Kevin McCarthy

From: Kevin McCarthy
Sent: Tuesday, January 10, 2017 7:28 PM
To: ivy.cheng@usdoj.gov
Subject: The Leader's Daily Schedule - 1/11/17

Kevin McCarthy - Majority Leader

LEADER'S DAILY SCHEDULE

WEDNESDAY, JANUARY 11TH

On Wednesday, the House will meet at 10:00 a.m. for morning hour and 12:00 p.m. for legislative business. First votes expected: 1:15 p.m. - 2:15 p.m. Last votes expected: 5:00 p.m. - 6:00 p.m.

One Minute Speeches

H.R. 5 - Regulatory Accountability Act of 2017 (Structured Rule) *(Sponsored by Rep. Bob Goodlatte / Judiciary Committee)*

The Rule provides for one hour of general debate and makes in order the following amendments:

Rep. Bob Goodlatte Amendment (10 minutes of debate)
Rep. Jason Chaffetz Amendment (10 minutes of debate)
Rep. Steve Chabot Amendment (10 minutes of debate)
Rep. Nydia Velazquez Amendment (10 minutes of debate)
Reps. Peterson / Goodlatte / Chaffetz Amendment (10 minutes of debate)
Reps. Graves (LA) / Cuellar / Babin Amendment (10 minutes of debate)
Rep. David Young Amendment (10 minutes of debate)
Rep. Kathy Castor Amendment (10 minutes of debate)
Rep. David Cicilline Amendment (10 minutes of debate)
Rep. Hank Johnson Amendment (10 minutes of debate)
Rep. Raul Ruiz Amendment (10 minutes of debate)
Rep. Bobby Scott Amendment (10 minutes of debate)
Rep. Paul Tonko Amendment (10 minutes of debate)
Rep. Raul Grijalva Amendment (10 minutes of debate)
Rep. Jerry Nadler Amendment (10 minutes of debate)
Rep. Bill Posey Amendment (10 minutes of debate)

Postponed Suspension Vote:

1) H.R. 39 - TALENT Act of 2017 *(Sponsored by Rep. Kevin McCarthy / Oversight and Government Reform Committee)*

Special Order Speeches

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Kevin McCarthy

From: Kevin McCarthy
Sent: Wednesday, March 8, 2017 7:52 PM
To: ivy.cheng@usdoj.gov
Subject: The Leader's Daily Schedule - 3/9/17

Kevin McCarthy - Majority Leader

LEADER'S DAILY SCHEDULE

THURSDAY, MARCH 9TH

On Thursday, the House will meet at 10:00 a.m. for morning hour and 12:00 p.m. for legislative business. First votes expected: 1:15 p.m. - 2:15 p.m. Last votes expected: 5:30 p.m. - 6:30 p.m.

One Minute Speeches

H.R. 725 - Innocent Party Protection Act (Structured Rule) *(Sponsored by Rep. Ken Buck / Judiciary Committee)*

The Rule provides for one hour of general debate and makes in order the following amendments:

Rep. Darren Soto Amendment (10 minutes of debate)
Rep. Matt Cartwright Amendment (10 minutes of debate)

H.R. 985 - Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017, Rules Committee Print (Structured Rule) *(Sponsored by Rep. Bob Goodlatte / Judiciary Committee)*

The Rule provides for one hour of general debate and makes in order the following amendments:

Rep. Bob Goodlatte Amendment (10 minutes of debate)
Rep. Ted Deutch Amendment #1 (10 minutes of debate)
Rep. Ted Deutch Amendment #2 (10 minutes of debate)
Rep. Darren Soto Amendment (10 minutes of debate)
Rep. Hank Johnson Amendment (10 minutes of debate)
Rep. John Conyers Amendment (10 minutes of debate)
Rep. Sheila Jackson Lee Amendment (10 minutes of debate)
Rep. Adriano Espaillat Amendment (10 minutes of debate)

Special Order Speeches

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Cheng, Ivy (OLA)

From:	Cheng, Ivy (OLA)
Sent:	Thursday, April 27, 2017 5:32 PM
To:	Mathur, Rajat (Appropriations)
Cc:	alexis.rudd@dot.gov; Zarish-Becknell, Kim; Petersen, Molly
Subject:	RE: Title IX question from Senate Approps Committee
Attachments:	Title IX 13160 USMMA CRT TA RESPONSES 4-27-17.docx

Rajat,

Attached please find responses from our Civil Rights Division to these questions. Thanks for your patience, and please let me know if you have any other questions.

Best,
Ivy

From: Mathur, Rajat (Appropriations) [mailto:(b) (6)
Sent: Friday, April 21, 2017 11:16 AM
To: Cheng, Ivy (OLA) <Ivy.Cheng@usdoj.gov>
Cc: alexis.rudd@dot.gov; Zarish-Becknell, Kim <Kim.Zarish-Becknell@ed.gov>; Petersen, Molly <Molly.Petersen@ed.gov>
Subject: RE: Title IX question from Senate Approps Committee

Yes, please answer these questions. Need something quickly.

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: "Cheng, Ivy (OLA)" <Ivy.Cheng@usdoj.gov>
Date: 4/21/17 10:37 AM (GMT-05:00)
To: "Mathur, Rajat (Appropriations)" <(b) (6)
Cc: alexis.rudd@dot.gov, "Zarish-Becknell, Kim" <Kim.Zarish-Becknell@ed.gov>, "Petersen, Molly" <Molly.Petersen@ed.gov>
Subject: RE: Title IX question from Senate Approps Committee

Rajat,

Pardon the delay in response. Upon further consultation with our experts in DOJ, they would be more comfortable responding to written questions in the form of technical assistance than participating in a call. If that would work for you, below are the questions that I believe DOT was hoping we could clarify on the call.

1. What is the relationship between Title IX and Executive Order 13160, to whom does each apply, and how is each enforced against applicable entities?

2. Can Title IX, as currently structured, apply to a federally operated institution (run as a program of a federal agency, with specific appropriations line items)?
3. If a student brought a private right of action against the USMMA for alleged intentional discrimination, could the Department of Justice intervene in the lawsuit?
4. If the Department of Education was unable to negotiate a resolution agreement with the USMMA for noncompliance with Title IX, could the Department of Justice initiate an enforcement action against the USMMA based on a referral from the Department of Education?
5. What would Title IX require of the USMMA that is not currently required by EO 13160?

Please let me know if these look right to you, or if there is anything else you would like to add. It would be most helpful if you were able to send these to me in a separate, clean email for our response.

Thanks,
Ivy

From: Mathur, Rajat (Appropriations) [mailto:(b) (6)
Sent: Monday, April 17, 2017 10:16 AM
To: Zarish-Becknell, Kim <Kim.Zarish-Becknell@ed.gov>; Ivy.Cheng@usdoj.gov; alexis.rudd@dot.gov; Petersen, Molly <Molly.Petersen@ed.gov>
Subject: RE: Title IX question from Senate Approps Committee

Hi all – I never heard back on this last week. Could you please set up a time for a phone call this week? Thanks.

From: Zarish-Becknell, Kim [mailto:Kim.Zarish-Becknell@ed.gov]
Sent: Friday, April 7, 2017 3:50 PM
To: Mathur, Rajat (Appropriations) <(b) (6) >; Ivy.Cheng@usdoj.gov; alexis.rudd@dot.gov; Petersen, Molly <Molly.Petersen@ed.gov>
Subject: RE: Title IX question from Senate Approps Committee

Hi Rajat, I'm looping in our colleague Alexis at DOT because we've all been discussing this and would like to be on the same page. Let us chat on how to best proceed and get back with you.
Kim

From: Mathur, Rajat (Appropriations) [mailto(b) (6)
Sent: Friday, April 07, 2017 3:23 PM
To: Ivy.Cheng@usdoj.gov; Zarish-Becknell, Kim
Subject: Title IX question from Senate Approps Committee

Hi there, I work for the Senate Appropriations Committee, THUD subcommittee and had a question about Title IX. Sen. Gillibrand has a bill that you may be familiar with which removes the Title IX exemption for the U.S. Merchant Marine Academy. I'd like to better understand what the Title IX requirements are, and how this bill would impact USMMA. Is there someone at your agencies I could talk to about this?

Thanks for your help in advance.

Rajat Mathur
(b) (6)
THUD Subcommittee
Senate Appropriations Committee
(b) (6)

4/27/17 Civil Rights Division Technical Assistance Responses to Senate Appropriations Subcommittee Staff on Transportation, Housing, and Urban Development

1. **What is the relationship between Title IX and Executive Order 13160, to whom does each apply, and how is each enforced against applicable entities?[1]**

Title IX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. 20 U.S.C. §§ 1681-1688. Title IX applies to recipients of federal financial assistance but includes a number of exemptions, including for educational institutions "whose primary purpose is the training of individuals for the military services of the United States, or merchant marine[.]" *Id.* §1681(a)(4). Federal agency Title IX regulations define a recipient as:

> any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

See e.g. 49 C.F.R. § 25.105 (Dep't. of Transp. Title IX Regulations).

Federal agencies that extend federal financial assistance are responsible for enforcing Title IX and its implementing regulations. 20 U.S.C. § 1682. A federal agency may enforce Title IX and its implementing regulations by (1) the termination of or refusal to grant or to continue assistance to the recipient or (2) any other means authorized by law. Title IX further states that "no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means." *Id.*

Executive Order 13160

Executive Order 13160 (EO 13160) holds the federal government "to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities" of recipients of federal financial assistance, including Title IX. Exec. Order No. 13160, 65 Fed. Reg. 39,775, § 1-101 (June 27, 2000). Among other bases, EO 13160 prohibits discrimination on the basis of sex in any federally conducted education or training program or activity, which include programs and activities conducted, operated, or undertaken by an executive department or agency. *Id.* §§ 1-102, 2-201. EO 13160 contains a number of exemptions from coverage, including the following:

> This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed

[1] We have not been asked for information on remedies, if any.

> forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

Id. § 3-301.

EO 13160 defines "military education or training programs" as "those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18."[2] *Id.* § 2-204. The Attorney General is authorized to make final determinations as to whether a program falls within the scope of education and training programs and activities covered by EO 13160 as well as exemptions from coverage. *Id.* § 2-203.

Each federal agency is required to establish a procedure to receive and address complaints regarding its federally conducted education and training programs. *Id.* § 5-502. DOJ issued an EO 13160 guidance document in 2001 that provides additional information about the administrative enforcement process and equitable relief available under EO 13160. *See* Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs, 66 Fed. Reg. 5398, 5407-5409 (Jan. 18, 2001).[3]

2. Can Title IX, as currently structured, apply to a federally operated institution (run as a program of a federal agency, with specific appropriations line items)?

Title IX does not apply to programs or activities operated by federal agencies. The plain language of the statute applies to recipients of federal financial assistance and provides no enforcement mechanism reaching federal conduct. In addition, Title VI of the Civil Rights Act of 1964, on which Title IX is patterned, has been interpreted to apply only to non-federal recipients of federal financial assistance. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 38 (2d Cir. 1983) (Title VI "was meant to cover only those situations where federal funding is given to a non-federal entity which, in turn, provides financial assistance to the ultimate beneficiary"); *see also Cannon v. University of Chicago*, 441 U.S. 677, 695-98 (1979) (Title IX patterned on Title VI).

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[2] DOJ is currently reviewing whether USMMA is a covered program under 13160.

[3] Available at https://www.gpo.gov/fdsys/pkg/FR_2001_01_18/pdf/01_1494.pdf. DOJ's Guidance notes that "[a]s a general matter, Executive Order 13160 will apply to all federally conducted education and training programs or activities not subject to a specific exemption set forth in Section 3 of the Executive Order." *Id.*, at 5400. As noted above, the drafters of the Executive Order did not include all of the military departments excluded from Title IX coverage.

Whether a specific institution is federally operated is a factual question.

3. If a student brought a private right of action against the USMMA for alleged intentional discrimination, could the Department of Justice intervene in the lawsuit?

The Department of Justice (DOJ) has not analyzed whether USMMA is a federally conducted program, but we understand that the U.S. Department of Transportation (DOT) considers it to be federally conducted.[4] And as a federally conducted program, DOJ would most likely represent DOT in the litigation. *See* 28 U.S.C. § 516 (conduct of litigation in which a federal agency is a party is reserved to DOJ except where otherwise authorized by law).

