February 20, 2025

The Honorable Mike Johnson Speaker of the House United States House of Representatives Washington, D.C. 20515

The Honorable Hakeem Jeffries Democratic Leader United States House of Representatives Washington, D.C. 20515 The Honorable John Thune Republican Leader United States Senate Washington, D.C. 20515

The Honorable Charles Schumer Democratic Leader United States Senate Washington, D.C. 20515

Dear Speaker Johnson, Leader Thune, Leader Jeffries, and Leader Schumer,

We write to ask that you continue to protect one of the most important religious freedom statutes in the nation's history, the Religious Freedom Restoration Act of 1993 (RFRA), from any proposed waiver.

Three decades ago, a remarkable and diverse coalition found common ground to protect religious liberty for all. The result was RFRA—a bill that passed with overwhelming and virtually unprecedented support in Congress. Many of us or our organizations were part of that original coalition. For three decades now, we have seen and experienced first-hand how crucial a statute RFRA is to protecting religious freedom.

Thirty years after RFRA's passage we are still a diverse group of religious organizations, parachurch organizations, religious leaders, legal scholars, and advocates. We disagree on many important religious and political issues. But we remain united in this fact: RFRA is a critical civil rights statute that must remain above partisan politics.

We ask that you continue to protect this landmark statute by ensuring that no legislative proposal in the 119th Congress passed out of committee or on the House or Senate floor waives RFRA's application to any federal law. Regrettably, these waivers have appeared in bills sponsored by members of both political parties. No RFRA waiver has ever been signed into law.

RFRA was passed with strong bipartisan support

As you know, RFRA was passed in 1993 with overwhelming bipartisan support (97-3 in the Senate, unanimous consent in the House) in response to the Supreme Court's decision in *Employment Division v. Smith*—a decision which dramatically cut back long-standing constitutional protections for religious exercise. The Court ruling upheld the denial of state unemployment benefits to members of a Native American church fired from their jobs for using peyote in religious ceremonies. The majority reasoned that laws that were neutral and generally applicable did not generally offend the Free Exercise Clause of the First Amendment.

In the wake of *Smith*, Congress responded swiftly by introducing RFRA. Its lead Senate sponsors were Senators Ted Kennedy and Orrin Hatch. The House likewise had strong bipartisan support for the bill under the lead sponsor, then-Representative Chuck Schumer. A remarkably diverse coalition rallied behind federal lawmakers to rebuild robust protections for free exercise. The proposal was endorsed by over sixty groups representing scholars, lawmakers, advocates, Christians, Sikhs, Jews, Muslims, Humanists, and secular

civil liberties organizations. It passed Congress with nearly unanimous support and was signed by President Clinton on November 16, 1993.

RFRA is a balancing test that requires sufficient justification for burdens on free exercise

Nothing in RFRA predetermines whether the religious claimant will win. It is, simply put, a balancing test that promises individuals a day in court when the federal government has substantially burdened their ability to practice their faith. It rightly places the burden of proof on those wielding government power to show why maintaining the burden on this religious person or group is in furtherance of a compelling government interest and could not be avoided. It applies to all federal statutes—including later-enacted statutes—and can only be waived by Congress with an explicit citation.

Courts are well-equipped to adjudicate questions of sincerity, burden, and the government's compelling interest. Empirical evidence from multiple studies shows that the federal government wins RFRA claims as often as it loses them.² Over the last eight years, federal agencies have also repeatedly recognized their obligation to consider RFRA's application in their rulemaking. It is religious views that are unpopular with federal bureaucrats that need RFRA's protection the most.

There are several reasons why no waiver to RFRA must ever pass. First, waivers are unnecessary because a balancing test is written into the very law itself. Where the government has a compelling government interest, that interest will justify the government's burden on religious exercise after the government has proven its case.

Second, because waivers are unnecessary, any single waiver would immediately reduce the potency that Congress intended RFRA to have in the first place. RFRA's protections are meaningful precisely because the statute applies without exception—even, as courts have held, to sensitive areas of the federal government like our nation's military.

Third, any single waiver increases the likelihood that more waivers will be passed in the future, reducing RFRA's protections over time. A diluted RFRA ultimately means diluted religious freedom protections for all of us. A strong, universal RFRA simply requires the federal government to justify its actions with good reasons where religious exercise has been restricted. RFRA is, at its core, common sense protection for the little guy. Nothing is more fundamentally American than that.

RFRA is not a replacement for clear religious freedom protections where there is an identifiable conflict

It should also be noted that, while RFRA is a critical protection that should not be amended, its existence does not absolve Congress from its responsibility to include clear protections for religious exercise where proposed legislation creates an identified free exercise conflict. In such cases, Members must recall their oath to defend the Constitution and negotiate legislation that is respectful of core constitutional protections for religious freedom. And, while RFRA's balancing test may ultimately provide protection, Congress should not pass legislation that generates needless church-state conflict. Religious entanglement and the high cost of litigation are burdens to all parties involved—especially for small or minority faith groups. Such costs can be especially expensive to the federal government if it loses.

