

Memorandum

To: The Office of the President-Elect  
Transition Team

From: The Union of Orthodox Jewish  
Congregations of America

Date: November 13, 2008

In Re: Policy Priorities and Recommendations for the  
Obama-Biden Administration

**DOMESTIC POLICY ISSUES****I. Religious Liberty in the United States**

In June, 2006, Mr. Obama delivered a compelling and nuanced address to the Call to Renewal conference on the topic of religion and politics in American society. In that address, Mr. Obama recognized that religious faiths and their adherents have a critical – and welcome – role to play in our nation’s public life. He called upon secularists to set aside their biases against people of faith and said they “are wrong when they ask believers to leave their religion at the door before entering into the public square,” and Mr. Obama called upon the faithful to embrace and acknowledge America’s religious diversity.<sup>1</sup> We of the Orthodox Jewish faith, who have endured centuries of persecution but now live in unprecedented freedom in the United States could not agree more with these principles. But we know very well that for our members, and the members of America’s many faith communities, to continue to enjoy this “first freedom,” the government must act to protect and promote religious liberty in law and policy.

**A. Religious Accommodation in the Workplace**

\* *Enact legislation to protect employees’ religious freedom in the workplace.*

***We greatly appreciate, that during the campaign, Mr. Obama stated “I believe firmly that employers have an obligation to reasonably accommodate their employees’ religious practices. I would support carefully drafted legislation that strengthens Title VII of the Civil Rights Act of 1964 to further protect religious freedom in the workplace.”<sup>2</sup>***

<sup>1</sup> [http://obama.senate.gov/podcast/060628-call\\_to\\_renewal\\_1/](http://obama.senate.gov/podcast/060628-call_to_renewal_1/)

<sup>2</sup> <http://www.ajc.org/site/c.ijITI2PHKoG/b.3878133/>





At the top of the religious liberty agenda in the legislative arena is the issue of religious accommodation in the workplace. Even at the dawn of the 21<sup>st</sup> Century, too many Americans of faith have been placed in the terrible position of having to choose between their career and their conscience. Religious Christians have been compelled to work on Christmas, observant Jews have been fired over refusing to work on the Sabbath and Muslim women have been demoted for wearing head-coverings. Title VII of the Civil Rights Act once encouraged employers to reasonably accommodate the religious needs of their employees in circumstances when doing so would not impose an undue hardship upon the employer. Court decisions dating back to the 1970s have eviscerated this protection. Now, with an American workforce more diverse than ever, religious Americans and their employers are faced with this problem.

In recent sessions of congress, a broad coalition of religious groups (including the UOJCA, National Council of Churches, American Jewish Committee, U.S. Conference of Catholic Bishops, Sikh American Legal Defense Fund, Islamic Supreme Council, Southern Baptist Convention, Union for Reform Judaism, Baptist Joint Committee and many others) have worked in concert with bipartisan members of congress to craft and introduce the **Workplace Religious Freedom Act** (HR 1431). This measure is a balanced one, designed to restore the protections originally for religious employees originally contemplated by Title VII while being sensitive to the needs of employers.

While WRFA has been stalled in congress due to some controversies and misunderstandings, we look forward to working with you early in your Administration's tenure to negotiate and pass a WRFA bill.

(In this same vein, it is important to note that President Clinton addressed, to a limited degree, the religious needs of federal civilian employees by an executive order issued in August, 1997. This order grants religious government workers appropriate protections with regard to their religious needs and *we urge you to keep it in place.*)

## **B. The "Faith-Based Initiative"**

*\* Implement modifications to the federal government's partnerships with faith-based entities in a manner that provides greater resources to support their work and also protects critical religious liberties.*

The UOJCA is proud of its record of consistent commitment to the principle of equal treatment for America's religious institutions and individuals. We also





know, based on our community's beliefs and experience, of the power of faith to motivate people to serve their fellow man and for faith to similarly serve as a key element in a person's quest to renew their path in life when they've fallen on hard times. *Because of the current economic downturn, faith-based and other community charities are seeing their donations decline dramatically while their services are in greater demand. In this context, government support for qualified and effective faith- and community-based social welfare programs is even more essential.*

In this vein, we have worked since 1996 with the Clinton Administration, the Bush Administration, bipartisan members of Congress and other advocates to expand government partnerships with faith based social service providers. It is difficult but useful to recall that the first laws enacting "charitable choice" provisions which allowed for greater participation by faith-based groups were signed by President Clinton and their expansion was promised in the 2000 campaign not only by George W. Bush, but by Al Gore as well.

