

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

AMERICAN CIVIL LIBERTIES UNION,

Plaintiff,

v.

DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; DEPARTMENT OF JUSTICE;  
DEPARTMENT OF LABOR; DEPARTMENT OF  
THE TREASURY,

Defendants.

Civil Action No. 1:17-cv-5514

**COMPLAINT FOR INJUNCTIVE RELIEF**

**Preliminary Statement**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief, seeking the release of agency records related to potential religious exemptions from generally applicable nondiscrimination requirements in federally funded programs.

2. In February 2017, media outlets reported that President Donald Trump planned to issue an executive order that would require federal agencies to fund, authorize, and endorse religiously motivated discrimination against lesbian, gay, bisexual, and transgender (“LGBT”) individuals, women, religious minorities, people seeking reproductive healthcare, and children who receive federal services.

3. The executive order under consideration would have granted a broad exemption to existing protections under the Patient Protection and Affordable Care Act,

42 U.S.C. § 18001, *et seq.*, authorizing employers and universities to use their religious beliefs to block employees' and students' health insurance coverage for contraception.

4. The executive order under consideration would have authorized discrimination against same-sex couples and unmarried mothers based on religious beliefs across a host of federal programs and services.

5. The executive order under consideration would have authorized child welfare agencies that receive federal funding to put religious doctrine above the best interest of the children in their care.

6. And the executive order under consideration would have allowed government employees and taxpayer-funded social services providers to discriminate against religious minorities.

7. Although President Trump did not sign the executive order in February, the Trump administration is still actively considering similar plans to authorize religiously-motivated discrimination in federal programs through new executive orders or regulations.

8. Plaintiff American Civil Liberties Union ("ACLU") has therefore sought documents to uncover the details of the Trump Administration's plans to authorize religious exemptions from nondiscrimination requirements.

9. On March 3, 2017, Plaintiff filed FOIA requests with the Department of Health & Human Services, the Department of Labor, the Department of Justice, and the Department of the Treasury.

10. To date, none of the Defendants has processed the ACLU's requests, provided responsive documents, or asserted any applicable basis for withholding disclosure.

11. Plaintiff is legally entitled to these documents, which were requested approximately four months ago. Defendants have far exceeded the statutory and regulatory time limitations to respond.

12. Plaintiffs seek an injunction ordering Defendants to respond to Plaintiff's FOIA requests, conduct a thorough search for all responsive records, and provide the requested documents.

### **Jurisdiction and Venue**

13. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(4)(A)(vii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706.

14. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because Plaintiff's principal place of business is in New York.

### **Parties**

15. Plaintiff is a non-profit organization that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties. The ACLU is a nationwide, non-profit, non-partisan organization with more than 1,500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU has filed multiple FOIA requests pertaining to the government's policies.

16. The Department of Health & Human Services ("HHS") is a Department of the Executive Branch of the United States government. HHS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

17. The Department of Justice (“DOJ”) is a Department of the Executive Branch of the United States government. DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1).

18. The Department of Labor (“DOL”) is a Department of the Executive Branch of the United States government. DOL is an agency within the meaning of 5 U.S.C. § 552(f)(1).

19. The Department of the Treasury (the “Treasury Department”) is a Department of the Executive Branch of the United States government. The Treasury Department is an agency within the meaning of 5 U.S.C. § 552(f)(1).

#### **The FOIA Requests and the Agency’s Response**

20. On March 3, 2017, Plaintiff filed a FOIA request with each of the Defendants seeking, *inter alia*, documents related to new religious exemptions that would authorize discrimination against LGBT individuals, women, religious minorities, people seeking reproductive healthcare, and children who receive services in federally funded programs. *See Exs. A, B, C, D.*

21. To date, none of the Defendants has processed the ACLU’s requests, provided responsive documents, or asserted any applicable basis for withholding disclosure.

22. Defendants have failed to comply with the time limits imposed by the FOIA statute and Defendants’ regulations.

23. Under the FOIA statute, an agency must determine whether to comply with the request within 20 days (excluding weekends and legal holidays) after receiving it. 5 U.S.C. § 522 (a)(6)(A)(i).