DOJ may intervene in private lawsuits against a non-federal entity brought under, for example, Title IX or the U.S. Constitution, consistent with Rule 24 of the Federal Rules of Civil Procedure. If DOJ were to determine that USMMA is a federally conducted program, it would not intervene in support of a student's discrimination complaint against USMMA.

4. If the Department of Education was unable to negotiate a resolution agreement with the USMMA for noncompliance with Title IX, could the Department of Justice initiate an enforcement action against the USMMA based on a referral from the Department of Education?

Currently, Title IX does not cover educational institutions "whose primary purpose is the training of individuals for the military services of the United States, or merchant marine[.]" 20 U.S.C. §1681(a)(4). Regardless of the merchant marine exemption, if USMMA is a federally conducted program of DOT, neither the Department of Education nor DOJ would have jurisdiction to enforce Title IX against USMMA.

For recipients covered by Title IX, however, the federal agency responsible for providing federal financial assistance ensures that its recipients comply with Title IX. *Id.* § 1682. If efforts to voluntarily resolve compliance concerns fail, the federal funding agency may take steps to terminate federal financial assistance or other means authorized by law. *Id.*; *see also* 49 C.F.R. § 25.605 (DOT Title IX regulations enforcement procedures). Under the latter option, the federal funding agency may refer the matter to DOJ to enforce Title IX in federal court. *See* 49 C.F.R. § 25.605; 49 C.F.R. § 21.13(a) (enforcement provisions of DOT's Title VI regulations adopted and applied to DOT's Title IX regulations).

5. What would Title IX require of the USMMA that is not currently required by EO 13160?

Without further clarification, we are unsure of the intent of this question but hope that our answers above provide sufficient guidance.

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[4] We note, without determining, that the preamble to the 1975 final Title IX regulations issued by the Department of Health, Education, and Welfare expressly states that "[n]either the statute nor the regulation applies to the United States military and merchant marine academies since these schools are Federal entities rather than recipients of Federal assistance." 40 Fed. Reg. 24,128, 24130 (June 4, 1975).

Non-responsive record

[redacted]

From: Tate, Curtis [mailto:ctate@mcclatchydc.com]
Sent: Monday, May 8, 2017 1:12 PM
To: Press <Press@jmd.usdoj.gov>
Subject: religious liberty executive order

Hi: Looking for comment/clarification on this section of the president's executive order. What does this empower DOJ to do that it was not empowered to do previously? What does it mean in practical terms going forward? Need answers, if possible, by 4 p.m. today.

Sec. 4. Religious Liberty Guidance. In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

Thanks!

--
Curtis Tate
Washington Correspondent
McClatchy Newspapers
1025 Connecticut Ave NW Suite 1100
Washington DC 20036
202-383-6018 office
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www.mcclatchydc.com

Seitz, Sarah (Lankford)

From:	Seitz, Sarah (Lankford)
Sent:	Wednesday, May 10, 2017 10:10 AM
To:	Talley, Brett (OLP)
Subject:	Religious freedom EO

Hi Brett-

The spoke with the Vice President yesterday about the section of the EO directing the AG to "issue guidance interpreting religious liberty protections in Federal law."

Religious freedom is the Senator's top priority so if there are ways we can be helpful, please let me know. Also, if there's anything you can share in terms of this new guidance, that would be very helpful.

Thanks!

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

Seitz, Sarah (Lankford)

From:	Seitz, Sarah (Lankford)
Sent:	Friday, June 9, 2017 10:42 AM
To:	Talley, Brett (OLP)
Subject:	FW: Letter from Sen. Lankford to AG Sessions
Attachments:	Lankford letter to AG Sessions.pdf

Just confirming that you received this.

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

From: Seitz, Sarah (Lankford)
Sent: Wednesday, June 7, 2017 4:06 PM
To: 'Talley, Brett (OLP)' <Brett.Talley@usdoj.gov>
Subject: Letter from Sen. Lankford to AG Sessions

Hi Brett –

I wanted to make sure you had an electronic copy.

We are also sending letters to 6 other Departments to identify specific actions that can be taken to protect religious freedom. If the Attorney General would like to have copies of those as well, just let me know.

Thanks,
Sarah

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

JAMES LANKFORD
OKLAHOMA

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TULSA, OK 74135
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June 7, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

On May 4, 2017, President Trump issued an Executive Order directing you to issue guidance interpreting religious liberty protections in federal law. The right to the free exercise of religion – to practice any faith or choose no faith at all – is a fundamental human right of all people. As such, it is essential that this new guidance affirm protections for individuals and religious entities to ensure that no one is forced by the federal government to violate his or her conscience and sincerely held religious beliefs.

In 1993, President Bill Clinton signed the Religious Freedom Restoration Act into law, at the time stating the "…shared desire here to protect perhaps the most precious of all American liberties, religious freedom." Further, an acknowledgement of the need for religious exemptions under current law have a rich history, including being an integral part of our nation's civil rights laws.

Yet, our federal government tried to push the Little Sisters of the Poor to change their health care plan to offer services that violate their deeply held religious beliefs. Highly-qualified faith-based organizations are being denied or they are declining to compete for federal contracts and grants because of their religious beliefs, the same beliefs that lead them to provide charitable work on behalf of the most vulnerable populations in our country and around the world. The threat of loss of accreditation or charitable tax status lingers in the wake of the United States Solicitor General's comments upon the Supreme Court's 2015 ruling in *Obergefell v. Hodges* that the loss of charitable tax status was, "certainly going to be an issue." Religious groups on college campuses are being banned, threatened, or forced to change their bylaws. Schools are being denied safe playground equipment simply because they are affiliated with a religious institution. Our men and women serving in uniform to defend this nation and our Constitution are being denied the full protections of the laws they are fighting to defend.

We cannot be a country that financially punishes individuals for practicing their sincerely held religious beliefs or decides which practices are a valid part of a particular religious tradition and worthy of protection. The free exercise of religion rings hollow if individuals do not have the ability to live out their faith without fear of repercussion from the government.

In the 1786 Virginia Statute for Religious Freedom, Thomas Jefferson wrote, "no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever…nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion."

The President's Order correctly noted that "the Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government."

As such, I urge you to issue guidance that unequivocally affirms the free exercise of religion for all people, by clarifying the scope and meaning of current federal laws like the Civil Rights Act to ensure that religious entities are able to claim lawful exemptions. Additionally, it is vital that the guidance ensures that people and entities of faith are able to partner fully with the federal government through grants and contracts.

We have a responsibility to protect and defend the free exercise of religion for people of all faith and non-faith both here and around the world, to ensure as President Trump said, that all are able to "exercise religion and participate fully in civic life without undue interference by the Federal Government." I look forward to working with you to secure this fundamental and constitutional right.

In God We Trust,

JAMES LANKFORD
United States Senator

David Nammo

From: David Nammo
Sent: Friday, June 9, 2017 11:02 AM
To: Tucker, Rachael (OAG)
Cc: Kim Colby
Subject: RE: REMINDER - CONNECT WITH DOJ RELIGIOUS LIBERTY PERSON

Hi Rachel,

No apologies necessary. I can't imagine how busy you are. The week of the 19th.sounds great I am travelling that week, but Kim, the director of our Center for Law & Religious Freedom, is here all that week. She is amazing (and has forgotten more about religious liberty than I will ever know) so me not being there is just fine. I know she is available Monday, Tuesday and Thursday of the week of the 19th. I am happy to just have you two meet and see how we can help in any way. Thank you for getting back to us.

Best,

David

David Nammo

Executive Director & CEO
Christian Legal Society
8001 Braddock Rd, Ste 302
Springfield, Virginia 22151
(703) 642-1070 (office)
(b) (6) (cell)
www.christianlawyer.org

From: Tucker, Rachael (OAG) [mailto:Rachael.Tucker@usdoj.gov]
Sent: Thursday, June 08, 2017 6:47 PM
To: David Nammo
Cc: Kim Colby
Subject: RE: REMINDER - CONNECT WITH DOJ RELIGIOUS LIBERTY PERSON

Hi David,

I apologize for my delayed response. I would be happy to meet. I'm leaving town tomorrow and am out on travel with the AG all next week. Can we aim for the week of the 19th?

Rachael

From: David Nammo [mailto:dnammo@clsnet.org]
Sent: Friday, May 19, 2017 2:58 PM
To: Tucker, Rachael (OAG) <ratucker@jmd.usdoj.gov>

Cc: Kim Colby <kcolby@clsnet.org>
Subject: RE: REMINDER - CONNECT WITH DOJ RELIGIOUS LIBERTY PERSON

Hi Rachael,

Thank you for responding.

I was speaking with Paul and told him we were encouraged by the executive order and specifically the fourth item on the order, which encourages the AG to issue guidance.

I told him that the Christian Legal Society (which has been doing religious liberty since 1975 through our Center for Law & Religious Freedom, including helping draft the Equal Access Act, RFRA, and RLUIPA) would love to be a resource for the AG/DOJ on this item. He said he would connect me with you.

It would be great to schedule a time to meet in the next week or so if you are able. Thank you for offering. I am cc'ing Kim Colby on this email as she is the director of our Center for Law & Religious Freedom.

Let us know. We look forward to working with you.

Best,

David

David Nammo
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From: Tucker, Rachael (OAG) [mailto:Rachael.Tucker@usdoj.gov]
Sent: Thursday, May 18, 2017 2:35 PM
To: Teller, Paul S. EOP/WHO
Cc: David Nammo
Subject: Re: REMINDER - CONNECT WITH DOJ RELIGIOUS LIBERTY PERSON

Thanks, Paul.

Hi David,

Please let me know how I can help. Happy to schedule a time to talk.

Rachael

Manus Cooney

From: Manus Cooney
Sent: Monday, June 19, 2017 9:55 AM
To: Parker, Rachel (OASG)
Cc: Murray, Brian (OASG); Bylund, Jeremy (OASG)
Subject: RE: Thanks and quick question

Thanks Rachel. Appreciate it.

Brian and Jeremy – Good to connect. Congratulations on your positions. Looking forward to connecting in the future. Per below, just trying to get sense of the timing and process for any religious liberty guidance per the EO. No rush unless you tell me otherwise. Thank you.

Manus.

From: Parker, Rachel (OASG) [mailto:Rachel.Parker@usdoj.gov]
Sent: Sunday, June 18, 2017 1:24 PM
To: Manus Cooney
Cc: Murray, Brian (OASG); Bylund, Jeremy (OASG); Parker, Rachel (OASG)
Subject: RE: Thanks and quick question

Hi Manus,

I apologize for the delay in responding to your note, but I have run down a couple folks you could talk to re: the EO. I have cc'd my colleagues, Brian Murray and Jeremy Bylund, who are helping with the implementation process.

Rachel

From: Manus Cooney [mailto:cooney@acg-consultants.com]
Sent: Wednesday, June 14, 2017 8:33 AM
To: Parker, Rachel (OASG) <racparker@jmd.usdoj.gov>
Subject: Thanks and quick question

Rachel – Great to see you on Friday and thank you for your service. Sent a formal note with John Clark thanking Rachel for coming over. Also dropped a personal note to her in the mail. Of course, I would be remiss not to also thank you for facilitating her visit. Thank you very much.

Sorry to bother you but can you help direct me to who in DOJ has been charged with overseeing the implementation process to "issue guidance interpreting religious liberty protections in Federal law" per the religious liberty EO he executed on May 4? (See article below). Just trying to stay abreast of developments.

http://www.npr.org/sections/thetwo-way/2017/05/04/526853555/in-name-of-religious-liberty-trump-targets-a-rarely-enforced-irs-provision

Thank you.

Manus.

Manus Cooney

American Continental Group
1800 M Street, N.W.
Suite 500 South
Washington, DC 20036
T: 202-327-8100
C: (b) (6)

Seitz, Sarah (Lankford)

From:	Seitz, Sarah (Lankford)
Sent:	Thursday, June 22, 2017 10:02 AM
To:	Tucker, Rachael (OAG)
Subject:	Religious freedom guidance
Attachments:	Lankford letter to AG Sessions.pdf

Hi Rachael –

As you work to finalize the new guidance, I wanted to ensure you had the letter my boss sent to the AG on this issue.

