

**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."<sup>1</sup>

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.

---

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

The Honorable Mac Thornberry  
The Honorable Adam Smith  
September 14, 2016  
Page 2

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.

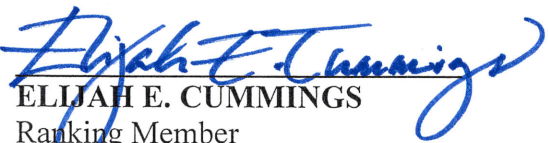
Religious freedom is one of our most cherished values – enshrined in the First Amendment of the U.S. Constitution. However, Section 1094 perilously undermines both the words and the spirit of the groundbreaking Civil Rights Act by expressly permitting religiously affiliated organizations doing business 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.

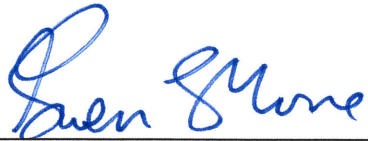
Sincerely,

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

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

  
JOHN CONYERS, JR.  
Member of Congress

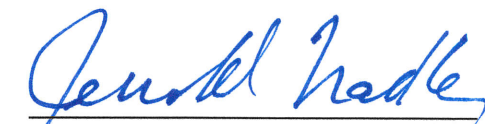
  
ELEANOR HOLMES NORTON  
Member of Congress

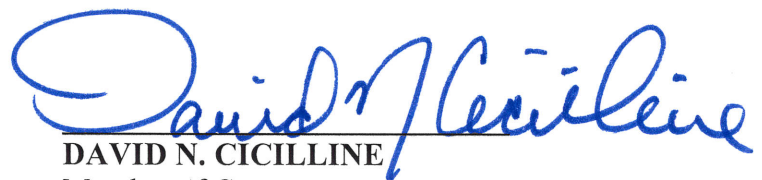
  
GWEN MOORE  
Member of Congress

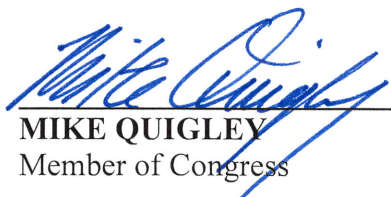
  
DIANA DEGETTE  
Member of Congress

  
THEODORE E. DEUTCH  
Member of Congress

  
BARBARA LEE  
Member of Congress

  
JERROLD NADLER  
Member of Congress

  
DAVID N. CICILLINE  
Member of Congress

  
MIKE QUIGLEY  
Member of Congress

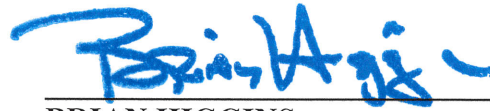
  
CAROLYN B. MALONEY  
Member of Congress

  
LUIS V. GUTIÉRREZ  
Member of Congress

  
SHEILA JACKSON LEE  
Member of Congress



**STEVE ISRAEL**  
Member of Congress



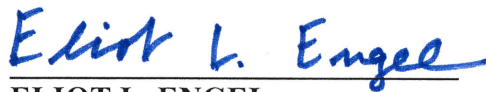
**BRIAN HIGGINS**  
Member of Congress



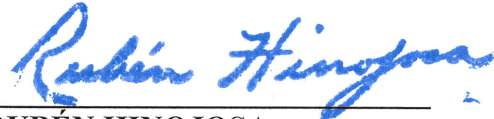
**PETER WELCH**  
Member of Congress



**JANICE D. SCHAKOWSKY**  
Member of Congress