24. Defendants have failed to make an initial determination with respect to Plaintiffs' request within the timeframe set by FOIA, and Plaintiffs therefore are deemed to have exhausted all administrative remedies, pursuant to 5 U.S.C. § 552(a)(6)(C).

**Plaintiff's Entitlement to a Waiver of or Reduced Processing Fees**

25. Plaintiff also asked for a waiver or reduction of document search, review, and duplication fees because disclosure is "likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k); 29 C.F.R. § 70.41; 31 C.F.R. § 1.7; 45 C.F.R. § 5.45.

26. The records sought in the instant request will significantly contribute to the public understanding of the operations and activities of Defendants and their grantees. In addition, disclosure is not in the Plaintiff's commercial interest. Plaintiff will evaluate the disclosed documents and, depending on what is contained in the documents, may well disseminate the information to the public. If Plaintiff publicly discloses information obtained through the FOIA, it will do so at no cost to the public.

27. Plaintiff is also entitled to a waiver or reduction of fees because the Plaintiff qualifies as a "representative of the news media" and the records are not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(k); 29 C.F.R. § 70.41; 31 C.F.R. § 1.7; 45 C.F.R. § 5.45.

28. Plaintiff is a representative of the news media for the purposes of FOIA because it is an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.

29. Plaintiff does not seek the requested information for commercial reasons.

Plaintiff summarizes, explains, and disseminates the information it gathers through FOIA requests at no cost to the public.

### **Causes of Action**

30. Plaintiff repeats and realleges paragraphs 1-29.

31. Defendants' failure to timely make available the records sought by Plaintiff's request violates FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and Defendants' corresponding regulations.

32. Defendants' failure to make a reasonable effort to search for records responsive to the Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendants' corresponding regulations.

33. Defendants' failure to officially grant Plaintiff's request for a waiver of fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and Defendants' corresponding regulations.

34. Defendants' failure to officially grant Plaintiff's requests for a reduction of fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), and Defendants' corresponding regulations.

### **Requested Relief**

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendants to immediately process all requested records;
2. Order Defendants to conduct a thorough search for all responsive records;
3. Order Defendants to promptly disclose the requested records in their entirety and make copies available to Plaintiff;
4. Enjoin Defendants from charging Plaintiff fees for the processing of their request;

5. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action under 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: July 20, 2017

/s/Joshua A. Block

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Joshua A. Block  
Leslie Cooper  
American Civil Liberties Union Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
Phone: 212-549-2627  
Fax: 212-549-2650

*Attorneys for Plaintiff*

# Exhibit A



March 3, 2017

By Certified Mail,  
Return Receipt Requested and  
Electronic Mail

FOIA Officer  
Department of Health and Human Services  
Freedom of Information Officer  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, DC 20201  
Email: FOIAREQUEST@HHS.gov

BRIGITTE AMIRI  
SENIOR STAFF ATTORNEY  
*Reproductive Freedom Project*  
T/212.519.7897  
bamiri@aclu.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

To Whom It May Concern:

This is a request for production of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Health and Human Services (HHS), 45 C.F.R. Pt. 5, on behalf of the American Civil Liberties Union (ACLU).

The ACLU seeks documents regarding the potential expansion of religious exemptions that require the federal government to fund, authorize, and endorse myriad forms of discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals, women, religious minorities, and children who receive services in federal programs.

### Definitions

For purposes of this request, the term “materials” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term “HHS” means any individual or group of individuals working for HHS and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within HHS.

