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DEMOCRATIC STAFF DIRECTOR

One Hundred Eighteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

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Acting Assistant Secretary Erin Barclay
Bureau of Democracy, Human Rights, and Labor
U.S. Department of State
Harry S. Truman Building
2201 C Street NW
Washington, DC 20520

Ambassador-at-Large Rashad Hussain
Office of International Religious Freedom
U.S. Department of State
Harry S. Truman Building
2201 C Street NW
Washington, DC 20520

Dear Acting Assistant Secretary Barclay and Ambassador-at-Large Hussain,

We write to once again ask why it is in America's interest to promote Atheism overseas, and why the Department refuses to produce certain documents that shed light on that misguided decision.

Following numerous unanswered inquiries during the 117th Congress, the Committee sent letters to the Department earlier this year regarding the Bureau of Democracy, Human Rights, and Labor (DRL) Notice of Funding Opportunity (NOFO) Number SFOP0007977, entitled "Promoting and Defending Religious Freedom Inclusive of Atheist, Humanist, Non-Practicing and Non-Affiliated Individuals."¹ After nearly six months of silence, on June 8, 2023, the Department purported to explain the implementation of the NOFO² but, in so doing, raised new questions. Then, on June 20, 2023, the Department finally produced a batch of documents related

¹ Letter from Committee on Foreign Affairs, U.S. H.R., to Rashad Hussain, Ambassador-at-Large, Office of International Freedom, U.S. Dep't of State (May 8, 2023) (on file with HFAC); Letter from Committee on Foreign Affairs, U.S. H.R., to Erin Barclay, Acting Assistant Secretary, Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State (Feb. 1, 2023).

² Letter from Naz Durakoglu, Assistant Secretary, Bureau of Legislative Affairs, U.S. Dep't of State, to Michael McCaul, Chairman, Committee on Foreign Affairs, U.S. H.R. (June 8, 2023).

to the programs that were funded under the NOFO.³ This production, however, failed to answer many of the Committee’s previous questions and has brought to light additional concerns regarding the Department’s grant review process.

In its June 8 letter, the Department states that DRL and the Office of International Religious Freedom (IRF) “do[] not provide funds to any organization with the aim of using such funds to promote or advance specific religious ideologies or beliefs.”⁴ This statement, however, directly contradicts the language of the NOFO itself, which makes clear that the intent of the funded programs was to expand Atheists’ presence and influence in the relevant countries.⁵ Furthermore, even a cursory look into the operations and mantra of Humanists International (HI) calls the Department’s claim into question. On its website, HI requires all of its “member organizations” to pay dues and “support” the five objectives of HI, the first of which is “The *Advancement of Humanism*.”⁶ Thus, the implementing partner itself is publicly negating the Department’s claim of neutrality, by illustrating that DRL subgrantees⁷ have sectarian objectives.⁸

³ Letter from Naz Durakoglu, Assistant Secretary, Bureau of Legislative Affairs, U.S. Dep’t of State, to Michael McCaul, Chairman, Committee on Foreign Affairs, U.S. H.R. (June 20, 2023).

⁴ Letter from Naz Durakoglu to Michael McCaul (June 8, 2023), *supra* note 2.

⁵ *DRL FY20 IRF Promoting and Defending Religious Freedom Inclusive of Atheist, Humanist, Non-Practicing, and Non-Affiliated Individuals*, U.S. DEP’T OF STATE (Apr. 21, 2021), <https://www.state.gov/statements-of-interest-requests-for-proposals-and-notice-of-funding-opportunity/drl-fy20-irf-promoting-and-defending-religious-freedom-inclusive-of-atheist-humanist-non-practicing-and-non-affiliated-individuals/> (The NOFO states that “Expected Program Outcomes include . . . [i]ncreased capacity among members of atheist and heterodox individuals to form or join networks or organizations . . . [and] program activities could include . . . [c]reating or strengthening networks of advocates for the diverse communities of atheist, humanist, non-practicing and non-affiliated individuals of all religious communities . . .”) (emphasis added).

⁶ *Join our global humanist movement*, HUMANISTS INTERNATIONAL, <https://humanists.international/join/> (click “Become a Member” or “Become an Associate” for membership or associate requirements) (last visited June 12, 2023) (emphasis added).

⁷ It is clear HI member organizations are the intended subgrantees within Nepal and Sri Lanka. *See* Department Document Production, at STATE-2023-00012-0000046 (June 20, 2023) (on file with HFAC) (HI stating, “We will use our existing structures for dissemination and monitoring of grants to make available two sub-grants to *member organizations* in Sri Lanka and Nepal.”) (emphasis added).