Additionally, one thing to flag for you is EEOC providing guidance to other agencies regarding scope of the Civil Rights Act. I understand that the EEOC has authority to provide guidance on workplace discrimination, but don't think that guidance should be based on an improper interpretation of sex discrimination under the Civil Rights Act.

Religious freedom issues are the Senator's top priority so we stand ready to work with you on this.

Thanks!

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

From:	Manus Cooney<cooney@acg-consultants.com>
Date:	Thu Jun 29 2017 14:05:27 EDT
To:	Murray, Brian (OASG) </o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=4c06e91b923744a0b8f20c4d3248377c-murray, bri>; Bylund, Jeremy (OASG) </o=exchangelabs/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=3a2b34ebc3914b8596f50b9a3f03a503-bylund, jer>
Cc:	Blank
Bcc:	Blank
Subject:	RE: Thanks and quick question
Attachments:	image001.jpg

Fellas - Just circling back on below. Just trying to get sense of the timing and process for any religious liberty guidance. Thank you.

Manus.

From: Manus Cooney
Sent: Monday, June 19, 2017 9:55 AM
To: 'Parker, Rachel (OASG)'
Cc: Murray, Brian (OASG); Bylund, Jeremy (OASG)
Subject: RE: Thanks and quick question

Thanks Rachel. Appreciate it.

Brian and Jeremy – Good to connect. Congratulations on your positions. Looking forward to connecting in the future. Per below, just trying to get sense of the timing and process for any religious liberty guidance per the EO. No rush unless you tell me otherwise. Thank you.

Manus.

From: Parker, Rachel (OASG) [mailto:Rachel.Parker@usdoj.gov]
Sent: Sunday, June 18, 2017 1:24 PM
To: Manus Cooney
Cc: Murray, Brian (OASG); Bylund, Jeremy (OASG); Parker, Rachel (OASG)
Subject: RE: Thanks and quick question

Hi Manus,

Rudd, Alexis (MARAD)

From:	Rudd, Alexis (MARAD)
Sent:	Thursday, June 29, 2017 4:44 PM
To:	(b) (6) Lina Dakheel House email; (b)(6) Mike Florio House email; (b) (6) Diane Shust House email
Cc:	Cheng, Ivy (OLA); Chavez, Gabriel (MARAD); Stroschein, Angela(MARAD)
Subject:	USMMA and Title IX
Attachments:	Title IX 13160 USMMA CRT TA RESPONSES.DOCX

Hi Mike, Lina, and Diane,

Mike mentioned on the phone that your office has been considering introducing legislation regarding the USMMA and Title IX. I wanted to give you some of the background information on conversations we have been having with the DOJ on Title IX, Executive Order 13160, and the USMMA. Attached are list of questions that DOT provided to DOJ earlier this year, as well as their answers. In addition, we received the following from the DOJ.

Title IX does not contain a specific exemption for the DoD academies and USMMA. The exemption states:

> **"(4) Educational institutions training individuals for military services or merchant marine**
>
> this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or merchant marine[.]" *Id*. 20 U.S.C. § 1681(a)(4).
>
> Given that Title IX applies only to recipients of federal financial assistance, the exemption applies to the state-run academies that receive federal financial assistance. An amendment to Title IX removing the phrase "merchant marine" from the Title IX exemption would presumably result in coverage for the state run merchant marine academies but not for a federally conducted merchant marine academy. As mentioned in the attached response, DOJ have not yet analyzed the USMMA's status as a federally conducted program (although DOT has made a request that they do so). Their understanding is that DOT considers it so and the preamble to HEW's (the agency that preceded HHS/ED split) Title IX regulations explicitly state that the U.S. military and merchant marine academies are federal entities rather than recipients of federal assistance. The Title IX exemption may cover state- or privately-run institutions receiving federal financial assistance whose primary purpose is military services training.

MARAD has formally requested that DOJ review the application of EO 13160 to the academy, and I believe that review is in process. To check on the timeline of the review, it would make the most sense to contact the DOJ. If you would like to contact DOJ directly, their legislative affairs contact is Ivy.Cheng@usdoj.gov. She is really helpful, and you will be in good hands. If you have any follow-up questions on Title IX enforcement, she would be the right person to ask, because if you ask me I will just be asking her anyway.

In case you are wondering why DOJ is involved rather than ED, the Department of Education primarily enforces Title IX on university campuses, since agencies that extend federal financial assistance are responsible for enforcing Title IX with respect to its recipient institutions, and ED provides federal financial assistance to virtually all institutions of higher learning. However, DOJ enforces Title IX with respect to universities that are recipients of funding from DOJ; upon referral from ED or another funding agency; or

through intervention or amicus participation in an existing case. DOJ is also responsible for coordinating federal agencies' enforcement and implementation of Title IX. It is this role which informs the analysis currently being undertaken by the DOJ Civil Rights Division of whether EO 13160 applies to the USMMA, and of the potential effect of removing USMMA's Title IX exemption.

Please let me know if you have any questions, and I look forward to working with Rep. Suozzi's office in the future.

Dr. Alexis Rudd
Office of Congressional and Public Affairs
Maritime Administration, Department of Transportation
202-366-1692 (office)
(b) (6) (cell)

4/27/17 DOJ Civil Rights Division Technical Assistance

1. **What is the relationship between Title IX and Executive Order 13160, to whom does each apply, and how is each enforced against applicable entities?[1]**

Title IX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. 20 U.S.C. §§ 1681-1688. Title IX applies to recipients of federal financial assistance but includes a number of exemptions, including for educational institutions "whose primary purpose is the training of individuals for the military services of the United States, or merchant marine[.]" *Id.* §1681(a)(4). Federal agency Title IX regulations define a recipient as:

> any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

See e.g. 49 C.F.R. § 25.105 (Dep't. of Transp. Title IX Regulations).

Federal agencies that extend federal financial assistance are responsible for enforcing Title IX and its implementing regulations. 20 U.S.C. § 1682. A federal agency may enforce Title IX and its implementing regulations by (1) the termination of or refusal to grant or to continue assistance to the recipient or (2) any other means authorized by law. Title IX further states that "no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means." *Id.*

Executive Order 13160

Executive Order 13160 (EO 13160) holds the federal government "to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities" of recipients of federal financial assistance, including Title IX. Exec. Order No. 13160, 65 Fed. Reg. 39,775, § 1-101 (June 27, 2000). Among other bases, EO 13160 prohibits discrimination on the basis of sex in any federally conducted education or training program or activity, which include programs and activities conducted, operated, or undertaken by an executive department or agency. *Id.* §§ 1-102, 2-201. EO 13160 contains a number of exemptions from coverage, including the following:

> This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by

[1] We have not been asked for information on remedies, if any.

> regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

Id. § 3-301.

EO 13160 defines "military education or training programs" as "those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18."[2] *Id.* § 2-204. The Attorney General is authorized to make final determinations as to whether a program falls within the scope of education and training programs and activities covered by EO 13160 as well as exemptions from coverage. *Id.* § 2-203.

Each federal agency is required to establish a procedure to receive and address complaints regarding its federally conducted education and training programs. *Id.* § 5-502. DOJ issued an EO 13160 guidance document in 2001 that provides additional information about the administrative enforcement process and equitable relief available under EO 13160. *See* Executive Order 13160 Guidance Document: Ensuring Equal Opportunity in Federally Conducted Education and Training Programs, 66 Fed. Reg. 5398, 5407-5409 (Jan. 18, 2001).[3]

2. Can Title IX, as currently structured, apply to a federally operated institution (run as a program of a federal agency, with specific appropriations line items)?

Title IX does not apply to programs or activities operated by federal agencies. The plain language of the statute applies to recipients of federal financial assistance and provides no enforcement mechanism reaching federal conduct. In addition, Title VI of the Civil Rights Act of 1964, on which Title IX is patterned, has been interpreted to apply only to non-federal recipients of federal financial assistance. *See Soberal-Perez v. Heckler*, 717 F.2d 36, 38 (2d Cir. 1983) (Title VI "was meant to cover only those situations where federal funding is given to a non-federal entity which, in turn, provides financial assistance to the ultimate beneficiary"); *see also Cannon v. University of Chicago*, 441 U.S. 677, 695-98 (1979) (Title IX patterned on Title VI).

Whether a specific institution is federally operated is a factual question.

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[2] DOJ is currently reviewing whether USMMA is a covered program under 13160.

[3] Available at https://www.gpo.gov/fdsys/pkg/FR-2001-01-18/pdf/01-1494.pdf. DOJ's Guidance notes that "[a]s a general matter, Executive Order 13160 will apply to all federally conducted education and training programs or activities not subject to a specific exemption set forth in Section 3 of the Executive Order." *Id.*, at 5400. As noted above, the drafters of the Executive Order did not include all of the military departments excluded from Title IX coverage.

3. **If a student brought a private right of action against the USMMA for alleged intentional discrimination, could the Department of Justice intervene in the lawsuit?**

The Department of Justice (DOJ) has not analyzed whether USMMA is a federally conducted program, but we understand that the U.S. Department of Transportation (DOT) considers it to be federally conducted.[4] And as a federally conducted program, DOJ would most likely represent DOT in the litigation. *See* 28 U.S.C. § 516 (conduct of litigation in which a federal agency is a party is reserved to DOJ except where otherwise authorized by law).

DOJ may intervene in private lawsuits against a non-federal entity brought under, for example, Title IX or the U.S. Constitution, consistent with Rule 24 of the Federal Rules of Civil Procedure. If DOJ were to determine that USMMA is a federally conducted program, it would not intervene in support of a student's discrimination complaint against USMMA.

4. **If the Department of Education was unable to negotiate a resolution agreement with the USMMA for noncompliance with Title IX, could the Department of Justice initiate an enforcement action against the USMMA based on a referral from the Department of Education?**

Currently, Title IX does not cover educational institutions "whose primary purpose is the training of individuals for the military services of the United States, or merchant marine[.]" 20 U.S.C. §1681(a)(4). Regardless of the merchant marine exemption, if USMMA is a federally conducted program of DOT, neither the Department of Education nor DOJ would have jurisdiction to enforce Title IX against USMMA.

For recipients covered by Title IX, however, the federal agency responsible for providing federal financial assistance ensures that its recipients comply with Title IX. *Id.* § 1682. If efforts to voluntarily resolve compliance concerns fail, the federal funding agency may take steps to terminate federal financial assistance or other means authorized by law. *Id.*; *see also* 49 C.F.R. § 25.605 (DOT Title IX regulations enforcement procedures). Under the latter option, the federal funding agency may refer the matter to DOJ to enforce Title IX in federal court. *See* 49 C.F.R. § 25.605; 49 C.F.R. § 21.13(a) (enforcement provisions of DOT's Title VI regulations adopted and applied to DOT's Title IX regulations).

5. **What would Title IX require of the USMMA that is not currently required by EO 13160?**

Without further clarification, we are unsure of the intent of this question but hope that our answers above provide sufficient guidance.

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[4] We note, without determining, that the preamble to the 1975 final Title IX regulations issued by the Department of Health, Education, and Welfare expressly states that "[n]either the statute nor the regulation applies to the United States military and merchant marine academies since these schools are Federal entities rather than recipients of Federal assistance." 40 Fed. Reg. 24,128, 24130 (June 4, 1975).

Mark L Rienzi

From:	Mark L Rienzi
Sent:	Friday, June 30, 2017 10:37 AM
To:	Bylund, Jeremy (OASG)
Subject:	Fwd: Motion to intervene as defendants in FFRF v. Trump
Attachments:	2017-06-29 06 Brief in Support of Motion to Intervene.pdf

Jeremy--FYI, this sounds like you all at least might end up not opposing the motion to intervene in the Johnson Amendment casse, which would be great. Here is our memo talking about who our clients are and the relief they need. We'd be happy to talk any time and hope you all end up not opposing our clients' efforts to get to the kind of relief the President has publicly talked about. Best regards,

Mark

---------- Forwarded message ----------
From: **Luh, James (CIV)** <(b) (6)
Date: Wed, Jun 28, 2017 at 10:56 AM
Subject: RE: Motion to intervene as defendants in FFRF v. Trump
To: Daniel Blomberg <dblomberg@becketlaw.org>
Cc: Mark <rienzi@law.edu>, Diana Verm <dverm@becketlaw.org>

Daniel

Thanks for your email and for your call yesterday. Your request to intervene seems premature at the moment, and we would encourage you and your clients to hold off filing a motion to intervene until the Government has responded to the complaint. We anticipate filing a motion to dismiss the complaint, and the proceedings on that motion could sharpen the issues in the case or possibly bring an end to the case.