Douglas Laycock & Oliver S. Thomas, *Interpreting the Religious Freedom Restoration Act*, 73 Tex. L. Rev. 209, 210, 244 (1994).

² Luke W. Goodrich & Rachel N. Busick, Sex, Drugs, and Eagle Feathers: An Empirical Study of Federal Religious Freedom Cases, 48 Seton Hall L. Rev. 353 (2018). See also Stephanie H. Barclay & Mark Rienzi, Constitutional Anomalies or As-Applied Challenges? A Defense of Religious Exemptions, 59 B.C. L. Rev. 1595, 1639 (2018).

We support RFRA and oppose any waiver of the statute's application to federal law. We urge you to avoid or strike RFRA waiver language from any bill text that is under consideration before your respective chambers.

Respectfully,

David Nammo Mark Rienzi President President

Christian Legal Society

The Becket Fund for Religious Liberty
Professor of Law, Catholic University

J. Randy Forbes Bob Goodlatte

Former Member of Congress (Virginia) Former Member of Congress (Virginia)

Lamar Smith Frank R. Wolf

Former Member of Congress (Texas)

Former Member of Congress (Virginia)

Tim Chapman Louis Brown Jr., J.D.
President Executive Director

Advancing American Freedom Christ Medicus Foundation

Rabbi David Zwiebel Michael E. Chupp, MD

Executive Vice President CI

Agudath Israel of America Christian Medical and Dental Association

William W. Nelson Bishop Gérald Caussé Chancellor Presiding Bishop

Anglican Church in North America The Church of Jesus Christ of Latter-day Saints

Larry Taylor, Ph.D. David A. Hoag
CEO/President President

Association of Christian Schools International Council for Christian Colleges and Universities

Stephanie Summers
CEO
Rabbi Yaakov Menken
Executive Vice President

Center for Public Justice Coalition for Jewish Values

Bishop Derek Jones Jacinta Tegman

Executive Director CEO
Chaplain Alliance for Religious Liberty CRISTA

Ryan T. Anderson, Ph.D.

President

The Ethics and Public Policy Center

Rev. Craig G. Muehler, CAPT, CHC, USN

(Retired) Director

Ministry to the Armed Forces of the LCMS

Brent Leatherwood

President

Ethics and Religious Liberty Commission

Mary Margaret Bush

Vice President & Executive Director

Napa Legal

Michael Martin President & CEO

Evangelical Council for Financial Responsibility

Walter Kim President

National Association of Evangelicals

Ralph Reed Chairman

Faith and Freedom Coalition

Sam Brownback Chairman

National Committee for Religious Freedom

Tim Schultz President

First Amendment Partnership

Michael Farris General Counsel

National Religious Broadcasters

Kelly Shackleford

President, CEO, and Chief Counsel

First Liberty Institute

Nathan J. Diament Executive Director Orthodox Union

Antoine Kazzi

Vice President of Legal & Europe

FOCUS

Brad Dacus President

Pacific Justice Institute

Stanley Carlson-Thies

Senior Director

Institutional Religious Freedom Alliance

Protect the First Foundation

Gregory Jao

Senior Assistant to the President

InterVarsity Christian Fellowship/USA

David K. Trimble

President

Religious Freedom Institute

Howard Slugh General Counsel

Jewish Coalition for Religious Liberty

Melissa Reid

Director of Government Affairs Seventh-day Adventist Church North American Division Eric Treene Former Special Counsel on Religious Discrimination U.S. Department of Justice

Rev. Dave Welch President U.S. Pastor Council

Patrick D. Purtill Executive Vice President & General Counsel Unify.US Most Reverend Kevin C. Rhoades Bishop of Fort Wayne-South Bend Chairman, United States Conference of Catholic Bishops Committee for Religious Liberty

John K. Shunk SVP, Chief Legal Officer World Vision Inc.

Religious Freedom Scholars*:

Stephanie Barclay

Professor of Law and Faculty Co-Director, Georgetown Center for the Constitution Georgetown Law School

Thomas C. Berg James L. Oberstar Professor of Law and Public Policy University of St. Thomas School of Law

Steven T. Collis

Clinical Professor of Law, University of Texas School of Law Faculty Director, Bech-Loughlin First Amendment Center Faculty Director, UT Law and Religion Clinic

Richard F. Duncan

Sherman S. Welpton, Jr. Professor of Law and Warren R. Wise Professor of Law University of Nebraska College of Law

Richard W. Garnett
Paul J. Schierl Professor of Law
Director, Notre Dame Program on Church, State & Society
Concurrent Professor of Political Science

Douglas Laycock

Robert E. Scott Distinguished Professor of Law Emeritus, University of Virginia Alice McKean Young Regents Chair in Law Emeritus, University of Texas

Michael W. McConnell Richard & Frances Mallery Professor, Stanford Law School Director, Stanford Constitutional Law Center Senior Fellow, Hoover Institution

^{*}University affiliations are for identification purposes only.