**ELIOT L. ENGEL**  
Member of Congress



**RUBÉN HINOJOSA**  
Member of Congress



**BOBBY L. RUSH**  
Member of Congress



**LOIS CAPPS**  
Member of Congress



**CHELLIE PINGREE**  
Member of Congress



**ANDRÉ CARSON**  
Member of Congress



**BETTY MCCOLLUM**  
Member of Congress



**JOSÉ E. SERRANO**  
Member of Congress



---

**HENRY C. "HANK" JOHNSON, JR.**  
Member of Congress



---

**LLOYD DOGGETT**  
Member of Congress




---

**KEITH ELLISON**  
Member of Congress



---

**LOUISE MCINTOSH SLAUGHTER**  
Member of Congress




---

**DEREK KILMER**  
Member of Congress



---

**CHRIS VAN HOLLEN**  
Member of Congress




---

**MARK TAKANO**  
Member of Congress



---

**KYRSTEN SINEMA**  
Member of Congress



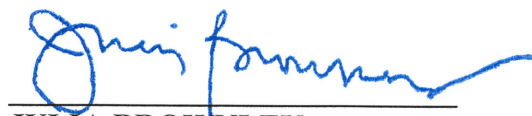
---

**LOIS FRANKEL**  
Member of Congress



---

**RUBEN GALLEGO**  
Member of Congress



---

**JULIA BROWNLEY**  
Member of Congress



---

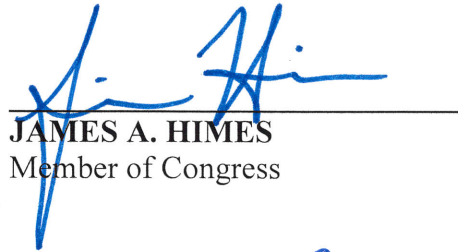
**MICHAEL M. HONDA**  
Member of Congress



**CHERI BUSTOS**  
Member of Congress



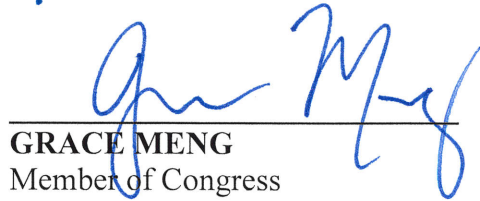
**RAÚL M. GRIJALVA**  
Member of Congress



**JAMES A. HIMES**  
Member of Congress



**RON KIND**  
Member of Congress



**GRACE MENG**  
Member of Congress



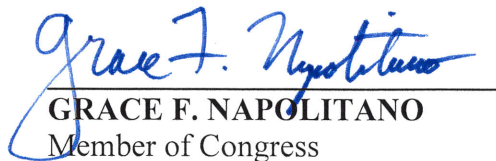
**DEBBIE WASSERMAN SCHULTZ**  
Member of Congress



**TONY CARDENAS**  
Member of Congress



**AMI BERA**  
Member of Congress



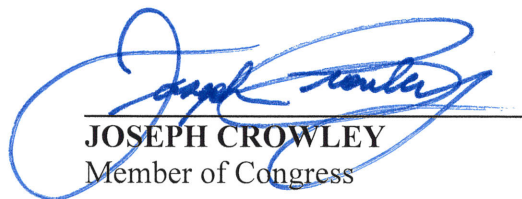
**GRACE F. NAPOLITANO**  
Member of Congress



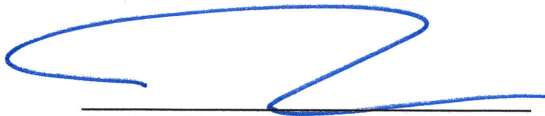
**JARED HUFFMAN**  
Member of Congress



**PETE AGUILAR**  
Member of Congress



**JOSEPH CROWLEY**  
Member of Congress



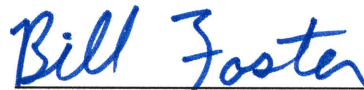
**JOHN K. DELANEY**  
Member of Congress