If you decide to proceed with filing today, you may indicate that the Government has not formulated a position on your motion and will communicate its position after reviewing your motion and proposed pleading and discussing the issues with our clients.

As I noted on the phone, you can send me by email any papers to be served on the Government under Rule 5 of the Federal Rules of Civil Procedure. I expect to file a notice of appearance in the action shortly, after which any papers can be served by ECF. Thank you.

Jim

--

James C. Luh

Trial Attorney

U.S. Department of Justice, Civil Division, Federal Programs Branch

(b) (6)

From: Daniel Blomberg [mailto:dblomberg@becketlaw.org]
Sent: Tuesday, June 27, 2017 20:05
To: Luh, James (CIV) <(b) (6)>
Cc: Mark <rienzi@law.edu>; Diana Verm <dverm@becketlaw.org>
Subject: Motion to intervene as defendants in FFRF v. Trump

Hi Jim,

Thank you for taking my call earlier today. As I mentioned, my firm represents three religious leaders and a church which intend to file a motion to intervene as defendants in *FFRF v. Trump*, No. 17-cv-330 (W.D. Wis.). The interests and arguments that they plan to raise in support of intervention are substantially similar to those two of the proposed intervenors—Father Patrick Malone and Holy Cross Anglican Church—successfully raised three years ago to intervene in a very similar lawsuit filed by the same plaintiffs before the same court, *FFRF v. Koskinen*, 298 F.R.D. 385 (W.D. Wis. 2014). The other two proposed intervenors are Charles Moodie, pastor of an inner-city church in the Chicago area, and Kuoa Vang, pastor of a small Hmong church in Madison.

We plan to file to intervene late tomorrow. Can you tell me whether your clients consent to, oppose, or take no position on our motion to intervene?

Thank you

Thank you.

Best,

Daniel Blomberg

Counsel

Becket – Religious Liberty for All

1200 New Hampshire Ave. NW, Suite 700

Washington, DC 20036

202-349-7222

dblomberg@becketlaw.org | www.becketlaw.org

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION, INC., DAN BARKER, and ANNIE LAURIE GAYLOR, Co-Presidents of FFRF,

Plaintiffs,

v.

DONALD TRUMP, President of the United States; and JOHN KOSKINEN, Commissioner of the Internal Revenue Service,

Defendants,

CHARLES MOODIE, KOUA VANG, PATRICK W. MALONE, and HOLY CROSS ANGLICAN CHURCH,

Proposed Defendant-Intervenors.

Case No. 3:17-CV-00330

BRIEF IN SUPPORT OF MOTION TO INTERVENE OF PROPOSED INTERVENORS CHARLES MOODIE, KOUA VANG, PATRICK MALONE, AND HOLY CROSS ANGLICAN CHURCH

For the second time in three years, Plaintiffs are back before this Court seeking to require the federal government to penalize one of the most sensitive and highly protected forms of speech safeguarded by the First Amendment: the teachings of religious leaders to their congregations, in their houses of worship, during religious services, and regarding matters of important religious belief that concern both internal church decisions and the public good. No one has more at stake in this lawsuit than those religious leaders and the congregations they serve. A diverse group of those leaders now seeks to once again intervene to protect their rights to speak freely with their congregations about their faith.

Proposed intervenors consist of Charles Moodie, the Pastor of Chicago City Life Center, an Assemblies of God church that serves the inner-city Englewood neighborhood in Chicago, Illinois; Koua Vang, the Pastor of Hmong Baptist Ministry, a small church in Madison, Wisconsin; Holy Cross Anglican Church, a small church in Waukesha, Wisconsin; and Holy Cross's rector, Father Patrick Malone. Each of the religious leader intervenors believes that he must preach on matters relevant to his church, including specific religious considerations that influence his respective congregation's members' choices about voting for or against political candidates. For its part, Holy Cross Anglican Church ("Holy Cross Anglican," or the "Church") believes that it has a religious duty to receive and act on Father Malone's guidance. While the religious leaders and Holy Cross Anglican understand that the Internal Revenue Service penalizes such religious teaching within the context of church services, proposed intervenors ("Intervenors") believe that they have a constitutional and statutory right to practice their faith by engaging in this necessary internal religious dialogue.

Plaintiff Freedom From Religion Foundation ("FFRF") brings this suit to force the IRS to penalize religious leaders and houses of worship, including Intervenors, for their internal religious guidance provided during religious services. Intervenors seek to protect their statutory and constitutional rights against the imposition of such penalties, and therefore oppose FFRF's lawsuit. As the real parties in interest, Pastor Moodie, Pastor Vang, Father Malone, and Holy Cross Anglican now move for leave to intervene as of right under Fed. R. Civ. P. 24(a). Several years ago, FFRF brought essentially the same suit before this Court seeking essentially the same relief. This Court granted intervention as of right to Father Malone and Holy Cross Anglican in

that case. *See Freedom From Religion Found. v. Koskinen*, 298 F.R.D. 385, 388 (W.D. Wis. 2014) ("*Koskinen I*"). The Court should grant intervention again in this follow-on lawsuit to *Koskinen I*.

Alternatively, Intervenors seek permissive intervention under Rule 24(b).

Both FFRF and Defendants stated that they have not formulated a position on the motion and will communicate their respective positions after reviewing the motion.

FACTUAL AND PROCEDURAL BACKGROUND

Proposed Intervenors

Pastor Charles Moodie is the head pastor at Chicago City Life Center ("Life Center"), a small church in the Englewood neighborhood of Chicago. Moodie Decl. ¶¶ 2, 4. In that role, he is responsible for preaching and teaching delivered at Life Center. *Id.* Life Center is affiliated with the Assemblies of God, a Pentecostal Protestant denomination. *Id.* ¶ 7. Pastor Moodie co-pastors the church with his wife, Kehinde, and they were drawn to Englewood to serve because of the neighborhood's problems with drugs, alcohol abuse, gangs, prostitution, and poverty. *Id.* ¶¶ 2, 4. On a given Sunday, most of the attendees of Life Center's worship service live in publicly subsidized housing. *Id.* ¶ 6. Life Center's worship services draw about 80 people on Sundays, and Tuesday outreach services draw about 120 people seeking food and clothing. *Id.* Life Center obtains its 501(c)(3) status as a church subordinate unit covered by the group exemption of the Assemblies of God, which is recognized by the IRS as a tax-exempt nonprofit corporation. *Id.* ¶ 9. Life Center was officially listed as part of the General Council of the Assemblies of God on August 31, 1992. *Id.* Life Center itself is an Illinois not-for-profit-corporation. *Id.* ¶ 8.

Pastor Koua Vang is the pastor of Hmong Baptist Ministry in Madison, Wisconsin ("Hmong Baptist"), and is the leader and primary preacher for the small church. Vang Decl. ¶ 2. Pastor Vang has served as a pastor for 16 years. *Id.* As a bi-vocational pastor, he supports his ministry through his work as an attorney and real estate investor. *Id.* Hmong Baptist is associated with the Southern Baptist Convention and the Hmong Baptist National Association. *Id.* ¶ 3. There are about 30 members of the church who regularly attend Sunday worship services. *Id.*

The Hmong people are an ethnic minority originally from Asia who have suffered persecution in many contexts. *Id.* ¶ 8. After the assistance they provided the United States during the Vietnam War in Laos and Vietnam left them exposed to severe persecution, many Hmong came to the United States to pursue freedom, including religious freedom. *Id.* ¶ 8, 10. As a part of his Christian faith, Pastor Vang believes it is important to serve both his congregation and his broader community. For example, when a group of protestors from Occupy Madison was evicted mid-winter from government land, Pastor Vang offered them a place to camp on his land to avoid leaving them without shelter. *Id.* ¶ 14. For his hospitality, he was fined $400 because his land was not zoned for camping. *Id.*

Father Malone is the rector of Holy Cross Anglican Church in Waukesha, Wisconsin, and is responsible for the Church's preaching and teaching. Malone Decl. ¶¶ 2-3. He is also a member of the Anglican Order of Saint Benedict and has served as Abbot of the Anglican Communion Benedictines, a community devoted to prayer. *Id.* ¶ 4. He has over 25 years of pastoral and ministry experience. *Id.*

Holy Cross Anglican is a congregation in the Anglican Church of North America

with about 65 active members. *Id.* ¶ 3. The IRS has recognized Holy Cross Anglican's I.R.C. § 501(c)(3) status. *Id.* ¶ 24.

Religious Beliefs and Teaching

Intervenors come from different faith backgrounds and hold different beliefs. But all of the Intervenors believe—based upon their varying religious traditions—that they have a duty to instruct adherents to speak up for the vulnerable and to seek justice in their society and from their elected officials. Moodie Decl. ¶¶ 10, 12-13, 15; Vang Decl. ¶¶ 11, 21; Malone Decl. ¶¶ 7-11. Thus, at appropriate times, the Intervenors teach their congregations in ways that provide guidance on voting for political candidates. Moodie Decl. ¶ 17; Vang Decl. ¶ 18-19; Malone Decl. ¶ 12-13.

All three of Intervenors' religious traditions likewise agree that they must teach their congregations to protect unborn children. The Intervenors' faith groups believe that every human being is made in the image of God, and thus that it is wrong to intentionally take the life of innocent human beings, including through intentional elective abortion. Moodie Decl. ¶ 13; Vang Decl. ¶ 21; Malone Decl. ¶ 15. They firmly believe that members of their respective faith groups have a duty to protect unborn children, including by advocating for them, seeking justice from the government on their behalf, and electing officials who will do the same. Moodie Decl. ¶¶ 13-14; Vang Decl. ¶¶ 21-22; Malone Decl. ¶¶ 7-9. They believe that intentionally electing officials who support elective abortion is generally a grave sin. Moodie Decl. ¶14; Vang Decl. ¶¶ 22-24; Malone Decl. ¶¶ 15-17. And each of the religious leader Intervenors believes that if he does not preach on this issue at appropriate times, he himself is sinning. Moodie Decl. ¶¶ 14-15; Vang Decl. ¶¶ 22-25; Malone Decl. ¶¶ 10-12, 16, 20.

Thus, Intervenors believe that they must preach on the sanctity of human life to their congregations during religious services. Intervenors have in the past, and will in the future, teach their congregations that they should select political candidates based on whether the candidates align with their individual church's religious beliefs on this issue. Moodie Decl. ¶ 17; Vang Decl. ¶ 24; Malone Decl. ¶ 17.

Moreover, Pastor Moodie, Pastor Vang, and Father Malone preach about candidates and issues in their capacities as their churches' religious leaders during normal worship and religious gatherings. They believe that they cannot segregate that religious duty into separate times, separate roles, or different places, because that would communicate there is something different or suspect about their religious teaching on those points, and that their congregants' duty is somehow diminished concerning political matters. Moodie Decl. ¶ 20; Vang Decl. ¶ 25; Malone Decl. ¶ 21.

As a practical matter, Intervenors have no other entity or location at which to hold religious instruction on these matters, and the leaders serve no role for their churches other than being their churches' religious leader. Moodie Decl. ¶ 21; Vang Decl. ¶ 26; Malone Decl. ¶ 22.

