

February 13, 2020

Submitted Electronically via Regulations.gov

Director, Office of Regulation Policy and Management (00REG)

U.S. Department of Veterans Affairs

810 Vermont Avenue NW, Rm 1064

Washington, D.C. 20420

Re: Public Comment on Joint Proposed Rule - Equal Participation of Faith-Based Organizations in Veterans Affairs Programs: Implementation of Executive Order 13831, RIN 2900-AQ75

Dear Sir or Madam:

First Liberty Institute (“First Liberty”) is the largest legal organization in the nation dedicated exclusively to defending religious freedom for all Americans. As a part of its mission, First Liberty provides *pro bono* legal advice and representation to numerous faith-based organizations that seek to live out their deep religious convictions by selflessly serving America’s veterans. First Liberty submits this comment on behalf of two such organizations: Mighty Oaks Warrior Programs (MOWP) and Shield of Faith Missions (SOF Missions).

The Mighty Oaks Warrior Program is a faith-based Veteran service organization that teaches combat Veterans struggling with Post Traumatic Stress how to get beyond combat trauma and live their lives in the manner God intended. Many combat vets are unable to reintegrate back into civilian life, leaving their families to deal with the aftermath of broken homes and suicide at times. By aligning their lives to Biblical principles, these warriors are able to lead their families, their communities and our nation. MOWP’s mission is to serve and restore our nation’s warriors and families, who have endured hardship through their service to America, and to help them find a new life purpose through hope in Christ. MOWP tackles this critical issue with peer-to-peer resiliency and recovery programs offered at no cost to our nation’s honored service men and women.

For warriors who are struggling, the MOWP journey begins with an intensive peer-based Legacy Program. Through instruction, life-skill projects and team building, MOWP challenges warriors to overcome past experiences and move forward into a life of purpose. More than 3,100 alumni have participated in MOWP, and it maintains one of

the highest success rates of any recovery program in preventing veteran suicide and divorce. In fact, MOWP is so successful that it receives hundreds of active duty military on official orders each year. Additionally, through a proactive effort, MOWP has provided Resiliency Programs to over 130,000 active duty troops on military bases worldwide.

MOWP uses its platform to advocate for civilian and government support of America's warriors returning home, and the inclusion of faith-based treatment options, which have shown to be some of the most effective available today.

SOF Missions was established in 2011 as a non-profit 503(c)3 organization by Dr. Damon and Dayna Friedman to combat the suicide epidemic among veterans. SOF Missions is committed to combating this problem by 'empowering warriors to find purpose and be resilient.' SOF Missions is very unique in their approach as it addresses the suicide crisis from a holistic perspective.

Through the Resiliency Project, the SOF Missions team develops and provides a complete treatment plan encompassing psychological, social, spiritual, and physical programs. They accomplish this through a national network of partners, non-profit organizations, and civilian health care providers. The Resiliency Project provides veterans with services for a full year and is fully funded.

In 2019, SOF Missions served 20 warriors in The Resiliency Project (365 days of care), 60 groups used its veteran resources, 275 veterans received connect care and over 10,000 people were present at 19 speaking engagements across the country. SOF Missions is currently serving veterans at various levels throughout 34 states. They have recently partnered with President Trump's PREVENTS Task Force and are serving alongside the Florida Department of Veterans Affairs and Florida chapters of the American Legion. In 2020, SOF Missions aims to increase its impact five-fold, which will provide 100 warriors with full spectrum care and over 1400 warriors will receive connect care across the nation. Since its inception, SOF Missions veterans have served over 90,000 people in the US and throughout 7 countries.

First Liberty supports and commends the Department of Veterans Affairs (VA) for ending a regulatory scheme that serves no legitimate purpose. Forcing faith-based veterans service organizations to identify and refer veterans to secular service providers not only discriminates against faith-based organizations, but it also harms veterans in need of the services such organizations provide. Moreover, the proposed rule will bring the VA into conformity with Executive Order 13831.

As one 2016 study concluded, religious communities in America contribute more than an estimated \$1 trillion annually to American society.¹ Another overview of the impact of faith-based organizations on society in America stated that faith-based organizations “are among the largest and most critically needed U.S.-based deliverers of human services in the world measured by the scope of services provided and the number of persons served” and noted that the Salvation Army, for example, “reports that it offers services in virtually every zip code in the nation, and serves more than 30 million Americans every year.”²

The proposed regulation would eliminate existing barriers that organizations such as MOWP and SOF Missions currently face when attempting to offer services to America’s veterans.

