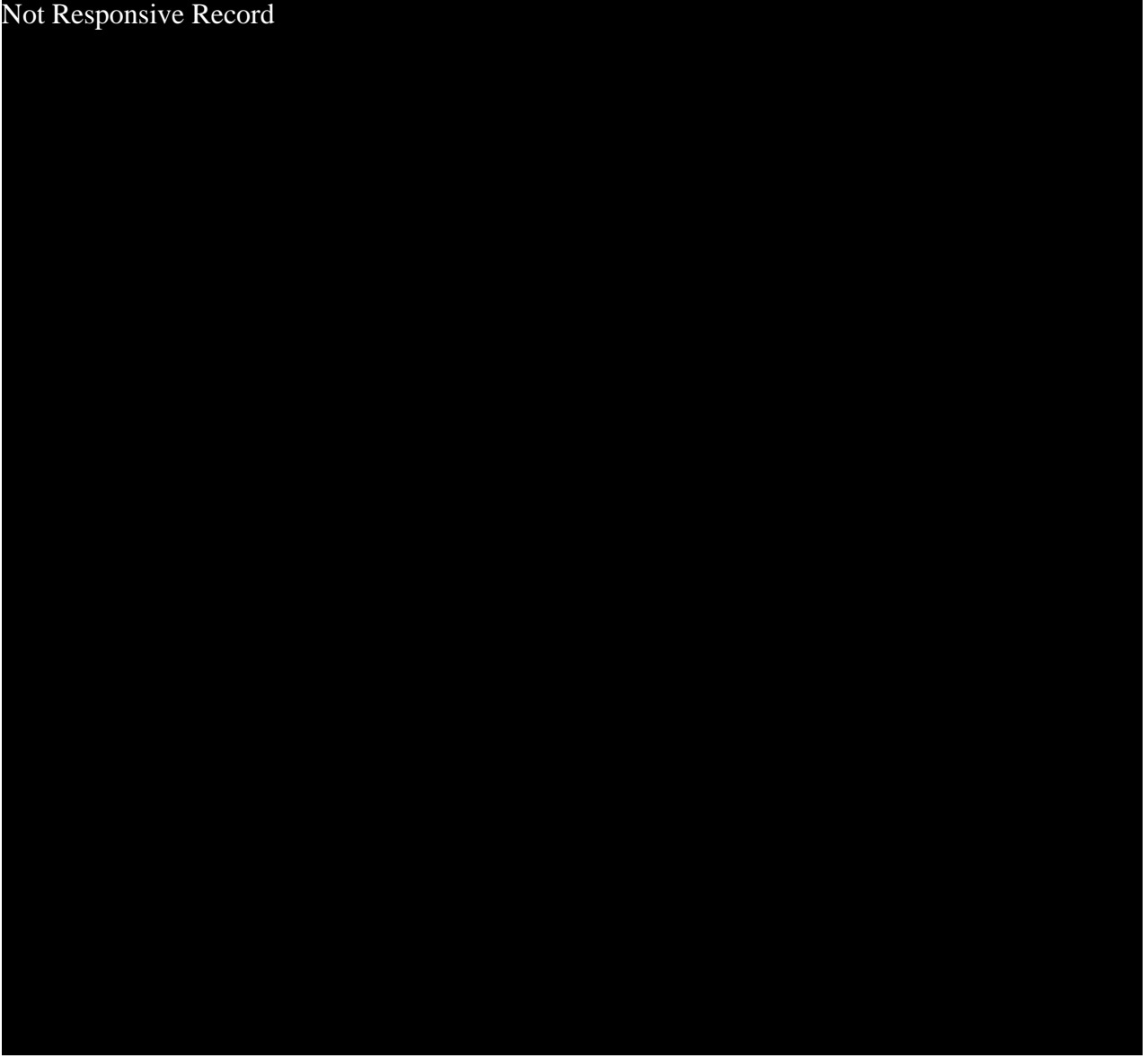
From: Pettit, Mark T. (OPA)
Sent: Friday, October 12, 2018 10:33 AM
To: Pettit, Mark T. (OPA)
Subject: Weekly Planning Document
Attachments: OPA Weekly Planning Meeting 10-12-18.docx

Attached is the current version of the weekly planning document. Have a great weekend!

Mark T. Pettit
Confidential Assistant
Office of Public Affairs
U.S. Department of Justice
Office: 202.514.1449
Cell: (b)(6)

This Document is Law Enforcement Sensitive
OPA Weekly Planning Meeting
October 12th, 2018

Not Responsive Record



Thursday, October 18th

AG

- Religious Liberty Task Force Meeting

Not Responsive Record



Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Tuesday, October 2, 2018 1:13 PM
To: Champoux, Mark (OLP)
Subject: TPs
Attachments: RL TPs for AG_10.3.18.docx

See attached. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Feel free to edit however you'd like. Thanks!

Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Tuesday, October 2, 2018 11:54 AM
To: Williams, Beth A (OLP)
Subject: TPs for AG's meeting with LDS Church
Attachments: RL TPs for AG_10.3.18.docx

Beth, here are proposed TPs per Patrick's request. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please let me know if you'd like to make any changes before I send to Pat.

Thanks!
Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Beck, Dorothy K. (OLP)

From: Beck, Dorothy K. (OLP)
Sent: Tuesday, October 2, 2018 9:34 AM
To: Lichter, Jennifer (OLP)
Subject: RE: religious liberty materials
Attachments: Religious Liberty Talking Points.docx

Here are the remarks. (b) (5)

[REDACTED]

Thanks!

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 5:43 PM
To: Beck, Dorothy K. (OLP) <dkbeck@jmd.usdoj.gov>
Subject: religious liberty materials

So sorry for the delay! Have not had much time at my computer this afternoon. See attached task force memo.

And here are a couple of the AG speeches:

<https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit>

<https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-alliance-defending-freedoms-summit>

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 9:46 PM
To: Williams, Beth A (OLP)
Cc: Crytzer, Katherine (OLP)
Subject: RE: OLA correspondence - Rep Lamborn (Colo)
Attachments: Response Letter_Lamborn_revised.docx

Beth, here's a revised version of the response letter to Rep Lamborn from Colorado, who wrote to the AG about Jack Phillips' ongoing trouble with the Colo Civil Rights Commission (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

[REDACTED]

How does it look to you?

Jennie

From: Lichter, Jennifer (OLP)
Sent: Tuesday, September 25, 2018 4:35 PM
To: Williams, Beth A (OLP) (b) (6)
Cc: Crytzer, Katherine (OLP) <kcrytzer@jmd.usdoj.gov>
Subject: RE: OLA correspondence - another response

Yes, will do. (b) (5)

[REDACTED]

From: Williams, Beth A (OLP)
Sent: Monday, September 24, 2018 3:49 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Cc: Crytzer, Katherine (OLP) <kcrytzer@jmd.usdoj.gov>
Subject: RE: OLA correspondence - another response

Thanks, Jennie. (b) (5)

[REDACTED]

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 21, 2018 4:07 PM
To: Williams, Beth A (OLP) (b) (6)
Cc: Crytzer, Katherine (OLP) <kcrytzer@jmd.usdoj.gov>
Subject: OLA correspondence - another response

Hi Beth, I am attaching another letter that has been assigned to us by OLA along with my draft response.

As you'll see, this letter is from a Congressman from Colorado (b) (5)

[REDACTED]

[REDACTED]

[REDACTED] Interested to hear your thoughts. (b) (5)

Rep Lamborn has posted this letter on his website and it looks like it's gotten some press coverage in Colorado, (b) (5)

Jennie

From:
Sent: Monday, October 1, 2018 9:12 PM
To: Hudson, Andrew (OLP)
Subject: RE: Interview with Asst AG Beth Williams

Drew, I got a vm from Tom G. today so assume you haven't reached out to him yet: (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

From: Lichter, Jennifer (OLP)
Sent: Friday, September 28, 2018 5:38 PM
To: Hudson, Andrew (OLP) <ahudson@jmd.usdoj.gov>
Cc: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: RE: Interview with Asst AG Beth Williams

Thanks! (b) (5)

[REDACTED]

From: Hudson, Andrew (OLP)
Sent: Friday, September 28, 2018 4:57 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Cc: Laco, Kelly (OPA) <klaco@jmd.usdoj.gov>
Subject: Re: Interview with Asst AG Beth Williams

He didn't reach out to me, but we'll get in touch and handle it. Thanks!

On Sep 28, 2018, at 3:46 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

FYI. Did you guys hear from "Tom G." as well? Thoughts on this - ?

From: Tom Gjelten <TGjelten@npr.org>
Sent: Friday, September 28, 2018 4:40 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Interview with Asst AG Beth Williams

Hello Jennifer,

After being away from NPR for most of the summer, I'm trying to catch up with stories I missed during my absence. Among them is the formation of the Religious Liberty Task Force. In the next week or so, I'll be working on that, and it would be good to meet and interview Beth Williams. I'm thinking that she, as the vice chair for policy, might be a better subject for me than Jesse Pannuccio.

Might you help arrange a face-to-face, on-the-record (on tape) interview for me? My contacts

are below.

Many thanks,

Tom G

Tom Gjelten
Correspondent, Religion and Belief
NPR

O: (b) (6)

M: (b) (6)

tgjelten@npr.org

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 28, 2018 5:03 PM
To: Williams, Beth A (OLP)
Cc: Hudson, Andrew (OLP)
Subject: FW: Interview with Asst AG Beth Williams

Beth, FYI—I got an interview request for you from NPR. (Despite the familiar tone of this email, I do not actually know “Tom G.”) Shared with Drew too.

From: Tom Gjelten <TGjelten@npr.org>
Sent: Friday, September 28, 2018 4:40 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Interview with Asst AG Beth Williams

Duplicative Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 6:14 PM
To: Gore, John (CRT); Hall, Jeffrey (OASG)
Cc: Williams, Beth A (OLP)
Subject: RE: OFCCP

Thanks. Jeff and I have coordinated on this; (b) (5)

[REDACTED]

[REDACTED]

From: Gore, John (CRT)
Sent: Monday, October 1, 2018 3:28 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Cc: Williams, Beth A (OLP) (b) (6)
Subject: FW: OFCCP

Duplicative Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 3:51 PM
To: Hall, Jeffrey (OASG)
Subject: FW: Religious Liberty Task Force

Is this scheduling something Mollie can handle? (b) (5)

[REDACTED]

From: Williams, Beth A (OLP)
Sent: Monday, October 1, 2018 11:10 AM
To: Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>
Subject: FW: Religious Liberty Task Force

See below from Erin Nealy Cox. Can we schedule the first RL Task Force mtg for early afternoon of 10/18?

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: NealyCox, Erin (USATXN) <Erin.NealyCox@usdoj.gov>
Sent: Sunday, September 30, 2018 7:23 PM
To: Williams, Beth A (OLP) (b) (6)
Subject: RE: Religious Liberty Task Force

October AGAC is October 16/17/18 – early afternoon of 18th is free.
December AGAC will be in Kansas City right before the PSN Conference.

I'll let you know the 2019 dates when I get them

Best, ENC

From: Williams, Beth A (OLP) (b) (6)
Sent: Friday, September 28, 2018 5:59 PM
To: NealyCox, Erin (USATXN) <ENealycox@usa.doj.gov>
Cc: Panuccio, Jesse (OASG) (JMD) <Jesse.Panuccio@usdoj.gov>
Subject: Re: Religious Liberty Task Force

Fantastic! I'm so glad. Yes, please send us those dates and we'll try to plan around them.

Have a wonderful weekend. I look forward to working together.

Beth

Sent from my iPhone

On Sep 28, 2018, at 5:54 PM, NealyCox, Erin (USATXN) <Erin.NealyCox@usdoj.gov> wrote:

Hi Beth. —

Hope you are well and surviving this SC process. Thank you for your dedication — these last few months could not have been easy on you.

I'd be most happy to join you. I also have a couple of AUSAs who would be interested in working on the smaller groups as well.

I look forward to learning more. I am in DC for the AGAC meetings and I can provide you those date throughout this year and the next if that would be helpful for coordination purposes.

ENC

Erin Nealy Cox
United States Attorney
Northern District of Texas

On Sep 28, 2018, at 4:07 PM, Williams, Beth A (OLP) (b) (6) wrote:

Erin,

I hope all is well with you. We are getting our Religious Liberty Task Force up and running, and wanted to extend to you the invitation to join the Task Force as our US Attorney member. We anticipate that the formal Task Force will meet approximately once per quarter and that there may be smaller working groups of more junior attorneys that would meet as needed or more frequently. We'd love to have you join us if you're interested.

All best,
Beth

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: NealyCox, Erin (USATXN) <Erin.NealyCox@usdoj.gov>
Sent: Monday, August 6, 2018 11:58 AM
To: Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>; Williams, Beth A (OLP) (b) (6)
Subject: Religious Liberty Task Force

Beth and Jesse:

Greetings from Texas. I was happy to learn and the Religious Liberty Task Force. I know you will likely be working with many USAOs across the country. If there is anything my office can do to assist – in any formal or informal way, we'd be happy to support the effort.

Hope you both have a great week.

Best, ENC

<image001
.png> Erin Nealy Cox
United States Attorney
Northern District of Texas

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 28, 2018 5:21 PM
To: Williams, Beth A (OLP)
Subject: RE: Religious Liberty Task Force

Great! Thank you.

From: Williams, Beth A (OLP)
Sent: Friday, September 28, 2018 5:13 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: Religious Liberty Task Force

fyi

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: Williams, Beth A (OLP)
Sent: Friday, September 28, 2018 5:07 PM
To: 'NealyCox, Erin (USATXN)' <Erin.NealyCox@usdoj.gov>
Cc: Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>
Subject: RE: Religious Liberty Task Force

Duplicative Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 12:26 PM
To: Davis, Valorie A (OLP)
Subject: RE: Commenting AG to protect religious liberty through Creation of the religious liberty task force

Hi Val, thanks for checking. (b) (5) and we have a draft almost finished so no need to ask for an extension. I'll have it for you today or tomorrow.

Jennie

From: Davis, Valorie A (OLP)
Sent: Monday, October 1, 2018 10:45 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: Commenting AG to protect religious liberty through Creation of the religious liberty task force

Good morning Jennie

Shall I request an extension on the attached if so. Please provide how long of the extension on the correspondence and state reason.

Thank you.

Valorie Davis
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 10:29 AM
To: Williams, Beth A (OLP)
Subject: Fwd: Handout for Religious Liberty briefing tomorrow
Attachments: AG RL Briefing_10.1.18 - new clean - JMG Redline.docx; ATT00001.htm

Beth, FYI - the briefer with additions from OASG + CRT.

Sent from my iPhone

Begin forwarded message:

From: "Gore, John (CRT)" <John.Gore@crt.usdoj.gov>
Date: October 1, 2018 at 10:22:34 AM EDT
To: "Lichter, Jennifer (OLP)" <jlichter@jmd.usdoj.gov>, "Hall, Jeffrey (OASG)" <jehall@jmd.usdoj.gov>
Cc: "Panuccio, Jesse (OASG)" <jpanuccio@jmd.usdoj.gov>
Subject: RE: Handout for Religious Liberty briefing tomorrow

Thanks. Attached is redline that adds some CRT content and makes some other edits to keep the document under 2 pages. Let me know if you'd like to discuss.

John M. Gore
Acting Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
(202) 353-9430
john.gore@usdoj.gov

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 9:54 AM
To: Gore, John (CRT) <John.Gore@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Cc: Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>
Subject: RE: Handout for Religious Liberty briefing tomorrow

John, if you haven't reviewed yet, please use the attached clean version. I pared some things back so that we are still at 2 pages even with Jeff's additions. (Thank you Jeff!)

From: Gore, John (CRT)
Sent: Monday, October 1, 2018 7:44 AM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Cc: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>

Subject: Re: Handout for Religious Liberty briefing tomorrow

Thanks. I'll review this. Do we have more info about the meeting time? I haven't received an invite.

Sent from my iPhone

On Sep 30, 2018, at 10:39 PM, Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov> wrote:

Thanks Jennie! (b) (5)

From: Lichter, Jennifer (OLP)

Sent: Sunday, September 30, 2018 9:36 PM

To: Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>; Gore, John (CRT) <John.Gore@crt.usdoj.gov>

Cc: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>

Subject: Handout for Religious Liberty briefing tomorrow

Good evening – we put together the attached handout for the briefing tomorrow morning; sharing it first just to give you a heads-up, and second because we'd welcome your additions, if you have any. (b) (5)

Feel free to add more if you'd like – or not – whatever you prefer.

See you tomorrow.
Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

<AG RL Briefing_10.1.18 PM.docx>

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 10:01 AM
To: Thomas, Mary (CRT)
Cc: Hall, Jeffrey (OASG)
Subject: Colo civil rights commission soon letter
Attachments: Response Letter_Lamborn JH.docx

Mary – good morning! Here's a revised version of the letter to Rep. Lamborn, (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Thanks!
Jennie

From: Hall, Jeffrey (OASG)
Sent: Sunday, September 30, 2018 11:29 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: any chance you could send me the language re the Colo civil rights commission soon?

Here's what I was thinking.

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 9:53 AM
To: Tucker, Rachael (OAG)
Subject: RE: for RL briefing tomorrow
Attachments: AG RL Briefing_10.1.18 - new clean.docx

Thanks! (b) (5)

John hasn't sent edits yet so may still change a bit, but this is roughly what we'll use.

(b) (6) so it will be just me from OLP.

From: Tucker, Rachael (OAG)
Sent: Monday, October 1, 2018 9:28 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Re: for RL briefing tomorrow

(b) (5)

On Sep 30, 2018, at 9:24 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

Here's what I put together for tomorrow. Beth ok'ed it so I'll share with Jesse and John to see if they want to add anything. Look good (enough)?

J.

