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December 8, 2021

Ms. Tina Williams
Director
Division of Policy and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, NW
Room C-3325
Washington, D.C. 20210

RE: Proposal to Rescind Rule Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, RIN 1250-AA09, Docket No. OFCCP-2021-0001

Dear Ms. Williams:

I write to express my support for the Office of Federal Contract Compliance Programs' (OFCCP) *Proposal to Rescind Rule Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption*.¹ OFCCP's mission is to "hold[] those who do business with the federal government (contractors and subcontractors) responsible for complying with the legal requirement to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran."²

During the Trump Administration, however, OFCCP undermined its mission by issuing a deeply flawed rule that significantly weakened anti-discrimination protections for employees who work on taxpayer-funded federal contracts.³ As finalized, the Trump-era rule gave religious contractors receiving taxpayer dollars the power to hire and fire employees for discriminatory reasons under the guise of religious freedom.⁴ In practice, this meant

¹ Proposal to Rescind Rule Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 86 Fed. Reg. 62,115 (Nov. 9, 2021) (to be codified at 41 C.F.R. Part 60-1).

² Office of Federal Contract Compliance Programs (OFCCP), *About Us*, U.S. Dep't of Labor, <https://www.dol.gov/ofccp/aboutof.html> (last visited Nov. 30, 2021).

³ Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption, 85 Fed. Reg. 79,324 (Dec. 9, 2020) (codified at 41 C.F.R. Part 60-1).

⁴ See *id.*

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that a wide range of workers—including LGBTQ individuals and pregnant workers—could be denied a taxpayer funded job opportunity or abruptly fired without cause because of a contractor’s religious beliefs.

Additionally, the Trump Administration rule misapplied the *Religious Freedom Restoration Act*⁵ (RFRA) to allow religious contractors to discriminate on *any* basis, except race, in their employment practices if that discrimination was motivated by the contractor’s sincerely held religious beliefs.⁶ When Congress passed RFRA in 1993, it did so in response to a Supreme Court case focused on religious minorities’ exercise of their faith.⁷ RFRA was never intended to allow religion to supersede civil rights laws. Indeed, in passing RFRA, Congress specifically stated that “[n]othing in this bill shall be construed as affecting Title VII of the Civil Rights Act of 1964.”⁸ Instead, RFRA was intended to provide heightened—but not unlimited—protection for religious exercise.⁹ Moreover, RFRA explicitly states that it does not affect in any way the Establishment Clause of the First Amendment,¹⁰ which specifically prohibits granting religious exemptions that would detrimentally affect any third parties.¹¹ Accordingly, its application should remain limited and bound by these constitutional considerations.

The proposal to rescind the Trump-era rule is an important step to restore core civil rights protections for federal contractor employees. Religious liberty is a fundamental American value, but we must be careful to ensure that protections for religious freedom are not used to cause harm or subvert the rights of others, including employees who work on federally funded contracts. Therefore, I strongly support this proposal and urge OFCCP to rescind the Trump-era rule.

If you have any questions regarding this matter, please contact Theresa Thompson with the House Committee on Education and Labor at Theresa.Thompson@mail.house.gov.

Sincerely,



ROBERT C. “BOBBY” SCOTT
Chairman

cc: Jenny R. Yang, Director, Office of Federal Contract Compliance Programs

⁵ 42 U.S.C. §§ 2000bb–2000bb-4

⁶ Implementing Legal Requirements Regarding the Equal Opportunity Clause’s Religious Exemption, 85 Fed. Reg. at 79,354.

⁷ *Employment Division v. Smith*, 485 U.S. 660 (1988).

⁸ H. R. Rep. No. 103-88, at 9 (1993).

⁹ See 42 U.S.C. §§ 2000bb–2000bb-4.

¹⁰ See *id.* § 2000bb-4.

¹¹ See *e.g.*, *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703 (1985) (invalidating a state statute requiring employers to accommodate an employee’s religious observance where that statute failed to consider the burden of the required accommodation on the employer or other employees); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 n. 37 (2014) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)) (Indeed, every member of the Court whether in the majority or in dissent, reaffirmed that the burdens on third parties must be considered.); *Holt v. Hobbs*, 135 S. Ct. 853, 867 (2015) (Ginsburg, J., concurring) (explaining that “accommodating petitioner’s religious belief in this case would not detrimentally affect others who do not share petitioner’s belief”); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 18 n. 8 (1989) (may not “impose substantial burdens on nonbeneficiaries”).