Thus, we are disappointed that over the past eight years the possibility of delivering much-needed social welfare services through programs effectively run by faith-based agencies became mired in partisan politics – this partisan gridlock has resulted in only hurting those in need who would benefit from these social welfare services. Another source of disappointment on this front comes from the fact that, despite our repeated requests, the Bush Administration did not increase the funding levels of many key social welfare grant programs in which faith-based agencies might participate.

We were therefore pleased that, on July 1, Mr. Obama recognized the critical role faith-based charities play in America and announced your intention to continue the effort with modifications.<sup>3</sup>

***We support Mr. Obama's intention to create a "Council for Faith-Based & Neighborhood Partnerships" and are eager to assist you in developing its membership and mission. We also support your commitment to provide more funding for relevant grant programs and training for the faith-based agencies.***

At the same time, we are concerned about the possibility that an Obama Administration might require a faith-based grantee to forego their religious liberty – specifically, their right to hire employees who share the agency's faith commitments, as embodied in Title VII of the Civil Rights Act and upheld by a unanimous Supreme Court decision - as the price of receiving a federal grant.

<sup>3</sup> <http://thepage.time.com/full-remarks-of-obamas-faith-speech-in-ohio/>





*We urge you not to make such a policy change which, in our view, would prevent many faith-based charities from participating in partnerships with government and thus be at odds with Mr. Obama's stated "all hands on deck" approach to addressing America's needs. **We urge you instead to adhere to the view Mr. Obama stated publicly on September 17 – noting that "the First Amendment is twofold" in protecting America from becoming a theocracy but also in ensuring that religious institutions do not - and need not "modify their views in order to get government funding."***<sup>4</sup>

### **C. Maintain DOJ's Role as a Watchdog for Religious Freedom**

Even in 2008, religious Americans often face challenges to their ability to fully enjoy their religious liberty. This may be due to the growing diversity of religions found in this nation, or it may be due some of the secularist biases in our cultural marketplace which Mr. Obama's Call to Renewal address described. In 2001, at the request of not only our organization, but an array of religious and civil rights organizations across the faith and political spectrum, the newly installed Bush Administration directed the Civil Rights Division of the Department of Justice to make religious discrimination and liberty issues a central focus of its work. As part of this effort, DOJ created a new, professional career position of Special Counsel for Religious Discrimination within the Division. Over the past eight years, the Special Counsel has worked with communities and organizations across the faith spectrum to combat religious discrimination in housing, employment, land use regulation, and so many other areas. The Special Counsel position and its work has been welcomed and supported by religious liberty advocates across the faith and political spectra.<sup>5</sup>

*We urge you to maintain this position within the Civil Rights Division and charge the DOJ to continue its important work in defense of religious freedom.*

### **D. The Interplay of Religious Liberty and Gay Rights**

*\* Ensure that gay rights legislation and regulations contain appropriate exemptions and accommodations to protect the constitutional liberties of religious institutions and individuals.*

With increased Democratic majorities in the House and Senate, it is reasonable to expect federal legislation to expand legal protections and

<sup>4</sup>[http://www.ou.org/public\\_affairs/article/orthodox\\_jewish\\_leader\\_colloquies\\_with\\_sen\\_obama\\_about\\_support\\_for\\_parochia](http://www.ou.org/public_affairs/article/orthodox_jewish_leader_colloquies_with_sen_obama_about_support_for_parochia)