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

<AG RL Briefing_10.1.18.docx>

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, October 1, 2018 9:27 AM
To: Morrissey, Brian (OAG)
Subject: RE: Religious Liberty Task Force

Brian – morning! FYI, John Gore mentioned this morning that he didn't get the meeting invite for the religious liberty briefing – and it does look like he didn't get the meeting invite from Errical although he is listed as attendee. Could you please have him added? I let him know it's at 11.30.

Thanks and see you soon.
Jennie

From: Morrissey, Brian (OAG)
Sent: Friday, September 28, 2018 3:59 PM
To: Williams, Beth A (OLP) <(b) (6)>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Religious Liberty Task Force

Beth and Jennie,

Errical just sent around an invitation to a briefing with the AG on Monday.

He is traveling to Salt Lake next week, and will be speaking about religious liberty issues as part of that trip. In preparation, he wanted to gather briefly on Monday for a quick refresher on (b) (5)

[REDACTED]

[REDACTED]

I know Jennie and Rachael have been in touch on the progress of the Task Force work. This will just be a chance to catch him up to speed before his travel.

Thanks, and have a good weekend,
Brian

(202) 305-8674 (office)
(b) (6) (cell)

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 28, 2018 4:52 PM
To: Morrissey, Brian (OAG); Williams, Beth A (OLP)
Subject: RE: Religious Liberty Task Force

Brian, thanks for the heads-up and background info. Happy weekend to you too, and see you Monday.

Jennie

From: Morrissey, Brian (OAG)
Sent: Friday, September 28, 2018 3:59 PM
To: Williams, Beth A (OLP) (b) (6) Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Religious Liberty Task Force

Duplicative Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Sunday, September 30, 2018 9:23 PM
To: Tucker, Rachael (OAG)
Subject: FW: WH OPL request / religious liberty reporting

Rachael, how do you want to handle this request? (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Other possibilities for this week are:

(b) (5)

[REDACTED]

??

From: Thomas, Mary (CRT)
Sent: Saturday, September 29, 2018 7:45 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Cc: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>; Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>
Subject: Re: WH OPL request

Hi Jennie, I see what you are saying. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Also, (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Please let me know how everyone would like to move forward.

Thanks and have a great weekend, Mary

Mary Thomas
202-616-1854

On Sep 28, 2018, at 8:21 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

Thanks Mary. I think the first question is – (b) (5)

[REDACTED]

[REDACTED]

Rachael – what do you think?

From: Thomas, Mary (CRT)
Sent: Friday, September 28, 2018 6:56 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>
Subject: WH OPL request

WH OPL has let us know that:

(b) (5)

[REDACTED]

Does anyone have any relevant initiatives, events, or trips to add? Any ideas on our faith priorities for next week?

Thanks, Mary

Mary Thomas
202-616-1854

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Sunday, September 30, 2018 9:17 PM
To: Williams, Beth A (OLP)
Subject: RE: AG Religious Liberty Briefing tomorrow

Thanks! Will do. See you tomorrow.

From: Williams, Beth A (OLP)
Sent: Sunday, September 30, 2018 7:21 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Re: AG Religious Liberty Briefing tomorrow

Terrific, thanks Jennie. And, yes, good to share with Jesse and John. (I would include Jeff Hall too since I don't think Jesse will be able to make the meeting tomorrow.)

Sent from my iPhone

On Sep 30, 2018, at 5:15 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

Hi Beth, I hope you're enjoying this beautiful weekend! (b) (5) for our meeting with the AG tomorrow. (b) (5)

[REDACTED]

(b) (5)

Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Office: (202) 514-4606

Cell: (b) (6)

Jennifer.Lichter@usdoj.gov

<AG RL Briefing_10.1.18.docx>

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Friday, September 28, 2018 9:59 AM
To: Lichter, Jennifer (OLP)
Subject: FW: Expressing support for the AG's efforts to protect religious liberty in this country
Attachments: Expressing support for the AG's efforts to protect religious liberty in this country.msg

Hi Jennie

This correspondence was tasked to you this week.

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Friday, September 28, 2018 9:48 AM
To: Lichter, Jennifer (OLP)
Subject: FW: Expressing support for the AG's efforts to protect religious liberty in this country
Attachments: Expressing support for the AG's efforts to protect religious liberty in this country.msg

Good morning Jennie

Reminder: The attached correspondence due **Friday, October 5.**

Valorie Davis

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

September 21, 2018 OLP Weekly Report

<u>Subject</u>	<u>Upcoming Event(s)</u>	<u>Component POC</u>	<u>ODAG Action</u>
Not Responsive Material			

<u>Subject</u>	<u>Upcoming Event(s)</u>	<u>Component POC</u>	<u>ODAG Action</u>
Religious Liberty OLP is working with OAG and OASG to lay the groundwork for the new Religious Liberty Task Force. OLP is preparing responses to correspondence regarding the Task Force.	None at this time	OLP: Jennie Lichter (4 4606)	None at this time
(b) (5)			

Not Responsive Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 9:55 PM
To: Hall, Jeffrey (OASG)
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Great! I reserved 4525 for us. Thanks again for handling.

From: Hall, Jeffrey (OASG)
Sent: Monday, September 24, 2018 9:53 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

That would be great, I'll change the location, wasn't thinking. Also, Beth just accepted.

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 9:49 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Thanks! Want me to grab our conference room for 9.15 so that we can just meet in there?

From: Hall, Jeffrey (OASG)
Sent: Monday, September 24, 2018 9:45 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Sure, I'm happy to send now.

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 9:44 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Thanks! Do you think you could just send an invite for 9.15am or can you not do that until mollie checks with jesse again? (b) (6)

██████████ If you can't do an invite tonight I'll just let her know by email.

From: Hall, Jeffrey (OASG)
Sent: Monday, September 24, 2018 9:35 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

This issue has come up and we are aware. Happy to discuss tomorrow.

Looks like all the key people are free at 9:15—sorry Mollie didn't get it on the calendar, I bugged her several times and she was just supposed to check with Jesse and put it on there. I will make sure she does in the morning.

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 8:54 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: FW: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

See below - can we talk about this tmrw? And are we meeting at 9.15 tmrw or is there another time that would be better?

Sent from my iPhone

Begin forwarded message:

From: "Williams, Beth A (OLP)" (b) (6)
Date: September 24, 2018 at 6:32:44 PM EDT
To: "Lichter, Jennifer (OLP)" <jlichter@jmd.usdoj.gov>
Cc: "Crytzer, Katherine (OLP)" <kcrytzer@jmd.usdoj.gov>
Subject: FW: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Jennie, I've received a few emails on this. Would you mind circling up with Jeff Hall (b) (5) Thanks

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: (b) (6) (b) (6)
Sent: Monday, September 24, 2018 6:27 PM
To: Williams, Beth A (OLP) (b) (6) Panuccio, Jesse (OASG)
<jpanuccio@jmd.usdoj.gov>
Subject: Re: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)
Importance: High

Dear Ms. Williams and Mr. Panuccio -

I've reached out to Mr. John Gore, i was surprised that he picked up the phone personally few min ago at (b) (6) I explained to him the situation briefly because i was planning to forward this letter to him but he told me you send it to the right department and they will look into it. I told him, I sent my letter to Mr. Panuccio and Ms. Williams. He did emphasis that he read

few things about it recently but he didn't give any details. I shared with him more information.

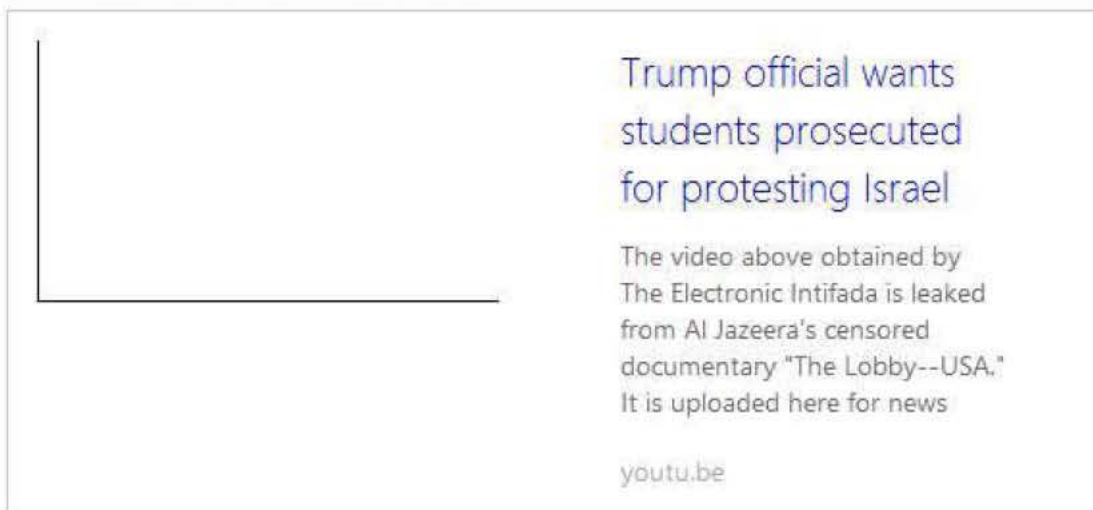
I don't know if the Religious Liberty Task Force has any jurisdiction or authority to oversee what Secretary Kenneth Marcus is doing but i explained that i don't feel safe with my complaint around Secretary Marcus. I also did express this directly to Secretary Betsy DeVos confidential assistant few days ago. This is hateful no matter how Secretary Marcus can spin his words and I am a Christian Coptic.

Secretary Candice Jackson wasn't like that compare to Secretary Kenneth Marcus.

"The goal is to have the federal government establish a definition of anti-Semitism that is parallel to the State Department definition" Marcus adds in 2016.

"You have to show that they are racist hate groups, and that they are using intimidation to get funded, and to consistently portray them that way" Marcus states in 2016.

<https://youtu.be/qRVyR0O--kE>



Mr. Gore told me to reach out to OCR for answers and i told him I've been in communication with them since Secretary Candice Jackson was in charge. I told him everything is in the letter I sent to Mr. Panuccio.

I hope this email helps.

Sincerely,

(b) (6)

From: (b) (6) (b) (6)
Sent: Monday, September 24, 2018 11:24 AM
To: (b) (6) Beth Williams ; jesse.panuccio@usdoj.gov
Subject: Re: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Dear Ms. Williams and Mr. Panuccio -

Please excuse my grammar error within my letter like 'signs' instead of 'sins', i had to write this letter during the weekend.

I want to also share Secretary Pompeo statement:

"Secretary of State Mike Pompeo reaffirmed Friday that the Trump administration is committed to religious liberty, both at home and abroad," Fred Lucas writes in [The Daily Signal](#). "We are assuring human dignity by advancing one of our most cherished, indispensable liberties, enshrined in the First Amendment. It is our religious liberty," Secretary Pompeo said.

Again thank you for taking the time and reading my letter and their attached exhibits. I hope the Liberty Task Force do something about my case that is being mishandled by OCR Atlanta and Secretary Kenneth Marcus policies.

Sincerely,

(b) (6)

From: (b) (6) (b) (6)
Sent: Monday, September 24, 2018 10:04 AM
To: (b) (6) Beth Williams ; jesse.panuccio@usdoj.gov
Subject: Fw: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Good Morning Ms. Williams -

After calling your office, i was advised to either fax the information or email it and I told them, I have your email. I am forwarding this email with its attached letter and exhibits that were sent to Mr. Panuccio because you're on the team for **Religious Liberty Task Force**.

Attorney General Jefferson Sessions said: the task force, co-chaired by Associate Attorney General Jesse Panuccio and the assistant attorney general for the Justice Department's Office of Legal Policy, Beth Williams, will help the department fully implement the religious liberty guidance it issued last year.

I called your office and Mr. Panuccio's as well and I was told someone will reach out to me after they speak to Molly.

Sincerely,

(b) (6)

From: (b) (6)

Sent: Sunday, September 23, 2018 2:49 PM

To: jesse.panuccio@usdoj.gov

Subject: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Dear Mr. Panuccio -

I sincerely hope this letter reaches you personally. Last Friday, I spoke to Molly who took down my information, phone number, and email and relayed to me someone will contact me and that you're in a meeting. In order to explain this matter in details, please see my letter attached herein, along with their supportive exhibits A - F.

Please also see this leaked undercover censored video that was shared on YouTube on September 19, 2018.

"The goal is to have the federal government establish a definition of anti-Semitism that is parallel to the State Department definition" Marcus adds in 2016.

He said this in 2016 and did it exactly with the Rutgers University case when he granted Zoa Appeal this month. Mr. Kenneth Marcus is the current Secretary of Office For Civil Rights at the Department of Education.

<https://youtu.be/qRVyR0O--kE>

[Trump official wants students prosecuted for protesting Israel](#)

The video above obtained by The Electronic Intifada is leaked from Al Jazeera's censored documentary "The Lobby--USA." It is uploaded here for news

youtu.be

The most troubling part about this working definition is to bring in another religion into this debate i.e., Christianity and Jesus Christ. Those who didn't like the movie Passion of the Christ called it anti-semitic, and Mel Gibson is working on a sequel and many jumped in to call it anti-Semitic. That is not religion tolerance and that is offensive and the only reason others can say that is because of definitions like these.

- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.

<https://www.independent.co.uk/arts-entertainment/films/news/passion-of-the-christ-2-mel-gibson-jim-caviezel-jesus-resurrection-a8187051.html#comments>

Passion of the Christ
2: Mel Gibson's sequel
will bring ...

Mel Gibson's The Passion of the Christ focussed on the life and death of Jesus Christ, only touching upon the figure's resurrection. For two years now,

www.independent.co.uk

Please see my letter for further disturbing details.

Sincerely,

(b) (6)

Williams, Beth A (OLP)

From: Williams, Beth A (OLP)
Sent: Monday, September 24, 2018 7:24 PM
To: Lichter, Jennifer (OLP)
Subject: RE: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

thanks

Beth A. Williams
Assistant Attorney General
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
Office: (b) (6)
(b) (6)

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 7:20 PM
To: Williams, Beth A (OLP) (b) (6)
Subject: Re: [Critical] To The Honorable Jesse Panuccio - Religious Liberty Task Force (Christianity)

Duplicative Material

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, September 24, 2018 5:26 PM
To: Davis, Valorie A (OLP)
Subject: Task Accepted: Expressing support for the AG's efforts to protect religious liberty in this country

Subject: Expressing support for the AG's efforts to protect religious liberty in this country

Start Date: Monday, October 1, 2018

Due Date: Tuesday, October 9, 2018

Status: Not Started

Percent Complete: 0%

Total Work: 0 hours

Actual Work: 0 hours

Owner: Lichter, Jennifer (OLP)

Requested By: Davis, Valorie A (OLP)

Good afternoon

Please prepare a response letter religious liberty in this country.

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Monday, September 24, 2018 4:56 PM
To: Davis, Valorie A (OLP)
Cc: Davis, Valorie A (OLP)
Bcc: Davis, Valorie A (OLP)
Subject: Expressing support for the AG's efforts to protect religious liberty in this country
Attachments: Reverend Richard Clore.rtf; Religious liberty.pdf

Good afternoon

Please prepare a response letter religious liberty in this country.

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Monday, September 24, 2018 11:40 AM
To: Lichter, Jennifer (OLP)
Subject: FW: Commenting AG to protect religious liberty through Creation of the religious liberty task force
Attachments: Commenting AG to protect religious liberty through Creation of the religious liberty task force.msg

Good morning

Reminder: The attached correspondence is due Tuesday, September 25, 2018. Thank you.

BAPTIST GENERAL ASSOCIATION OF VIRGINIA

2828 Emerywood Parkway
Richmond, VA 23294
BGAV.org
800.255.2428

September 12, 2018

The Hon. Jeff Sessions
Attorney General of the United States U. S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Duplicative Material



Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 13, 2018 4:07 PM
To: Lichter, Jennifer (OLP)
Subject: Commenting AG to protect religious liberty through Creation of the religious liberty task force
Attachments: Commending AG to protect religious liberty through the creation of the Religious Liberty Task Force.pdf; The Honorable Doug Lamborn rtf.rtf

DOUG LAMBORN
5TH DISTRICT, COLORADO

COMMITTEE ON ARMED SERVICES

COMMITTEE ON NATURAL RESOURCES
CHAIRMAN,
ENERGY AND MINERAL RESOURCES

COMMITTEE ON VETERANS' AFFAIRS



Congress of the United States
House of Representatives
Washington, DC 20515-0605

2402 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
202-225-4422
FAX 202-226-2638

DISTRICT OFFICE:

1125 KELLY JOHNSON BOULEVARD, SUITE 330
COLORADO SPRINGS, CO 80920
719-520-0055
FAX 719 520-0840

WEBSITE:
lamborn.house.gov

August 30, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dear Attorney General Sessions,

I commend the actions you have undertaken as Attorney General to protect religious liberty through the creation of the Religious Liberty Task Force.

Freedom of religion and the ability to express one's religious beliefs have been a core American principle since our nation's founding. All Americans have the First Amendment right to speak and peacefully live consistently with their religious convictions. However, these liberties are under assault. As you have previously stated, "A dangerous movement, undetected by many, is now challenging and eroding our great tradition of religious freedom. There can be no doubt. This is no little matter. It must be confronted and defeated." And nowhere is the assault on religious freedom more pervasive than at the Colorado Civil Rights Commission through their selective application of the law, using it to target viewpoints that contradict their own personal beliefs.

For over six years now, the Colorado Civil Rights Commission has been on a crusade against Jack Phillips because its officials despise what he believes and how he practices his faith. After Phillips defended himself all the way to the U.S. Supreme Court and won, he thought Colorado's hostility towards his faith was over. Unfortunately, he was wrong. The Colorado Civil Rights Division has filed a Probable Cause determination in a new attack on Mr. Phillips and his business.