The IRS Prohibitions

Relying on its regulatory authority, the IRS "absolutely prohibit[s]" churches and the leaders of those churches, including Intervenors, from "directly or indirectly" making "public statements" that are "in favor of (or in opposition to) any candidate for public office" during "an official church service." *See* IRS Publication 1828, *Tax Guide for Churches and Religious Organizations* ("IRS Church Tax Guide") at 7-8, http://www.irs.gov/pub/irs-pdf/p1828.pdf; *accord* 26 C.F.R. § 1.501(c)(3)-1(a)(1),

(c)(3)(i) (2009). The IRS has specifically identified a minister's sermon to his church about voting for or against political candidates as "absolutely prohibited." IRS Church Tax Guide at 7-8 (Example 4); *see also* IRS Rev. Rul. 2007-41, https://www.irs.gov/irb/2007-25_IRB/ar09.html (additional instructions on IRS church speech restrictions). It has also stated that sermons on specific religious issues may likewise be absolutely prohibited based on the IRS's own determination of the "facts and circumstances" surrounding the sermons. IRS Church Tax Guide at 6-9. These "facts and circumstances" include the use of banned "code words" such as "pro-life," which Intervenors often use in their sermons on the sanctity of human life. *See* IRS 1993 EO CPE Text, *Election Year Issues*, at 411, http://www.irs.gov/pub/irs-tege/eotopicn93.pdf. If a church violates either of these prohibitions, the IRS threatens to revoke the church's tax-exempt status and the ability of members to deduct contributions from their taxes, and to impose excise taxes against both the church and its leadership. IRS Church Tax Guide at 7, 18; *see also* I.R.C. § 4955(a)-(c) (2006) (authorizing excise taxes). These punishments would deeply harm the Intervenors, especially due to their churches' small size and their members' and leaders' modest income. Moodie Decl. ¶ 27; Vang Decl. ¶ 32; Malone Decl. ¶ 29.

Though the Intervenors and other churches have been open about their religious exercise and their plans to continue it, the IRS has never enforced these prohibitions against them. Moodie Decl. ¶ 33; Vang Decl. ¶ 37; Malone Decl. ¶ 33.

The Previous Lawsuit

As noted above, this is not FFRF's first attempt to mandate a change to the IRS's enforcement approach. FFRF filed a prior lawsuit on November 14, 2012, seeking an

injunction requiring the IRS "to enforce the electioneering restrictions of § 501(c)(3) of the Tax Code against churches," and to order the IRS to have an official "initiate enforcement of the restrictions of § 501(c)(3) against churches[.]" Complaint ¶¶ 1-2, *Koskinen I*, 298 F.R.D. 385 (No. 3:12-cv-0818), Dkt. 1. In that lawsuit, Father Malone and Holy Cross Anglican intervened in order to protect their rights under the First Amendment and the Religious Freedom Restoration Act. *Koskinen I*, 298 F.R.D. at 387-388. This Court granted intervention as of right because (1) it was timely sought; (2) Father Malone and Holy Cross Anglican had a protectable "interest in having Father Malone preach to the church about whom to vote [against] without jeopardizing the church's tax exempt status"; (3) denying intervention would impair their interests because they would not be able to argue in the first instance that federal law "prevents the IRS from enforcing the electioneering restrictions against churches"; and (4) the IRS "d[id] not fully represent the movants' interests" because it did "not intend to argue" that a policy of non-enforcement against churches was "compelled by the Establishment Clause and other laws." *Id.* at 386-87.

Shortly after the intervention, FFRF settled *Koskinen I* with the IRS and dismissed its lawsuit without prejudice so that it could later re-file to seek enforcement of the IRS's speech restrictions against houses of worship. Joint Motion for Dismissal, *Koskinen I*, 298 F.R.D. 385 (No. 3:12-cv-0818), Dkt. 38. FFRF repeatedly emphasized that it was willing to re-file to seek the same relief "against rogue political churches."[1]

[1] *See* News Release, FFRF, IRS settle suit over church politicking (July 17, 2014), https://ffrf.org/news/news-releases/item/20968-ffrf-irs-settle-suit-over-church-politicking; *accord* News Release, FFRF anti-church electioneering victory is final (Aug.

It also stated that it believed that these speech restrictions should be enforced specifically against Father Malone and Holy Cross Anglican.[2]

The Present Lawsuit

FFRF filed this lawsuit on May 4, 2017. Just as in its last lawsuit, FFRF's complaint asks this Court to "order the Defendants to neutrally enforce the restrictions in Internal Revenue Code § 501(c)(3) against churches and religious organizations." Dkt. 1 ¶ 14. And just as before, FFRF does not ask that it be treated like churches (*i.e.*, without the application of IRS-enforced speech restrictions), but rather that churches be treated like it.

The only notable difference this time is that FFRF filed its lawsuit the same day that the President issued an Executive Order concerning, among other things, the IRS's enforcement of the Johnson Amendment. The Executive Order states that "[a]ll executive departments and agencies . . . shall . . . respect and protect the freedom of persons and organizations to engage in religious and political speech." Exec. Order No. 13,798, 82 Fed. Reg. 21,675 (May 4, 2017). The Executive Order directs that the Department of Treasury "not take any adverse action against any individual, house

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1, 2014), https://ffrf.org/news/news-releases/item/21076-ffrf-anti-church-electioneering-victory-is-final; *see also* FFRF, *Why did FFRF sue Trump, when others did not?*, Patheos (May 8, 2017), http://www.patheos.com/blogs/freethoughtnow/why-did-ffrf-sue-trump/ ("We warned the IRS that we would refile our lawsuit if there was evidence of future lack of enforcement").

[2] *See* News Release, FFRF, IRS settle suit over church politicking (July 17, 2014), https://ffrf.org/news/news-releases/item/20968-ffrf-irs-settle-suit-over-church-politicking; *see also* News Release, FFRF opposes anti-abortion church's intervention (Dec. 17, 2013), https://ffrf.org/news/news-releases/item/19778-ffrf-opposes-anti-abortion-church%E2%80%99s-intervention.

of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office." *Id.* FFRF's lawsuit seeks an order both enjoining enforcement of the Executive Order and mandating enforcement of the IRS's long-stated position against religious speech of religious ministers to their houses of worship during religious services. *See, e.g.*, Dkt. 1 ¶ 14.

Since FFRF filed its lawsuit, there has been almost no action in the case. Defendants have not answered the complaint, and no dispositive motions have been filed.

STANDARD OF REVIEW

In evaluating a motion to intervene, courts "must accept as true the non-conclusory allegations" made by the proposed intervenor, *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995), and "should avoid rigid construction of Rule 24." *Jessup v. Luther*, 227 F.3d 993, 998 (7th Cir. 2000).

ARGUMENT

I. Intervenors should be granted intervention as of right.

Fed. R. Civ. P. 24(a)(2) permits intervention as of right if: "(1) the application is timely; (2) the applicant has an 'interest' in the property or transaction which is the subject of the action; (3) disposition of the action as a practical matter may impede or impair the applicant's ability to protect that interest; and (4) no existing party adequately represents the applicant's interest." *U.S. v. Thorson*, 219 F.R.D. 623, 626 (W.D. Wis. 2003) (quoting *Security Ins. Co. of Hartford v. Schipporeit*, 69 F.3d 1377,

1380 (7th Cir. 1995)). "A motion to intervene as a matter of right . . . should not be dismissed unless it appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint." *Reich*, 64 F.3d at 321, (quoting *Lake Inv'rs Dev. Group v. Egidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir. 1983)). Intervenors meet all four criteria and should therefore be allowed to intervene as a matter of right.

A. The Intervenors' motion to intervene is timely.

Timeliness is determined "from the time the potential intervenors learn that their interest might be impaired." *Reich*, 64 F.3d at 321; *accord Thiel v. Wride*, No. 12-C-530, 2013 WL 3224427, at *2 (E.D. Wis. June 25, 2013). The "test for timeliness is one of reasonableness": courts look to see if the intervenor has been "reasonably diligent in learning of a suit that might affect their rights," and have acted "reasonably promptly" to intervene "upon so learning." *Thorson*, 219 F.R.D. at 627 (quoting *Reich*, 64 F.3d at 321). Courts then consider "the prejudice to the original parties if intervention is permitted and the prejudice to the intervenor if his motion is denied." *Reich*, 64 F.3d at 321 (citing *Shea v. Angulo*, 19 F.3d 343, 349 (7th Cir. 1994)).

The present motion presents no timeliness problems. It is being filed less than sixty days after the Intervenors first learned of FFRF's lawsuit. Moodie Decl. ¶ 37; Vang Decl. ¶ 44; Malone Decl. ¶ 39. Thus, measuring "from the time the . . . Intervenors learn[ed] that their interests might be impaired," *Reich*, 64 F.3d at 321, the timeliness standard is met.

Nor would intervention work any prejudice to the parties. No dispositive motions have been filed, and no discovery has begun. In FFRF's last lawsuit, this Court found

intervention timely over a year after the complaint was filed because intervention came "well in advance of the summary-judgment deadline" and FFRF could not show "any prejudice." *Koskinen I*, 298 F.R.D. at 388. So too here.

B. The Intervenors have a protectable interest in the subject of the action.

The Intervenors have a protectable interest in the subject matter of the action because FFRF seeks to require Defendants to enforce an "absolute prohibition" on the Intervenors' exercise of fundamental constitutional and civil rights, which will necessarily put substantial pressure on the Intervenors to abandon those rights.

To determine whether a protectable interest is at stake, courts "focus on the issues to be resolved by the litigation and whether the potential intervenor has an interest in those issues." *Reich*, 64 F.3d at 322. Courts have "embraced a broad definition of the requisite interest" sufficient to justify intervention, *Lake Investors*, 715 F.2d at 1259, requiring only that it be a "direct and substantial" interest, *id.*, in a "legally protected right that is in jeopardy and can be secured" by intervention. *Aurora Loan Servs., Inc. v. Craddieth*, 442 F.3d 1018, 1022 (noting that meeting this standard meets Article III standing requirements); *accord Town of Chester v. Laroe Estates Inc.*, --- S.Ct. ---, 2017 WL 2407473 (June 5, 2017) (requiring standing for intervenors in some cases). But Rule 24 requires "only that, as a practical . . . matter, [the intervenor's] interest *could be* impaired." *Habitat Educ. Ctr., Inc. v. Bosworth*, 221 F.R.D. 488, 492-93 (E.D. Wis. 2004) (emphasis added). Thus, in *Koskinen I*, it was sufficient that Father Malone and Holy Cross Anglican showed that they had an interest "in

having Father Malone preach to the church about whom to vote for without jeopardizing the church's tax-exempt status" and in making unique legal arguments that "if successful, would confer a tangible benefit on the movants." 298 F.R.D. at 386-87.

Here, as in *Koskinen I*, the Intervenors have legal protectable interests in this lawsuit that will be impaired if FFRF succeeds. The sole purpose of FFRF's lawsuit is to force the IRS to begin enforcing regulations that "absolutely prohibit" the Intervenors' religious activities. This would necessarily harm and chill the Intervenors' legally protected interests in:

1. The rights secured by the Religion Clauses of the First Amendment to the United States Constitution, including their right to be free from government interference with internal church decisions that affect the faith and mission of a church itself, *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012); their right to engage in religious exercise free from interference from laws that are not neutral and generally applicable, *see Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993); and their right to be free from discriminatory laws that favor other religious groups, *see Larson v. Valente*, 456 U.S. 228, 246 n.23 (1982).
2. The rights secured by the Free Speech Clause of the First Amendment to the United States Constitution, including their right to be free from content-based restrictions on religious and political speech, *see Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995); their right to be free from vague, prolix laws that can only be applied on a case-by-case basis and thus broadly restrict and chill their religious and political speech, *see Citizens United v.*

FEC, 558 U.S. 310, 363-64 (2010); their right to be free from laws that discriminate against religious and political speech based upon the identity of the speaker, *id.*; their right to expressive association, *see Boy Scouts of Am. v. Dale*, 530 U.S. 640, 661 (2000); and their right to speak to and hear one another, *see ACLU of Ill. v. Alvarez*, 679 F.3d 583, 592 (7th Cir. 2012) ("[W]hen one person has a right to speak, others hold a reciprocal right to receive the speech" (internal quotation marks and citations omitted)).

3. The rights secured by the Assembly Clause of the First Amendment to the United States Constitution, including the Intervenors' and their churches' right to engage in otherwise lawful worship and speech activities with persons of their choosing. *See Thomas v. Collins*, 323 U.S. 516, 532-40 (1945).
4. The right to be free from substantial government-imposed burdens on religious exercise secured by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq*. *See, e.g.*, *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013).

Given that these laws protect the Intervenors' right to freely express their religious beliefs in the context of religious services, intervention is appropriate to protect their interest in doing so. *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) ("[T]he 'interest' required for intervention" requires that the intervenor "be someone whom the law on which his claim is founded was intended to protect.").