⁸ More recently, DRL has issued a NOFO seeking to support the rights of Dalits in Nepal and Bangladesh (Dalit NOFO). *See DRL FY 2022 IRF Supporting Dalit Rights in Nepal and Bangladesh*, U.S. DEP’T OF STATE (Dec. 27, 2022), <https://www.state.gov/drl-fy-2022-irf-supporting-dalit-rights-in-nepal-and-bangladesh/>. Though there is reference to protecting certain minority religions, the Dalit NOFO is much broader than the DRL Atheism NOFO. The Dalit NOFO lists program outcomes as fostering “mutual respect for Dalit and other lower caste groups” and providing “access to legal tools . . . to challenge discrimination and violence . . .” This language is vastly different from that of the DRL Atheism NOFO which expresses a desire to “[i]ncrease[] capacity among members of atheist and heterodox individuals to form or join networks or organizations, implement advocacy campaigns . . .” Additionally, unlike the Dalit NOFO, the DRL Atheism NOFO was issued as a first of its kind in South Asia. Prior to the DRL Atheism NOFO, DRL had not attempted to directly promote certain religious groups in South Asia through the issuance of grants. Thus, the Department may not claim that the existence of the Dalit NOFO is proof that it is not, in the relevant countries, preferencing one religion (Humanism/Atheism) at the expense of all others. That is because, first, the Dalit NOFO does not apply to the same countries as the Atheism NOFO; second, at the time it was issued, and presumably during at least part of its implementation phase, the Atheism NOFO was the only one of its kind; and third, the Dalit NOFO does not indicate an explicit attempt to expand the presence and influence of a certain religion, unlike the Atheism NOFO.

Nor may the Department evade responsibility by claiming that a constitutional analysis is unwarranted, because humanism is not synonymous with religious belief. For over half a century, the courts have considered Humanism a “religion” protected under the Establishment Clause,⁹ and therefore held that Humanism may not be specifically promoted using aid money from the government.¹⁰ At least one section of HI’s Application for Federal Assistance expresses HI’s intent to violate that prohibition. Under “Objective 2” of its program proposal, HI states it will award sub-grants for “[o]rganizing events and seminars to *promote the positive aspects of humanism* and other ethical non-religious worldviews . . .”¹¹ including Atheism.¹² Thus, in the explicit words of the implementing partner, the goal of the Department funded program is promotion of the tenets of a single belief system.

In addition to promoting Humanism and Atheism overseas, HI also works closely with member organizations that engage in American litigation to promote Humanism domestically, often to the detriment of other religious creeds.¹³ These organizations include American Humanist Association (AHA), which shares a Washington, D.C. address with HI,¹⁴ and American Atheists.¹⁵ Far from advancing religious freedom, AHA often takes actions which are antithetical to the idea of religious freedom.¹⁶ HI’s close association with AHA speaks volumes about the true objectives of HI, and should be of grave concern to the Department.

⁹ *Torcaso v. Watkins*, 367 U.S. 488, 495 n.11 (1961) (“Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, *Secular Humanism*” (emphasis added)).

¹⁰ *See Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067, 2096 (2019) (Thomas, J., concurring) (noting that “singl[ing] out a particular religious denomination for exclusive state subsidization” is a “historical characteristic[] of an establishment of religion.”); *see also Bowen v. Kendrick*, 487 U.S. 589, 609 (1988) (“we have always been careful to ensure that direct government aid to religiously affiliated institutions does not have the primary effect of advancing religion. One way in which direct government aid might have that effect is if the aid flows to institutions that are ‘pervasively sectarian.’”); *see also Hunt v. McNair*, 413 U.S. 734, 743 (1973) (“Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission . . .”).

¹¹ Department Document Production, at STATE-2023-00012-00000178 (June 20, 2023) (on file with HFAC) (emphasis added).

¹² *See* Department Document Production, at STATE-2023-00012-00000043 (June 20, 2023) (on file with HFAC) (In HI’s initial program proposal, the Department was notified that “humanist” and “atheist” are synonymous in South Asia.).

¹³ *See City of Ocala v. Rojas*, 142 S. Ct. 764 (2023) (arguing a candlelight vigil facilitated by police violates the Establishment Clause); *Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067 (2019) (arguing the placement of a Latin Cross on public land violates the Establishment Clause); *Am. Humanist Ass’n v. McCarty*, 851 F.3d 521 (5th Cir. 2017) (arguing that a school board inviting students to give statements, which were sometimes prayers, violated Establishment Clause).

¹⁴ *See About the American Humanist Organization*, AMERICAN HUMANIST ASSOCIATION, <https://americanhumanist.org/about/>; *About Humanists International*, HUMANISTS INTERNATIONAL, <https://humanists.international/about/> (Listing 1821 Jefferson Place NW, Washington, DC 20036 as their registered address.).

¹⁵ *See Our Members and Associates*, HUMANISTS INTERNATIONAL, <https://humanists.international/about/our-members/list/> (last visited July 19, 2023).

¹⁶ *American Humanist Association Condemns National Prayer Breakfast*, AMERICAN HUMANIST ASSOCIATION (Jan. 20, 2023), <https://americanhumanist.org/press-releases/american-humanist-association-condemns-national-prayer-breakfast/> (Characterizing all who attend the National Prayer Breakfast as “Christian Nationalists”); Brief for

The awarding of the DRL NOFO to HI reveals major flaws in the Department’s screening process for potential constitutional violations. The Department states that Establishment Clause concerns may be raised both “prior to the issuance of a grant agreement” and “during the implementation phase” of the grant.¹⁷ Evidently, though, “no such concerns were raised” regarding HI’s program proposal,¹⁸ leaving us perplexed.