<sup>5</sup> [http://www.ouradio.org/images/uploads/Letter\\_to\\_Judiciary\\_Committee.doc](http://www.ouradio.org/images/uploads/Letter_to_Judiciary_Committee.doc)





rights for Gay Americans. A critical issue is how such laws address conflicts with religious liberties. While the push for legislation and regulation affording Gay Americans equal rights does not always intend to impair the religious liberties of those individuals or institutions who might have beliefs which reject homosexuality, legal scholars of all stripes concur that gay rights laws, if not carefully crafted, may well advance the rights of those Americans while inappropriately – and possibly unconstitutionally – infringing upon others' rights.<sup>6</sup>

An important case in point at the federal level is the Employment Non-Discrimination Act (“ENDA”) which, as you are aware, would enact a federal prohibition against hiring discrimination on the basis of sexual orientation. Like several other prominent faith-organizations, the UOJCA has historically neither opposed nor endorsed ENDA. Foremost among the reasons for our neutrality was that ENDA was consistently proposed with a clear and broad exemption from application to the hiring practices of religious institutions.<sup>7</sup> When ENDA was re-introduced in the 110<sup>th</sup> Congress, the previously broad exemption for religious employers was narrowed considerably. Our organization, along with other prominent religious organizations, had to consider opposing ENDA if the exemption remained in that narrowed form. Fortunately, we worked productively with Speaker Pelosi, Chairman George Miller and Rep. Barney Frank to rewrite the religious exemption, and the version of ENDA passed by the House of Representatives (HR 3685) contains an exemption entirely consistent with the similar exemption contained in the Civil Rights Act of 1964.

*It is critical that when an ENDA bill is taken up and (presumably) signed into law under your presidency, it contains this comprehensive religious exemption. Moreover, it is critical that this accommodation of religious liberty serve as a paradigm for all gay rights legislation and regulation which may be enacted under your Administration.*

## **II. Education Reform & Funding**

**\* Include faith-based providers in a universal pre-k initiative; look to successful models of education investment tax credits to bring needed resources to k-12 schools.**

<sup>6</sup> See Same Sex Marriage and Religious Liberty, Laycock & Picarello eds., Rowman & Littlefield (2008).

<sup>7</sup> In our view, such an exemption would be required by the First Amendment (see *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327 (1986)).





The Orthodox Jewish community strongly believes that providing all children with a high-quality education is essential for all children and to secure a productive future for our nation. We appreciate Mr. Obama’s campaign commitment to introduce “universal pre-k” to the American educational landscape and your stated commitment to have faith-based schools and organizations among those providing this critical program in our communities.<sup>8</sup>

We also support your call to reform and improve No Child Left Behind. With regard to the need for greater funding to support K-12 schools and the costs of NCLB, we encourage you to consider bringing to the federal level the successful education investment tax credits now employed in several states across the nation.<sup>9</sup> These tax credits, already in place in states such as Arizona, Pennsylvania and Florida, have brought tens-of-millions of new dollars into the education arena – benefiting public and non-public schools; a federal education investment tax credit would bring even more of the much needed resources America’s K-12 schools need.

**III. HOMELAND SECURITY**

*\* Assist non-profits at risk of terrorist attacks to improve their security.*

In the wake of the 9/11 attacks, the American Jewish community became more acutely concerned about the security of our institutions and members in the face of terrorist threats. In the months and years after 9/11, Al Qaeda publicly stated its desire to attack Jewish institutions in the U.S. (and elsewhere). As part of a response to this threat, our organization partnered with other non-profit organizations to create the Nonprofit Security Grants program under which an amount of funds appropriated to DHS in the Urban Area Security Initiative is allocated for grants to nonprofits assessed to be at risk of terrorist attack so that the nonprofit can enhance their physical security. In each of the past few years \$15 to \$25 million has been appropriated and disbursed under this program to synagogues and churches, faith-based schools, museums, hospitals and other nonprofits. The Jewish community in particular has benefited greatly from this program. *We urge you to maintain this essential and productive program.*

<sup>8</sup>[http://www.ou.org/public\\_affairs/article/orthodox\\_jewish\\_leader\\_colloquies\\_with\\_sen\\_obama\\_about\\_support\\_for\\_parochia](http://www.ou.org/public_affairs/article/orthodox_jewish_leader_colloquies_with_sen_obama_about_support_for_parochia)