The Current VA Regulation

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships with Faith-Based and Other Neighborhood Organizations. Executive Order 13559 created a new requirement that faith-based social services providers who receive federal funds refer potential beneficiaries of their services to secular providers if the potential beneficiary objects to the religious character of the faith-based provider. It also required faith-based social services providers to advertise the fact that they would make such referrals. Finally, Executive Order 13559 required that the awarding of federal funds not be based on a recipient’s religious affiliation or lack thereof.

Since then, the Supreme Court of the United States issued its ruling in *Trinity Lutheran Church of Columbia v. Comer*, 137 S.Ct. 2012 (2017), a decision that eliminates any alleged legitimacy in the requirement that federal agencies place hindrances on faith-based providers not also placed upon secular providers. In *Trinity Lutheran*, a church was faced with a choice, to “participate in an otherwise available benefit program or remain a religious institution.” *Id.* at 2021-22. In a similar manner, a government requirement that faith-based providers refer services to secular providers that may provide services in a manner inconsistent with the faith-based provider’s religious tenets places a substantial burden upon the free exercise of that organization in a manner likely in violation of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1. See *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 723-26 (2014). Moreover, it is unlikely that this provision could

¹ Brian J. Grim and Melissa E. Grim, “The Socio-economic Contribution of Religion to American Society: An Empirical Analysis,” 12 *Interdisciplinary J. of Research on Religion* (2016), available at <http://www.religjournal.com/pdf/ijrr12003.pdf>.

² Brief *Amicus Curiae* of United States Conference of Catholic Bishops et al., *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

withstand strict scrutiny since there is no interest here, let alone a compelling interest, sufficient to support the government's burden on faith-based providers.

The proposed rule ends any prospect that a faith-based provider could be complicit in the provision of services that contradict or offend its religious convictions. As Justice Anthony Kennedy observed in his concurring opinion in *Hobby Lobby*, "In our constitutional tradition, freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law. For those who choose this course, free exercise is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts." *Burwell*, 573 U.S. at 736 (Kennedy, J., concurring). The proposed rule resolves any question that a faith-based provider must "renounce its religious character in order to participate in an otherwise generally available public benefit program, for which it is fully qualified." *Id.* at 2024. Religious organizations should be treated equally and fairly. The proposed rule ends the ability of the federal government to discriminate against a religious organization merely *because* it is religious.

The Proposed VA Regulation

By removing the requirement that faith-based providers refer beneficiaries to secular providers, unequal treatment of religious organizations will end. The proposed regulation accords with Executive Order 13279, "Equal Protection of the Laws for Faith-Based and Community Organizations," in which President Bush stated:

No organization should be discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs;

...

...[O]rganizations, in providing services supported in whole or in part with Federal financial assistance, and in their outreach activities related to such services, should not be allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.

Executive Order 13279, Sections 2(c) and (d).

The First Amendment requires the federal government to treat religious organizations equally, permitting them to act in a manner consistent with the religious convictions that form the basis of their mission. Executive Order 13279, Section 2(f).

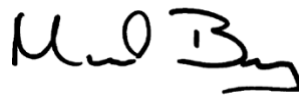
In providing guidance to federal agencies with respect to Executive Order 13279, then-Attorney General Jeff Sessions noted the importance of treating faith-based providers equally with secular providers in all matters, including contracting and grant distribution. Faith-based providers, therefore, “should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations.” Memorandum for All Executive Departments and Agencies, “Federal Law Protections for Religious Liberty,” 82 FR 49668, 49671 (October 6, 2017) (the “Attorney General’s Memorandum on Religious Liberty”).

The proposed rule comports with Executive Order 13279 and Executive Order 13831 (signed by President Trump on May 3, 2018), and, reflecting current Supreme Court jurisprudence and federal religious liberty statutes, declines to “condition receipt of a government contract or grant on the effective relinquishment of a religious organization’s Section 702 exemption for religious hiring practices, or any other constitutional or statutory protection for religious organizations.” *Id.* Further, the proposed rule respects the internal workings of faith-based providers, refusing to “meddle in the internal governance affairs of religious organizations or to limit those organizations’ otherwise protected activities.” *Id.*

Conclusion

In conclusion, First Liberty supports the proposed rule. Placing faith-based organizations on equal footing with their secular counterparts will aid the VA in achieving the full promise of its noble mission: “To care for him who shall have borne the battle and for his widow and his orphan.”

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Berry". The signature is stylized and written in a cursive-like font.

Michael Berry
General Counsel
First Liberty Institute