It is abundantly clear that the Colorado Civil Rights Commission is incapable of being fair and impartial to the people who are before them. It is imperative that the Department of Justice investigate the actions of Ms. Aubrey Elenis as the Director of the Colorado Civil Rights Division and to actively monitor the Colorado Civil Rights Commission for continued religious bias in violation of the U.S. Constitution. The Department of Justice cannot continue to allow a biased arbiter, who holds a near monopoly on anti-discrimination cases within the state, to continue to wage a personal campaign against individuals they disagree with.

The Department of Justice should have a substantial interest in ensuring that Colorado's public accommodation statutes, which share certain features with federal public accommodation laws, including Title II of the Civil Rights Act of 1964, 42 U.S.C. 2000a *et seq.*, and Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. 12181 *et seq.* are not applied to violate fundamental first amendment freedoms, including freedom of religion. Indeed, you have said the Department of Justice must also protect people of faith from unjust discrimination.

For nearly 25 years, Jack Phillips has owned and operated Masterpiece Cakeshop, Inc. (Masterpiece), a Colorado bakery that creates and sells custom cakes and other baked goods. Mr. Phillips is a Christian who seeks to incorporate his religious principles into all facets of his business. For example, he closes Masterpiece on Sundays, refuses to sell goods containing alcohol, and chooses not to create or sell goods relating to Halloween. Mr. Phillips also believes that he must honor God through the creative aspects of his business, including the design and creation of custom cakes. Mr. Phillips views the creation of custom cakes as a form of art, to which he devotes his creativity and artistic talents.

Both Mr. Phillips and Masterpiece serve everyone. All people – no matter who they are, what they believe, or what protected class they belong to – are welcome in Mr. Phillips' shop and may purchase anything available for sale. But as a devout Christian, Mr. Phillips cannot create custom cakes that express messages or that celebrate events in conflict with his deeply held religious beliefs.

Mr. Phillips was first targeted by the Colorado Civil Rights Commission when he declined to create a custom wedding cake celebrating a view of marriage that conflicts with his faith's teachings. The Colorado Civil Right Commission punished Mr. Phillips, while allowing other cake artists to refuse to create cakes with messages they deem objectionable, simply because their ideology aligned with the Commission's. State officials went so far as to publicly compare Mr. Phillips's religious exercise to the defense of slavery and the Holocaust.

To punish Mr. Phillips, the Colorado Civil Rights Commission mandated that he implement comprehensive staff reeducation to teach him and his employees that it is wrong for him to operate his business according to his faith. The state also ordered him to either violate his religious beliefs or shut down his custom cake business. Because Mr. Phillips could not turn his back on his faith, he was forced to give up that part of his work, which cost him and his family 40% of their income and caused more than half of his employees to lose their jobs.

After six grueling years, Mr. Phillips was vindicated by the Supreme Court in a 7-to-2 decision, bolstered by an amicus brief from the Department of Justice. The ruling declared that the Colorado Civil Rights Commission acted with "clear and impermissible hostility toward [his] sincere religious beliefs," *Masterpiece Cakeshop, Ltd. V Colo. Civil Rights Comm'n*, 138 S. Ct. 1719, 1729 (2018). The Supreme Court held that the Commission manifested its anti-religious hostility by disparaging Mr. Phillips' religion, "describing it as despicable," and enforcing a double standard that harshly punished Mr. Phillips while exonerating other cake artists who similarly decline requests for cakes with messages they deem offensive.

And what has the Colorado Civil Rights Commission done to remedy what the U.S. Supreme Court called its “impermissible religious hostility”? Absolutely nothing. Instead, less than one month after the *Masterpiece* decision, state officials targeted the very same individual in retaliation for fighting against the Commission’s abject hostility towards his religious beliefs.

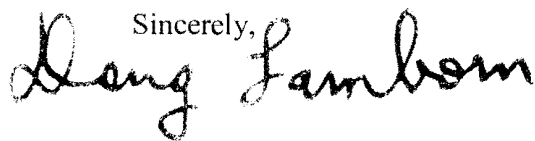
In June of 2017, the very day that the Supreme Court decided to hear *Masterpiece*, a local attorney asked Jack to design a custom pink-and-blue cake to celebrate their gender transition, a request that Jack politely declined because the cake’s artistic messages clearly conflicted with his deeply held Christian beliefs. In moving forward with this new case, the Colorado Civil Rights Commission is yet again confirming that it applies the law in an arbitrary and unequal way, which the Supreme Court has already said it cannot do.

No one should be bullied or banished from the marketplace simply because their beliefs don’t line up with the government-favored viewpoint.

We are stronger as a nation because of the societal contribution of religious Americans like Jack Phillips. Mr. Phillips and other creative professionals should not be targeted by the government for living consistently with their deeply held beliefs just because an agency director or the government doesn’t like those beliefs.

Religious freedom is critical to maintaining a free society, and it must be defended. The U.S. Constitution stands as a bulwark against state officials, like Ms. Elenis and the Civil Rights Commissioners, who target individuals and seek to ruin their livelihoods because of the government’s anti-religious animus. I am asking the Department of Justice to protect the rights of religious Coloradans by ensuring that the Colorado Civil Rights Commission cannot continue its harassment of people of faith in my home state and its attempts to violate their first amendment freedoms.

Thank you for your attention and careful consideration of this request.

Sincerely,


Doug Lamborn
Member of Congress

CC: Jesse Panuccio
Acting Associate Attorney General

Beth Williams
Assistant Attorney General for the Office of Legal Policy

Aubrey Elenis
Director of the Colorado Civil Rights Division

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 21, 2018 3:47 PM
To: Davis, Valorie A (OLP)
Subject: Task Accepted: Religious Liberty Task Force

Subject: Religious Liberty Task Force
Start Date: Monday, September 24, 2018
Due Date: Friday, October 5, 2018

Status: Not Started
Percent Complete: 0%

Total Work: 0 hours
Actual Work: 0 hours

Owner: Lichter, Jennifer (OLP)
Requested By: Davis, Valorie A (OLP)

Good afternoon Jennie

Attached is an incoming correspondence re: Religious Liberty Task Force".

(b) (5)

Thank you

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Friday, September 21, 2018 3:35 PM
To: Davis, Valorie A (OLP)
Cc: Davis, Valorie A (OLP)
Bcc: Davis, Valorie A (OLP)
Subject: Religious Liberty Task Force
Attachments: The Honorable Jamie Raskin.rtf; Reglious Task Force.pdf

Good afternoon Jennie

Attached is an incoming correspondence re: Religious Liberty Task Force". (b) (5)
Thank you

Congress of the United States
Washington, DC 20515

September 19, 2018

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Sessions:

We, the Members of the Congressional Freethought Caucus (CFC), are writing to express our serious concerns about the Religious Liberty Task Force (RLTF), which you announced on July 30, 2018. The CFC is dedicated to promoting public policy on the basis of reason, science, and moral values, protecting the Constitutional principle of separation of church and state, opposing discrimination on the basis of religious belief or non-belief, and championing the value of freedom of thought and conscience around the globe.

We are concerned that the RLTF could undermine religious liberty by promoting policies that come at the expense of non-religious Americans and other vulnerable communities by imposing a specific set of religious viewpoints through the law. Moreover, we are concerned about efforts to allow individuals and organizations to ignore neutral and universally applicable laws that conflict with their religious beliefs, creating chaos and unconstitutional burdens on third parties.

The historical understanding of religious liberty is built on the idea that government entanglement with religion can be a great threat to individual rights, often leading to religious oppression and tyranny.¹ The principle of separation between religion and government is grounded in the understanding that freedom of belief is an essential component of religious liberty and has deep roots in the political philosophy of human rights and democracy.

Our Founders sought to create a government for people of diverse origins and faiths. They knew that the separation of religion and government was essential to the newborn nation's survival. Thomas Jefferson explained that "the clergy, by getting themselves established by law & ingrafted into the machine of government, have been a very formidable engine against the civil & religious rights of man."² James Madison concluded that the establishment of state religions historically led to "ignorance and servility in the laity; in both, superstition, bigotry, and persecution."³

¹ "What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the Civil authority; in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an established Clergy convenient auxiliaries. A just Government instituted to secure & perpetuate it needs them not." James Madison, Memorial and Remonstrance Against Religious Assessments § 8 (1785).

² Letter from Thomas Jefferson to Jeremiah Moore (August 14, 1800), NATIONAL ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-32-02-0066>.

³ James Madison, Memorial and Remonstrance Against Religious Assessments § 7 (1785).

Religious Freedom means the right to freely choose a religion, or to freely choose none at all, without interference by the government. It simultaneously prevents religious authorities from interfering with our system of government and law. If religious practices were used to excuse oneself from the law, it would “make the professed doctrines of religious belief the law of the land, and in effect to permit every citizen to become a law unto himself.”⁴ Justice Scalia echoed this sentiment, writing that religious liberty protections do not extend to “otherwise prohibitable conduct [that] is accompanied by religious convictions.”⁵

Accordingly, we request answers to the following questions:

1. Is there precedent for the establishment of a government-sanctioned task force on religious liberty?
2. Will the Religious Liberty Task Force’s decisions be legally binding?
 - a. How will the Task Force’s decisions and recommendations be enforced?
3. How and by whom are members of the Religious Liberty Task Force being chosen?
4. Will specific religious viewpoints be represented on the Religious Liberty Task Force?
 - a. Will representatives of the community of atheists, agnostics, humanists and other non-theists be invited to be members of the Religious Liberty Task Force?
 - b. Will specific religious viewpoints be granted a predetermined number or quota of seats on the Task Forces?
5. Who wields final authority on which members of the Religious Liberty Task Force will be chosen?
6. What Department of Justice resources will be used to support the Religious Liberty Task Force?
 - a. Will there be any career civil servants on the Religious Liberty Task Force or serving as staff?
 - b. Will members of the Religious Liberty Task Force receive a stipend or be reimbursed for costs?
7. Will meetings of the Religious Liberty Task Force be open to the public?
8. Will meetings of the Religious Liberty Task Force be open to the media? If so, who selects press credentials?
9. When will an agenda for the Religious Liberty Task Force be made publicly available before a meeting?
10. How will decisions be made on the Religious Liberty Task Force?

⁴ *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878).

⁵ *Employment Div. v. Smith*, 494 U.S. 872, 882 (1990).

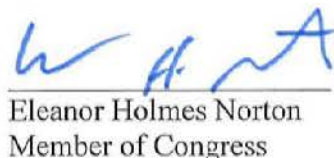
11. Will the Religious Liberty Task Force have authority to direct the actions of other Departments or Agencies?
- a. Will the Religious Liberty Task force have the authority to hold other Departments and Agencies accountable for not following a directive of the Religious Liberty Task Force?
12. In your remarks announcing the Religious Liberty Task Force, the Department of Justice plans to continue to "remain in contact with religious groups across America to ensure that their rights are being protected."
- a. What religious groups has the Department contacted and what additional groups does the Department intend to contact?
- b. Will this contact include non-theistic and non-religious groups, whose right to freedom from religion is equally protected by the Constitution's Establishment Clause?

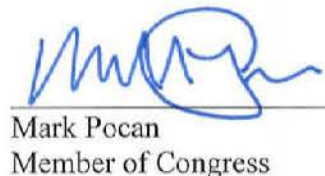
We ask that you respond to each of the above questions by October 5, 2018. Thank you for your prompt attention to this matter.

Sincerely,

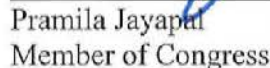

Jamie Raskin
Member of Congress



Jared Huffman
Member of Congress


Eleanor Holmes Norton
Member of Congress


Mark Pocan
Member of Congress


Jerry McNerney
Member of Congress


Pramila Jayapal
Member of Congress


Henry C. "Hank" Johnson, Jr.
Member of Congress


Steve Cohen
Member of Congress M.C.

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 21, 2018 2:52 PM
To: Davis, Valorie A (OLP)
Subject: OLA correspondence
Attachments: The Honorable Michael McLaulan.rtf; Thank you letter regarding Religious Liberty Task Force.pdf; Response Letter_McLachlan.docx

Hi Val, I'm attaching a response to correspondence from Connecticut state legislator Michael McLachlan, which was assigned to us by OLA. Beth has approved this response. (b) (5)

[REDACTED]

Thanks!
Jennie

From: Davis, Valorie A (OLP)
Sent: Wednesday, August 29, 2018 10:17 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject:

Valorie Davis
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 21, 2018 12:32 PM
To: Day, Sean (OLP)
Subject: going to sit out lunch after all
Importance: High

Hey, on second thought, I am going to sit out lunch. I have got to push through a couple more of these response letters re the religious liberty task force today and so I think I do need to just grab something quick and come back here. Sorry!!! Thanks for handling this one.

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

Subject: Regulation re scope of Title VII religious hiring exemption
Location: OLP Conference Room 4525

Start: Tuesday, September 25, 2018 9:30 AM
End: Tuesday, September 25, 2018 10:00 AM

Recurrence: (none)

Meeting Status: Meeting organizer

Organizer: Lichter, Jennifer (OLP)
Required Attendees: Williams, Beth A (OLP); Tucker, Rachael (OAG); Gore, John (CRT); Treene, Eric (CRT); Forrester, Nate (OLC); Shumate, Brett A. (CIV); Morrissey, Brian (OAG); Jones, Kevin R (OLP); Panuccio, Jesse (OASG); Hall, Jeffrey (OASG); Thomas, Mary (CRT); Crytzer, Katherine (OLP)

Attachments: Memo_Title VII rulemaking.docx

All –

(b) (5)



I look forward to discussing with you next week.

Jennie

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 5:13 PM
To: Hildabrand, Dorothy W. (OLA)
Subject: RE: sample response letter
Attachments: Response Letter_McLachlan.docx

In case I'm supposed to send the letter to you directly – here it is. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Thanks again.
Jennie

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 5:04 PM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: sample response letter

Thanks again for all of your input. I have one of these responses finished and approved by Beth. Should I send it to you directly, or does it have to go through the correspondence system?

From: Hildabrand, Dorothy W. (OLA)
Sent: Thursday, September 20, 2018 10:52 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: sample response letter

Those are usually signed by Jessica Hart, the Public Liaison. Her signature is:

Jessica E. Hart
Intergovernmental Affairs and Public Liaison

I've attached a letter she signed as an example.

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 10:48 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: sample response letter

Thanks! What about non-congressional? (I'm doing one from a state lawmaker, for example.)

From: Hildabrand, Dorothy W. (OLA)
Sent: Thursday, September 20, 2018 10:38 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: sample response letter

Yes, (b) (5)

[REDACTED] Congressmen passing along complaints from their constituents who think their civil rights have been violated.

Thanks!

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 10:34 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: sample response letter

Thanks! This is so helpful. (b) (5)

From: Hildabrand, Dorothy W. (OLA)
Sent: Thursday, September 20, 2018 10:26 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: sample response letter

Thanks for checking.

The first line reads: (b) (5)

The last paragraph usually reads:

(b) (5)

Thanks,
Dorothy

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 10:23 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: sample response letter

Got it, thanks. Any other template response items I should use?

From: Hildabrand, Dorothy W. (OLA)
Sent: Thursday, September 20, 2018 10:13 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: sample response letter

(b) (5)

Thanks!
Dorothy

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 10:00 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: sample response letter

Hi Dorothy, (b) (5)

Thanks!
Jennie

From: Hildabrand, Dorothy W. (OLA)
Sent: Tuesday, September 18, 2018 10:05 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: sample response letter

Hi Jennie,

Sorry for the delay on this. The letter I mentioned is attached, along with the incoming letters (b) (5)

Thanks,
Dorothy

From: Lichter, Jennifer (OLP)
Sent: Tuesday, September 18, 2018 9:49 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: sample response letter

Hi Dorothy, could you please send me the sample response letter you mentioned when we spoke yesterday?

Thanks!
Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 20, 2018 12:23 PM
To: Williams, Beth A (OLP)
Cc: Crytzer, Katherine (OLP)
Subject: RL Task Force correspondence
Attachments: The Honorable Michael McLaulan.rtf; Thank you letter regarding Religious Liberty Task Force.pdf; Response Letter_McLachlan.docx

Hi Beth, I'm attaching a letter from a CT state senator that was assigned to OLP by OLA, as well as my draft response. (b) (5)

Please let me know if you have any edits.

Thanks!
Jennie

From: Davis, Valorie A (OLP)
Sent: Wednesday, August 29, 2018 10:17 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject:

Valorie Davis
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 10:45 PM
To: Treene, Eric (CRT); Hall, Jeffrey (OASG); Thomas, Mary (CRT)
Subject: RE: DECIPHERING TITLE VII & EXECUTIVE ORDER 13672: TO WHAT EXTENT ARE RELIGIOUS ORGANIZATIONS FREE TO DISCRIMINATE IN THEIR HIRING PRACTICES?
Attachments: Memo_Title VII rulemaking.docx

Thank you very much for these materials. (b) (5)

(b) (5)

Does this all sound ok to everyone? I'd welcome additional edits to the memo if you have any.

(b) (5)

Thanks again.
Jennie

-----Original Message-----

From: Treene, Eric (CRT)
Sent: Wednesday, September 19, 2018 5:42 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>
Subject: FW: DECIPHERING TITLE VII & EXECUTIVE ORDER 13672: TO WHAT EXTENT ARE RELIGIOUS ORGANIZATIONS FREE TO DISCRIMINATE IN THEIR HIRING PRACTICES?

(b) (5)



-----Original Message-----

From: Westlaw@westlaw.com <Westlaw@westlaw.com>

Sent: Wednesday, September 19, 2018 4:38 PM

To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>

Subject: DECIPHERING TITLE VII & EXECUTIVE ORDER 13672: TO WHAT EXTENT ARE RELIGIOUS ORGANIZATIONS FREE TO DISCRIMINATE IN THEIR HIRING PRACTICES?