This is more than sufficient to establish a cognizable interest under Rule 24. By contrast, courts have permitted far less concrete interests, such as that of "timber companies" who intervened "in an action to bar logging in a national forest even though they had no logging contracts and merely wanted an opportunity to bid for

such contracts in the future." *City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 986 (7th Cir. 2011).

C. The Intervenors' ability to protect their interests may be impaired by the disposition of this action.

"[D]emonstrat[ing] the direct and significant nature of [the Intervenors'] interest" often alone "meets the impairment prong of Rule 24(a)(2)." *Reich*, 64 F.3d at 323. As the advisory committee explained, "[i]f an [intervenor] would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24, advisory committee's note to 1966 amendment.

The Intervenors would suffer significant practical harm to their interests if FFRF obtains its desired relief. Indeed, the entire point of FFRF's lawsuit is to force the IRS to stop Intervenors from engaging in their religious speech. If the IRS is enjoined to begin enforcing its "absolute prohibition" on the Intervenors' religious activities, that will place significant pressure on the churches "to modify [their] behavior to avoid future adverse consequences." *Ohio Forestry Ass'n, Inc. v. Sierra Club*, 523 U.S. 726, 734 (1998). The Intervenors have a strong interest in continuing their religious speech, and avoiding the dilemma of either abandoning their religious exercise or risking the revocation of their tax exempt status, which would subject the Intervenors' internal church records to detailed examination, their church income to taxation by the federal government, and would prevent the Intervenors' church members from obtaining a charitable tax deduction for their tithes and offerings to their churches. IRS Church Tax Guide at 15; 26 C.F.R. § 1.501(c)(3)-1(a)(1), (c)(3)(i) (2009); *see also*

Abbott Labs. v. Gardner, 387 U.S. 136, 152 (1967) (parties have a legal interest in avoiding the "dilemma" of "risk[ing] prosecution" if they do not comply with regulations). It could also expose Intervenors to excise taxes against both the churches and church leaders. IRS Church Tax Guide at 18; I.R.C. § 4955(a)—(c) (2006). The threat of these penalties would chill the Intervenors' religious exercise because they would severely harm the Intervenors' churches due to their small size and the modest income of their members and leadership. Moodie Decl. ¶ 27; Vang Decl. ¶ 32; Malone Decl. ¶ 29; *see also Alvarez*, 679 F.3d at 592-93 (finding that there was a "credible threat of prosecution" sufficient to chill First Amendment rights when a law "plainly prohibits" the exercise of the rights, the law "has not fallen into disuse," and the government "has not foresworn the possibility of prosecut[ion]" under the statute).

As this Court found in *Koskinen I*, it is no answer to say that the Intervenors could defend their interests in a separate action against the IRS. 298 F.R.D. at 387. The availability of a separate action is not a "bar to intervention." *City of Chicago v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 985-86 (7th Cir. 2011). Rather, the intervention analysis focuses on "the practical effect of denying intervention." *Id.* at 987. There are three practical harms to denying intervention here.

First, a separate action would come with its "own costs and burdens," if it were available at all. Non-profits seeking to challenge tax-based restrictions are generally required by the Tax Anti-Injunction Act to first lose their tax-exempt status, "pay the tax," and "sue for a refund." *Gaylor v. Lew*, No. 16-cv-215-bbc, 2017 WL 222550, at *2 (W.D. Wis. Jan. 19, 2017) (citing *Flying J*, 578 F.3d at 573 (impairment shown if alternative means of enforcement "would impose substantial inconvenience on the

[intervenor] with no offsetting gain"); *see also* 26 U.S.C. § 7421(a). Thus the Intervenors would face not only direct financial harm, but also an indeterminately long wait before they could even begin to relieve the burden on their internal religious speech with their coreligionists.

Second, it's not clear that a separate action *would* be cleanly available. A federal agency cannot "simply disregard an adverse decision in this case," and the injunction FFRF seeks is directly adverse to the relief Intervenors would seek. *Gaylor*, 2017 WL 222550, at *2; *United States v. City of Chicago*, 870 F.2d 1256, 1262 (7th Cir. 1989) (recognizing that the potential for inconsistent judgments could subject government defendant to contempt and thus created practical obstacles to proposed intervenors' protecting their rights in a separate action). And the adverse precedent would "at the very least be persuasive authority that [the Intervenors] would have to convince the IRS not to follow." *Gaylor*, 2017 WL 222550, at *2; *accord Flying J*, 578 F.3d at 573 ("concern with the stare decisis effect of a decision can be ground for intervention"). Thus, forcing the Intervenors to wait until later to raise their claims denies them the "tangible benefit" of being able to raise them now, *Koskinen I*, 298 F.R.D. at 387, before the field has been tilted against them.

Finally, the long, disadvantaged, and potentially fruitless wait would subject the Intervenors to harms that a separate action could not repair: the loss of sensitive First Amendment rights. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"); *accord Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013) (finding that the same rule applies to RFRA). The Intervenors' religious speech would be

substantially burdened by the dilemma of choosing between exercising their First Amendment rights and violating a now-enforced "absolute prohibition" on such speech, with all its crippling tax penalties and intrusive investigations.

Viewed in the practical light required here, the Intervenors' interests would be harmed by the relief sought by FFRF, and in a way that a separate action could not relieve. Accordingly, this factor also weighs in favor of granting intervention.

D. The Intervenors' interests are not adequately represented by the existing parties to the action.

Finally, the Court should allow the Intervenors to intervene because the Defendants cannot adequately represent their interests in this case. This factor presents a low hurdle. The Intervenors need not show that their interests are clearly not being adequately represented, only that "the representation of [their] interest 'may' be inadequate[.]" *Thorson*, 219 F.R.D. at 627 (quoting *Lake Investors*, 715 F.2d at 1261). And courts must treat "the burden of making that showing . . . as minimal." *Thorson*, 219 F.R.D. at 627. If an existing party's interests "are related, but not identical" to an intervenor's, the Court cannot simply presume that the intervenor is adequately represented. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538-39 & n.10 (1972) (articulating the "may be inadequate" standard and applying it with no presumption of adequacy).

Here, Defendants cannot adequately represent the Intervenors' interests for three reasons: because their interests and goals are very different than the Intervenors', because they will not make the same legal and factual arguments as the Intervenors, and because Defendants' interests directly conflict with those of the Intervenors.

First, the Defendants have nothing like the Intervenors' direct, personal interest in the outcome of this case. After all, if Defendants lose, Defendants will actually make money in increased tax receipts. It is the Intervenors, then, who are the real parties in interest here: "no group of people face more to lose if plaintiffs succeed than ministers such as the proposed intervenors." *Gaylor*, 2017 WL 222550, at *1. It is the Intervenors whose RFRA, Free Speech, Free Exercise, Expressive Association, Free Assembly, and Establishment Clause rights are directly implicated. The Intervenors can best defend those rights for themselves. *Id.* (allowing pastors to intervene in a challenge to the IRS parsonage allowance in order to present arguments regarding their Constitutional rights "from their own perspective"). Indeed, government representation is "'frequently' not adequate 'when one group of citizens sues the government, challenging the validity of laws or regulations, and the citizens who benefit from those laws or regulations wish to intervene and assert their own, particular interests rather than the general, public good.'" *Id.* at *2 (quoting 6 James Wm. Moore et al., *Moore's Federal Practice* § 24.03(4)(a) (3d ed. 2016).[3]

Second, the Intervenors plan to make factual and legal arguments that there is no reason to think that the Government would or perhaps even could make, in large part because Intervenors and the Defendants have different goals for the outcome of this

[3] *See also Cal. Dump Truck Owners Ass'n* v. *Nichols*, 275 F.R.D. 303, 308 (E.D. Cal. 2011) (private applicant not adequately represented by government agency because applicant's interests were more "narrow and parochial" and agency was required to consider "impact its rules will have on the state as a whole"); *Delano Farms Co. v. Cal. Table Grape Comm'n*, 1:07-CV-1610, 2010 WL 2942754, at *2 (E.D. Cal. 2010) (no adequacy of representation because "USDA, as an agency of the Executive Branch must balance a number of policy considerations").

litigation. While the IRS may follow the Executive Order in a manner that causes it to argue that it *can* treat houses of worship respectfully, there is no indication that it will argue that it *must* do so under the First Amendment or RFRA. Indeed, given that the IRS has not made any move to revise or rescind its "absolute prohibit[ion]" regulations, it is entirely possible that the government simply seeks maximal freedom to operate—leaving burdensome regulations on the books, but avoiding any requirement to enforce. Intervenors obviously have a stronger and more personal interest in arguing that enforcement is affirmatively barred by the First Amendment and RFRA.

Similarly, many of the Intervenors' interests derive from a sphere of church autonomy guaranteed by the Religion Clauses. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 189. This "constitutional protection is . . . a personal" right for religious groups, meaning that religious groups are best able to assert it. *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829, 836 (6th Cir. 2015). It is also a "structural limitation imposed on the government by the Religion Clauses," *id.*, meaning that the government's interest is generally not in expanding or strengthening it. Indeed, churches are often required to vigorously assert this against governmental entities. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 189 (both chronicling the long history of government encroachment and rejecting the EEOC's "remarkable view that the Religion Clauses have nothing to say about a religious organization's freedom to select its own ministers"); *accord id.* at 199 (Alito, J., joined by Kagan, J., concurring) ("the autonomy of religious groups . . . has often served as a shield against oppressive civil laws"). Thus, the Intervenors have different goals and interests in asserting a church-protecting limitation on State power than does the State itself.

The Defendants' response to FFRF's last lawsuit bears this point out. As here, FFRF claimed that the IRS was illegally failing to enforce its speech restrictions against internal church speech. The IRS could have asserted in a dispositive motion on the pleadings—as Intervenors will do here if intervention is granted—that those restrictions *cannot* be so enforced because of the First Amendment rights noted above. But it did not. Instead, the IRS's motion to dismiss claimed that it had a policy for enforcing the restrictions on "***all*** tax-exempt entities, religious and non-religious alike" and that this Court lacked jurisdiction to hear FFRF's complaint to the contrary. Defs.' Mem. in Supp. of Mot. to Dismiss at 1-2, *Koskinen I*, 298 F.R.D. 385 (No. 3:12-cv-0818), Dkt. 13 (emphasis in original).

Along those lines, it remains to be seen how expansively the IRS will interpret the Executive Order. It is possible to read the order as simply affirming the IRS's current interpretation of the Johnson Amendment, particularly given the Executive Order's qualification that it only applies "to the extent permitted by law" and only protects speaking about "moral or political issues" where the speech has "not ordinarily been treated as" forbidden. *See* 82 Fed. Reg. at 21,675; *see also id.* at 21,676 (stating that the order does not "impair or otherwise affect the authority granted by law to an executive department or agency" and that it "shall be implemented consistent with applicable law"). If so, the IRS's position would not be just different and less robust than the Intervenors', but—as further noted below—directly at odds to theirs.

The Intervenors are also able to inform the record before this court with factual context on how religious leaders actually provide issue- and election-related religious guidance to their congregations during worship services, how religious leaders and

congregations evaluate the risks created by the IRS's guidance and FFRF's enforcement actions, and the harmful effect of enforcing or threatening to enforce the IRS's speech restrictions on small churches. *See Gaylor*, 2017 WL 222550, at *1 (granting intervention in part because "the proposed intervenors want to provide facts to the court related to how the tax exemption they receive works in practice"). Moreover, should FFRF's claims survive Intervenors' dispositive motion on the pleadings, Intervenors plan to seek discovery from FFRF and the IRS demonstrating that the speech restrictions have historically been used in a discriminatory manner against disfavored religious speakers.

Finally, Defendants' "substantive interests" remain in conflict with the Intervenors'. *See Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 508 (7th Cir. 1996) (citing *Trbovich*, 404 U.S. at 538-39); *see also Retired Chi. Police Ass'n v. City of Chi.*, 7 F.3d 584, 594 (7th Cir. 1993) ("[a]dequate representation of the same legal interests necessarily entails the absence of conflicts of interest"). This conflict comes up in two ways: first, via the basic incentive structures involved, and second, the IRS's longstanding and as-yet un-disavowed rules that specifically and "absolutely" prohibit the Intervenors' religious speech.

