

# Congress of the United States

Washington, DC 20515

President Joseph R. Biden  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

April 24, 2024

Dear President Biden:

We write to thank you for finalizing the nine-agency rule, “Partnerships With Faith-Based and Neighborhood Organizations,” to restore and strengthen religious freedom protections for beneficiaries of federally funded social services.<sup>1</sup> While this is an important step in restoring religious freedom protections removed by the previous administration, we also urge you to go farther and rescind remaining legal memoranda and opinions that misuse religious freedom to harm others.

When the government funds social service programs, it must protect religious freedom and make certain all people can get the help they need. No one should be forced to pass a religious litmus test to access federally funded employment opportunities or social services, such as food, housing, and job training.

Alarming, the Trump administration allowed certain service providers to use millions of taxpayer dollars to discriminate against beneficiaries and require them to participate in religious activities as a precondition of receiving services, while also expanding religious discrimination against employees of federal programs.<sup>2</sup>

We applaud the Biden administration for adopting a rule that refocuses on people in need. This rule makes clear that people from all backgrounds can participate in social service programs without being pressured to participate in religious activities or required to meet a religious standard in exchange for the help they need. The rule also eliminates harmful religious exemptions that could have violated the other civil rights of program participants and granted faith-based organizations the right to broadly discriminate against their employees.

Adoption of this final rule is an important step toward fulfilling the Biden administration’s goal from Executive Order 14015 of “preserving our fundamental constitutional commitments guaranteeing the equal protection of the laws and the free exercise of religion and forbidding the establishment of religion.”<sup>3</sup> But there is more to be done.

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<sup>1</sup> <https://www.federalregister.gov/documents/2024/03/04/2024-03869/partnerships-with-faith-based-and-neighborhood-organizations>

<sup>2</sup> <https://www.aclu.org/press-releases/aclu-comment-trump-administrations-final-rule-religious-freedom>

We encourage you, therefore, to rescind and replace the Department of Justice legal memoranda and opinions that misuse religious freedom for the purpose of harming others. These include the Attorney General “Memorandum on Federal Law Protections for Religious Liberty” (Oct. 6, 2017) (“Sessions Memo”) and the Office of Legal Counsel memorandum opinion, “Re: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act” (June 29, 2007) (“OLC Memo”).

Rather than champion religious freedom, the Sessions Memo improperly elevated the statutory right to religious exemptions above all other legal and constitutional rights and served to protect those who sought federal dollars while denying necessary services to and discriminating against religious minorities, women, and LGBTQ individuals. The Memo states that the freedom of religion is of paramount importance, which extends to persons and organizations, yet somehow fails to acknowledge the central importance of the Establishment Cause.

Similarly, the OLC Memo interprets the *Religious Freedom Restoration Act* (RFRA) to provide for a blanket override of statutory nondiscrimination provisions, which is not only an erroneous interpretation, but one that threatens core religious freedom protections. The OLC Memo incorrectly asserts that RFRA can be interpreted to require a federal agency to categorically exempt a religious organization from an explicit federal nondiscrimination provision tied to a grant program.

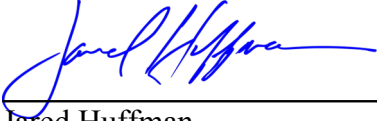
While the finalized nine-agency rule replaces Trump administration policies that stripped away critical religious freedom protections, failing to also rescind the Sessions Memo and the OLC Memo undermines the administration’s goals of upholding equal protection of the law, ensuring racial equity, supporting underserved communities, and combatting LGBTQ discrimination. We urge you to act expeditiously to rescind these flawed memoranda.

Thank you again for your work to lead all nine agencies to adopt strong and uniform rules that protect religious freedom. We look forward to working with you to continue this progress.

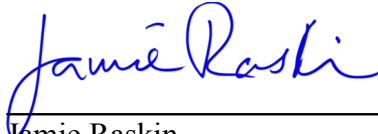
Sincerely,

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<sup>3</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/14/executive-order-on-the-establishment-of-the-white-house-office-of-faith-based-and-neighborhood-partnerships/>



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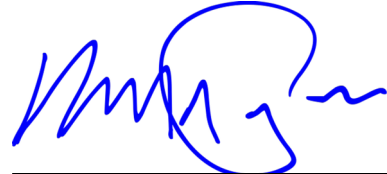
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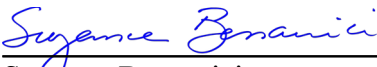
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