

Congress of the United States
Washington, DC 20515

December 16, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave. SW
Washington, D.C. 20201

Dear Secretary Becerra:

You must reverse course and reinstate the Department of Health and Human Services (HHS) Office for Civil Rights' (OCR) authority to investigate and initiate enforcement actions under the Religious Freedom Restoration Act (RFRA) and the Religion Clause of the First Amendment to the U.S. Constitution. HHS should always work to ensure that the religious liberty of Americans is protected.

On November 24th, your Department issued a notice in the Federal Register that withdrew OCR's authority to investigate non-compliance complaints brought under RFRA and the Religion Clause of the First Amendment.¹ This notice was published shortly after a draft memo leaked from the Department's Office for Civil Rights which suggested that the shift in enforcement authority was motivated by ideological reasons.

On December 7, 2017, then HHS Acting Secretary Eric Hargan granted the Department's Office for Civil Rights authority to enforce RFRA. RFRA prohibits the federal government from substantially burdening an individual or institution's religious exercise "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."² By centralizing RFRA investigations and compliance under OCR, the Trump administration was able to ensure that HHS maintained compliance under the law. This reorganization and delegation of authority to OCR was a commonsense and necessary step to protect Americans' religious liberties.

Rather than keeping with the precedent that President Trump's administration established, your Department has revoked OCR's authority to investigate and enforce any non-compliance with

¹ Delegation of Authority, 86 Fed. Reg. 67067 (Nov. 24, 2021), <https://www.federalregister.gov/documents/2021/11/24/2021-25632/delegation-of-authority>.

² DEP'T OF HEALTH AND HUMAN SERVICES, LAWS AND REGULATIONS ENFORCED BY OCR (Last updated Oct. 27, 2021), <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html>.

RFRA by the Department. The decision to withdraw OCR's ability to ensure that HHS maintains compliance with RFRA is a direct affront to Americans' religious liberty.

It is clear that you have no interest in protecting or upholding the conscience rights of Americans. Your November 24 decision to rescind OCR's authority to protect Americans' conscience rights will only further hamstring OCR's ability to carry out its mission and enforce federal civil rights laws. By limiting your Department's ability to efficiently investigate religious liberty violations, you are signaling to the American people that their moral convictions are not deserving of protection.

Supreme Court Justice Samuel Alito highlighted the degree to which religious liberty is under attack. During an address, Justice Alito stated that "[i]n certain quarters, religious liberty has fast become a disfavored right."³ Your November 24 decision lends more credence to Justice Alito's timely remarks.

We urge you to reverse your November 24 decision to remove OCR's authority to investigate complaints brought under RFRA and the Religion Clause of the First Amendment.

Sincerely,



Andy Biggs
Member of Congress



Jeff Duncan
Member of Congress



Brian Mast
Member of Congress



Marjorie Taylor Greene
Member of Congress

³ Joshua Rhett Miller, *Justice Alito warns of threats to religious liberty in remarks to Federalist Society*, Nov. 13, 2020, N.Y. POST, <https://nypost.com/2020/11/13/justice-alito-warns-of-threats-to-religious-liberty-in-speech/>.

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