<sup>9</sup> [http://www.ou.org/public\\_affairs/article/education\\_tax\\_credits\\_experience\\_from\\_the\\_states/](http://www.ou.org/public_affairs/article/education_tax_credits_experience_from_the_states/)





#### **IV. FAMILY FRIENDLY FISCAL POLICIES**

\* *Ensure that tax policy accounts for family size and education costs in its application to income levels.*

The Orthodox Jewish community is a family oriented community. We appreciate Mr. Obama's stated plans to provide most Americans with tax relief – especially in these difficult financial times. We note that Mr. Obama committed to providing tax relief to all those with an income of less than \$250,000. We urge you to recognize, as you must, that not all \$250,000 incomes are alike. A single person earning such a salary with only herself to support is in quite a different position than a family of six with the same income. Moreover, a married couple may be earning more than \$200,000 a year, but be paying tuition for their children to go to college – or, as is the case in our community, a faith-based K-12 non-public school which their religious commitments demand, and thus be utilizing the lion-share of their income for that alone. Thus, while Mr. Obama's proposal for an "American Opportunity Tax Credit" to make education more affordable is a most worthy proposal, there are families presently struggling with education costs who it will not assist. *We therefore urge you to integrate into your tax policy a factor that will account for a family's education-related costs – even if they otherwise earn more than \$200,000 per year.*

Additionally, as a general matter, America's families also face a daily struggle to secure good, quality childcare for their pre-school-age children. *We urge you to expand the per-child tax credit, the amount of money working parents may devote to pre-tax dependant care accounts and child care tax credits as a series of steps to bolster America's families.*

#### **V. ENERGY INDEPENDENCE; GREEN JOBS**

Our community was pleased to hear Mr. Obama speak often during the campaign of developing an aggressive energy policy that will diminish the United States' reliance upon imported oil for our energy needs. We believe that such a policy is critical to strengthen America's unfettered ability to pursue its national interests, both strategic- and value- based, around the world. Because of this long-held perspective, the UOJCA has supported a range of initiatives to increase domestic energy production in the U.S. as well as conservation initiatives such as increased CAFE standards. We look forward to working to support Mr. Obama's proposals in this arena.





We are also eager to support new efforts to bolster energy efficiency, climate protection and bring new jobs into the economy through efforts to “green” public and community buildings. The 110<sup>th</sup> Congress enacted an Energy and Environment Block Grant to provide billions of dollars to counties and cities for energy efficiency and carbon reduction projects. The House of Representatives (although not the Senate) also passed the 21<sup>st</sup> Century Green High-Performing Public Schools Facilities Act,<sup>10</sup> to authorize \$6.4 billion for localities to modernize school buildings for energy and environmental efficiency.

*Our organization and constituency supports these, and similar, initiatives, but urges that the programs include faith-based and other non-public schools. Faith-based and other non-public schools must be as safe and modern learning environments for their students as any other American school and their inefficiencies can adversely impact our environment just as any other American school.*

There is precedent – supported on a bipartisan basis in congress – for including faith-based and other non-public entities in such federal infrastructure assistance programs. Millions of dollars in federal funds have been allocated to faith-based and non-public schools located near airports to assist with soundproofing under the Airport Improvement Program.<sup>11</sup> As mentioned above, millions of federal homeland security dollars have been allocated to improve the physical security of faith-based and non-public schools. And faith-based and non-public schools have also received federal disaster relief funds through FEMA when stuck by tragedy.<sup>12</sup>

## **VII. STEM CELL RESEARCH**

*\* Implement policies providing federal financial support for stem cell research with appropriate ethical oversight.*

In 2002, the Union of Orthodox Jewish Congregations was proud to be the first among America’s Jewish denominational bodies to endorse public funding for stem cell research.<sup>13</sup> Our position on this matter is based on Judaism’s

<sup>10</sup> <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03021:@@D&summ2=m&>

<sup>11</sup> See [www.aee.faa.gov/noise/index.htm](http://www.aee.faa.gov/noise/index.htm) and <http://www.panynj.gov/AboutthePortAuthority/PressCenter/PressReleases/PressRelease/index.php?id=54>

<sup>12</sup> [http://www.dhs.gov/xprevprot/programs/gc\\_1173201764934.shtm#5](http://www.dhs.gov/xprevprot/programs/gc_1173201764934.shtm#5)

<sup>13</sup> <http://www.wwrn.org/article.php?idd=3816&sec=24&con=4>





teaching about the nature of life and the obligation to combat disease and save human lives.<sup>14</sup> We thus supported enactments of the Stem Cell Research Enhancement Act (HR 3) in the last congress which was vetoed by President Bush.