### Requests

Please provide the following:

1. Any and all materials from January 1, 2017, until present, relating to:
  - a. Changes or potential changes to rules, regulations, guidance, or guidelines related to the women's preventive health requirement, 42 U.S.C. § 300gg-13(a)(4), including the women's preventive guidelines posted on the Health Resources & Services Administration's website, and a potential expansion of the religious exemption for certain women's preventive services, such as contraception.
  - b. Changes or potential changes to regulations or guidelines promulgated under or related to Section 1557 of the Affordable Care Act.
  - c. Changes or potential changes to rules, regulations, guidance, or guidelines related to health insurance coverage for abortion in the individual health insurance market, including plans offered on federally facilitated exchanges or state-sponsored exchanges.
  - d. Changes or potential changes to rules, regulations, guidance, or guidelines related to exemptions for government contractors or grantees who provide child welfare services and who have religious objections to provide, facilitate, or refer for certain services.
  - e. Changes or potential changes to rules, regulations, guidance, or guidelines related allowing any person, business, house of worship, or religious organization that is a recipient of or offeror for a government contract, subcontract, grant, purchase order, or cooperative agreement to make hiring decisions based on religious beliefs.
  - f. Changes or potential changes to rules, regulations, guidance, or guidelines related to tax penalties, denial or delay of tax exempt status, or denial of tax deductions by houses of worship or nonprofit organizations because they speak about politics, candidates running for government office, marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.
  - g. Changes or potential changes to rules, regulations, guidance, or guidelines related to when HHS will take adverse action against federal employees, contractors, or grantees on the basis of speaking about (or refusing to speak about) marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.

- h. The legality of expanding the ability of or allowing federal employees, grantees, contractors, and subcontractors to deny, refuse to facilitate, or refuse to refer for certain services to LGBT people, same-sex couples, women, or people of other faiths.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require HHS to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon. *See* 5 C.F.R. § 5.33.

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Because we ask that you respond to our request as quickly as possible, and thus do not wish to slow down the agency's response, we do not ask for a fee waiver if the fee pursuant to 5 U.S.C. § 552(a)(4)(A) and 45 C.F.R. § 5.43 associated with this request is less than \$500.00.

If, however, the fee exceeds \$500.00, we request that the fee be waived pursuant to 45 C.F.R. § 5.45. Under § 5.45, fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the commercial interest of the requester. 45 C.F.R. § 5.45. Disclosure in this case meets both of these tests; and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). Fees should thus be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II); 45 C.F.R. § 5.41(b).

The HHS regulations provide the following factors to consider in determining whether disclosure is in the public interest: (a) how the records pertain to the operations or activities of the federal government; (b) whether disclosure of the records reveals any meaningful information about government operations or activities; whether one can learn from these records anything that is not already public knowledge; (c) whether the disclosure advances the understanding of the general public as distinguished from a narrow segment of interested persons; and (d) whether the contribution to public understanding will be significant and

substantially greater as a result of disclosure. 45 C.F.R. § 5.45(b).

Disclosure pursuant to this request is in the public interest. First, the records pertain directly to the operations and activities of the federal government. Second, the information to be learned from the requested documents is not already public knowledge.

Third, because the ACLU qualifies as a “representative of the news media” as defined by FOIA, HHS should find that the information requested is “likely to [be] disseminated to the public.” See 45 C.F.R. § 5.45(b)(3). The ACLU meets the definition of a representative of the news media because it is “an entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.” *National Sec. Archive v. Department of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). See also 45 C.F.R. § 5.5 (defining representative of the media as a “publisher[ ] of periodicals” that “distribute[s]” its “products to the general public” and an entity that “disseminate[s] news through other media (e.g., electronic dissemination of text”). The ACLU regularly gathers information on issues of public significance; uses its editorial skills to turn that information into distinct publications such as reports, newsletters, right-to-know pamphlets, fact sheets, and other educational materials; and distributes those materials to the general public through various channels, such as its heavily subscribed Web site ([www.aclu.org](http://www.aclu.org)), and newsletter sent to its more than 1,000,000 members, as well as an electronic newsletter, which is distributed to subscribers by e-mail. The ACLU is therefore a “news media entity.” Cf. *Electronic Privacy Information Ctr. v. Department of Defense*, 241 F.Supp.2d 5, 10–15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the media” for purposes of FOIA).

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Fourth, allowing fee waivers is in the public interest: Disclosure will contribute to the public good in a significant way because the requested records, which are all materials related to religious exemptions from laws and regulations, concern the operations of a federal agency. “[W]hat could be more important to the public’s understanding of [agency] operations” than understanding whether and to what extent the agency affords religious exemptions from its policies and regulations? *Judicial Watch*, 326 F.3d at 1313.