Eric Treene sent you content from Westlaw.

Please see the attached file.

Item: DECIPHERING TITLE VII & EXECUTIVE ORDER 13672: TO WHAT EXTENT ARE RELIGIOUS ORGANIZATIONS FREE TO DISCRIMINATE IN THEIR HIRING PRACTICES?

Citation: 29 Regent U. L. Rev. 339

Sent On: Wednesday, September 19, 2018 Sent By: Eric Treene Client ID: DOJ

Note:

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Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 10:29 PM
To: Tucker, Rachael (OAG)
Subject: Title VII rulemaking
Attachments: Memo_Title VII rulemaking.docx

Here's the backgrounder (b) (5) but should do the trick to get ppl up to speed. I also checked calendars for the people we discussed and it looks like there are a couple of windows that will work on Tues to discuss this. I'll schedule it as soon as I get the ok from Beth.

(b) (5)

J.

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (5)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 10:27 PM
To: Williams, Beth A (OLP)
Cc: Crytzer, Katherine (OLP)
Subject: Faith-Based Organizations - rulemaking
Attachments: Memo_Title VII rulemaking.docx

Hi Beth, I am trying to make some headway on policy matters this week, and to that end am attaching a memo laying out an issue raised in an (b) (5)

(b) (5)

(b) (5)

I flagged this issue for Rachael today (b) (5)

I'm happy to talk about this tomorrow if you have any time free. And should we aim to try to meet with a small group to discuss on Tuesday of next week? I looked at calendars and it appears there are a couple of windows that could work.

I also asked both Jeff Hall and Rachael today if we can revisit the conversation about task force membership soon. Jeff is going to check on Jesse's schedule in the next week or so and let me know when would work.

Thank you!
Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 8:58 PM
To: Hildabrand, Dorothy W. (OLA)
Subject: RE: Task Force Letter

Thanks for the heads-up! Appreciate it. Have a good night.

Jennie

From: Hildabrand, Dorothy W. (OLA)
Sent: Wednesday, September 19, 2018 3:43 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: Task Force Letter

Hi Jennie,

We just received another letter regarding the Religious Liberty Task Force. It's going to be assigned to OLP. I'm sure it will come through the correspondence system, but I wanted to go ahead and pass it along to you since you were working on the Nadler response.

Thanks,
Dorothy

Dorothy Hildabrand
Attorney
Office of Legislative Affairs
U.S. Department of Justice
Phone: 202-305-7851
Email: Dorothy.W.Hildabrand@usdoj.gov

Hall, Jeffrey (OASG)

From: Hall, Jeffrey (OASG)
Sent: Wednesday, September 19, 2018 4:47 PM
To: Lichter, Jennifer (OLP)
Subject: RE: HHS proposal
Attachments: changes memo for Beth Williams (EWT comments) JH.docx

(b) (5)

[REDACTED]

From: Treene, Eric (CRT)
Sent: Wednesday, September 19, 2018 4:15 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>
Subject: RE: HHS proposal

Attached are some edits and comments to you memo to Beth.

Note particularly the last comment bubble. (b) (5)

[REDACTED]

Eric

From: Hall, Jeffrey (OASG)
Sent: Wednesday, September 19, 2018 3:59 PM
To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>
Subject: RE: HHS proposal

(b) (5)

[REDACTED]

...

From: Treene, Eric (CRT)
Sent: Wednesday, September 19, 2018 3:57 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: HHS proposal

No. I am working on something else relating to the memo—once I send you my comments (b) (5)

[REDACTED] What is your drop-dead deadline? Anyway to push to tomorrow?

Eric

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 3:25 PM

To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: HHS proposal

Eric, (b) (5)

Jennie

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 19, 2018 12:15 PM
To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: HHS proposal

Thank you very much. Attaching the meat of a memo teeing up this issue. (b) (5)

(b) (5) Please feel free to propose any edits you think necessary (b) (5)
(In particular, if there is any material you think could be cut, please go for it.)

Jennie

From: Treene, Eric (CRT)
Sent: Wednesday, September 19, 2018 8:26 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Cc: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>
Subject: FW: HHS proposal

(b) (5)

I have a few comments:

(b) (5)

(b) (5)



Eric

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 6, 2018 3:21 PM
To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>; Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: RE: HHS proposal

Thanks Eric! When you get back let's plan to talk about (b) (5)

Have a great trip.

Jennie

From: Treene, Eric (CRT)
Sent: Thursday, September 6, 2018 3:14 PM
To: Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: HHS proposal

All,

I am leaving on a work trip tomorrow for South Africa for a week, so I wanted to get you my comments on the HHS draft. Justin Butterfield called me to get my take on some things. I have noted what I told him below.

(b) (5)



Eric

Hall, Jeffrey (OASG)



From: Hall, Jeffrey (OASG)
Sent: Wednesday, September 19, 2018 1:58 PM
To: Lichter, Jennifer (OLP)
Subject: RE: Title VII memo
Attachments: Title VII reg JH.docx

(b) (5)



From: Lichter, Jennifer (OLP)
Sent: Tuesday, September 18, 2018 10:48 PM
To: Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: Title VII memo

Hey, I haven't finished this memo but am trying to get to sleep at a reasonable time this week while I have the chance, so am going to call it a night even though mid-drafting. If you have the time tomorrow, (b) (5)

J.

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Treene, Eric (CRT)

From: Treene, Eric (CRT)
Sent: Tuesday, September 18, 2018 11:38 AM
To: Lichter, Jennifer (OLP)
Cc: Thomas, Mary (CRT); Hall, Jeffrey (OASG)
Subject: RE: Language for leadership
Attachments: Draft Implementation of EO 13831 8-28-2018.docx

Here you go

-----Original Message-----

From: Lichter, Jennifer (OLP)
Sent: Tuesday, September 18, 2018 8:27 AM
To: Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov>
Cc: Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>
Subject: Re: Language for leadership

Welcome back! When you have a chance today do you mind sending me the final version of the memo (preamble) you did for the last meeting? (b) (5)

Sent from my iPhone

> On Sep 18, 2018, at 7:25 AM, Treene, Eric (CRT) <Eric.Treene@crt.usdoj.gov> wrote:

>

> Thanks. I am back in the US—just landed. Will work from home (b) (5)

>

>> On Sep 17, 2018, at 9:45 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

>>

>> Thank you Eric! I'm working on turning this into a memo, but it was slow going today (b) (5)

(b) (5) I reached out to Katy Talento and Jenn Dickey and told them that (b) (5)

Katy sounds amenable to pushing back the meeting although has not given me a final answer yet.

>>

>> Jennie

>>

>>

>> -----Original Message-----

>> From: Treene, Eric (CRT)

>> Sent: Monday, September 17, 2018 8:32 AM

>> To: Thomas, Mary (CRT) <Mary.Thomas@crt.usdoj.gov>; Hall, Jeffrey (OASG) <jehall@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>

>> Subject: Language for leadership

>>

>> Here is a rough version—I did a little research on westlaw on my phone but that is very clunky and

minimally productive.

(b) (5)



Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Monday, September 17, 2018 10:25 AM
To: Lichter, Jennifer (OLP)
Subject: RE: Religious Task Force
Attachments: (b) (5)

Good morning

Can you tell me the person whom I shall reassign this correspondence to in OLA? Thank you

Valerie Davis

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 13, 2018 5:02 PM
To: Davis, Valorie A (OLP) <vadavis@jmd.usdoj.gov>
Subject: RE: Religious Task Force

Thanks for the reminder. (b) (5)

Jennie

From: Davis, Valorie A (OLP)
Sent: Thursday, September 13, 2018 5:00 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: Religious Task Force

Good afternoon Jennie

The attached correspondence is past due August 23, 2018

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, August 13, 2018 10:15 AM
To: Lichter, Jennifer (OLP)
Subject: Religious Task Force
Attachments: Religious Liberty Task Force.pdf; The Honorable Jerrold Nadler wf 4093419.rtf

Good morning,

Please prepare a draft response thank you due Thursday, August 23. Thank you

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Thursday, September 13, 2018 4:21 PM
To: Davis, Valorie A (OLP)
Subject: Task Accepted: Commenting AG to protect religious liberty through Creation of the religious liberty task force

Subject: Commenting AG to protect religious liberty through Creation of the religious liberty task force

Start Date: Monday, September 17, 2018

Due Date: Tuesday, September 25, 2018

Status: Not Started

Percent Complete: 0%

Total Work: 0 hours

Actual Work: 0 hours

Owner: Lichter, Jennifer (OLP)

Requested By: Davis, Valorie A (OLP)

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 12, 2018 10:59 AM
To: Hildabrand, Dorothy W. (OLA)
Subject: FW: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and (b) (6)
[REDACTED]
Attachments: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and (b) (6)
[REDACTED].msg

Hi Dorothy – Beth would like to set up a meeting with Rep Gohmert and with his friend Rabbi Vize (who has contacted her directly by email), per their requests. Do we need to send a formal letter response to Rep Gohmert in order to facilitate that meeting or could you work with his office more directly?

Is it ok with you if we coordinate with Rabbi Vize ourselves or would OLA like to be involved with that since his name came through OLA correspondence?

Thank you!
Jennie

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Friday, September 7, 2018 8:35 AM
To: Lichter, Jennifer (OLP)
Subject: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) an (b) (6)
[REDACTED]
Attachments: The Honorable Louie Germert.rtf; CBE3BB38.pdf

Good morning Jennie,

Attached is an incoming correspondence from ES from The Honorable Louie Garment requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) an (b)(6)
[REDACTED] Please send a response by due date **September 20, 2018.** **Thank you**

Valorie Davis

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, September 12, 2018 10:56 AM
To: Hall, Jeffrey (OASG); Thomas, Mary (CRT)
Subject: FW: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and (b) (6)
[REDACTED]
Attachments: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and (b) (6)
[REDACTED].msg

Has Jesse gotten an identical letter / have you guys seen this? Beth would like to set up a meeting with Rep Gohmert and his friend, the Rabbi. (Rabbi has emailed Beth directly too.) Would your bosses want to join, since this is about RLUIPA enforcement?

From: Davis, Valorie A (OLP)
Sent: Friday, September 7, 2018 11:37 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: Requesting a meeting with Rabbi Moshe Arya Vise who is an ally in the religious liberty realm to discuss the enforcement of the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) [REDACTED]
(b) (6)

(b) (6)

From: (b) (6)
Sent: Tuesday, September 11, 2018 6:17 PM
To: Lichter, Jennifer (OLP)
Subject: Article
Attachments: Article.pdf

Jennie

I hope you are doing well. I thought you might be interested in the attached article that appeared in Catholic New York regarding the Religious Liberties Conference you organized.

Regards!.



Hon. Mary Kay Vyskocil

United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Telephone: (b) (6)

Email: (b) (6)

Archbishop Kurtz, Attorney General Address Religious Liberty at Department of Justice Conference

By STEVE LARKIN

Archbishop Joseph E. Kurtz of Louisville, Ky., gave three reasons why religious freedom is important to the Catholic Church in a speech July 30 at a conference on the issue at the Justice Department in Washington, D.C.

"We are called by Jesus Christ to inspire a culture, religious freedom gives us a space to serve, and we can solve social problems better when all of us work together to find a solution," said the archbishop, who is chairman of the U.S. Conference of Catholic Bishops' Committee on Religious Liberty.

He began by describing the teachings that lead the Church to support religious freedom: "The Catholic Church teaches that religious liberty is rooted in the dignity of the human person. The human person has dignity because we are made in the image of God, and so each of us has the capacity to seek the truth about God."

This vision of the human person, he said, is essential to healthy politics.

"We want our political culture to respect that freedom as much as possible, because when we lose respect for the search for truth, our politics degenerates into power-seeking for the purpose of imposing one's will on others," Archbishop Kurtz said. The end result is "losing respect for basic human dignity."

In contrast, protecting religious freedom is part of the Church's "vision of human flourishing," he said.

Leading into his second point, he said that the vision of human flourishing the Church proposes includes the ability for the Catholic Church to have "the space to serve with integrity."

The archbishop expressed concerns about threats to the Church's ability to fulfill its mission.

He said that the Obama administration's contraceptive mandate imposed on all employers, including religious employers with a moral objection to it, was one example of an attempt to force Christians to violate their consciences.

The U.S. Department of Health and Human Services, or HHS, implemented the mandate as part of the Affordable Care Act.

Although the Trump administration removed the mandate, Archbishop Kurtz expressed concern about the state of Catholic child welfare organizations.

"One of our biggest concerns is the ability of our child welfare organizations to place the foster children with families consistent with our teaching."

He explained that the opioid crisis, among other things, was leading to a noticeable increase in the number of children requiring help from child welfare organizations.

"Yet, as a real crisis emerges, faith-based child welfare providers are being targeted for closure because of the convictions about the family. Service providers who have a track record of excellence have been shut down."

He mentioned that the city of Philadelphia was trying to force Catholic foster care providers to comply with its nondiscrimination policies and require them to place children with same-sex couples, and that the ACLU sued the state of Michigan because Michigan has a law permitting foster care agencies with religious beliefs to reject qualified same-sex couples as placements.

"Faith-based organizations have a crucial role to play in adoption and foster care," he said.

"There are some who claim that faith-based organizations must give up our convictions when we partner with the government to provide much-needed social services," but Archbishop Kurtz said forcing them to give up their convictions is not necessary.

"Faith-based organizations are some of the most trusted groups within our society and excluding them makes no sense in a holistic society like ours," he said.

"We're very grateful for all the service done by people of faith every day both in our country and around the world. Religious freedom is vital to the common good."

At the same conference, Attorney General Jeff



ADVOCATES—Archbishop Joseph E. Kurtz of Louisville, Ky., chair of the U.S. bishops' Committee for Religious Liberty, speaks during a religious freedom event July 30 at the U.S. Department of Justice in Washington, D.C. Among others also pictured are, closest to the podium, U.S. Attorney General Jeff Sessions and Deputy Attorney General Rod Rosenstein.

Sessions spoke about threats to religious freedom and what can be done to halt them.

"Let's be frank. A dangerous movement is now challenging and eroding our great devotion to religious freedom. It must be confronted, both intellectually and politically, and defeated," he said.

Religious freedom, he said, is more than just the freedom to worship. "The Constitution's protections don't end at the parish parking lot."

Sessions explained several kinds of actions the Department of Justice is taking as it "actively seeks to protect people of faith."

"Since January 17, we've obtained 11 indictments and seven convictions in cases about arson or other attacks or threats on houses of worship," and he also said the DOJ was working to prosecute in cases involving threats made against people because of their religion.

Sessions also said that the DOJ was filing civil actions in courts when religious groups are discriminated against in zoning laws.

"We'll keep going to court, and I believe we're going to keep winning," he said.

tions in courts when religious groups are
nated against in zoning laws.

"We'll keep going to court, and I believe we're going to keep winning," he said.

Sessions said he aimed to stay in touch with religious groups to make sure their concerns were being heard.

He also announced on July 30 the formation of a Religious Liberty Task Force, which he said would help the DOJ implement fully the guidance it issued last October to all administrative agencies and executive departments regarding religious liberty protections in federal law.

Sessions also said why fighting for religious liberty is important on a human level.

"There can be no doubt that we are stronger as a nation because of the contributions of religious people. People in Washington have no idea how much our religious communities are with people in the situations—birth, death, marriage, divorce—that most greatly affect human beings." —CNS

Boone, Annika M. (OLP)

From: Boone, Annika M. (OLP)
Sent: Friday, August 31, 2018 4:14 PM
To: Lichter, Jennifer (OLP)
Subject: RE: RL Task Force correspondence
Attachments: Religious Liberty letter McLachlan.docx

Hi Jenny,

(b) (5)



Best,
Annika

From: Lichter, Jennifer (OLP)
Sent: Thursday, August 30, 2018 1:47 PM
To: Boone, Annika M. (OLP) <amboone@jmd.usdoj.gov>
Subject: Re: RL Task Force correspondence

Yes - no problem. (b) (5) Thanks for checking.

Sent from my iPhone

On Aug 30, 2018, at 1:30 PM, Boone, Annika M. (OLP) <amboone@jmd.usdoj.gov> wrote:

Hi Jennie,

Candace just called and asked (b) (5)



Can I get this to you tomorrow?

Thanks,
Annika

From: Lichter, Jennifer (OLP)
Sent: Wednesday, August 29, 2018 1:02 PM
To: Boone, Annika M. (OLP) <amboone@jmd.usdoj.gov>
Subject: RL Task Force correspondence

Annika, I'm attaching some materials for you re the project we discussed yesterday. If you are back from the brown-bag soon could you please give me a call at 4-4606 or stop by my office? I have a meeting at 1.30 so if we don't talk before then let's try to connect in the late afternoon, when I'm back.

Thanks!
Jennie

From: Davis, Valorie A (OLP)
Sent: Wednesday, August 29, 2018 10:17 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject:

Valorie Davis

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Harinder Takyar, M.D., be, and it hereby is, revoked. I further order that any pending application of Harinder Takyar, M.D., to renew or modify this registration, as well as any other pending application by him for registration in the State of Arizona, be, and it hereby is, denied. This order is effective November 27, 2017.

Dated: October 18, 2017.

Robert W. Patterson,
Acting Administrator.

[FR Doc. 2017-23338 Filed 10-25-17; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

[OLP Docket No. 165]

Federal Law Protections for Religious Liberty

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice provides the text of the Attorney General's Memorandum of October 6, 2017, for all executive departments and agencies entitled "Federal Law Protections for Religious Liberty" and the appendix to this Memorandum.

DATES: This notice is applicable on October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Dickey, Counsel, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, D.C. 20530, phone (202) 514 4601.

