

August 25, 2010

The Honorable Harry Reid  
Majority Leader  
United States Senate  
S-221 U.S. Capitol Building  
Washington, DC 20002

### **Allowing Regular Order and Debate For Religious Hiring Rights and Religious Liberty**

Dear Majority Leader Reid:

We respectfully urge you to oppose any effort to amend the Religious Freedom Restoration Act (“RFRA”), to amend Title VII of the 1964 Civil Rights Act, or otherwise to dilute the right of faith-based social service organizations to stay faith-based through their hiring, including when awarded a federal grant.

In support, we enclose an independent affirmation and analysis by one of the nation’s leading experts on church-state law, Professor Douglas Laycock of the University of Michigan Law School (currently at the University of Virginia).

By way of context, several years ago the Justice Department’s Office of Legal Counsel concluded that RFRA can sometimes provide to a faith-based grantee an exemption permitting it to consider religion when hiring (but not in who it serves). This accommodation of religious autonomy is provided only to those religious charities that can show that it would substantially burden their religious freedom to have to drop their religious hiring policy in order to receive a federal grant. The Justice Department did not interpret RFRA as creating a blanket exemption for all faith-based service providers that apply for a grant.

The law has affirmed this right for decades (arguably longer, since the ratification of the First Amendment to our Constitution). We respectfully ask you to uphold and protect this fundamental right, allowing faith-based charities to be treated equally as secular groups when competing for federal funds and to hire employees who share their faith, whether Muslim, Buddhist, Jewish, or Christian. These groups adhere strictly to the law, forbid the use of public funds to proselytize or for any religious activities, and serve all people in need, regardless of faith.

Recently you may have heard from a coalition of advocacy groups urging you to outlaw religious preference in hiring by faith-based recipients of federal grants. But they are urging you to overturn 46 years of fundamental religious freedom law under the Civil Rights Act of 1964. These critics would also have you cripple RFRA by carving out a group of unprotected organizations; faith-based social service providers would become the only organizations not allowed to seek an exemption under RFRA. Such actions would be catastrophic to our efforts to serve those in need and to all who value statutory protection for religious liberty.

Regardless of your position on the religious hiring debate, surely you agree that there must be full and orderly debate before Congress reverses previously unamended statutes to which our First Freedom (religious liberty) looks for much of its protection. It would be scandalous to hide such a seismic change in the law without full, substantive, and open debate.

We want to continue to serve the poor and victims of injustice - - those suffering from famine, the homeless, people trapped in gang-infested communities, chemically-dependent citizens, victims of malaria, earthquake victims in Haiti, those widowed and orphaned by AIDS, among many others. We intend to continue working effectively with government in a constitutionally-sound and proven manner, but only if we can stay faith-based in mission, which means remaining faith-based in those we hire. The law has upheld this balance for nearly half a century.

Thank you in advance for your consideration.

Respectfully,

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