As to the first: the Intervenors face serious, and even ruinous, financial harm if they lose their 501(c)(3) status. Defendants, by contrast, will *benefit* financially if they were to revoke the tax-exempt status of the Intervenors and other houses of worship. Indeed, Plaintiffs allege that the Defendants could collect up to $100 billion more per year. Dkt. 1 ¶ 88. The IRS would collect the very taxes that could seriously curtail

the vital community ministries run by the Intervenors. Indeed, the IRS actively solicits complaints against nonprofits and offers a financial reward for turning in churches who violate the IRS's speech restrictions. *See* IRS Form 13909, Tax-Exempt Organization Complaint (Referral) (Dec. 2016), https://www.irs.gov/pub/irs-pdf/f13909.pdf; *see also* IRS Form 211, Application for Award for Original Information (Mar. 2014), https://www.irs.gov/pub/irs-pdf/f211.pdf. It is difficult for the IRS to represent the Intervenors' rights against FFRF when the IRS is actively soliciting and rewarding entities like FFRF to turn in the Intervenors for exercising those rights.

As to the second: Defendants' long-standing, oft-repeated, and un-disavowed guidance is that the Intervenors' religious speech is "absolutely prohibited." IRS Church Tax Guide at 7. For example, in its current guidance, the IRS has specifically identified the precise religious exercise that the Intervenors seek to protect via intervention—sermons that provide religious instruction on voting for specific candidates—as banned. *Id.* at 7-8, Example 4. Similarly, it has created a broad "facts and circumstances" test that chills and effectively proscribes most issue-related sermons. *Id.* at 7-8; *Election Year Issues* at 411. Indeed, the longest part of the IRS's instructional tax guide for churches—four times longer than the next longest section—concerns only the restrictions that the IRS places on the Intervenors' sermons. IRS Church Tax Guide at 7-15. FFRF itself cites the IRS's agreement to "enforce" the Johnson Amendment in a settlement. Complaint ¶26. Indeed, at the end of FFRF's last lawsuit, Defendant Koskinen informed Congress that the IRS had formed a "Political Activities Referral Committee" to investigate "99 churches" that it had "identified . . . as having potential impermissible political campaign intervention activities." *See* Letter from

John Koskinen, IRS Commissioner, to Congressman Scott Garrett (Sept. 5, 2014), http://s3.amazonaws.com/becketpdf/IRS-response-to-Garrett.pdf. Given the IRS's longstanding and still extant policy and practice, "the government ha[s] substantive interests at variance with that of the [intervenor]" and cannot adequately represent the Intervenors' interests. *Solid Waste Agency*, 101 F.3d at 508.

In sum, there is more than enough reason to conclude that the Intervenors' surmount the "minimal" burden of simply showing that that the IRS's representation "may" be inadequate. *Thorson*, 219 F.R.D. at 627.[4]

II. Alternatively, the Intervenors should be permitted to intervene under Rule 24(b).

Even if this Court were to find that the Intervenors cannot intervene as of right, permissive intervention is appropriate. Rule 24(b) authorizes this Court to permit intervention when "an applicant's claim or defense and the main action have a question of law or fact in common." The determination of whether a party will be able to intervene is within the discretion of the court, which will consider whether it will unduly delay the main action or unfairly prejudice the existing parties.

The Intervenors easily qualify for permission to intervene in this case. The Intervenors' interest in protecting their religious exercise presents common questions of law and fact with those of the existing parties. Indeed, the legal questions are inescapably wrapped up in FFRF's claims. FFRF asserts that the Establishment Clause

[4] Should this Court be inclined to find that Defendants currently adequately represent the Intervenors' interests, the Intervenors request that the Court defer consideration of that question until later in the case, when the Intervenors can further evaluate the adequacy of Defendants' representation. *See Solid Waste Agency*, 101 F.3d at 508-09; *accord Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 776 (7th Cir. 2007).

requires enforcement against houses of worship; Intervenors assert that the Establishment Clause forbids it. FFRF alleges that failure to enforce violates the Take Care Clause; Intervenors argue that nonenforcement effectively obeys it.

Moreover, as noted above, this motion is timely and intervention will neither require any change to existing deadlines nor prejudice the current parties. The significance of the Intervenors' interests in the subject matter of this litigation outweighs any marginal additional burden that would be caused by intervention. *See City of Chicago*, 660 F.3d at 986 (reversing denial of permissive intervention, noting that a concern about "unwieldy" litigation was insufficient to justify denying intervention, especially where the intervenor promised to streamline its participation). Even if the Court concluded that the Intervenors cannot intervene as of right, it should nonetheless permit intervention under Fed. R. Civ. P. 24(b).

CONCLUSION

The Intervenors' motion to intervene should be granted. Intervenors will file a dispositive motion on the pleadings if they are allowed to intervene.

Dated: June 29, 2017

Respectfully submitted,

/s/ Diana Verm

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Counsel for Proposed Intervenors

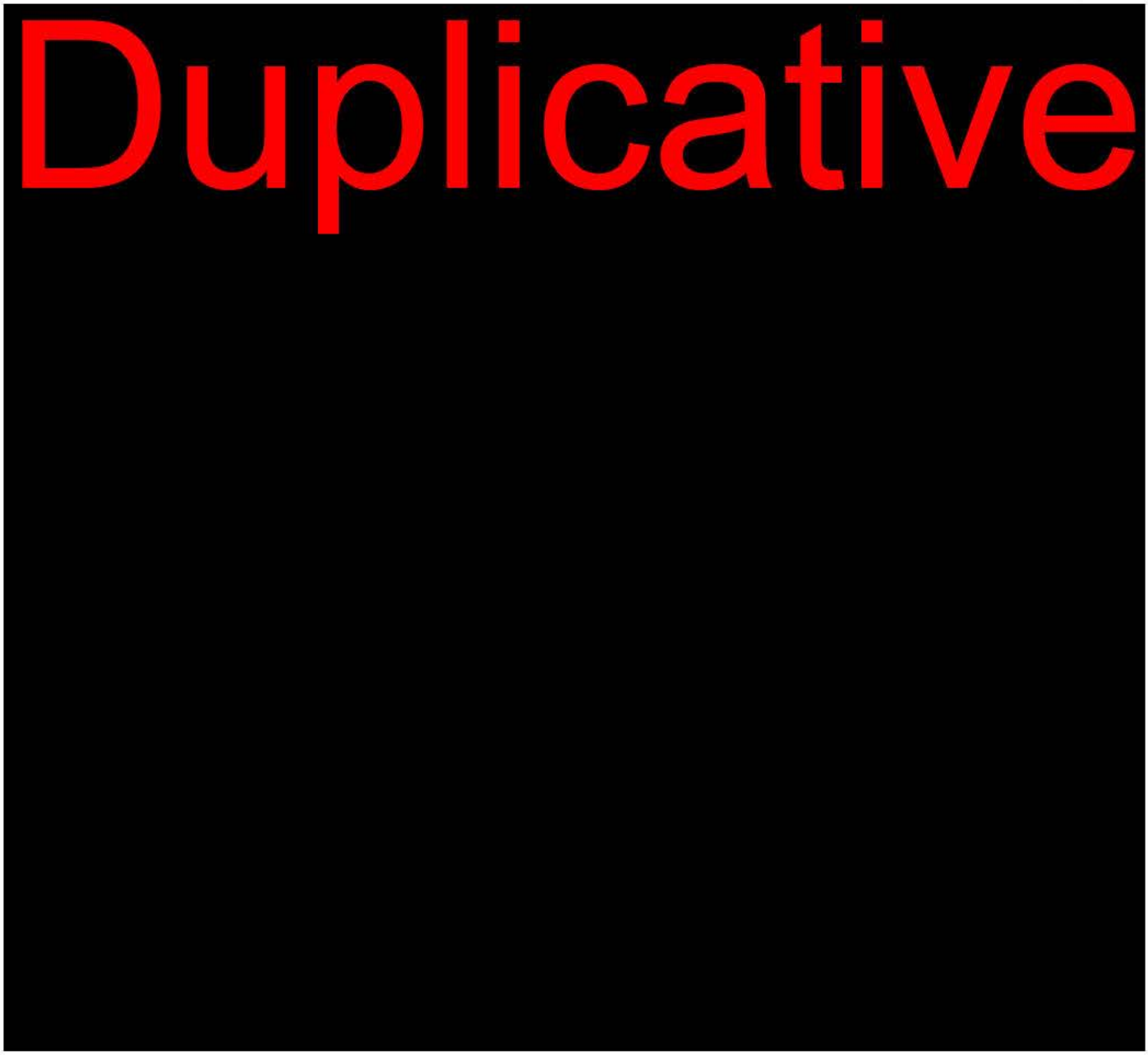
Manus Cooney

From: Manus Cooney
Sent: Thursday, July 6, 2017 1:35 PM
To: Murray, Brian (OASG); Bylund, Jeremy (OASG)
Subject: RE: Thanks and quick question

Brian and Jeremy –

No urgency here but hoping to get a sense of the process and timing.

Manus.



Flores, Sarah Isgur (OPA)

From:	Flores, Sarah Isgur (OPA)
Sent:	Thursday, July 13, 2017 2:24 PM
To:	Brand, Rachel (OASG); Tucker, Rachael (OAG); Hunt, Jody (OAG)
Cc:	Crowell, James (ODAG); Prior, Ian (OPA)
Subject:	ADF remarks

We're going to publish the AG's remarks as prepared for delivery w the federalist. Wanted yall to be able to see it since he made a few changes when he edited it himself:

Thank you for that introduction.

And thank you for the important work that you do every day to uphold and protect the right to religious liberty in this country. This is especially needed today.

While your clients vary from pastors to nuns to geologists, all of us benefit from your good work—because religious liberty and respect for religion have strengthened this country from the beginning.
In fact it was largely in order to enjoy and protect these rights that this country was settled and founded in the first place as those in this room especially know.

Our concepts of religious freedom came to us through the development of the Western heritage of faith and reason. In America, Madison and Jefferson advanced those concepts. Their victory was to declare religious freedom to be a matter of conscience inherent in each individual, not as a matter of toleration granted from the top. I propose that in America our understanding of religious freedom can only be understood within that heritage.

Our Founders wisely recognized that religion is not an accident of history or a passing circumstance. It is at the core of the human experience, and as close to a universal phenomenon as any. Each one of us considers with awe the stars in the sky and at the moral code within our hearts. Even today, in a rapidly changing world, a majority of the American people tell Gallup that religion is "very important" in their lives.

With this insight into human nature, they took care to reserve a permanent space for freedom of religion in America. That space is the very first line of the Bill of Rights.

And not just that line. Twelve of the thirteen colonies authored state constitutions that protected the free exercise of religion. Six of the original 13 states had established churches, but almost every state made accommodations for religious minorities like Quakers or Mennonites. They did not insist that all follow the same doctrines. Every state constitution at the time of our Founding—and now—mentions God.

Our first president, George Washington, called for a national day of prayer. And he wrote to a Jewish congregation in Rhode Island that in America, "all possess alike liberty of conscience."

In his farewell address, President Washington famously called religion the "indispensable support of political prosperity [and a] great pillar of human happiness." He warned, "let us with caution indulge the supposition that morality can be maintained without religion…Reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle."

And Thomas Jefferson did not mention on his tombstone that he had served as president. He named three accomplishments: that he had founded the University of Virginia, authored the Declaration of Independence, and authored the statute of religious freedom in Virginia.

This national commitment to religious freedom has continued throughout our history, and it has remained just as important to our prosperity and unity ever since.

When Alexis de Tocqueville visited this country, he noted "in France I had almost always seen the spirit of religion and the spirit of freedom marching in opposite directions. But in America I found they were intimately united and that they reigned in common over the same country."

united and that they reigned in common over the same country.

And of course it was faith that inspired Martin Luther King, Jr. to march and strive to make this country stronger yet. His was a religious movement. The faith that truth would overcome. He said that we "must not seek to solve the problem" of segregation merely for political reasons, but "in the final analysis, we must get rid of segregation because it is sinful." It undermined the promise, as he described it, that "each individual has certain basic rights that are neither derived from nor conferred by the state...they are gifts from the hands of the Almighty God."

So our freedom as citizens has always been inextricably linked with our religious freedom as a people. It has protected both the freedom to worship and the freedom not to believe as well.