SUPPLEMENTARY INFORMATION: The President instructed the Attorney General to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with the authority to provide advice and opinions on questions of existing law to the Executive Branch, the Attorney General issued the following memorandum to the heads of all executive departments and agencies on October 6, 2017.

Dated: October 20, 2017.

Beth Ann Williams,
Assistant Attorney General, Office of Legal Policy.

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: *Federal Law Protections for Religious Liberty*

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as

appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."¹ Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law.

Religious liberty is enshrined in the text of our Constitution and in numerous federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

¹James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), in 5 The Founders' Constitution 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

2. The free exercise of religion includes the right to *act* or *abstain from action* in accordance with one's religious beliefs.

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. The freedom of religion extends to persons *and* organizations.

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with federal, state, or local governments.

5. Government may not restrict acts or abstentions because of the beliefs they display.

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. Government may not target religious individuals or entities for special disabilities based on their religion.

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child playground surfaces, it may not deny participation in that program to religious schools. Nor may government deny religious schools including schools whose curricula and activities include religious elements the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.

Although government generally may subject religious persons and organizations to neutral, generally applicable laws e.g., across the board criminal prohibitions or certain time, place, and manner restrictions on speech government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment which prohibits 501(c)(3) non profit organizations from intervening in a political campaign on behalf of a candidate against a religious non profit organization under circumstances in which it would not enforce the amendment against a secular non profit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. Government may not officially favor or disfavor particular religious groups.

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially preferring one religious group to another. This principle of denominational neutrality means, for example, that government

cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. Government may not interfere with the autonomy of a religious organization.

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. The Religious Freedom Restoration Act of 1993 prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny.

RFRA prohibits the federal government from substantially burdening a person's exercise of religion, unless the federal government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. RFRA does not permit the federal government to second-guess the reasonableness of a religious belief.

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application

of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.

Because the government cannot second guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even a half inch beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Department of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial

burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The strict scrutiny standard applicable to RFRA is exceptionally demanding.

Once a religious adherent has identified a substantial burden on his or her religious belief, the federal government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties.

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the federal government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as amended, prohibits covered employers from discriminating against individuals on the basis of their religion.

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way

that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's protection extends to discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship on the business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no head coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.

President Clinton issued Guidelines on Religious Exercise and Religious Expression in the Federal Workplace ("Clinton Guidelines") explaining that federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing.

The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII's prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. As a general matter, the federal government may not condition receipt of a federal grant or contract on the effective relinquishment of a religious organization's hiring exemptions or attributes of its religious character.

Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies as Employers

Administrative agencies should review their current policies and practices to ensure that they comply

with all applicable federal laws and policies regarding accommodation for religious observance and practice in the federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including through subject matter experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1.2, 45 Fed. Reg. 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with federal law protections for religious liberty as interpreted in this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as

appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). In appropriate circumstances, an agency might explain that it will consider requests for accommodations on a case by case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any "adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of *similar character*" from a non religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 Fed. Reg. at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization's Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance affairs of religious organizations or to limit those organizations' otherwise protected activities.

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Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530, phone (202) 514 4601.

APPENDIX

Although not an exhaustive treatment of all federal protections for religious liberty, this appendix summarizes the key constitutional and federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the “right to believe and profess whatever religious doctrine [they] desire [.]” *Empl’t Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to regulate religious beliefs, compel religious beliefs, or punish religious beliefs. See *id.*; see also *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492–93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevic*, 426 U.S. 696, 724–25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120–21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. See *Widmar v. Vincent*, 454 U.S. 263, 269 (1981); see also U.S. Const., amend. I, cl. 3. The Constitution’s protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*, 374 U.S. at 402; see also *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”).

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious tradition. *Frazee v. Illinois Dept. of Emp’t Sec.*, 489 U.S. 829, 833–34 (1989). As the Supreme Court has repeatedly counseled, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to

merit First Amendment protection.” *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be “sincerely held.” *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to “exercise” religion, not just the freedom to “believe” in religion. See *Smith*, 494 U.S. at 877; see also *Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403–04; *Wisconsin v. Yoder*, 406 U.S. 205, 219–20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts and religious beliefs may be readily apparent (e.g., attendance at a worship service) or not (e.g., service to one’s community at a soup kitchen or a decision to close one’s business on a particular day of the week). The “exercise of religion” encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. See, e.g., *Hosanna Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525–26, 547; see also *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770, 2772–73 (2014) (even a closely held for profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute. *Smith*, 491 U.S. at 878–79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict “acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display,” *id.* at 877, nor “target the religious for special disabilities based on their religious status,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. , (2017) (slip op. at 6) (internal quotation marks omitted), for it was precisely such “historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 532

(internal quotation marks omitted). The Free Exercise Clause protects against “indirect coercion or penalties on the free exercise of religion” just as surely as it protects against “outright prohibitions” on religious exercise. *Trinity Lutheran*, 582 U.S. at (slip op. at 11) (internal quotation marks omitted). “It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official “object or purpose . . . the suppression of religion or religious conduct,” courts must “survey meticulously” the text and operation of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits “gratuitous restrictions on religious conduct”; or “accomplishes . . . a ‘religious gerrymander,’ an impermissible attempt to target [certain individuals] and their religious practices.” *Id.* at 533–35, 538 (internal quotation marks omitted). A law is not generally applicable if “in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief,” *id.* at 543, including by “fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does” the prohibited conduct, *id.*, or enables, expressly or de facto, “a system of individualized exemptions,” as discussed in *Smith*, 494 U.S. at 884; see also *Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

“Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied.” *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit—including a grant or contract—because of the person’s religious character is neither neutral nor generally applicable. See *Trinity Lutheran*, 582 U.S. at (slip op. at 9–11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad

commercial reasons, is neither neutral, nor generally applicable. See *Church of the Lukumi Babalu Aye*, 508 U.S. at 533–36, 542–45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one's children. See *Smith*, 494 U.S. at 881–82; *Axson Flynn v. Johnson*, 356 F.3d 1277, 1295–97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person's speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. See, e.g., *Wooley v. Maynard*, 430 U.S. 705, 707–08 (1977) (challenge by Jehovah's Witnesses to requirement that state license plates display the motto "Live Free or Die"); *Axson Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God's name in vain during classroom acting exercises). A law taxing or prohibiting door to door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108–09 (1943) (challenge by Jehovah's Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents' right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227–29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the "most rigorous" form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; see also *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) ("Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law."). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and restrictions on the freedom of

speech, *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). See *Church of the Lukumi Babalu Aye*, 508 U.S. at 546–47. Under this level of scrutiny, government must establish that a challenged law "advance[s] interests of the highest order" and is "narrowly tailored in pursuit of those interests." *Id.* at 546 (internal quotation marks omitted). "[O]nly in rare cases" will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. See, e.g., *Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69–70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. See *Trinity Lutheran*, 582 U.S. at (slip op. at 6); cf. *Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper's participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. See, e.g., *Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. See *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1819–20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna Tabor*, 565 U.S. at 188–89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. See *Galloway*, 134 S. Ct. at 1824; *Larson v. Valente*, 456 U.S. 228,

244–46 (1982). Indeed, "a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion." *Rosenberger*, 515 U.S. at 839 (emphasis added). That "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular aid program. See, e.g., *Trinity Lutheran*, 582 U.S. at (slip op. at 6) (scrap tire program); *Zelman v. Simmons Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that "establishe[d] as a condition of office the willingness to eschew certain protected religious practices." *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); see also *id.* at 629 (plurality op.) ("[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti establishment interests or less faithful to their oaths of civil office than their unordained counterparts.").

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. 1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full

members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, prohibits the federal government from “substantially burden[ing] a person’s exercise of religion” unless “it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Id.* § 2000bb 1(a), (b). The Act applies even where the burden arises out of a “rule of general applicability” passed without animus or discriminatory intent. *See id.* § 2000bb 1(a). It applies to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” *see* §§ 2000bb 2(4), 2000cc 5(7), and covers “individuals” as well as “corporations, companies, associations, firms, partnerships, societies, and joint stock companies,” 1 U.S.C. 1, including for profit, closely held corporations like those involved in *Hobby Lobby*, 134 S. Ct. at 2768.

Subject to the exceptions identified below, a law “substantially burden[s] a person’s exercise of religion,” 42 U.S.C. 2000bb 1, if it bans an aspect of the adherent’s religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, *see Sherbert*, 374 U.S. at 405–06. The “threat of criminal sanction” will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere \$5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405–06; *see also Hobbie v. Unemployment Appeals Comm’n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717–18. But a law that infringes, even severely, an aspect of an adherent’s religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government’s internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no

substantial burden. *See, e.g., Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 448–49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699–700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent’s assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S. Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division*—one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the sincerely held religious beliefs of a Jehovah’s Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716–18. In doing so, the Court rejected the lower court’s inquiry into “what [the claimant’s] belief was and what the religious basis of his belief was,” noting that no one had challenged the sincerity of the claimant’s religious beliefs and that “[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.” *Id.* at 714–15 (internal quotation marks omitted). The Court likewise rejected the lower court’s comparison of the claimant’s views to those of other Jehovah’s Witnesses, noting that “[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences.” *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that “the connection between what the objecting parties [were required to] do [provide health insurance coverage for four methods of contraception that may operate after the fertilization of an egg] and the end that they [found] to be morally wrong (destruction of an embryo) [was] simply too attenuated.” 134 S. Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely held religious belief that

provision of the coverage was morally wrong, and it was “not for us to say that their religious beliefs are mistaken or insubstantial.” *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. “[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion.” *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the “fundamental, overriding interest in eradicating racial discrimination in education discrimination that prevailed, with official approval, for the first 165 years of this Nation’s history,” *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the “mandatory and continuous participation” that is “indispensable to the fiscal vitality of the social security system,” *United States v. Lee*, 455 U.S. 252, 258–59 (1982). But “broadly formulated interests justifying the general applicability of government mandates” are insufficient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435–38. For example, the military may have a compelling interest in its uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier’s request for an accommodation from the uniform and grooming policy. *See, e.g., Secretary of the Army, Army Directive 2017–03, Policy for Brigade Level Approval of Certain Requests for Religious Accommodation* (2017) (recognizing the “successful examples of Soldiers currently serving with” an accommodation for “the wear of a hijab; the wear of a beard; and the wear of a turban or under turban/patka, with uncut beard and uncut hair” and providing for a reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436–37; *see also Hobby Lobby*, 134 S. Ct. at 2780.

The compelling interest requirement applies even where the accommodation sought is “an exemption from a legal obligation requiring [the claimant] to

confer benefits on third parties.” *Hobby Lobby*, 134 S. Ct. at 2781 n.37. Although “in applying RFRA ‘courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,’” the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. 2000bb 1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S. Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is “exceptionally demanding.” *Hobby Lobby*, 134 S. Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government’s stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781 82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress’s leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where “the substantial burden is imposed in a program or activity that receives Federal financial assistance” or “the substantial burden affects, or removal of that substantial burden would affect,

commerce with foreign nations, among the several States, or with Indian tribes.” 42 U.S.C. 2000cc(a)(2), 2000cc 1(b).

RLUIPA’s protections must “be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution.” *Id.* § 2000cc 3(g). RLUIPA applies to “any exercise of religion, whether or not compelled by, or central to, a system of religious belief,” *id.* § 2000cc 5(7)(A), and treats “[t]he use, building, or conversion of real property for the purpose of religious exercise” as the “religious exercise of the person or entity that uses or intends to use the property for that purpose,” *id.* § 2000cc 5(7)(B). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc 1(a). That standard “may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.” *Id.* § 2000cc 3(c); *cf. Holt v. Hobbs*, 135 S. Ct. 853, 860, 864 65 (2015).

With respect to land use in particular, RLUIPA also requires that government not “treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution,” 42 U.S.C. 2000cc(b)(1), “impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination,” *id.* § 2000cc(b)(2), or “impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction,” *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262 64 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep’t of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c 6; in employment, *id.* §§ 2000e, 2000e 2, 2000e 16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real estate transaction or brokerage services, *id.* §§ 3605, 3606; in federal jury service, 28 U.S.C. 1862; in access to limited open forums for speech, 20 U.S.C. 4071; and in participation in or receipt of benefits from various federally funded programs, 15 U.S.C. 3151; 20 U.S.C. 1066c(d), 1071(a)(2), 1087 4, 7231d(b)(2), 7914; 31 U.S.C. 6711(b)(3); 42 U.S.C. 290cc 33(a)(2), 300w 7(a)(2), 300x 57(a)(2), 300x 65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 9858l(a)(2), 10406(2)(B), 10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g., Church of the Lukumi Babalu Aye*, 508 U.S. at 532 33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress's instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) "fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion," as well as (2) to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion." 42 U.S.C. 2000e 2(a); *see also* 42 U.S.C. 2000e 16(a) (applying Title VII to certain federal sector employers); 3 U.S.C. 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies "regardless of whether the discrimination is directed against [members of religious] majorities or minorities." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71 72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define "[r]eligion" broadly to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j); *Hardison*, 432 U.S. at 74 n.9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of any aspect of an employee's religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII's reasonable accommodation requirement is meaningful. As an initial matter, it requires an employer to consider what adjustment or modification to its policies would effectively address the employee's concern, for "[a]n ineffective modification or adjustment will not accommodate" a person's religious

observance or practice, within the ordinary meaning of that word. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, *see Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that "an undue hardship [on its business] would in fact result from each available alternative method of accommodation." 29 CFR § 1605.2(c)(1) (emphasis added). "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, "[b]y definition, any special 'accommodation' requires the employer to treat an employee . . . differently, i.e., preferentially." *U.S. Airways*, 535 U.S. at 397; *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) ("Title VII does not demand mere neutrality with regard to religious practices that they may be treated no worse than other practices. Rather, it gives them favored treatment.").

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an "undue hardship," for example, if it would require the employer to breach an otherwise valid collective bargaining agreement, *see, e.g., Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; *see also U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an "undue hardship" if it would impose "more than a de minimis cost" on the business, such as in the case of a company where weekend work is "essential to [the] business" and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n.15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee "in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies

of the employer's business." *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person's religious observance and practice, it falls within the scope of Title VII. *See* 42 U.S.C. 2000e, 2000e 2. Speech or expression outside of the scope of an individual's employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual's employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. *Cf. Abercrombie*, 135 S. Ct. at 2032.

The federal government's approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the federal government permits a federal employee to "keep a Bible or Koran on her private desk and read it during breaks"; to discuss his religious views with other employees, subject "to the same rules of order as apply to other employee expression"; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee's church, except to the extent that such speech becomes excessive or harassing. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § 1(A), Aug. 14, 1997 (hereinafter "Clinton Guidelines"). The Clinton Guidelines have the force of an Executive Order. *See Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) ("[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order."); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) ("All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully."). The successful experience of the federal government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an “aspect[] of religious observance and practice” and is therefore protected by Title VII. 42 U.S.C. 2000e, 2000e 2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee’s religious holidays, 29 CFR 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the federal government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. 5550a, and the Clinton Guidelines make clear that “[a]n agency must adjust work schedules to accommodate an employee’s religious observance—for example, Sabbath or religious holiday observance—if an adequate substitute is available, or if the employee’s absence would not otherwise impose an undue burden on the agency,” Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, “such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness.” *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII’s protection against disparate treatment, 42 U.S.C. 2000e 2(a)(1), is implicated *any time* religious observance or practice is a motivating factor in an employer’s covered decision. *Abercrombie*, 135 S. Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with “an unsubstantiated suspicion” of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes *is* an appropriate factor in employment decisions, and it has limited Title VII’s scope accordingly. Thus, for example, where religion “is a bona fide occupational qualification reasonably necessary to the normal operation of [a]

particular business or enterprise,” employers may hire and employ individuals based on their religion. 42 U.S.C. 2000e 2(e)(1). Likewise, where educational institutions are “owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society” or direct their curriculum “toward the propagation of a particular religion,” such institutions may hire and employ individuals of a particular religion. *Id.* And “a religious corporation, association, educational institution, or society” may employ “individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” *Id.* § 2000e 1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327, 335–36 (1987).

Because Title VII defines “religion” broadly to include “all aspects of religious observance and practice, as well as belief,” 42 U.S.C. 2000e(j), these exemptions include decisions “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198–200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school’s decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute’s terms do not limit this exemption to non profit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), *codified at* 42 U.S.C. 2000e 1(a); *see also Hobby Lobby*, 134 S. Ct. at 2773–74; *Corp. of Presiding Bishop*, 483 U.S. at 335–36. The exemption applies whenever the organization is “religious,” which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. *Br. of Amicus Curiae the U.S. Supp. Appellee, Spencer v. World Vision, Inc.*, No. 08–35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and

houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See* 28 CFR app. C; 56 Fed. Reg. 35544, 35554 (July 26, 1991) (explaining that “[t]he ADA’s exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations”).

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g., Hosanna Tabor*, 565 U.S. at 180, 188–90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization’s religious tenets, either because doing so might itself inhibit the organization’s exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649–55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations’ decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna Tabor*, 565 U.S. at 180, 188–90. It is beyond dispute that “it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of women by the Catholic Church or by an Orthodox Jewish seminary.” *Id.* at 188. The same is true for other employees who “minister to the faithful,” including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194–95; *see also Br. of Amicus Curiae the U.S. Supp. Appellee, Spencer v. World Vision, Inc.*, No. 08–35532 (9th Cir. 2008) (noting that the First Amendment protects “the right to employ staff who share the religious organization’s religious beliefs”).