Finally, disclosure is not in the ACLU’s commercial interest, defined as “interests relating to business, trade and profit.” 45 C.F.R. 5.45(c)(1). The ACLU is a “non-profit, non-partisan, public interest organization.” See *Judicial Watch*, 326 F.3d at 1310. Additionally, the purpose of the request is to monitor and vindicate legal rights; it is unrelated to business, trade, or profit.

Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.

Disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requester, and if the fee exceeds \$500.00, it should therefore be waived. In the event that you decide not to waive the fees if over \$500.00, please provide me with prior notice so that we can discuss arrangements.

We look forward to a determination on this request from you within 10 (ten) working days, pursuant to 45 C.F.R. § 5.35. Thank you for your prompt attention to this request. Please call me at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Brigitte Amiri, ACLU Foundation, 125 Broad Street, 18th Floor, New York, NY 10004.

Sincerely,

*s/ Brigitte Amiri*

Brigitte Amiri

# Exhibit B



March 3, 2017

By Certified Mail,  
Return Receipt Requested and  
Electronic Mail

BRIGITTE AMIRI  
SENIOR STAFF ATTORNEY  
*Reproductive Freedom Project*  
T 212.519.7897  
bamiri@aclu.org

FOIA/PA Mail Referral Unit  
Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001  
MRUFOIA.Requests@usdoj.gov

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

To Whom It May Concern:

This is a request for production of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 CFR Part 16, on behalf of the American Civil Liberties Union (ACLU).

The ACLU seeks documents regarding the potential expansion of religious exemptions that require the federal government to fund, authorize, and endorse myriad forms of discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals, women, religious minorities, and children who receive services in federal programs.

### Definitions

For purposes of this request, the term “materials” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term “DOJ” means any individual or group of individuals working for DOJ and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within DOJ.

### Requests

Please provide the following:

1. Any and all materials from January 1, 2017, until present, relating to:

- a. Changes or potential changes to rules, regulations, guidance, or guidelines related to the women's preventive health requirement, 42 U.S.C. § 300gg-13(a)(4), including the women's preventive guidelines posted on the Health Resources & Services Administration's website, and a potential expansion of the religious exemption for certain women's preventive services, such as contraception.
- b. Changes or potential changes to regulations or guidelines promulgated under or related to Section 1557 of the Affordable Care Act.
- c. Changes or potential changes to rules, regulations, guidance, or guidelines related to health insurance coverage for abortion in the individual health insurance market, including plans offered on federally facilitated exchanges or state-sponsored exchanges.
- d. Changes or potential changes to rules, regulations, guidance, or guidelines related to exemptions for government contractors or grantees who provide child welfare services and who have religious objections to provide, facilitate, or refer for certain services.
- e. Changes or potential changes to rules, regulations, guidance, or guidelines related allowing any person, business, house of worship, or religious organization that is a recipient of or offeror for a government contract, subcontract, grant, purchase order, or cooperative agreement to make hiring decisions based on religious beliefs.
- f. Changes or potential changes to rules, regulations, guidance, or guidelines related to tax penalties, denial or delay of tax exempt status, or denial of tax deductions by houses of worship or nonprofit organizations because they speak about politics, candidates running for government office, marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.
- g. Changes or potential changes to rules, regulations, guidance, or guidelines related to when DOJ will take adverse action against federal employees, contractors, or grantees on the basis of speaking about (or refusing to speak about) marriage for same sex couples, extra-marital sex, gender and gender identity,

contraception, and abortion.

- h. The legality of expanding the ability of or allowing federal employees, grantees, contractors, and subcontractors to deny, refuse to facilitate, or refuse to refer for certain services to LGBT people, same-sex couples, women, or people of other faiths.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require DOJ to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

Because we ask that you respond to our request as quickly as possible, and thus do not wish to slow down the agency's response, we do not ask for a fee waiver if the fee pursuant to 5 U.S.C. § 552(a)(4)(A) associated with this request is less than \$500.00.

