



Reclaiming Religious Freedom:

An Inside Look At Recent Actions By The Executive Branch





Executive Orders



MAY 4, 2017

Executive Order Promoting Free Speech and Religious Liberty articulated President Trump's priority "to enforce Federal law's robust protections for religious freedom" (E.O. 13798). The E.O. directed federal agencies to protect to the greatest extent possible the expression of religious and political speech; in particular, it directed the Department of the Treasury to ensure to the extent permitted by law that houses of worship and other religious organizations be permitted to speak to moral or religious issues from a religious perspective. The E.O. also instructed the Secretaries of the Treasury, Labor, and Health and Human Services to consider amending regulations to provide conscience protections under the preventative-care mandate of Obamacare. Finally, it encouraged the Attorney General to issue guidance explaining religious liberty protections.



MAY 3, 2018

Following on President George W. Bush's White House Office of Faith-Based and Community Initiatives, President Trump established the **White House Faith and Opportunity Initiative**, along with Centers for Faith-Based and Community Initiatives in various federal agencies (E.O. 13831).



DEC 11, 2019

The President's **Executive Order on Combating Anti-Semitism** affirmed the Administration's commitment to enforcing Title VI of the Civil Rights Act against "prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI."



JUNE 2, 2020

President Trump reaffirmed his commitment to international religious freedom through an **Executive Order on Advancing International Religious Freedom**. The Order recognized religious freedom as both "a moral and national security imperative," directing the Secretary of State to develop a plan to prioritize international religious freedom in implementing U.S. foreign policy. Additionally, the E.O. increased foreign assistance funding to \$50 million a year, mandated training for all Department of State civil service employees, and encouraged the use of economic tools to advance religious freedom.





Regulations



NOV. 7, 2018

The Departments of Health and Human Services, Treasury, and Labor promulgated two regulations to strengthen the [conscience protections for employers under the Affordable Care Act](#). The Obama Administration had issued regulations requiring employers as part of “preventative services” to offer health insurance that included coverage for contraceptives, including sterilization and medications and devices that might act as abortifacients; these regulations had included a narrow exemption for churches and an accommodation for religious nonprofits (which many found insufficient to alleviate the burden on their religious convictions). After the Supreme Court’s Hobby Lobby decision, the regulations were amended to include an accommodation for closely held for-profit organizations with religious objections. In the face of many pending lawsuits, the Trump Administration proposed and then finalized regulations providing either an exemption or accommodation for those with sincerely held religious beliefs or moral objections to providing contraceptive services. **(INTERIM FINAL RULE, OCT. 6, 2017; FINAL RULE, NOV. 7, 2018, NOT YET IN EFFECT DUE TO ONGOING LITIGATION)**



APR 29, 2019

In 2013, the Office of Personnel Management had proposed but never finalized a regulation regarding [religious compensatory time off](#). The Trump Administration finalized the rule, clarifying accommodations for federal employees who need to abstain from work for personal religious observance.



MAY 2, 2019

The Department of Health and Human Services (HHS) issued a regulation to [implement and enforce 25 statutory conscience provisions](#) for healthcare providers. (In 2008, the Bush Administration had proposed a rule to clarify and enforce three of those provisions. The Obama Administration rescinded that rule, eliminating the sections defining and explaining the substantive protections, and its new rule simply provided information about how to file a complaint.) The new regulatory provisions protect individuals and healthcare entities from being compelled to participate in activities that violate their religious beliefs or moral convictions, such as abortion, sterilization, or assisted suicide. They ensure that faith-based hospitals can retain their religious identity and that practitioners do not face pressure to either violate their religious convictions or leave the field of medicine. **(PROPOSED RULE, JAN. 26, 2018; FINAL RULE, MAY 2, 2019)** creased foreign assistance funding to \$50 million a year, mandated training for all Department of State civil service employees, and encouraged the use of economic tools to advance religious freedom.



★★ Regulations ★★



DEC. 9, 2020

The Department of Labor (DOL) proposed a regulation to clarify that **religious organizations who serve as federal contractors** may continue to condition employment on acceptance of or adherence to religious tenets. The new regulation as proposed and **finalized** explains the breadth of that protection. (In 2003, President Bush had amended the applicable executive order to provide a hiring exemption for religious organizations similar to Title VII's exemption for religious employers, allowing them to make employment decisions on the basis of religion. Under the Obama Administration the exemption had been interpreted narrowly.) **(PROPOSED RULE, AUG. 14, 2019; FINAL RULE, DEC. 9, 2020)**