**JIM COSTA**  
Member of Congress



**MATT CARTWRIGHT**  
Member of Congress



**BILL FOSTER**  
Member of Congress



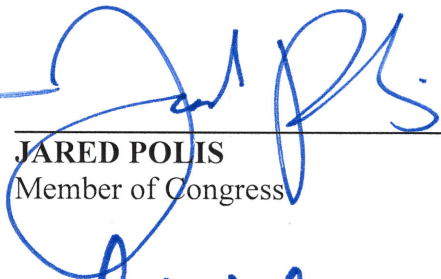
**NIKI TSONGAS**  
Member of Congress



**ED PERLMUTTER**  
Member of Congress



**DONALD NORCROSS**  
Member of Congress



**JARED POLIS**  
Member of Congress



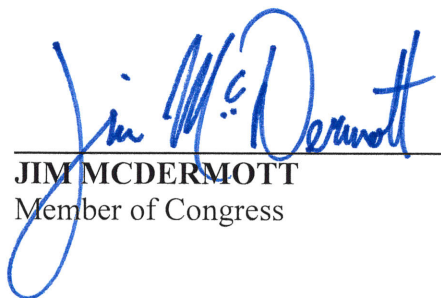
**KATHERINE M. CLARK**  
Member of Congress



**SETH MOULTON**  
Member of Congress



**ZOE LOFGREN**  
Member of Congress



**JIM MCDERMOTT**  
Member of Congress

1

*Michelle Lujan Grisham*

MICHELLE LUJAN GRISHAM  
Member of Congress

*Ted W. Lieu*

TED W. LIEU  
Member of Congress

*Bonnie Watson Coleman*

BONNIE WATSON COLEMAN  
Member of Congress

*Dina Titus*

DINA TITUS  
Member of Congress

*Frederica S. Wilson*

FREDERICA S. WILSON  
Member of Congress

*Daniel T. Kildee*

DANIEL T. KILDEE  
Member of Congress

*Suzanne Bonamici*

SUZANNE BONAMICI  
Member of Congress

*Bob A. Brady*

ROBERT A. BRADY  
Member of Congress

*Suzan K. DelBene*

SUZAN K. DELBENE  
Member of Congress

*James P. McGovern*

JAMES P. MCGOVERN  
Member of Congress

*William R. Keating*

WILLIAM R. KEATING  
Member of Congress

*John A. Yarmuth*

JOHN A. YARMUTH  
Member of Congress





**ALAN S. LOWENTHAL**  
Member of Congress



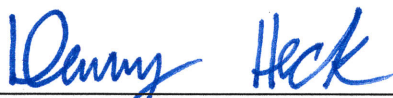
**JOSEPH P. KENNEDY, III**  
Member of Congress



**FRANK PALLONE, JR.**  
Member of Congress



**PATRICK E. MURPHY**  
Member of Congress



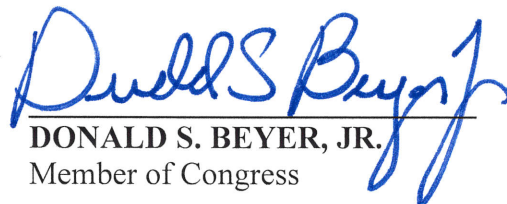
**DENNY HECK**  
Member of Congress



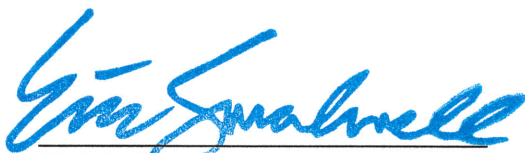
**ELIZABETH H. ESTY**  
Member of Congress



**MARK POCAN**  
Member of Congress



**DONALD S. BEYER, JR.**  
Member of Congress



**ERIC SWALWELL**  
Member of Congress



**MIKE THOMPSON**  
Member of Congress




**TAMMY DUCKWORTH**  
Member of Congress

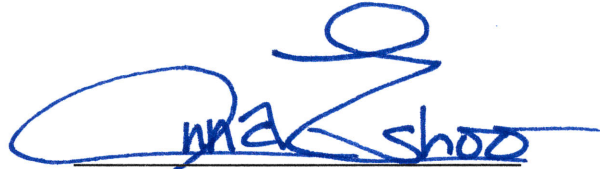


**STEVE COHEN**  
Member of Congress

The Honorable Mac Thornberry  
The Honorable Adam Smith  
September 14, 2016  
Page 10



**BETO O'ROURKE**  
Member of Congress



**ANNA G. ESHOO**  
Member of Congress



**EARL BLUMENAUER**  
Member of Congress

Cc: Members of the Committees on Armed Services