If, however, the fee exceeds \$500.00, we request that the fee be waived pursuant to 28 CFR § 16.10. Under § 16.10, fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the commercial interest of the requester. Disclosure in this case meets both of these tests; and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'). Fees should thus be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Disclosure pursuant to this request is in the public interest. The records pertain directly to the operations and activities of the federal government; the information to be learned from the requested documents is not already public knowledge; and disclosure will contribute to the public good in a significant way because the requested records, which are all materials related to religious exemptions from laws and regulations, concern the operations of a federal agency. "[W]hat could be more important to the public's understanding of [agency] operations" than

understanding whether and to what extent the agency affords religious exemptions from its policies and regulations? *Judicial Watch*, 326 F.3d at 1313.

Moreover, disclosure is not in the ACLU's commercial interest. The ACLU is a "non-profit, non-partisan, public interest organization." *See Judicial Watch*, 326 F.3d at 1310. Additionally, the purpose of the request is to monitor and vindicate legal rights; it is unrelated to business, trade, or profit.

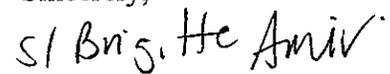
Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.

Disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requester, and if the fee exceeds \$500.00, it should therefore be waived. In the event that you decide not to waive the fees if over \$500.00, please provide me with prior notice so that we can discuss arrangements.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

We look forward to a determination on this request from you within ten working days pursuant to 28 CFR § 16.5. Thank you for your prompt attention to this request. Please call me at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Brigitte Amiri, ACLU Foundation, 125 Broad Street, 18th Floor, New York, NY 10004.

Sincerely,

A handwritten signature in black ink that reads "s/ Brigitte Amiri". The signature is written in a cursive, slightly slanted style.

Brigitte Amiri

# Exhibit C



March 3, 2017

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By Certified Mail,  
Return Receipt Requested and  
Electronic Mail

FOIA Request  
Department of Labor  
Division of Management and Administrative Legal Services  
200 Constitution Avenue, N.W., Room N-2420  
Washington, DC 20210  
foiarequests@dol.gov

BRIGITTE AMIRI  
SENIOR STAFF ATTORNEY  
*Reproductive Freedom Project*  
T 212.519.7897  
bamiri@aclu.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2500  
WWW.ACLU.ORG

To Whom It May Concern:

This is a request for production of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Labor (DOL), 29 C.F.R. Pt. 70, on behalf of the American Civil Liberties Union (ACLU).

The ACLU seeks documents regarding the potential expansion of religious exemptions that require the federal government to fund, authorize, and endorse myriad forms of discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals, women, religious minorities, and children who receive services in federal programs.

#### Definitions

For purposes of this request, the term “materials” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term “DOL” means any individual or group of individuals working for DOL and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within DOL.

#### Requests

Please provide the following:

1. Any and all materials from January 1, 2017, until present, relating to:
  - a. Changes or potential changes to rules, regulations, guidance, or guidelines related to the women's preventive health requirement, 42 U.S.C. § 300gg-13(a)(4), including the women's preventive guidelines posted on the Health Resources & Services Administration's website, and a potential expansion of the religious exemption for certain women's preventive services, such as contraception.
  - b. Changes or potential changes to regulations or guidelines promulgated under or related to Section 1557 of the Affordable Care Act.
  - c. Changes or potential changes to rules, regulations, guidance, or guidelines related to health insurance coverage for abortion in the individual health insurance market, including plans offered on federally facilitated exchanges or state-sponsored exchanges.
  - d. Changes or potential changes to rules, regulations, guidance, or guidelines related to exemptions for government contractors or grantees who provide child welfare services and who have religious objections to provide, facilitate, or refer for certain services.
  - e. Changes or potential changes to rules, regulations, guidance, or guidelines related allowing any person, business, house of worship, or religious organization that is a recipient of or offeror for a government contract, subcontract, grant, purchase order, or cooperative agreement to make hiring decisions based on religious beliefs.
  - f. Changes or potential changes to rules, regulations, guidance, or guidelines related to tax penalties, denial or delay of tax exempt status, or denial of tax deductions by houses of worship or nonprofit organizations because they speak about politics, candidates running for government office, marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.
  - g. Changes or potential changes to rules, regulations, guidance, or guidelines related to when DOL will take adverse action against federal employees, contractors, or grantees on the basis of speaking about (or refusing to speak about) marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.