JUNE 12, 2020

HHS revised regulations put into place by the Obama Administration **implementing Section 1557 of the Affordable Care Act** (ACA). Section 1557 references other statutory provisions prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability in health programs receiving federal financial assistance or administered or established under the ACA. The Obama Administration's regulation expanded the statutory protections by defining "on the basis of sex" to cover, among other things, gender identity. Litigation followed, and a preliminary injunction enjoined application of the rule nationwide while HHS reviewed it and then put into place language more in line with the underlying statute. **(PROPOSED RULE, JUNE 14, 2019; FINAL RULE, JUNE 12, 2020)**



NOV 19, 2019

HHS proposed regulations to rescind, among other things, the Obama Administration's addition of "sexual orientation" and "gender identity" to the list of **protected classes in HHS programs and services**. The Obama-era regulations, requiring that all grantees agree not to deny benefits to or discriminate against any eligible beneficiary on the basis of gender identity or sexual orientation, had prompted complaints and legal action against faith-based adoption and foster care providers, and one court had enjoined their enforcement against a faith-based provider. HHS expressed its concern that if the previous rule were finalized, the effectiveness of federal programs would be reduced given the number of providers who would no longer provide services. The amended provision simply requires compliance with applicable law and Supreme Court decisions.



FEB 13, 2020

Nine federal agencies—the Departments of **Agriculture, Education, Health and Human Services, Homeland Security, Housing and Urban Development, Justice, Labor**, and **Veterans Affairs**, and the **U.S. Agency for International Development**—proposed rules to clarify the rights and obligations of faith-based organizations participating in government programs. The proposed regulations also would eliminate notice and referral requirements that the Obama Administration had placed on faith-based providers but not on other providers. **(JAN. 17, 2020; HUD FEB. 13, 2020)**



★★ Regulations ★★



SEP 10, 2020

The Department of Education finalized a regulation protecting [religious liberty and free inquiry](#) on the campuses of both public and private institutions of higher learning. Implementing Executive Order 13864 (Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities), the regulation specifies that in order to qualify for DOE grants, public colleges and universities must comply with the First Amendment and private institutions must follow their own policies protecting academic freedom. The regulation ensures that religious student organizations on public university campuses are not denied benefits offered to other organizations, and it prohibits discrimination against religious student organizations because of their beliefs and practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs. To clarify what it means to be an educational institution “controlled by a religious organization” for purposes of Title IX’s exemption, the regulation provides a nonexhaustive list of factors that can demonstrate such control. Finally, to better align with the First Amendment, the regulation revises provisions governing prohibited uses of certain DOE grant funds. **(PROPOSED RULE, JAN. 17, 2020; FINAL RULE, SEPT. 10, 2020)**



JULY 1, 2020

The Department of Housing and Urban Development (HUD) published a proposed modification to a rule put in place by the Obama Administration, requiring [homeless shelters](#) to provide housing according to a person’s self-identified gender. The proposed change would allow homeless shelters to again determine their own policies, subject to state and local laws, accommodating the religious beliefs of faith-based shelters as well as providing flexibility to shelters focused on serving victims of domestic violence or human trafficking.





Guidance & Policies



OCT 6, 2017

Following the instructions of the President's Free Speech and Religious Liberty Executive Order, Attorney General Jeff Sessions issued [guidance](#) laying out twenty principles to direct federal agencies in accommodating religious beliefs and practices to the greatest extent practicable and permitted by law. The guidance noted specific areas in which agencies should be attentive to safeguarding religious freedom and then provided a summary of key constitutional and statutory protections. An accompanying [memorandum](#) instructed the Department of Justice to carefully implement the principles set out in the guidance.



JAN 2, 2018

The Federal Emergency Management Agency (FEMA) announced a change to its policy of excluding nonprofit houses of worship from [disaster relief funding](#). Under the revised policy, houses of worship are eligible to apply for disaster-relief funds on the same basis as other nonprofits.



JULY 3, 2019

The Department of Veterans Affairs (VA) rewrote its policies allowing religious literature, symbols and displays as well as spiritual and pastoral care at [VA facilities](#). Previous policies had been inconsistently interpreted, and the new policies both protect the religious liberty of veterans and their families while also ensuring inclusivity and nondiscrimination.



AUG 13, 2019

The Department of the Interior made [revisions to its policy](#) to allow Tribes recognized by the federal government to keep certain golden eagle remains found under their religious tribal lands in order to adhere to their beliefs.



