

U.S. House of Representatives
Committee on the Judiciary
Washington, DC 20515-6216
One Hundred Fifteenth Congress

August 8, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Sessions,

We write to request that the Department of Justice (“DOJ”) provide a briefing to Members of our Committees regarding the “Religious Liberty Task Force” that you established on July 30, 2018. We understand that the Task Force is charged with implementing the “Federal Law Protections for Religious Liberty” guidance (“Guidance”). Both the Task Force and the Guidance it is intended to implement raise a number of significant concerns that we would like DOJ to address.

According to a two-page memorandum that your office issued, the Associate Attorney General’s Office and the Office of Legal Policy have been coordinating with staff from other Department components to implement the Guidance since its issuance in October 2017.¹ The memorandum states that the Task Force’s purpose is to “institutionalize” this ongoing process and “to leverage the expertise and experience of diverse components within the Department to identify new opportunities for the Department to engage with the issue of religious liberty.”²

The memorandum leaves many questions unanswered. For instance, it does not detail which individuals will comprise the Task Force’s membership or the number of staff or other resources to be assigned, or whether it will be required to meet obligations under the Federal Advisory Committee Act. Instead, the memorandum states that in addition to yourself, the Associate Attorney General, and the Assistant Attorney General for the Office of Legal Policy, the Task Force will be “composed of representatives from the Office of the Deputy Attorney General, the Civil Division, the Civil Rights Division, the Environment and Natural Resources Division, the Office of Legal Counsel, the Office of Legal Policy, the Office of Public Affairs, a U.S. Attorney's Office [the Attorney General] will designate” as well as “other components that [the Attorney General] may designate from time to time to aid in the Task Force's work.”³

¹ Department of Justice Memorandum on “Religious Liberty Task Force” (Jul. 30, 2018).

² *Id.*

³ *Id.*

Beyond questions about the Task Force’s organization, we also note with concern the context in which it is being established. While we firmly believe in the basic constitutional guarantee of religious freedom, the Task Force is being established in the wake of the Trump Administration’s various efforts to roll back important legal and civil rights for women, the LGBTQ community, and religious minorities. In fact, in your remarks announcing the Task Force’s formation you asserted that “[a] dangerous movement, undetected by many, is now challenging and eroding our great tradition of religious freedom,” citing as examples “nuns ordered to buy contraceptives” – a factual mischaracterization of pending litigation over the Affordable Care Act’s requirement that religious organizations submit a form to obtain an exemption from the contraception coverage mandate – and the case of a baker who challenged a Colorado anti-discrimination law after he refused to make a wedding cake for a couple because they are gay.⁴ You further stated “[t]his election, and much that has flowed from it, gives us the rare opportunity to arrest these trends” and that “[s]uch a reversal will not just be done with electoral victories, but by intellectual victories.”⁵

We vehemently disagree with your implication that religious freedom requires the government to allow believers to harm third parties. We strongly support the Constitution’s protections for the free exercise of religion as well as its prohibitions against government establishment of religion. We are also equally strong supporters of the First Amendment’s free speech guarantee. Nonetheless, religious freedom has never been recognized to include the right to diminish the civil rights of others. Nor do we believe that those protections permit individuals or organizations – particularly government employees or organizations that receive taxpayer funds to carry out federal policies – to discriminate against women, LGBTQ persons, and religious minorities in violation of rights protected by the Constitution. Such discrimination could have negative and far reaching consequences, including permitting federal program providers to deny women, LGBTQ persons, and religious minorities’ access to health care, adoption agencies, and other critical services.

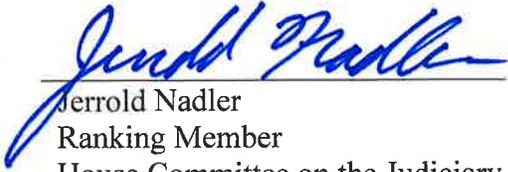
In light of the foregoing concerns, we request that the Department provide a briefing to discuss questions, including questions concerning: Which individuals have been selected to participate in the Task Force; What is the criteria for selection to serve on the Task Force; Which U.S. Attorney’s offices have been designated to participate in the Task Force and why; Which “religious liberty organizations” is the Department reaching out to for “feedback”, and what is the criteria for including outside organizations in any outreach efforts; Will the Task Force have to meet obligations under the Federal Advisory Committee Act, and, regardless, will meeting agendas and meetings themselves be public; What mechanisms are in place to report the Task Force’s activities to Congress, as well as the Department’s pre-Task Force efforts to “institutionalize” the Guidance; What is the justification for including a representative from the Environment and Natural Resources Division on a “Religious Liberty Task Force”; How will the diversion of staff from the Civil Rights Division impact work on Division priorities such as voting rights enforcement, housing discrimination, hate crimes prosecutions, and other civil rights cases under the Division’s purview; From what appropriation is the Task Force to be funded from and what are the estimated costs associated with it?

⁴ Attorney General Sessions Prepared Remarks for the Department of Justice Religious Liberty Summit (Jul. 30, 2018).

⁵ *Id.*

Please contact us at your earliest convenience to schedule the briefing.

Sincerely,



Jerrold Nadler
Ranking Member
House Committee on the Judiciary



Robert C. "Bobby" Scott
Ranking Member
House Committee on Education
and the Workforce

cc: The Hon. Bob Goodlatte, Chairman, Committee on the Judiciary
The Hon. Virginia Foxx, Chairwoman, Committee on Education and the Workforce
The Hon. Stephen E. Boyd, Assistant Attorney General, Office of Legislative Affairs