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization’s associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict

scrutiny); *Smith*, 494 U.S. at 882 (“[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns.”). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque’s religious men’s meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840–41 (Mass. 2002). The Supreme Court has also held that the government’s interest in addressing sexual orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, “prohibiting religious organizations from hiring only coreligionists can ‘impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.’” *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be “a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court w[ould] consider religious” in applying a nondiscrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws—as it has in other contexts, *see, e.g.*, 42 U.S.C. 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular organizations, *see, e.g.*, 42 U.S.C. 290kk 1, 300x 65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that “[t]he Nation’s social service capacity will benefit if all eligible organizations, including faith based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs.” Exec. Order No. 13559, § 1, 75 Fed. Reg. 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 Fed. Reg. 77141 (2002)). To that end, no organization may be “discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs.” *Id.* “Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)” are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the federal government and at a separate time and location. *Id.*

The President has assured religious organizations that they are “eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character.” *See id.*; *see also* 42 U.S.C. 290kk 1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, “including the definition, development, practice, and expression of . . . religious beliefs,” so long as they do not use any “direct Federal financial assistance” received “to support or engage in any explicitly religious activities” such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also “use their facilities to provide social services supported with Federal financial assistance, without removing

or altering religious art, icons, scriptures, or other symbols from these facilities,” and they may continue to “retain religious terms” in their names, select “board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents.” *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do “not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” Exec. Order No. 13279, § 4, *amending* Exec. Order No. 11246, § 204(c), 30 Fed. Reg. 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision “to employ only persons whose beliefs and conduct are consistent with the employer’s religious precepts.” *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court’s repeated counsel that the decision to borrow statutory text in a new statute is “strong indication that the two statutes should be interpreted *pari passu*.” *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (*per curiam*); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559 U.S. 573, 590 (2010). It is also consistent with the Executive Order’s own usage of discrimination on the basis of “religion” as something distinct and more expansive than discrimination on the basis of “religious belief.” *See, e.g.*, Exec. Order No. 13279, § 2(c) (“No organization should be discriminated against on the basis of religion or religious belief . . .” (emphasis added)); *id.* § 2(d) (“All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, in providing services

supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.”). Indeed, because the Executive Order uses “on the basis of religion or religious belief” in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination “against beneficiaries or potential beneficiaries,” a narrow interpretation of the protection for religious organizations’ hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 2(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program specific statutes and regulations expressly confirm that “[a] religious organization’s exemption provided under section 2000e 1 of this title regarding employment practices shall not be affected by its participation, or receipt of funds from, a designated program.” 42 U.S.C. 290kk 1(e); *see also* 6 CFR § 19.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a federal grant or contract program on a religious organization’s effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. 2000bb 1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith Based Organizations*, 25 Op. O.L.C. at 132. Given Congress’s “recognition that religious discrimination in employment is permissible in some circumstances,” the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization’s receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee

effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. 2000bb 1.

The First Amendment also “supplies a limit on Congress’ ability to place conditions on the receipt of funds.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. 2321, 2328 (2013) (internal quotation marks omitted). Although Congress may specify the activities that it wants to subsidize, it may not “seek to leverage funding” to regulate constitutionally protected conduct “outside the contours of the program itself.” *See id.* Thus, if a condition on participation in a government program including eligibility for receipt of federally backed student loans would interfere with a religious organization’s constitutionally protected rights, *see, e.g., Hosanna Tabor*, 565 U.S. at 188 89, that condition could raise concerns under the “unconstitutional conditions” doctrine, *see All. for Open Soc’y Int’l, Inc.*, 133 S. Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide education programs or activities receiving federal financial assistance. Such institutions are exempt from Title IX’s prohibition on sex discrimination in those programs and activities where that prohibition “would not be consistent with the religious tenets of such organization[s].” 20 U.S.C. 1681(a)(3). Although eligible institutions may “claim the exemption” in advance by “submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization,” 34 CFR § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of federal law. For example, it has exempted individuals who, “by reason of religious training and belief,” are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. 3806(j). It has exempted “ritual slaughter and the handling or other preparation of livestock for ritual slaughter” from federal regulations governing methods of animal slaughter. 7 U.S.C. 1906. It has exempted “private secondary school[s] that maintain [] a religious objection to service in the Armed Forces” from being

required to provide military recruiters with access to student recruiting information. 20 U.S.C. 7908. It has exempted federal employees and contractors with religious objections to the death penalty from being required to “be in attendance at or to participate in any prosecution or execution.” 18 U.S.C. 3597(b). It has allowed individuals with religious objections to certain forms of medical treatment to opt out of such treatment. *See, e.g.*, 33 U.S.C. 907(k); 42 U.S.C. 290bb 36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.*, 26 U.S.C. 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.*, 26 U.S.C. 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. 300a 7(d), (e). It has prohibited discrimination against health care professionals and entities that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain federal funds does not require an individual “to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions” nor an entity to “make its facilities available for the performance of” those procedures if such performance “is prohibited by the entity on the basis of religious beliefs or moral convictions,” nor an entity to “provide any personnel for the performance or assistance in the performance of” such procedures if such performance or assistance “would be contrary to the religious beliefs or moral convictions of such personnel.” *Id.* § 300a 7(b). Finally, no “qualified health plan[s] offered through an Exchange” may discriminate against any health care professional or entity that refuses to “provide, pay for, provide coverage of, or refer for abortions,” § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Public Law

114 113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the “policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” 42 U.S.C. 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians’ right of access for religious purposes to national park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. 228i(b), 410aaa 75(a), 460uu 47, 543f, 698v 11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians’ use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. 1996a.

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (“[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.”).

[FR Doc. 2017–23269 Filed 10–25–17; 8:45 am]

BILLING CODE 4410–13–P; 4410–BB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On October 19, 2017, the Department of Justice lodged a proposed Consent Decree (“Consent Decree”) with the United States District Court for the District of Massachusetts in the lawsuit entitled *United States, et al. v. Bouchard Transportation Company, Inc., et al.*, Civil Action No. 1:17 cv 12046 NMG.

The proposed Consent Decree will settle claims of the United States (on behalf of the Department of Commerce/ National Oceanic and Atmospheric Administration and the Department of the Interior/Fish and Wildlife Service), the Commonwealth of Massachusetts, and the State of Rhode Island for injuries to birds (other than piping plover) under the Oil Pollution Act, 33 U.S.C. 2701, *et seq.*, (“Trustees”) against Bouchard Transportation Company, Inc., and related companies (“Defendants”), caused by an oil spill from the tank barge *Bouchard No. 120* which occurred in April 2003 in Buzzards Bay. Under the proposed Consent Decree, the Defendants will pay \$13,300,000 to the Trustees as damages for injuries to wildlife resources, as defined in the Consent Decree. The payment will be used to plan for and implement the restoration, rehabilitation, replacement, or acquisition of the equivalent of the damaged resources. In addition, the Defendants acknowledge payment of almost \$3,500,000 to the Trustees for reimbursement of their assessment costs. The proposed Consent Decree is the second settlement between the Trustees and the Defendants for injuries to natural resources caused by the oil spill. Under the first settlement, entered by the District Court in 2011, the Defendants paid the Trustees \$6,076,393 for injuries to other natural resources caused by the oil spill.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al. v. Bouchard Transportation Company, Inc., et al.*, D.J. Ref. No. 90 5 1 1 08159/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment.ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ ENRD, P.O. Box 7611, Washington, DC 20044 7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ ENRD, P.O. Box 7611, Washington, DC 20044 7611.

Please enclose a check or money order for \$22.75 (25 cents per page reproduction cost), payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–23259 Filed 10–25–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0197]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60 day notice.

SUMMARY: The Department of Justice, Bureau of Justice Assistance, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until December 26, 2017.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michelle Martin, Senior Management Analyst, Bureau of Justice Assistance,

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Wednesday, August 29, 2018 9:54 AM
To: Lichter, Jennifer (OLP)
Subject: FW: Religious Task Force
Attachments: Religious Task Force.msg

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Monday, August 13, 2018 10:15 AM
To: Lichter, Jennifer (OLP)
Subject: Religious Task Force
Attachments: Religious Liberty Task Force.pdf; The Honorable Jerrold Nadler wf 4093419.rtf

Good morning,

Please prepare a draft response thank you due Thursday, August 23. Thank you

Lichter, Jennifer (OLP)

From: Lichter, Jennifer (OLP)
Sent: Wednesday, August 29, 2018 9:47 AM
To: Davis, Valorie A (OLP)
Subject: Task Force correspondence

Hi Val, could you please send me electronic versions of the two letters about the religious liberty task force that we have gotten from OLA?

Thank you!
Jennie

Jennie Bradley Lichter
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 514-4606
Cell: (b) (6)
Jennifer.Lichter@usdoj.gov

Davis, Valorie A (OLP)

From: Davis, Valorie A (OLP)
Sent: Tuesday, August 28, 2018 11:16 AM
To: Lichter, Jennifer (OLP)
Subject: FW: Religious Task Force
Attachments: Religious Task Force.msg

Good morning Jennie

Please provide status on the attached correspondence past due August 23. Thank you.

[Valorie Davis](#)

Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Room 4250
Washington, D.C. 20530
Telephone: 202-305-0072

Freeman, Lindsey (OLP)

From: Freeman, Lindsey (OLP)
Sent: Tuesday, August 21, 2018 4:34 PM
To: Crytzer, Katherine (OLP); Lichter, Jennifer (OLP)
Subject: RE: SOS - Strategic Deliverables - a few sentences by 5 pm?

You both are my heroes. Seriously. THANK YOU!!!! (b) (6)

Seriously, thank you!

From: Crytzer, Katherine (OLP)
Sent: Tuesday, August 21, 2018 4:33 PM
To: Freeman, Lindsey (OLP) <lifreeman@jmd.usdoj.gov>; Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: RE: SOS - Strategic Deliverables - a few sentences by 5 pm?

I've got Jennie here with me. See below. Thanks.

Katie Crytzer
Chief of Staff
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 353-3069
Cell: (b) (6)
Katherine.Crytzer2@usdoj.gov

From: Freeman, Lindsey (OLP)
Sent: Tuesday, August 21, 2018 4:26 PM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>; Crytzer, Katherine (OLP) <kcrytzer@jmd.usdoj.gov>
Subject: SOS - Strategic Deliverables - a few sentences by 5 pm?

Hi Katie and Jennie,

(b) (5), but if you could help me fill in a sentence description for these below I would be forever grateful. I have highlighted in red my issues. As background, we are looking to (b) (5)

(b) (5)

(b) (5)



Thank you!!!

Best,
Lindsey

Lindsey Freeman
Counsel
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Office: (202) 307-3024
Cell: (b) (6)
Lindsey.Freeman@usdoj.gov

Tucker, Rachael (OAG)

From: Tucker, Rachael (OAG)
Sent: Tuesday, August 21, 2018 2:07 PM
To: Lichter, Jennifer (OLP)
Subject: Re: National Faith Leaders Call

Great

On Aug 21, 2018, at 1:32 PM, Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov> wrote:

(b) (5)



From: Tucker, Rachael (OAG)
Sent: Tuesday, August 21, 2018 11:43 AM
To: Lichter, Jennifer (OLP) <jlichter@jmd.usdoj.gov>
Subject: FW: National Faith Leaders Call

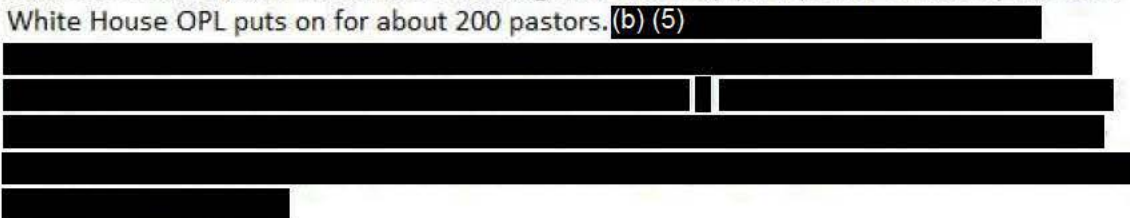
(b) (5)



From: Thomas, Mary (CRT)
Sent: Monday, August 20, 2018 10:04 AM
To: Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>
Subject: National Faith Leaders Call

Hi Rachael,

I hope that you are having a good morning. I wanted to give you a heads up on the National Faith Leaders call that is occurring this Thursday (8/23). This a monthly call that White House OPL puts on for about 200 pastors. (b) (5)



Please let me know if you have any questions or concerns.

Thank you,

Mary

L. Mary Thomas

Office of the Assistant Attorney General

Civil Rights Division

United States Department of Justice

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530

202.616.1854

(b) (6)

From: (b) (6)
Sent: Wednesday, August 15, 2018 5:37 PM
To: Jeffrey.Hall@usdoj.gov; Jennifer.Lichter@usdoj.gov
Subject: Religious Liberty Task Force
Attachments: DOJ letter dated Aug 7, 2018.pdf; Times of Israel article.docx.pdf; UL v. NYS Assembly cert petition.pdf

Dear Mr. Hall and Ms. Lichter:

Did you receive my August 7, 2018 letter, and accompanying article? Courtesy copies are attached.

In my letter, I referred you to the "briefs" in the case, U.L. v. New York State Assembly. On further reflection, I would more particularly like to refer you to the petition for writ of certiorari filed in the US Sup Ct in June 2015. A courtesy copy is attached. The petition well articulates our arguments that the Equal Protection and Due Process Clauses of the Fourteenth Amendment requires child protection parity between public and religious schools. Additional arguments, and the factual record, appear in the US Court of Appeals and District Court briefs, available on Pacer.

I should also mention that I recently became aware of the Federal Commission on School Safety, organized by the US Department of Education. On July 23, 2018, I emailed the Commission, advising them of our advocacy for child protection for America's religious schools.

Once again, I hope you can take my views into account, and ultimately, bring greater child protection to our nation's religious and other nonpublic schools. My colleagues and I would also welcome any conversation about these issues.

Your acknowledgement would be appreciated.

Very truly yours,

Elliot Pasik
Attorney at Law

(b) (6)

-----Original Message-----

From: (b) (6)
To: Jeffrey.Hall <Jeffrey.Hall@usdoj.gov>; Jennifer.Lichter <Jennifer.Lichter@usdoj.gov>
Sent: Tue, Aug 7, 2018 11:05 am
Subject: Religious Liberty Task Force

Dear Mr. Hall and Ms. Lichter:

In connection with the work of the Religious Liberty Task Force, please find my letter, dated August 7, 2018, to Attorney General Sessions, attached herewith.

I hope you can take my thoughts into consideration.

Very truly yours,

Elliot Pasik
Attorney at Law

(b) (6)

A large black rectangular redaction box covers the signature area of the letter.

ELLIOT PASIK

Attorney at Law

(b) (6)

A large black rectangular redaction box covers the contact information of Elliot Pasik.

August 7, 2018

The Honorable Jeff Sessions
United States Attorney General
United States Justice Department
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

I am an attorney in private practice in New York.

I was heartened and excited to learn, in recent days, of the formation of the Religious Liberty Task Force. I have read the relevant Memoranda. I believe, undoubtedly, that the Task Force will be a very positive force for protecting and advancing the religious and spiritual rights of all Americans. I extend my congratulations and admiration to all members of the Administration who have been involved in the creation of the Task Force.

For about a decade, my fellow advocates and I have had a difficult time in attempting to secure the constitutional rights of religious school children in New York. I will explain.

In New York, public school children are protected by a variety of child protection laws that, quite intentionally, are not extended to the approximate 450,000 children who attend New York's religious and other non-public schools.

As I explained in my article, "Without Excuse: Religious, Private Schools Still Schlepping in Child Protection", The Times of Israel, December 8, 2016 (slightly edited copy attached);

"New York public schools are *required* to fingerprint and perform criminal history searches on their employees. All public school employees are *mandated* to report child abuse to the police or child protection services. All public school administrators and teachers are *required* to take coursework in identifying child abuse, and preventing violence. All public schools *must* have written policies and safety plans to prevent child abuse and violence. These, and other child protection laws, apply to the public schools, but not the non-public schools." <https://blogs.timesofisrael.com/without-excuse-religious-private-schools-still-schlepping-in-child-protection/>

About ten years ago, colleagues and I formed an organization, Jewish Board of Advocates for Children, to try to remedy this patently inequitable situation, but we have mostly failed. A disinterested New York State Legislature, year after year, failed to act. As a result, New York's religious and non-public school children are at greater risk of being subject to abuse and neglect than public school children, and that is immoral and unethical.

Finally, in 2013, on behalf of an orthodox Jewish father whose child attends a New York yeshiva, I filed a lawsuit in the U.S. District Court, Southern District of New York, demanding a declaratory judgment and permanent injunction, that would require the New York State Legislature to enact legislation that would extend the public school child protection laws to the non-public schools. Our four claims for relief pleaded the violations of the Equal Protection Clause of the Fourteenth Amendment; the substantive Due Process Clause (“Liberty”) of the Fourteenth Amendment; the Free Exercise Clause of the First Amendment; and the Establishment Clause of the First Amendment.

The lawsuit was firmly opposed by the Legislature, represented by its counsel, the New York State Attorney General. The Legislature moved to dismiss asserting, among other points, that it is rational, and therefore not a violation of the Equal Protection Clause, for the state government to provide greater protection to public school children, over religious school children, for the simple reason that public school children attend classes in publicly owned buildings, while religious school children do not. I found this particular argument offensive and repugnant - in the eyes of New York State, children are defined, and therefore protected, by the buildings in which they attend school. Constitutional rights do not extend to all children.

Judge Thomas P. Griesa dismissed the action on immunity grounds, U.L. v. New York State Assembly, 2014 WL 322108 (S.D.N.Y. 2014). On other grounds, the U.S. Court of Appeals affirmed in a summary order, 592 Fed.Appx. 40 (2d Cir. 2015). The petition for writ of certiorari, filed by the Emory Law School Supreme Court Advocacy Project, was denied, 136 S.Ct. 153 (2015).