We appreciate Mr. Obama's commitment to support stem cell research and look forward to working with the Administration not only to fund such research adequately, but also to ensure that it is conducted within appropriate and necessary ethical guidelines.

### **VIII. DEATH PENALTY MORATORIUM**

Judaism, like the world's other major religions, finds its sources of inspiration and moral guidance in the Bible. While the Bible clearly contemplates and condones the death penalty as the ultimate sanction within a legitimate legal system, our tradition simultaneously insists that capital punishment must be administered by a process which ensures accuracy as well as justice.

In recent years, too many questions have been raised as to whether the demand for accuracy is being met in America's courts in capital cases. Studies have indicated that there may be serious failings with regard to legal counsel and resources capital defendants are provided. Just as troubling are questions with regard to racial disparities within the justice system, particularly in capital cases. These questions must be answered and appropriate corrective measures must be put in place before we can proceed with additional executions in this country. *We therefore urge you to support efforts to place a moratorium, of limited duration, upon executions and appoint a special commission to study the manner in which capital cases and sentences are currently conducted.* Once the commission's findings and recommendations are implemented, America will feel more confident about its criminal justice system.

### **IX. MEDIA VIOLENCE AND PORNOGRAPHY**

As a community adhering to traditional moral values, we are deeply concerned by the ever-growing tidal wave of violent and sexual media content that washes over our society and dulls our moral sensitivities. Parents are now confronting challenges from so many media fronts – television, film, records and, perhaps the most challenging, the internet and video games.

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<sup>14</sup>[http://www.ou.org/public\\_affairs/article/ou\\_rca\\_joint\\_statement\\_on\\_cloning\\_research\\_jewish\\_tradition\\_public\\_policy/](http://www.ou.org/public_affairs/article/ou_rca_joint_statement_on_cloning_research_jewish_tradition_public_policy/)





We agree with Mr. Obama's frequent statement in the campaign that parents have the central responsibility to raise their children and "turn off the TV..."

However, the Federal Trade Commission has found that America's large media companies have regularly undermined their professed commitment to parents embodied in their ratings systems by marketing inappropriately violent and sexual material to young children. We urge Mr. Obama to take early steps to put your Administration on the side of parents in this battle to influence the next generation of Americans. While we do not call for censorship, we do call for the media industry to act in a socially responsible manner and, failing that, *we look to the government to use its considerable powers of persuasion to get the industry to act in a responsible manner.*





## FOREIGN POLICY ISSUES

### I. THE U.S.-ISRAEL RELATIONSHIP

#### A. Overall Commitment

Mr. Obama and Mr. Biden spoke extensively during the campaign about their deep commitment to the security of the State of Israel. These clear and strong statements were watched very closely by our constituency and deeply appreciated.

We appreciate Mr. Obama's commitments to maintain Israel's qualitative military advantage over its hostile neighbors, continue American foreign aid to Israel and support Israel's actions in self-defense against Hamas, Hizbollah and all others who would imperil Israelis.<sup>15</sup>

#### B. Jerusalem

*\* Support a diplomatic 'atmosphere' to ensure that Jerusalem is not re-divided, as it is impractical and would imperil access to holy sites.*

**The Orthodox Jewish community in particular appreciates Mr. Obama's statements that "Jerusalem is the capital of Israel" and that "as a practical matter" a re-division of the Holy City "would be very difficult to execute. And...that it is smart for us to work through a system in which everybody has access to the extraordinary religious sites in old Jerusalem."**<sup>16</sup>

We suggest, and urge you to consider in your approach to this critical policy issue, that Mr. Obama is correct that the re-division of Jerusalem is impractical. Jerusalem is a diverse city where Jewish and Arab neighborhoods are scattered in a patchwork. It is not only impractical to divide the holy city, it would be unwise. Mr. Obama is also correct that we must ensure that people of every faith have access to all of the extraordinary religious sites of Jerusalem. History has shown that such access and freedom of worship has only existed with Jerusalem under Israeli sovereignty. Merely four decades ago, when Arabs controlled the Old City, sacred places of worship were sacked and people were denied access to their holiest sites. And more recently, when synagogues in Gaza or Joseph's Tomb in Nablus came under Arab control, they too were destroyed.