- h. The legality of expanding the ability of or allowing federal employees, grantees, contractors, and subcontractors to deny, refuse to facilitate, or refuse to refer for certain services to LGBT people, same-sex couples, women, or people of other faiths.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require DOL to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Because we ask that you respond to our request as quickly as possible, and thus do not wish to slow down the agency's response, we do not ask for a fee waiver if the fee pursuant to 5 U.S.C. § 552(a)(4)(A) associated with this request is less than \$500.00.

If, however, the fee exceeds \$500.00, we request that the fee be waived pursuant to 29 CFR § 70.41. Under § 70.41, fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the commercial interest of the requester. Disclosure in this case meets both of these tests; and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). Fees should thus be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Disclosure pursuant to this request is in the public interest. The records pertain directly to the operations and activities of the federal government; the information to be learned from the requested documents is not already public knowledge; and disclosure will contribute to the public good in a significant way because the requested records, which are all materials related to religious exemptions from laws and regulations, concern the operations of a federal agency. "[W]hat could be more important to the public's understanding of [agency] operations" than understanding whether and to what extent the agency affords religious exemptions

from its policies and regulations? *Judicial Watch*, 326 F.3d at 1313.

Moreover, disclosure is not in the ACLU's commercial interest. The ACLU is a "non-profit, non-partisan, public interest organization." See *Judicial Watch*, 326 F.3d at 1310. Additionally, the purpose of the request is to monitor and vindicate legal rights; it is unrelated to business, trade, or profit.

Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.

Disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requester, and if the fee exceeds \$500.00, it should therefore be waived. In the event that you decide not to waive the fees if over \$500.00, please provide me with prior notice so that we can discuss arrangements.

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We look forward to a determination on this request from you within twenty working days. Thank you for your prompt attention to this request. Please call me at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Brigitte Amiri, ACLU Foundation, 125 Broad Street, 18th Floor, New York, NY 10004.

Sincerely,

Handwritten signature of Brigitte Amiri in black ink.

Brigitte Amiri

# Exhibit D



March 3, 2017

By Certified Mail,  
Return Receipt Requested and  
Facsimile

FOIA Request  
Department of the Treasury  
Freedom of Information Officer  
Washington, DC 20220  
Fax: 202-622-3895

BRIGITTE AMIRI  
SENIOR STAFF ATTORNEY  
*Reproductive Freedom Project*  
T/212.519.7897  
bamiri@aclu.org

To Whom It May Concern:

This is a request for production of records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (Treasury), 31 C.F.R. Pt. 1, on behalf of the American Civil Liberties Union (ACLU).

The ACLU seeks documents regarding the potential expansion of religious exemptions that require the federal government to fund, authorize, and endorse myriad forms of discrimination against lesbian, gay, bisexual, and transgender (“LGBT”) individuals, women, religious minorities, and children who receive services in federal programs.

#### Definitions

For purposes of this request, the term “materials” includes but is not limited to any and all objects, writings, drawings, graphs, charts, tables, electronic or computerized data compilations, budgets, accountings, balance sheets or other financial statements, invoices, receipts, minutes, emails, electronic or computerized documents, photographs, audiotapes, videotapes, transcripts, drafts, correspondence, notes, notes of oral communications, and non-identical copies, including but not limited to copies with notations.

For purposes of this request, the term “Treasury” means any individual or group of individuals working for Treasury and any sub-department, office, board, program, group, agency, bureau, administration, and/or other subdivision within Treasury.

