

May 9, 2016

The Honorable Paul Ryan  
United States House of Representatives  
Washington, DC 20515

Majority Leader Kevin McCarthy  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Speaker and Majority Leader:

We write to correct the mischaracterizations of federal employment law and of religious staffing contained in the recent letter from the Coalition Against Religious Discrimination (CARD) that was written in opposition to the Russell amendment to HR 4909, the National Defense Authorization Act for FY 2017.

The undersigned lead faith-based organizations or work to strengthen the freedoms that faith-based organizations need in order to make their valued contributions to our society. Some of the organizations receive federal funds while others support their services from private contributions alone. We have a common commitment to the vital freedom of religious staffing.

When a religious organization considers religion when selecting staff, this is not a suspect act of discrimination, as CARD alleges. The fundamental federal employment law—Title VII of the 1964 Civil Rights Act—includes two exemptions specifically to protect religious organizations from being charged with discrimination when they assess the religious suitability of applicants and employees. This religious staffing freedom, which extends to every position in a religious organization, was unanimously upheld by the US Supreme Court (*Corporation of the Presiding Bishop v. Amos*, 1987), both to protect the religious exercise of the religious organizations and to minimize government entanglement with religion.

Nor does religious staffing somehow turn into wrongful “government funding of discrimination,” as the CARD letter asserts, if the religious organization receives a federal grant or contract. When government awards funding to a religious organization, it is simply selecting the best provider of the desired services or goods, which in such an instance is a religious organization that has the legally protected freedom to select staff compatible with its religious character.

It is notable that few federal grant programs include a restriction on religious hiring, and if they do, a religious organization can appeal to the Religious Freedom Restoration Act to lift the restriction. And when President Obama in 2014 revised the federal contracting rules to expand the nondiscrimination requirements, he left intact the existing religious hiring exemption in the rules.

CARD injures the truth when it headlines its letter, “CARD opposes taxpayer-funded employment discrimination authorized by the Russell Amendment.” Religious staffing is not “employment discrimination.” Taxpayers are funding a valued service and not endorsing every

action of a grantee or contractor. And the Russell amendment simply affirms the long-standing religious hiring exemptions of Title VII and of the Americans with Disabilities Act.

America is a diverse nation, our civil society is full of faith-based organizations, and those faith-based organizations are often government's chosen partners. Religious organizations commonly engage in religious staffing, formally or informally, with respect to all positions or some. They do this not out of hostility to their fellow citizens but to maintain their religious character and the missions that propel and shape their acts of service. Their actions are directly analogous to the actions secular organizations take to ensure that their employees are committed to their secular missions.

The Russell amendment protects religious staffing—which is not an innovation or a wrongful practice—and thereby ensures that the government is able to select its service partners from the whole array of effective private organizations.

Sincerely,

Stanley Carlson-Thies, Founder and Senior Director, Institutional Religious Freedom Alliance

Richard Stearns, President, World Vision, Inc. (US)

Shirley V. Hoogstra, President, Council for Christian Colleges and Universities

Michael Galligan-Stierle, President, Association of Catholic Colleges and Universities

Anthony R. Picarello, Jr., Associate General Secretary & General Counsel, United States  
Conference of Catholic Bishops

G rard Causs , Presiding Bishop, The Church of Jesus Christ of Latter-day Saints

Rabbi Abba Cohen, Vice President for Federal Affairs and Washington Director, Agudath Israel  
of America

Galen Carey, Vice President, Government Relations, National Association of Evangelicals

Dr. Russell Moore, President, Southern Baptist Ethics & Religious Liberty Commission

David Nammo, Executive Director and CEO, Christian Legal Society

Kelly Shackelford, President and CEO; Matthew Kacsmatyk, Deputy General Counsel; and  
Stephanie Phillips, Judicial Fellow in Constitutional Law, at First Liberty Institute

Douglas Laycock, Robert E. Scott Distinguished Professor of Law, University of Virginia Law  
School\*

Carl H. Esbeck, R.B. Price Professor of Law emeritus, University of Missouri\*

Richard W. Garnett, Paul J. Schierl / Fort Howard Corporation Professor of Law, University of Notre Dame\*

Thomas C. Berg, James L. Oberstar Professor of Law and Public Policy, University of St. Thomas School of Law (Minnesota)\*

Steven T. Collis, adjunct professor of law, University of Denver Sturm College of Law\*

Robert A. Destro, Professor of Law & Director, Interdisciplinary Program in Law & Religion, Columbus School of Law, The Catholic University of America\*

John Ashmen, President, Association of Gospel Rescue Missions

Dan Busby, President, Evangelical Council for Financial Accountability

David Stevens, MD, MA (Ethics), CEO, Christian Medical Association

Kevin J Worthen, President, Brigham Young University

John Garvey, President, The Catholic University of America

Clark G. Gilbert, President, Brigham Young University Idaho

Dr. John S. Tanner, President, Brigham Young University Hawaii

Jim J. Adams, Ed.D., President, Life Pacific College

Dr. John Jackson, President, William Jessup University

Jerry C. Davis, President, College of the Ozarks

Thomas J. Cathey, EdD, Director for Legal Legislative Issues, Association of Christian Schools International

Dr. Keith Wiebe, President, The American Association of Christian Schools

Shepherd Smith, President, Institute for Youth Development

Rev. Cheryl Mitchell Gaines, J.D., M.Div., Institutional Religious Freedom Alliance Advisory Committee

\*Educational institutions are listed only for identification.