I continue to believe that under then-current law, the courts were wrong in dismissing the action, and not granting plaintiff’s cross-motion for summary judgment, but this is not the place to re-hash and debate the arguments because, I believe, the legal landscape has favorably changed, as a result of recent U.S. Supreme Court decisions. I also believe that the Task Force may well be the vehicle for asserting the constitutional rights of the more than four million children who attend America’s religious and non-public schools.

In Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. (2017), the Court held that Missouri violated the rights of a church, under the Free Exercise Clause of the First Amendment, by denying the church a grant to purchase playground resurfacing material. These grants were available to any and all non-religious entities.

More recently, in Masterpiece Cakeshop v. Colorado Civil Rights Commission, 584 U.S. (2018), the Court held that the Colorado Civil Rights Commission, and the Colorado Court of Appeals, were hostile towards the Christian baker’s expression of his religion, in declining to bake and sell a wedding cake to a same-gender couple, and therefore, the baker’s free exercise of religion rights were violated. The Court reversed the finding of illegal discrimination reached by the Commission and Court of Appeals.

There is more say on this subject of disparate child protection in New York, and I respectfully refer you and the Task Force to the legal briefs in the U.L. case, and my attached article.

Upon careful consideration, I hope and indeed, *pray* that the Task Force can:

1. Advocate equal child protection, in state law, for all religious and non-public school children in New York, and all of our states, and/or,
2. File suit against New York and those states that refuse to provide equal child protection, and/or,
3. Consider federal legislation which will require states, that receive federal funding for their religious and non-public schools, to provide equal child protection.

I would welcome any conversation on this subject, and I wish you good luck and Godspeed in your meritorious endeavors.

Respectfully,

/s/ Elliot Pasik

Elliot Pasik

(b) (6)

Copy: Jeffrey Hall

Office of the Associate Attorney General

Jeffrey.Hall@usdoj.gov

Jennie Bradley Lichter

Office of Legal Policy

Jennifer.Lichter@usdoj.gov

The Times of Israel

Without excuse: Religious, private schools still schlepping in child protection

Laws protecting New York public school kids are not applied to private schools: It's time for that to change

DECEMBER 8, 2016

I'm a lawyer in private practice in New York, and 10 years ago, in 2006, something truly unusual occurred.

I wrote a letter to the New York State Legislature, and six months later, they passed an important child protection law, affecting nearly one-half million children, which Governor Pataki quickly signed. A few months after that, I received a box in the mail, delivering a ceremonial bill pen, and a certificate, from the Governor.

There were no public hearings. There were no lobbyists. Big media didn't write a single word. I never stepped foot in Albany. I had a few phone calls with legislative staffers, particularly those working for Senator Dean Skelos, and Assemblyman Harvey Weisenberg, the bill sponsors.

How did this happen? And where do we stand now?

Working on a case, I noticed an irrational situation existing within our New York statutes. A statute is a bill that was passed by the State Legislature, which consists of two houses, the 150-member Assembly, and the 63-member Senate. Next, the Governor must sign the bill. The bill is now law, or a statute.

In my research, I noticed that several statutes within our State Education Law protected public school children, but intentionally omitted the same protections for the children who attend our state's religious and private schools.

New York public schools are *required* to fingerprint and perform criminal history searches on their employees. All public school employees are *mandated* to report child abuse to the police or child protection services. All public school administrators and teachers are *required* to take coursework in identifying child abuse, and preventing violence. All public schools *must* have written policies and safety plans to prevent child abuse and violence. These, and other child protection laws, apply to the public schools, but not the non-public schools.

In my 2006 letter to the Legislature, I pointed out the manifest illogic and inequity of laws that protect some of our children, but not all of our children.

I also informed the Legislature that not only were non-public schools not required to fingerprint and background check their employees, but there was also an archaic but still binding labor law from the mid-1930s that actually *prohibited* them from doing so.

The Legislature responded by passing a bill that at least *permitted* non-public schools to fingerprint and background check their prospective employees. *Permitted*, but not *required*.

The fingerprints would be sent to the FBI, where a national criminal history search would be done, for all potential 50-state and federal criminal convictions.

Ten years later last summer I made a Freedom of Information Law request upon the New York State Education Department, which manages the optional fingerprint program for the non-public schools: I asked them to tell me how many non-public schools are fingerprinting their employees. I asked them to tell me if any prospective employees had been rejected for non-public school employment because of their serious criminal histories. I asked them, in fact, a whole bunch of questions after all, I'm the author of the law.

The results, which I received in November, are disappointing, illuminating, and educational. Here are the highlights:

- Of about 1,900 non-public schools in New York, only 70 are fingerprinting their prospective employees.
- Among the 70 schools that fingerprint, only two are Jewish schools North Shore Hebrew Academy in Great Neck, and Shema Kolainu in Brooklyn. There are about 400 private Jewish schools in New York.
- The State Education Department denied clearance for employment to eight prospective job applicants, who sought work in six non-public schools. They had serious criminal histories.
- Some of the crimes that got these nonpublic school job applicants rejected included: felony drug trafficking and possession, bank fraud, forgery, car theft, criminal impersonation, embezzlement, larceny, drunk driving.

- Since 2001, when statewide *public* school employee fingerprinting became legally required, the State Education Department has denied clearance for employment to about 3,200 public school job applicants in the 57 counties outside New York City, based on their serious criminal histories. (The New York City Department of Education refused to tell me their numbers for New York City public schools.) It should be noted that the above statistics do not, and cannot, reveal how many job applicants with serious criminal histories were *deterred* from applying for employment after they were told that fingerprinting was part of the job application. Think of all the convicted sex offenders who slinked away from our yeshivas, Catholic schools, and other private schools where they have been known to inflict great damage upon innocent children, up until the present day.

The solution is not complicated. Employee fingerprinting needs to be legally required in New York's nonpublic schools.

In fact, one year after my law was passed, in 2007, I continued to work with Senator Skelos to amend the law to make the fingerprinting *mandatory*. The bill passed the State Senate, but alack and alas, the Assembly refused to vote. There were elements within the ultra-orthodox Jewish community who were against the bill. Surprisingly, also, there are some within the modern, centrist community who do not support the bill.

In the 10 years that have since elapsed, various legislators have again sponsored amendments that would make the fingerprinting mandatory, but these efforts fizzled out. Enthusiasm, perseverance, and idealism are uncommon character traits among New York's legislators.

In failing to pass child protection laws for our nonpublic school children, New York's lackadaisical legislators have even ignored the pleas of some of the best and the brightest minds among the nonprofit child protection and advocacy organizations. The New York Society for the Prevention of Cruelty to Children, the American Professional Society on the Abuse of Children – NY Chapter, Prevent Child Abuse New York, and Children's Healthcare is a Legal Duty have all come out on the record in favor of a mandatory employee fingerprint bill for New York's nonpublic schools. The Rabbinical Council of America and Ohel Children's and Family Services support the bill. The New York State Catholic Conference – the "official voice of the Catholic Church in the Empire State", their website states – supports mandatory employee fingerprinting.

Clever opponents of a mandatory fingerprint bill will tell you that many, or even most, of New York's non-public schools already are doing employee background checks, but without the fingerprinting. They assert that there are schools which are utilizing private companies to background check, and government fingerprinting is, therefore, unnecessary. There are a few problems with this argument.

First, the opponents have no proof. Nobody is surveying the nonpublic schools to see who is doing private company criminal history searches, and who is not. (The one exception is the Catholic Church, which self-reports that *all* of their schools background check their employees through non-fingerprint, name and date-of-birth criminal history searches conducted through a private company.)

Second, at least in New York State, the background checks performed by private companies are *partial* only. The private company searches report felonies only, and not misdemeanors, which can be quite serious – sex abuse, assault, drugs, child endangerment, and other crimes. (I, personally, conducted private company

background searches on people who I knew were convicted of serious misdemeanors in New York and I received reports stating no criminal records!)

Third, identity fraud is a major problem. Social security cards, driver's licenses, and even birth certificates can be forged, or purchased. For this reason, the private, non-fingerprint, name and date-of-birth background check companies do not guarantee their results. FBI fingerprint checks, on the other hand, have a near-perfect accuracy rate. Fingerprints don't lie, cheat, or steal.

Fourth, there are some private schools in New York, and other employers, who are conducting criminal history searches through the website of the New York State Office of Court Administration. The difficulty here is that OCA even admits that they report *partial* results only. They do not report all misdemeanors, out-of-state criminal convictions, and federal convictions.

Meanwhile, across the nation, word is long out that child protection laws are the best thing going for preventing child abuse in the non-public schools that educate nearly 10 percent, or 5 million, of America's children.

Big states, with large nonpublic school populations, including, California, Florida, Illinois, Maryland, Massachusetts, Michigan, Ohio, and Pennsylvania *legally require* their nonpublic schools to fingerprint their employees. Convicted sex offenders and other persons with serious criminal histories need to look for work elsewhere in those states.

Closer to home, we can look at the results of New York City's new pre-K program. All job applicants must be fingerprinted. In September 2014, *Politico New York* reported that the City "fingerprinted 3,000 employees who will be working in pre-K centers, and has cleared 2,755 of them...The remaining 245 employees will not

be allowed to work in pre-K centers...All of those who were rejected were found to have (serious) criminal records.”

We will never know how many thousands of our children’s lives have been safeguarded and preserved because legally mandated employee fingerprinting kept the school gates closed to convicted sex offenders and other dangerous persons.

The time is long overdue for the New York State Legislature to realize the common wisdom of an ounce of prevention being worth a pound of cure. Child sex abusers and other dangerous persons *want* to work near children and other vulnerable populations. We must keep them out of our schools, both public and non-public. Child protection laws for the nearly one-half million New York nonpublic school children is a necessity. The 2006 law that made it optional for non-public schools to fingerprint their employees needs to be amended. The fingerprinting needs to become mandatory. Ten years of schlepping needs to come to an end. The New York State Legislature begins its 2017 session in January, and these issues needs to be a high priority. All people of good will, who care about all children, and particularly our own Jewish community, must join forces to assure that child protection legislation for our religious and private schools is finally enacted.

ABOUT THE AUTHOR

Elliot B. Pasik is a graduate of Cardozo Law School, Yeshiva University, J.D.; Clark University, Worcester, Mass., BA; Bronx HS of Science. He is a practicing civil litigation attorney. He has published several articles on child abuse in various publications; has spoken in public forums. Notably, Elliot is the original and successful proponent of New York State's first employee background check law for religious and nonpublic schools, enacted in 2007. He is also a co-founder and president of an advocacy group, Jewish Board of Advocates for Children, which advocates for child protection, particularly in our faith communities. He may be reached at efpasik@aol.com.

2015 WL 3898663 (U.S.) (Appellate Petition, Motion and Filing)

Supreme Court of the United States.

U.L., individually and as father and natural guardian of E.L., an infant under the age of 18 years,
Petitioner,

v.

NEW YORK STATE ASSEMBLY, New York State Senate, Sheldon Silver, in his official capacity as Speaker of the New York State Assembly, Jeffery Klein, in his official capacity as President Pro Tempore of the New York State Senate and as Senate Independent Democratic Conference Leader, Dean Skelos, in his official capacity as President Pro Tempore of the New York State Senate, and the State of New York,
Respondents.

No. 14-1522.

June 22, 2015.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Petition For A Writ Of Certiorari

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***i QUESTIONS PRESENTED**

I. Whether the 14th Amendment's Equal Protection clause requires state child protection laws to apply equally to public and private school children, who are similarly situated with respect to child protection laws?

II. Whether the 14th Amendment's Due Process clause requires that parents not be forced to choose between public schools that protect children's safety, and private (including religious) schools that provide the type of education that the parents desire.

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***1 PETITION FOR A WRIT OF CERTIORARI**

U.L., individually and as father and natural guardian of E.L., an infant under the age of 18 years, respectfully petitions for writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit is reported at [592 Fed. Appx. 40](#), and is reprinted in Appendix A, 2a-4a. The opinion and order of the District Court for the Southern District of New York is reported at 2014 U.S. Dist. LEXIS 11215, and reprinted in Appendix B, 5a-13a.

STATEMENT OF JURISDICTION

The District Court for the Southern District of New York had jurisdiction under [28 U.S.C. § 1331](#). The United States Appeals Court had appellate jurisdiction under [28 U.S.C. § 1291](#), and filed its opinion on February 5, 2015. This Court has jurisdiction under [28 U.S.C. § 1254\(1\)](#) and S. Ct. R. 13.3. This Court granted an extension to file on April 22, 2015 under S. Ct. R. 13.5, extending the time to file this petition until June 22, 2015.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

***2** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[U.S. Const. amend. XIV, §1](#)

[Section 2590-h\(20\) of the New York Education Law](#) provides in relevant part:

The chancellor shall have the following powers and duties as the superintendent of schools and chief executive officer for the city district, which the chancellor shall exercise to promote an equal educational opportunity for all students in the schools of the city district, promote fiscal and educational equity, increase student achievement and school performance and encourage local school-based innovation, including the power and duty to ensure compliance with qualifications established for all personnel employed in the city district, including the taking of fingerprints as ***3** a prerequisite for licensure and/or employment of such personnel. Every set of fingerprints taken pursuant to this subdivision shall be promptly submitted to the division of criminal justice services where it shall be

appropriately processed. Furthermore, the division of criminal justice services is authorized to submit the fingerprints to the federal bureau of investigation for a national criminal history record check.

[Section 305\(30\)\(a\) of the New York Education Law](#) provides in relevant part:

The commissioner of education is hereby charged with the following powers and duties... The commissioner, in cooperation with the division of criminal justice services and in accordance with all applicable provisions of law, shall promulgate rules and regulations to require the fingerprinting of prospective employees, as defined in section eleven hundred twenty-five of this chapter, of school districts, charter schools and boards of cooperative educational services and authorizing the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the division of criminal *4 justice services and the federal bureau of investigation based on the use of such fingerprints. The commissioner shall also develop a form for use by school districts, charter schools, boards of cooperative educational services, and nonpublic and private elementary and secondary schools in connection with the submission of fingerprints that contains the specific job title sought and any other information that may be relevant to consideration of the applicant. The commissioner shall also establish a form for the recordation of allegations of child abuse in an educational setting, as required pursuant to section eleven hundred twenty-six of this chapter.

STATEMENT OF THE CASE

Child Protection Laws

This Court has held that “democratic society [...] rests upon the healthy, well-rounded growth of young people into full maturity as citizens.” [Prince v. Massachusetts, 321 U.S. 158, 168 \(1944\)](#). In other words, the Court considers the health and safety of children to be of the utmost importance. As a result, the “State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate.” [Lemon v. Kurtzman, 403 U.S. 602, 613 \(1971\)](#) (emphasis added). Despite the importance of protecting the health and safety of children, it is estimated that ten percent of school children from kindergarten through twelfth grade are victims of educator sexual assault. Charol *5 Shakeshaft, Educator Sexual Misconduct: A Synthesis Of Existing Literature at 20 (Hofstra Univ. and Interactive, Inc., 2004).

In response to disturbing estimates of sexual abuse in schools, Congress enacted the National Child Protection Act with the intent to “encourage the States to adopt legislation requiring background checks for child care providers through the FBI criminal history records system.” Jewish Bd. Of Advocates For Children, Inc., Position Paper To The New York Legislature Advocating Child Protection Laws For Nonpublic Schools at 3 (2009). A survey released in 2003 found that 42 of the 50 states - following the intent of Congress in enacting the National Child Protection Act - require background checks of all employees in public schools. Additionally, numerous states currently require background checks and fingerprinting of employees at both public and nonpublic schools, including Alabama, California, Florida, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Ohio, Pennsylvania, Rhode Island, and Virginia. *Id.* at 4. These states constitute over 40% of the US population. *Id.*

This Court has affirmed the right of states to regulate nonpublic education. See [Pierce v. Soc'y of Sisters](#), 268 U.S. 510 (1925); see also Eric A. DeGroff, [State Regulation of Nonpublic Schools: Does the Tie Still Bind?](#), 2003 BYU Educ. & L.J. 363 (2003) (discussing the Court's history of affirming the right of states to regulate nonpublic education); Donal M. Sacken, Regulating Nonpublic Education: A Search for Just Law and Policy, 96 Am. J. Educ. 394 (1988) (discussing the Court's history of affirming the right of states to regulate nonpublic education). Although ^{*6} courts have consistently upheld laws deferring to individual states approval of teacher certification, core subject instruction, attendance for private schools, and other non-health-or-safety related matters, there remains enormous disparity in the application of health and safety-related regulations to public schools versus private schools. See James G. Dwyer, [The Children We Abandon](#), 74 North Carolina L. Rev. 1321 (1996) (footnotes omitted). This has led to continual frustration and recurrent litigation. Sacken at 395. The majority of states do not mandate equal protections for private school children by requiring the same employee background checks and fingerprinting that they do for public school children. *Id.* This Court must grant the writ to end the confusion and litigation related to state regulation of safety and security in nonpublic schools to ensure the equal protection of all children regardless of the type of educational institution they attend.

Federal law and policy favor school employee background checks. The National Child Protection Act, 42 U.S.C. Sects. 5119a, et seq. (enacted 1993, amended 1998). In fact, The National Child Protection Act gives qualifying schools and youth groups to access the FBI national criminal history database and empowers state legislatures to require them to. *Id.* The Schools Safely Acquiring Faculty Excellence Act (contained within the Adam Walsh Child Protection and Safety Act), signed into law on July 27, 2006, provides that the U.S. Attorney General “shall, upon request of the chief executive officer of a State, conduct fingerprint-based checks of the national crime information databases ... pursuant to a request submitted by ... a private or ^{*7} public elementary school, a private or public secondary school, a local educational agency, or State educational agency in that State, on individuals employed by, under consideration for employment by, or otherwise in a position in which the individual would work with or around children in the school or agency.” [42 U.S.C. § 16962\(b\)\(2\)](#). Under this law, State Governors are granted the power to authorize nonpublic school background checks. The U.S. Education Department report, “Educator Sexual Misconduct: A Synthesis of Existing Literature” (June 2004), received national media attention, particularly for its finding that nearly 9.6% of American students, in their K-12 years, are victims of sexual misconduct. *Id.* at 20. The 147-page Congress-mandated report recommends fingerprint-based criminal background checks for all school personnel. Shakeshaft at 47-48.