#### Requests

Please provide the following:

1. Any and all materials from January 1, 2017, until present, relating to:
  - a. Changes or potential changes to rules, regulations, guidance, or guidelines related to the women's preventive health requirement, 42 U.S.C. § 300gg-13(a)(4), including the women's preventive guidelines posted on the Health Resources & Services Administration's website, and a potential expansion of the religious exemption for certain women's preventive services, such as contraception.
  - b. Changes or potential changes to regulations or guidelines promulgated under or related to Section 1557 of the Affordable Care Act.
  - c. Changes or potential changes to rules, regulations, guidance, or guidelines related to health insurance coverage for abortion in the individual health insurance market, including plans offered on federally facilitated exchanges or state-sponsored exchanges.
  - d. Changes or potential changes to rules, regulations, guidance, or guidelines related to exemptions for government contractors or grantees who provide child welfare services and who have religious objections to provide, facilitate, or refer for certain services.
  - e. Changes or potential changes to rules, regulations, guidance, or guidelines related allowing any person, business, house of worship, or religious organization that is a recipient of or offeror for a government contract, subcontract, grant, purchase order, or cooperative agreement to make hiring decisions based on religious beliefs.
  - f. Changes or potential changes to rules, regulations, guidance, or guidelines related to tax penalties, denial or delay of tax exempt status, or denial of tax deductions by houses of worship or nonprofit organizations because they speak about politics, candidates running for government office, marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.
  - g. Changes or potential changes to rules, regulations, guidance, or guidelines related to when Treasury will take adverse action against federal employees, contractors, or grantees on the basis of speaking about (or refusing to speak about) marriage for same sex couples, extra-marital sex, gender and gender identity, contraception, and abortion.

- h. The legality of expanding the ability of or allowing federal employees, grantees, contractors, and subcontractors to deny, refuse to facilitate, or refuse to refer for certain services to LGBT people, same-sex couples, women, or people of other faiths.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. However, to the extent that a response to this request would require Treasury to provide multiple copies of identical material, the request is limited so that only one copy of the identical material is requested.

In the event you determine that materials contain information that falls within the statutory exemptions to mandatory disclosure, we request that such information be reviewed for possible discretionary disclosure. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). We also request that, in accordance with 5 U.S.C. § 552(b), any and all reasonably segregable portions of otherwise exempt materials be produced. To the extent the request is denied, we expect to receive notice in writing, including a description of the information withheld, the reasons for denial, and any exemptions relied upon.

Because we ask that you respond to our request as quickly as possible, and thus do not wish to slow down the agency's response, we do not ask for a fee waiver if the fee pursuant to 5 U.S.C. § 552(a)(4)(A) associated with this request is less than \$500.00.

If, however, the fee exceeds \$500.00, we request that the fee be waived pursuant to 31 CFR § 1.7. Under § 1.7, fees should be waived or reduced if disclosure is (1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) not primarily in the commercial interest of the requester. Disclosure in this case meets both of these tests; and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'"). Fees should thus be "limited to reasonable standard charges for document duplication." 5 U.S.C. § 552(a)(4)(A)(ii)(II).

Disclosure pursuant to this request is in the public interest. The records pertain directly to the operations and activities of the federal government; the information to be learned from the requested documents is not already public knowledge; and disclosure will contribute to the public good in a significant way because the requested records, which are all materials related to religious exemptions from laws and regulations, concern the operations of a federal agency. "[W]hat could be more important to the public's understanding of [agency] operations" than understanding whether and to what extent the agency affords religious exemptions from its policies and regulations? *Judicial Watch*, 326 F.3d at 1313.

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Because the ACLU meets the test for a fee waiver, fees associated with responding to FOIA requests are regularly waived for the ACLU.

Disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the Requester, and if the fee exceeds \$500.00, it should therefore be waived. In the event that you decide not to waive the fees if over \$500.00, please provide me with prior notice so that we can discuss arrangements.

We look forward to a determination on this request from you within twenty working days, pursuant to 31 CFR § 1.5(h). Thank you for your prompt attention to this request. Please call me at (212) 519-7897 if you have any questions or wish to obtain further information about the nature of the documents in which we are interested. The records should be sent to Brigitte Amiri, ACLU Foundation, 125 Broad Street, 18th Floor, New York, NY 10004.

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

Sincerely,

*s/Brigitte Amiri*

Brigitte Amiri