Congress of the United States
House of Representatives
Washington, DC 20515

September 14, 2016

The Honorable Mac Thornberry
Chairman
Committee on Armed Services
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
2216 Rayburn House Office Building
Washington, DC 20515

Re: Opposition to (Sec. 1094 of the House NDAA) Which Authorizes Government-Funded Employment Discrimination

Dear Chairman Thornberry and Ranking Member Smith:

We write to express our concern regarding the harmful language in Section 1094 of the House version of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (H.R. 4909), which would permit religiously-affiliated federal contractors and grantees to discriminate in hiring with taxpayer-provided funds by broadening the religious exemptions in the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). We urge the conferees to remove this provision in the joint House-Senate conference.

The scope of Section 1094 is far reaching as it would authorize taxpayer-funded employment discrimination in every grant, cooperative agreement, contract, subcontract, and purchase order awarded by every Federal agency doing business with a religiously affiliated organization. This troubling provision prompted 91 religious, education, civil rights, labor, and women's organizations to express their opposition to the sweeping language of Section 1094 in a letter dated August 25, 2016. The groups noted that "effective government collaboration with faith-based groups does not require the sanctioning of federally funded religious discrimination."[1]

The consequences of this amendment are shocking. Section 1094 would effectively nullify the protections from workplace discrimination for LGBT workers that were provided in Executive Order 13672 (Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors) that was signed on July 21, 2014.

Further, the provision would incorporate an exemption from Section 103(d) of the Americans with Disabilities Act that could permit discrimination not only against employees and applicants who are not members of the same religion, but also against those who fail to adhere to the organization's religious tenets.

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[1] Letter from the Coalition Against Religious Discrimination (August 25, 2016) to the Conferees of the National Defense Authorization Act for FY 2017 (NDAA).

Accordingly, under this provision, religious organizations in receipt of federal dollars could use their religious viewpoint to: discharge a female worker who uses birth control or who is pregnant and unmarried; fire employees who engage in premarital sex; deny employment or health benefits to married same-sex couples that they already provide to married opposite-sex couples; or refuse to consider for employment anyone, however qualified, whose religion is inconsistent with the employer's religious tenets.

There is no dispute that churches and religious institutions have the right to hire co-religionists with their own private funds when carrying out the religious mission of their faith. However, when administering a federal social service grant or using federal dollars collected from the taxpayers of differing beliefs, Congress has historically rejected religious discrimination in the use of such funds. This applies to houses of worship and small religious charities, as well as large educational or medical institutions in receipt of Federal funds. Section 1094 would upend a well-established understanding of the Civil Rights Act by ironically allowing religious-based discrimination in the name of religion.

Religious freedom is one of our most cherished values – enshrined in the First Amendment of the U.S. Constitution. However, Section 1094 perilously undermines both the words and the spirit of the groundbreaking Civil Rights Act by expressly permitting religiously affiliated organizations doing business with federal funding to engage in discrimination. Taxpayers will be ill-served if those who do business with the federal government are empowered to use the taxpayers' hard-earned money to discriminate against them.

The federal contractor community has operated and flourished for at least 75 years under various executive orders prohibiting employment discrimination. Section 1094 significantly and needlessly curtails both President Roosevelt's (EO 8802) and President Johnson's (EO 11246) executive orders banning discrimination by federal contractors. In sum, the government should never be in the business of funding discrimination by private entities, regardless of their religious beliefs. Unfortunately, Section 1094 would do just that.

Accordingly, we urge you to remove Section 1094 from the NDAA conference report and thank you for your consideration. We look forward to working with you on this matter.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member
Committee on Education and Workforce

ELIJAH E. CUMMINGS
Ranking Member
Committee on Oversight and Government Reform

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Member of Congress

ELEANOR HOLMES NORTON
Member of Congress

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Member of Congress

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Cc: Members of the Committees on Armed Services