The Department’s efforts to combat religious persecution abroad do not entitle the Department to promote particular religions using taxpayer funds.

With these concerns in mind, we ask you to address the following questions and comply with the following document requests:

1. What specific caselaw was the basis for the Establishment Clause training slides provided by the Department in its June 20, 2023, letter?¹⁹ Are these the slides which Department employees relied upon in determining there were no Establishment Clause concerns with HI’s program?
 - a. Did the Department previously base its training slides on the test articulated in *Lemon v. Kurtzman*?²⁰ If so, have they modified their training in light of the Court’s recent abandonment of that test?²¹
2. Does the Department view Atheism and Humanism as religions?
 - a. If so, why was it permitted for these religions to be specifically promoted in the program by HI, and why was this not raised as a concern in the proposal review process?
 - b. If not, how does this comport with the Supreme Court’s First Amendment jurisprudence?²²

Respondent at 45–46, *City of Ocala v. Rojas*, 143 S. Ct. 764 (2023) (Nos. 22-278), 2022 U.S. S. Ct. Briefs LEXIS 3866, at *50 (Characterizing voluntary attendees at a candlelight vigil as “being stuck at a Christian Revival”).

¹⁷ Letter from Naz Durakoglu to Michael McCaul (June 8, 2023), *supra* note 2.

¹⁸ *Id.* at 6.

¹⁹ Department Document Production, at STATE-2023-00012-0000137–142 (June 20, 2023) (on file with HFAC).

²⁰ The Department’s Establishment Clause Analysis slides ask, “Does the program have a secular purpose? Does it have a neutral effect, or does it have a principal or primary effect of advancing or inhibiting religion?” Department Document Production, at STATE-2023-00012-0000135 (June 20, 2023) (on file with HFAC). This mirrors the test articulated in *Lemon v. Kurtzman*: “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971).

²¹ See *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2414 (2022) (“[T]his Court long ago abandoned *Lemon* and its endorsement test offshoot. In place of *Lemon* and the endorsement test, this Court that the Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’”).

²² See *Torcaso v. Watkins*, 367 U.S. 488 (1961); *U.S. v. Seeger*, 380 U.S. 163 (1965).

3. Does the Department investigate affiliations of implementing partners prior to awarding grants? If so, did the Department find the close affiliation of HI and AHA concerning?
4. Does the Department view HI's requirement that applicants for training "provide information about their humanist activism, their past and current affiliation with non-religious groups, and how they intend to use the skills acquired during the training sessions in the future" as consistent with the Establishment Clause and No Religious Test Clause? Please provide a legal justification in support of the answer.
5. Provide all training materials from the training sessions organized in Kathmandu, Nepal during Q1 of 2023.²³
6. We remind you that you are still out of compliance with various documents requests made in the May 8, 2023, letter from this Committee. Our immediate priorities are as follows:
 - a. Please provide all correspondence (emails, internal memoranda, calendar invites and attachments, Microsoft Teams chats) regarding DRL NOFO Number SFOP0007977 both before and after funding was granted to HI to implement the program.
 - b. A copy of the current DRL/GP Operations Plan that shows how DRL NOFO Number SFOP0007977 relates to other DRL Global Programming activities.
 - c. Please provide **subgrantee** documents, including but not limited to the award package and all deliberative documents provided to the grant officer (score sheets, independent government cost estimates, choice of instrument, scope of work, evaluation criteria, action memo, "do no harm" risk assessment).
 - d. Please provide documents that HI provided to DRL that indicate how the NOFO funds were implemented in Nepal and Sri Lanka.
 - e. Please explain what steps, if any, DRL took to monitor HI's compliance with the Establishment Clause?
 - i. Please provide the name(s) of the DRL personnel designated to monitor compliance with the Establishment Clause.
 - ii. Please provide all screening criteria applied to applicants responding to DRL NOFO.
 - iii. What criteria did DRL use to determine an applicant's capacity and commitment to the cause of "promot[ing] and defend[ing] religious freedom inclusive of Atheist, Humanist, Non-Practicing and Non-Affiliated Individuals"?

Thank you for your assistance with this request for further information. **We also reiterate our expectation for agency officials previously identified to sit for transcribed interviews and**

²³ See Department Document Production, at STATE-2023-00012-0000179 (June 20, 2023) (on file with HFAC).

reserve the right use compulsory process in the event they fail to appear voluntarily. We look forward to your prompt reply.

Sincerely,



Michael T. McCaul
Chairman
House Foreign Affairs Committee



Christopher H. Smith
Chairman
Subcommittee on Global Health, Global Human Rights, and International Organizations



Brian Mast
Chairman
Subcommittee on Oversight and Accountability