JAN 16, 2020

In support of the implementation of E.O. 13798, the Office of Management and Budget (OMB) issued a [Memorandum](#) directing all grant administering agencies to "publish policies detailing how they will administer Federal grants in compliance with E.O. 13798, the Attorney General's memorandum [issued on October 6, 2017], and this Memorandum." The OMB Memorandum reminded agencies that religious organizations can compete for federal financial assistance on the same basis as other organizations and specifically cautioned that state Blaine Amendments not be used by states to justify discriminating against religious organizations competing for federally funded grants.



★★ Guidance & Policies ★★

In response, agencies have issued the following guidance documents:

- Department of [Commerce Guidance Regarding Federal Grants and Executive Order 13798](#) (Apr. 27, 2020)
- Department of Education [Guidance Regarding Federal Grants and Executive Order 13798](#) (Aug. 7, 2020)
- Department of Justice [Guidance Regarding Federal Grants and Executive Order 13798](#) (July 20, 2020)
- Department of Labor [Guidance Regarding Federal Grants and Executive Order 13798](#) (May 15, 2020)
- Department of State [Guidance Regarding Federal Grants and Executive Order 13798](#) (June 16, 2020)
- Environmental Protection Agency (EPA) [Guidance Regarding Federal Grants and Executive Order 13798](#) (May 8, 2020)
- Inter-American Foundation [guidance](#)
- National Endowment for the Humanities [General Terms and Conditions for Awards to Organizations](#), §26.F.
- Social Security Administration [Guidance Regarding Federal Grants and Executive Order 13798](#)



JAN 16, 2020

The Department of Education and the Department of Justice issued [Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools](#), which makes clear that students can read religious texts or pray during noninstructional periods, organize prayer groups, and express their religious beliefs in assignments. This guidance had been last updated in 2003.



APR 3, 2020

After Congress passed the [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#), the Small Business Administration clarified that faith-based organizations, including houses of worship, were eligible to participate in the Paycheck Protection Program and the Economic Injury Disaster Loan Program on the same basis as other recipients.



JULY, 2019

During the COVID-19 pandemic, the Department of Homeland Security included “clergy for essential support” in its [Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response](#).



JULY, 2019

During the COVID-19 pandemic, Attorney General William Barr issued a Memorandum directing U.S. Attorneys across the country to “be on the lookout for state and local directives that could be violating the constitutional rights and liberties of individual citizens. . . [f]or the Constitution is not suspended in times of crisis.” (Apr. 27, 2020)

- The Justice Department filed [statements of interest](#) challenging pandemic-related restrictions on houses of worship in Washington, D.C. and several states including Colorado, Washington, Virginia, and Mississippi. It has also filed a statement of interest challenging COVID-19-related restrictions for religious schools in Michigan and local government restrictions in locations such as San Francisco, New York City, and Montgomery County, Maryland.



★★ Guidance & Policies ★★



AUG 7, 2020

The Department of Education (DOE) issued guidance affirming its commitment to protect the [religious liberty of students and religious organizations](#). Among other things, the guidance announced a process by which individuals or organizations could report to DOE a burden or potential burden on their religious exercise under the Religious Freedom Restoration Act. It also notes that states may not use discriminatory Blaine Amendments to deny faith-based organizations contracts or grants with DOE funds.



OCT 26, 2020

DOE Secretary Betsy DeVos announced a [policy](#) of no longer enforcing a federal law preventing organizations from being providers of contract services because of their religious affiliation (Mar. 11, 2019) and a [policy](#) of not enforcing a prohibition on charter schools with a religious affiliation from partaking in the Expanding Opportunity Through Quality Charter Schools Program.



OCT 30, 2020

DOL's Office of Federal Contractor Compliance Programs (OFCCP) increased the workplace rights of employees with religious values through a [directive](#) to enforcement staff to respect religious individuals and groups (Aug. 10, 2018), an [accommodations review and enforcement program](#) (Sept. 23, 2020), and revisions of its [compliance manual](#).





Additional Advances



JAN 11, 2018

The Department of State placed Pakistan on a [Special Watch List](#) and designated several other countries as those of particular concern for severe violations of religious freedom, thereby standing up for religious liberty worldwide.



JAN 18, 2018

The Department of Health and Human Services created a [Conscience and Religious Freedom Division](#) within its Office of Civil Rights to focus on enforcing laws that protect religious freedom and rights of conscience.



JAN 31, 2018

Shortly after the Department of Justice (DOJ) issued guidance for all federal agencies laying out twenty principles of federal law protecting religious liberty, DOJ directed [U.S. Attorneys' offices](#) across the country to designate a religious liberty point of contact and updated the U.S. Attorneys' Manual to ensure religious liberty issues receive careful attention.