<sup>15</sup> <http://origin.barackobama.com/pdf/IsraelFactSheet.pdf>

<sup>16</sup> <http://www.ou.org/public-affairs/article/ou-comments-on-further-clarification-of-jerusalem-statement>





*Thus, using the criteria Mr. Obama set forth, the Administration ought to ensure that diplomatic discussions and “atmosphere” surrounding any Israeli-Palestinian discussions should be influenced to preserve the status quo of Jerusalem.*

### **C. The Peace Process and “Two-State Solution”**

*\* Pursue a “bottom-up” peace effort, as opposed to continuing the failed approach of seeking an agreement between leaders.*

We urge you to continue to recognize the extraordinary steps that Israel has taken in recent years for the sake of peace, only to have them rebuffed by the Palestinian Authority and other Arab regimes. During the campaign, Mr. Obama regularly noted that, even when making peace overtures, Israelis had to worry about terrorism when they rode a bus to work or sent their children off to school.

The United States has long played a constructive role in brokering Israeli-Arab negotiations and Mr. Obama has stated that the Administration will continue this effort. But we note that efforts by previous Administrations to produce the “comprehensive settlement” have not only failed time and again, but have consistently yielded higher levels of terrorism. *We suggest it is time for a different, more practical approach that does not aim for the “grand bargain” but works to build the context for peaceful coexistence from the grassroots up.*

In the face of peace process failures past and current, the notion of working to build the context of peace from the ground up has gained increasing support within Israeli and Palestinian circles.<sup>17</sup> It is an approach the Obama Administration should pursue.

## **II. POLICY TOWARD IRAN**

*\* Prevent Iran from obtaining nuclear weapons.*

Throughout the presidential campaign, Mr. Obama spoke clearly of his recognition of the threat an Iranian regime with nuclear weapons poses to the United States, Israel and other Western nations; so much so that we need not reiterate the discussion here. **We appreciate Mr. Obama’s statement that,**

<sup>17</sup>[http://online.wsj.com/article\\_email/SB121815474002722569-1MyQjAxMDI4MTA4ODEwNTg0Wj.html](http://online.wsj.com/article_email/SB121815474002722569-1MyQjAxMDI4MTA4ODEwNTg0Wj.html) and <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/21/AR2008092101126.html>





**as president, he would do “everything...to prevent Iran from obtaining a nuclear weapon...everything.”<sup>18</sup>**

*We stand ready to support your efforts to implement a comprehensive series of steps to realize this critical outcome.*

**III. INTERNATIONAL RELIGIOUS FREEDOM**

The UOJCA joined with other concerned communities to support the enactment of legislation addressing the scourge of religious persecution around the world. This effort created an independent Commission on International Religious Freedom and a special ambassador-at large position for this purpose within the State Department. We urge you to fill this position early on in your Administration so that the United States can continue to press for the basic right of religious freedom around the world.

**IV. ANTI-SEMITISM ABROAD**

The UOJCA joined with other concerned organizations to support the enactment of legislation that created a special office within the State Department to monitor and combat anti-Semitism. This office has worked effectively with foreign governments to combat overt and sub-rosa anti-Semitism and we urge you to fill this position early in your Administration.

<sup>18</sup> [http://aipac.org/Publications/SpeechesByPolicymakers/PC\\_08\\_Obama.pdf](http://aipac.org/Publications/SpeechesByPolicymakers/PC_08_Obama.pdf)  
and [http://www.realclearpolitics.com/articles/2008/07/obama\\_under\\_the\\_microscope\\_in.html](http://www.realclearpolitics.com/articles/2008/07/obama_under_the_microscope_in.html)