Legally mandated employee fingerprinting is well established in New York. New York City public school employees have been fingerprinted since 1974. [N.Y. Educ. Law § 2590-h\(20\)](#). Prospective State public school employees have been subject to mandatory fingerprinting since 2001. [N.Y. Educ. Law § 305\(30\)](#). Child day care center workers must be fingerprinted. [N.Y. Soc. Serv. Law § 390-b](#). Licensed school bus drivers must be fingerprinted. [N.Y. Vehicle & Traffic Law § 509-d](#). Nursing home workers must be fingerprinted. [N.Y. Public Health Law §§ 2899, 2899-a](#). New York City child day care centers are required to have a permit issued by the N.Y.C. Health Department, and must fingerprint and background check their current and prospective employees under Title 24, Rules of the City of New York, Sect. 47.15.

Effective September 1, 2008, all *8 religious child day care centers are required to fingerprint their current and prospective employees. Title 24, Rules of the City of New York, Sect. 43.13.

The common thread of the background check statutes and rules is that where vulnerable populations are involved, the workers need to be screened to ensure security. Fingerprinting and background checks have screened out many dangerous persons, and have therefore prevented many crimes that would have been inflicted on children and other vulnerable people.

New York's Project SAVE

In 2001, the New York Legislature enacted Project SAVE (Safe Schools Against Violence in Education), which consists of child protection laws that are only mandatory in public schools. Pet. App'x. 6. These laws require, inter alia, fingerprinting and criminal background checks for prospective public school employees, reporting occurrences of child abuse in public schools to law enforcement, and the completion of coursework by public school administrators and teachers in identifying and reporting child abuse. *Id.* None of these requirements apply to nonpublic schools. *Id.*

For the 2014-2015 school year, New York State had 1,768 non-public schools, with 815 in New York City alone. IRS Information and Reporting Services, Education Statistics for New York State, NYSED.GOV (Jun. 18, 2015), <http://www.p12.nysed.gov/irs/statistics/public/>. In the fall of 2011, it was estimated that there were 30,861 private elementary and secondary schools in the United States, made up of 4,494,845 students and 420,880 full-time equivalent teachers. Nat'l Ctr. *9 for Educ. Statistics, Characteristics of Private Schools in the United States: Results From the 2011-12 Private School Universe Survey (U.S. Dep't of Educ., 2013) <http://www2.ed.gov/about/offices/list/oii/nonpublic/statistics.html>. Of those schools, 68.4% were religious private schools. *Id.* These schools represent hundreds of thousands of students around the country who are receiving unequal protection from their state government and are being placed daily into potential harm's way.

REASONS FOR GRANTING THE WRIT

I. The Second Circuit's Decision Conflicts With Supreme Court Precedent Requiring Equal Protection of the Laws for Public and Private School Children, Who are Similarly Situated with Respect to Child Protection Laws

A. As it Relates to the Provision of Public Services and Safety Measures, Students in Public and Nonpublic Schools are Similarly Situated

The Equal Protection Clause of the Fourteenth Amendment instructs, "No State shall deny any person within its jurisdiction the equal protection of the laws." [U.S. Const. amend. XIV](#). This Court has interpreted the Equal Protection Clause to require that "all persons similarly situated should be treated alike." [City of Cleburne v. Cleburne Living Ctr.](#), 473 U.S. 432, 439 (1985). Thus, intentional discrimination between similarly situated groups of people violates the Equal Protection Clause. Dwyer *10 at 1385. The constitution does not require a showing that such discrimination was enacted with the intent to harm a particular group in violation of the Fourteenth Amendment. *Id.* Rather, a government's mere

indifference to the safety of a particular group is sufficient to violate that group's Equal Protection rights. *Id.* Where government discrimination between similarly situated groups is found; the government bears the burden of providing a rational justification for such discrimination.

Prior decisions of this Court have found that private and public school children are similarly situated and deserve equal treatment of generally applicable public services and protective measures. [*Everson v. Bd. of Educ. of the Twp. of Ewing*, 330 U.S. 1 \(1947\)](#). In *Everson*, a township board of education authorized the reimbursement to parents of money spent on public transportation for their children to attend school. *Id.* The reimbursements went to both public and private school children. *Id.* The law was challenged because public funds could not constitutionally be provided to private school children. *Id.* The Court rejected those challenges, finding that private school children were similarly situated to public school children! thus, they were equally deserving of the benefits of neutral, generally applicable programs. *Id.* The Court used a metaphor - one that applies perfectly in this case - of firemen and policemen who act to protect the lives of children. [Id. at 25-26](#). Even the dissent agreed that in “matters of common right, part of the general need for safety. Certainly the fire department must not stand idly by while the church burns.” [Id. at 61-62](#) (Rutledge, J., dissenting). The same can be said for the provision of essential services like streets, ^{*11} sidewalks, and sewage facilities. [*Bd. of Educ. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236, 242 \(1968\)](#). The same can be said for laws mandating fingerprinting and background checks.

There are differences between public and private school education, but the students are similarly situated with respect to their need to be protected by child protection laws, and merit equal protection. In New York, and elsewhere, religious school children are now facing harm by the Legislature's decision to exclude them from mandated child protection laws. The lack of employee fingerprinting means that registered sex offenders can more easily manage to find work in religious schools. The failure to require basic and appropriate abuse detection and prevention training for nonpublic school employees makes it more likely that private school children will be hurt.

The Court found in *Everson* that States had a historical interest in providing for the public health and welfare of all children. [*McGowan v. Maryland*, 366 U.S. 420, 444 \(1961\)](#). Moreover, the Court held that the State must secure against dangers that may plague children in pursuit of their education. [*Prince*, 321 U.S. at 168](#). As noted, these protective measures are what the Court has called “matters of common right, part of the general need for safety.” *Walz. v. Tax Comm'n of City of New York*, 397 U.S. 644, 67 (1970). The Court has held that the provision of these public services to religious schools is not a violation of the Establishment Clause or the Free Exercise Clause. *Id.* In the case at bar, the New York legislature failed to protect a child from attending a school where sexual offenders may be employed, based on an arbitrary distinction.

****12 B. Child Protection Laws, Like Public Services, Are Equally Applicable to Both Public and Private School Children***

On July 27, 2006, the U.S. Congress established the National Sex Offender Registry “[i]n order to protect the public from sex offenders and offenders against children ...” [42 U.S.C. § 16901](#). As the Court noted

in *Reynolds*, the Act sought “to make more uniform and effective a patchwork of pre-Act federal and 50 state registration systems.” [*Reynolds v. United States*, 132 S.Ct. 975, 976 \(2012\)](#). New York passed The Sex Offender Registration Act (SORA) in 1996 and related penal laws mandate that convicted sex offenders must:

[R]efrain from knowingly entering into or upon any school grounds ... or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present ...

N.Y. CLS Correct, Art. 6-C; [N.Y. Penal Law § 65.10 \(McKinney\)](#).

This statute and its related criminal penalties apply to all schools, both public and private. *Id.*

In February of this year, the New York State Senate Coalition published the results of a bipartisan coalition that lists numerous loopholes in the existing sex offender registration laws. The NYS Senate Coalition, *Keeping Our Children Safe From Sex Offenders* (2015), http://www.nysenate.gov/files/pdfs/Keeping_our_Children_Safe.pdf. The result of *13 this was the passage of nine bills to “close dangerous loopholes in the laws protecting children and communities from sexual predators.” *Senate Coalition Announces Passage of Bills to Close Dangerous Loopholes in Sex Offender Laws*, New York State Senate, Feb. 26, 2015, <http://www.nysenate.gov/press-release/senate-coalition-announces-passage-bills-close-dangerous-loopholes-sex-offender-laws>. With its passage, Senate Independent Democratic Conference Leader and Coalition Co-Leader Jeff Klein stated, “Today the Senate sent a message that dangerous sexual predators do not belong anywhere near schools, including pre-schools.” *Id.* Senate Majority Leader Dean Skelos, an author of Megan's Law, said, “New York needs to take additional steps to address court rulings and loopholes that are reducing the effectiveness of Megan's Law and other measures to protect our children from sexual predators.” *Id.* The result of all of this - the investigations in the wake of *Diack* (where harsher local restrictions were preempted by state restrictions) and the passage of these laws - has created a system that is safer than before. [*People v. Diack*, 41 Misc. 3d 36, 37, 974 N.Y.S.2d 235, 236 \(App. Term 2013\)](#) (leave to appeal granted [22 N.Y.3d 1155, 7 N.E.3d 1127 \(2014\)](#) *rev'd*, [24 N.Y.3d 674, 26 N.E.3d 1151 \(2015\)](#)).

Even now, the fact remains that only public school students enjoy these greater protections. Similarly situated students, i.e. the public school student and the nonpublic school student, are being treated differently by the legislature.¹ When *14 representatives of the legislature stated, “dangerous sexual predators do not belong anywhere near schools,” they did not differentiate between public and private institutions. New York State Senate, *supra*. That differentiation exists in laws such as New York's Project SAVE.

Statutorily mandated fingerprinting for nonpublic school employees would be entirely consistent with long-standing common-law principles and modern public policy. As stated by the Court in [*Veronica Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 \(1995\)](#), “When parents place minor children in private schools for their education, the teachers and administrators of those schools stand *in loco parentis* over the children entrusted them.” The private schools thus owe the same high duty of care parents ordinarily owe their own children. As Justice Cardozo noted in [*Finlay v. Finlay*, 240 N.Y. 429, 434 \(1925\)](#), the

Government is “*parens patriae*” for the protection of infants. See also [Prince, 321 U.S. at 166](#). As recently as 2006, New York state courts have said that the state possesses an “explicit and compelling public policy to protect children from the harmful conduct of adults, particularly in an educational setting. *Binnhamton City Sch. Dist. v. Peacock*, 33 A.D.3d 1074, 1076, 823 N.Y.S.2d 23, 1233 (3rd Dept. 2006), *apt. dism.*, [8 N.Y.3d 840, 830 N.Y.S.2d 692 \(2007\)](#). [N.Y. Educ. Law § 549\(1\)](#) “Health and Safety Grants for Nonpublic School Children” provides: “The legislature hereby finds and declares that: [...] The state has a primary *15responsibility to ensure the health, welfare and safety of children attending both public and nonpublic schools.”

C. This Court Should Grant the Writ to Resolve a Disparity Among the States as to Whether Child Protection Laws Apply Equally to Private and Public School Children

The primary responsibility for regulating education in the United States has traditionally rested with the individual states. DeGroff at 370. In fulfilling this responsibility, states have “navigate[d] in waters that have never been fully charted by the United States Supreme Court.” *Id.* Consequently, there is a wide degree of variation in state regulations that protect some children and deny other children equal protection. *Id.* A concern at the heart of this case is that a child in public school has more legal protections in place than one in a private school. *Id.* Forty-two of the fifty U.S. states require criminal-background checks and fingerprinting for teacher certification in public schools. Jennifer Park, *Education Week Survey, Across The Nation*, Apr. 30, 2003, <http://www.edweek.org/legacymedia/ew/vol-22/gallery/l7webtable.pdf>. However, only about one third of the states mandate similar requirements for nonpublic schools. U.S. Dep’t Of Educ., *State Regulation Of Private Schools* (2009).

As of 2009, only 17 states specifically required mandatory reporting of any incidences of child abuse occurring at non-public schools. *Id.* Even now, although every state has a mandatory reporting statute, only a handful specifically require nonpublic *16 schools to report child abuse. *Id.* The remainder use vague statutes to inadequately address this issue. [Villarin v. The Rabbi Haskel Lookstein School, 96 A.D.3d 1 \(N.Y. Sup. Ct. 2012\)](#). Additionally, statutes regarding mandatory reporting of child abuse in private schools only require specific staff and employees to report it as opposed to the blanket and universal requirements for reporting child abuse in public schools. *Mandatory Reporting of Child Abuse and Neglect 2013 Introduced State Legislation*, Nat’l Conf. Of St. Legislatures, Sept. 23, 2014, <http://www.ncsl.org/research/human-services/redirect-mandatory-rprtng-of-child-abuse-and-neglect-2013.aspx>. As is apparent, child safety laws discriminate among groups of children based “on an arbitrary and improper basis.” Dwyer at 1326.

Given the strong federal policy of protecting children from abuse, this Court should grant the writ to resolve this disparity and clarify the application of Equal Protection to child protection laws.

D. There Exists a Severe Split of Authority on the Issue of the Ministerial Exception to Generally Applicable Laws Which is Directly Related to the Hiring Procedures at Issue in this Case.

To the extent that the state legislatures have exempted private institutions, including private religious institutions, to avoid any questions relating to the hiring of ministers or clergy, they should not. Among the circuits, there is three way split of authority on applying the ministerial exception to Title VII of the

196 Civil Rights Act: first, the primary duties test; second, the holistic approach; *17third, a case-by-case analysis. W. Cole Durham and Robert Smith, *Religious Organizations and the Law* § 9.9 (2d ed. 2010), Westlaw (database updated 2015). In reality, the split is far greater with divides present in all three approaches, particularly a split between qualitative and quantitative evaluation of the primary duties test. *Id.* These competing approaches result in inconsistent outcomes in factually indistinguishable cases. *Id.*

The holding in *Hosanna - Tabor* leaves open the question of whether the State's compelling interest in protecting children, specifically in the instance of reporting sexual abuse (or requiring background checks, as is the case in U.L.), could trump the First Amendment rights of religious organizations and employers. [*Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 710 \(2012\)](#). The Court explicitly declined to address whether a state interest other than fair employment, such as child welfare and safety, would trigger a different outcome and result, awaiting such a case to appear. *Id.*

The circuit split here is crucially important in this case: in some of the above mentioned circuits the ministerial exception would cover all school employees, under some it would only cover some school employees, and in still others it would cover no school employees. This kind of discrepancy cannot be allowed to exist. The Supreme Court is well situated to make this important clarification.

This severe fracture of authority amongst the various circuits' raises concerns about the nature of the ministerial exception to generally applicable laws, including its application in private school settings and child safety.

***18 II. The Second Circuit's Decision Conflicts with Supreme Court Precedent Maintaining the Right of Parents to Send Children to Nonpublic Schools By Forcing Them to Choose Between This Right and the Safety of their Children.**

The Due Process Clause of the Fourteenth Amendment states that “[n]o state shall ... deprive any person of life, liberty, or property, without due process of law.” [U.S. Const., amend. XIV](#). The Court clarified that the liberty embodied in the Due Process Clause includes the liberty to “establish a home and bring up children.” [Meyer v. Nebraska](#), 262 U.S 390, 399 (1923).

In *Pierce*, the Court expanded the rights of parents raising children, when it struck down an Oregon law that compelled all students in a specified age range to attend public schools. [Pierce](#), 268 U.S. at 535. The Court ruled that parents have a fundamental right to send their children to private schools. *Id.* This right was reaffirmed in *Yoder*, where the Court held that a state's interest in universal education had to be balanced against the fundamental rights of parents with respect to the upbringing of their children. [Wisconsin v. Yoder](#), 406 U.S. 205, 214 (1972).

Time and time again, decisions of this Court have consistently upheld the fundamental right of parents to direct the education of their children, specifically whether to send them to public or nonpublic schools. As a fundamental right, this “parental liberty is to be protected by the highest standard of review.” Christopher J. Klicka, *Decisions of the United States *19 Supreme Court Uphold Parental Rights as “Fundamental”*, Home Sch. Legal Def. Ass'n, Oct. 27, 2003, <http://www.hslda.org/docs/nche/000000/>

00000075.asp #18. Whenever government burdens a fundamental right, it implicates a strict scrutiny standard of review. Stephen A. Siegel, *The Origin of the Compelling State Interest Test and Strict Scrutiny*, 48 The Am. J. Of Legal Hist 355 (2006). Strict scrutiny requires the government to prove that the burdensome government act is narrowly tailored to achieve a compelling state interest. *Id.*

The New York Legislature, amongst other state legislatures, has unduly burdened parents and infringed on their fundamental rights. Parents are forced to choose between sending their children to public schools with mandated safety measures, or to private schools where the lack of mandated fingerprinting and background checks places their children in constant peril. Additionally, the First Amendment right to the Free Exercise of religion is also severely burdened here, as thousands of parents are currently faced with the dilemma of choosing between their child's safety and their "*fundamental interest* of parents, as contrasted with that of the state, to guide the religious future and education of their children." [Yoder, 406 U.S. at 232](#) (emphasis added). The New York Legislature's discriminatory decision to only mandate employee background checks and fingerprinting in public schools and not private schools fails the compelling state interest test.

This Court should take this opportunity to find that the Constitution requires New York and every other state to apply the same standard of fingerprint testing and background checks it mandates for public *20 schools to administrators and employees of non-public schools. At this moment, a child who shares everything in common with a neighbor - except the child attending a non-public school - is not receiving the same protections under the law as his neighbor. Failing to mandate fingerprint testing and background checks effectively creates an impossible dilemma for parents, a safe harbor for predators, and an immeasurable risk of trauma for children.

CONCLUSION

For the foregoing reasons, the petition for a writ certiorari should be granted.

Footnotes

[1](#)

Even plugging the loopholes that New York State claimed needed to be closed still puts private schools in an inferior position compared to public schools in terms of security. In essence, private school students would be better off with the broken laws public school systems once enjoyed versus the nonexistent laws that private schools currently have.