DOJ instituted a [Place to Worship Initiative](#), focused on protecting the ability of religious institutions to build, expand, buy or rent facilities. The Initiative aims not only to increase enforcement of land use provisions of the Religious Land Use and Institutionalized Persons Act (RLUIPA), but also to educate prosecutors, religious leaders, local officials, and communities about RLUIPA's protections through learning programs.



JUNE 13, 2018

- A later [report](#) found that the Place to Worship Initiative had increased the amount of RLUIPA cases and briefs filed by 100% and the amount of investigations by 60% compared to the average two-year period. (SEPT. 22, 2020)



JULY, 2018

DOJ formed a [Religious Liberty Task Force](#) to help DOJ coordinate its work on religious liberty.



OCT 13, 2018

The Trump Administration oversaw the release and return home of American [Pastor Andrew Brunson](#), who was held prisoner in Turkey in part because of his religious beliefs.



★★ Additional Advances ★★



DEC, 2018

DOJ submitted several amicus curiae [briefs](#) and statements of interest to defend both individual and organizational religious liberty in the court system, including a brief to support Colorado baker Jack Phillips in operating his bakery according to his religious values (Sept. 2017) and an [amicus brief](#) to support the American Legion's financing of a Memorial Cross to honor soldiers who perished during World War I.



DEC 21, 2018

In an [opinion letter](#), DOL's Wage and Hour Division stated that a group of religious communities who all work beside each other and share everything with one another can never be regulated under the Fair Labor Standards Act, allowing them to raise funds for their nonprofit organization without abandoning their religious tenets.



JULY 8, 2019

The Department of State facilitated the formation of the [Commission on Unalienable Rights](#) to generate bipartisan and multinational discussion and debate about religious freedom and release reports on their findings.



JULY 15, 2019

The State Department hosted the first [Ministerial to Advance Religious Freedom](#) in 2018 and a second in 2019, in which it outlined steps for countries to take to protect religious freedom and announced the establishment of funds for victims of religious persecution throughout the world.



JULY 15, 2019

DOJ hosted a [Summit on Combating Anti-Semitism](#), discussing anti-Semitic incidents and what is being done to combat them in several different areas of government, including the FBI, Department of Education, and Civil Rights Division of the Justice Department.



AUG 15, 2019

DOJ issued an [opinion](#) that prohibitions on loans for capital improvements at historically black colleges and universities with religious missions under 20 U.S.C. 1066c(c) violates the Free Exercise Clause of the First Amendment.



★★ Additional Advances ★★

President Trump has signed bills, nominated officials, and made several speeches and declarations advancing both domestic and international religious liberty.

- Nominated Sam Brownback of Kansas to the position of [Ambassador at Large for International Religious Freedom](#), who was subsequently confirmed by the Senate. (Jan. 8, 2018)
- Signed the [Iraq and Syria Genocide Relief and Accountability Act](#) into law to help aid religious minorities in the Middle East and provide funding for religious and nongovernmental organizations in the region. (Dec. 11, 2018)
- Appointed Elan S. Carr as a [Special Envoy to Monitor and Combat Anti-Semitism](#). (Feb. 5, 2019)
- Met with survivors of religious persecution from several different religious groups and nations in the White House as part of the [2019 Ministerial to Advance Religious Freedom](#). (July 17, 2019)
- Spoke at the [United Nations Global Call for Religious Freedom](#) event, calling on the international community to end religious persecution and announcing an outlay of \$25 million in additional funds to protect religious freedom and symbols throughout the globe. (Sept. 23, 2019)
- Declared a day in January to be [Religious Freedom Day](#) in 2018, 2019, and 2020 in order to commemorate and affirm the American tradition of religious liberty. (Jan. 16, 2020)
- Gave speeches at the [Annual National Prayer Breakfast](#) from 2018-2020, as well as the [National Catholic Prayer Breakfast](#) in 2020. (Sept. 23, 2020)



JAN 8, 2018



OCT 21, 2020

DOJ has obtained [convictions](#) for 15 defendants in cases involving religiously-motivated federal crimes against other individuals, 17 defendants who attacked or threatened houses of worship, and 65 defendants in cases involving [anti-Semitic hate crimes](#) since 2017.



DEC 16, 2020

DOJ filed a [lawsuit](#) against the University of Vermont Medical Center for unfair treatment of medical workers who refuse to facilitate abortions. The Medical Center's actions are in violation of a federal law protecting workers like these from discrimination for adhering to their religious tenets while on the job.



DEC 16, 2020

HHS's Office of Civil Rights facilitated [safe access to clergy](#) for hospital patients during the COVID-19 pandemic in compliance with federal guidelines, so individuals do not lose their freedom to exercise religion when they step into hospital doors.





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