To an amazing degree, the value of religion is totally missed by many today. Our inside-the-beltway crowd has no idea how much good is being done in this country every day by our faith communities. They teach right behavior, they give purpose to life, and they support order, lawfulness, and personal discipline while comforting the sick, supporting families, and giving support to those in need. They are there at birth and death.

But the cultural climate has become less hospitable to people of faith and to religious belief. And in recent years, many Americans have felt that their freedom to practice their faith has been under attack.

This feeling is understandable. Just last year, a Harvard Law professor publicly urged judges to "take aggressively liberal positions…The culture wars are over. They lost; we won…Taking a hard line is better than trying to accommodate the losers."

A lot of people are concerned about what this changing cultural climate means for the future of religious liberty in this country.

The challenges our nation faces today concerning our historic First Amendment right to the "free exercise" of our faith have become acute. I believe that this recent election was significantly impacted by this concern and that this motivated many voters. President Trump made a promise that was heard. In substance, he said he respected people of faith and he promised to protect them in the free exercise of their faith. This promise was well received.

How then should we deal with this matter? America has never thought itself to be a theocracy. Our founders, at least the most articulate of them, believed our government existed as a protector of religious rights of Americans that were essential to being a created human being.

The government did not exist to promote religious doctrine nor to take sides in religious disputes that had, as they well knew, caused wars and death in Europe. Nor was it the government's role to immanetize the eschaton, as Bill Buckley reminded us. The government's role was to provide the great secular structure that would protect the rights of all citizens to fulfill their duty to relate to God as their conscience dictated and to guarantee the citizen's right to exercise that faith.

The government would not take sides, and would not get between God and man. Religious rights were natural rights, not subject to government infringement, as the Virginia Assembly once eloquently declared.

Any review of our nation's policies must understand this powerful constraint on our government and recognize its soundness. Yet, this understanding in no way can be held to contend that government should be hostile to people of faith and is obligated to deprive public life of all religious expression.

In all of this litigation and debate, this Department of Justice will never allow this secular government of ours to demand that sincere religious beliefs be abandoned. We will not require American citizens to give intellectual assent to doctrines that are contrary to their religious beliefs. And they must be allowed to exercise those beliefs as the First Amendment guarantees.

We will defend freedom of conscience resolutely. That is inalienable. That is our heritage.

Since he was elected, President Trump has been an unwavering defender of religious liberty. He has promised that under a Trump Administration, "the federal government will never, ever penalize any person for their protected religious beliefs."

And he is fulfilling that promise. First, President Trump appointed an outstanding Supreme Court Justice with a track record of applying the law as written, Neil Gorsuch. I have confidence that he will be faithful to the full meaning of the First Amendment and protect the rights of all Americans.

The President has also directed me to issue guidance on how to apply federal religious liberty protections. The Department is finalizing this guidance, and I will soon issue it.

The guidance will also help agencies follow the Religious Freedom Restoration Act. Congress enacted RFRA so that, if the federal government imposes a burden on somebody's religious practice, it had better have a compelling reason. That is a demanding standard, and it's the law of the land. We will follow it just as faithfully as we follow every other federal law. If we're going to ensure that religious liberty is adequately protected and our country remains free, then we must ensure that RFRA is followed.

Under this administration, religious Americans will be treated neither as an afterthought nor as a problem to be managed. The federal government will actively find ways to accommodate people of all faiths. The protections enshrined in the Constitution and our laws protect all Americans including when we work together, speak in the public square, and when we interact with our government. We don't waive our constitutional rights when we participate fully in public life and civic society.

This administration, and the upcoming guidance, will be animated by that same American view that has led us for 241 years: that every American has a right to believe, worship, and exercise their faith in the public square. It has served this country well, and it has made us not only one of the tolerant countries in the world, it has also helped make us the freeist and most generous. Thank you.

###

Sarah Isgur Flores
Director of Public Affairs
(b) (6) [redacted]

Mark L Rienzi

From: Mark L Rienzi
Sent: Monday, July 17, 2017 3:37 PM
To: Bylund, Jeremy (OASG)
Cc: Panuccio, Jesse (OASG); Eric Rassbach; lwindham@becketfund.org
Subject: Re: draft agreement

Jeremy--I think the best thing to do then is for you all to send over a revised draft that addresses the issues we've flagged. We got the Tenth Circuit to give us an extra week, and they seem to be holding off in the other cases waiting on our report. So I don't expect us to be able (or willing) to kick the can down the road further. Right now, we're still too far apart for that update to the court to be positive. So I would rather keep things moving forward with a new draft than wait for a time when our schedules match.

Relatedly, I know that you all are working on religious liberty guidance following the May 4th executive order. That's the kind of thing where I would love for us to be publicly supportive of DOJ's work (indeed, I was in for a listening session a few weeks ago on the topic). But it will be awkward if we are getting press calls about what we think of the guidance when our issue still has not been wrapped up despite the President's and Vice President's promises. To me, that's another reason for us all to get this wrapped up sooner rather than later.

Thanks very much,

Mark

On Mon, Jul 17, 2017 at 9:55 AM, Bylund, Jeremy (OASG) <Jeremy.Bylund@usdoj.gov> wrote:

> Dear Mark,
>
> Given travel schedules the call will not be today. What are other options for you?
>
> Best,
>
> Jeremy
>
> **From:** Mark L Rienzi [mailto:rienzi@law.edu]
> **Sent:** Saturday, July 15, 2017 10:59 PM
> **To:** Panuccio, Jesse (OASG) <jpanuccio@jmd.usdoj.gov>; Bylund, Jeremy (OASG) <jbylund@jmd.usdoj.gov>; Eric Rassbach <erassbach@becketlaw.org>; lwindham@becketfund.org
> **Subject:** draft agreement
>
> Jeremy and Jesse--Thanks again for the call. As I said to Jeremy yesterday afternoon, I don't think we're quite at the point where redlining the draft makes sense. But here is a summary of the points I made on the call yesterday.

Of course, this is intended as a confidential settlement communication. This is just a summary of my initial reactions. And I have not yet run your draft past my clients. With those caveats:

1) Recitals: The recitals contain a number of Obama-era "double-speak" phrases that need to be removed. For example, issues like facilitation or whether Ps were being forced to violate their beliefs should just be plainly stated. The President invited the Little Sisters to the Rose Garden and made it exceedingly clear in public statements to them that he thinks they were being forced to violate their beliefs. (starting at 23:00, and getting specifically to the Sisters around 28:30). I do not see any good reason for DOJ to refuse to say what the President has already said, or to feel obligated to stick to the prior administration's torturing of the English language on these points. Also, for the most part, the recitals should be moved into the body of the agreement and turned into representations, so it is clear they are part of the deal.

2) As set forth in the email I sent Jeremy about concessions earlier in the week (attached again here), we think that the agreement needs to acknowledge that the regs violate RFRA. The prior administration virtually admitted that violation, and there is no reason not to acknowledge that a federal civil rights statute limits a policy choice of the prior administration.

3) While I'm willing to table the overall discussion of whether this needs to be a consent decree or not, you all should at least drop the appeals in cases where you lost. Those clients would have to be willing to give up on injunctions they already have in hand and instead take a settlement agreement. I can't imagine why any of them would be willing to do such a thing, and I don't see why it would be in DOJ's interests to litigate those appeals.

4) The document should also reiterate the concession that the government lacks authority under ERISA to enforce the mandate in the context of church plans.

5) In the Hobby Lobby paragraph, we should add in the statute, and we should add in a plain English sentence that states that the Government agrees not to require Ps to provide the objected-to services.

6) In paragraph 2 (on the accommodation regs) we need something saying that the reg would not apply to plaintiffs or their plans. Mere non-enforcement against plaintiffs is not enough.

7) The fees paragraph is unacceptable. For five years, the government tried to illegally force our clients to violate their religion. For five years, we protected them both from forced violation of their beliefs and from hundreds of millions of dollars in fines. We are entitled to fees for that work under Section 1988.

Jeremy mentioned the possibility of a call on Monday. Please let me know when you'd be able to do that. My schedule is harder later in the week, so I'd like to be sure we connect on Monday.

Thanks very much,

Mark

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, July 25, 2017 8:17 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Tuesday, July 25, 2017 8:17:24 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

TUESDAY, JULY 25, 2017 AT 08:17 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Johnson Amendment #272 to HR1628 — submitted**
- **Johnson Amendment #273 to HR1628 — submitted**
- **Barrasso Amendment #274 to HR1628 — submitted**
- **Barrasso Amendment #275 to HR1628 — submitted**

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

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Kate Gillespie

From: Kate Gillespie
Sent: Thursday, July 27, 2017 4:11 PM
To: Parker, Rachel (OASG)
Subject: Manus Cooney- 5 minute phone call request

Hi Rachel,

I just left you a voicemail, but thought it may be easier if I shot you a quick email. Errical Bryant connected me with you. I am Manus Cooney's assistant, and he has asked that I reach out to you to see if Rachel Brand has 5 minutes tomorrow for a phone call? Manus and Ms. Brand have spoken before, and Manus just was hoping for a quick follow up. Manus will keep it short, and just want to touch base with her for some religious liberty guidance.

Please let me know if Ms. Brand has any availability for tomorrow, and if you have any further questions regarding the nature of the call.

Thank you so much!

Best,

Kate Gillespie

Kate Gillespie
American Continental Group
1800 M Street NW, 500 South Tower
Washington, DC 20036
(202) 327-8100

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Thursday, July 27, 2017 7:34 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Thursday, July 27, 2017 7:33:33 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

THURSDAY, JULY 27, 2017 AT 07:33 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Flake Amendment #552 to HR2810 — submitted**
- **Cornyn Amendment #553 to HR2810 — submitted**
- **Flake Amendment #554 to HR2810 — submitted**
- **Flake Amendment #555 to HR2810 — submitted**
- **Inhofe Amendment #556 to HR2810 — submitted**
- **Gardner Amendment #557 to HR2810 — submitted**
- **Gardner Amendment #558 to HR2810 — submitted**
- **Gardner Amendment #559 to HR2810 — submitted**
- **Gardner Amendment #560 to HR2810 — submitted**
- **Hatch Amendment #561 to HR2810 — submitted**
- **Udall Amendment #562 to HR2810 — submitted**
- **Udall Amendment #563 to HR2810 — submitted**
- **Cardin Amendment #564 to HR2810 — submitted**
- **Cardin Amendment #565 to HR2810 — submitted**
- **Cardin Amendment #566 to HR2810 — submitted**
- **Cardin Amendment #567 to HR2810 — submitted**
- **Menendez Amendment #568 to HR2810 — submitted**

- Menendez Amendment #569 to HR2810 — submitted
- Menendez Amendment #570 to HR2810 — submitted
- Menendez Amendment #571 to HR2810 — submitted
- Menendez Amendment #572 to HR2810 — submitted
- Paul Amendment #588 to HR2810 — submitted
- Johnson Amendment #589 to HR2810 — submitted
- Heitkamp Amendment #591 to HR2810 — submitted
- Durbin Amendment #592 to HR2810 — submitted
- Duckworth Amendment #593 to HR2810 — submitted
- Klobuchar Amendment #594 to HR2810 — submitted
- Warren Amendment #595 to HR2810 — submitted
- Sanders Amendment #596 to HR2810 — submitted
- Sanders Amendment #597 to HR2810 — submitted
- Gillibrand Amendment #598 to HR2810 — submitted
- Moran Amendment #599 to HR2810 — submitted
- Moran Amendment #600 to HR2810 — submitted
- Moran Amendment #601 to HR2810 — submitted
- McCain Amendment #602 to HR2810 — submitted
- Hatch Amendment #587 to HR1628 — submitted
- Collins Amendment #590 to HR1628 — submitted
- Donnelly Amendment #573 to HR2810 — submitted
- Heitkamp Amendment #574 to HR2810 — submitted
- Nelson Amendment #575 to HR2810 — submitted
- Cantwell Amendment #576 to HR2810 — submitted
- Baldwin Amendment #577 to HR2810 — submitted
- Hirono Amendment #578 to HR2810 — submitted
- Hirono Amendment #579 to HR2810 — submitted
- Hirono Amendment #580 to HR2810 — submitted
- Hirono Amendment #581 to HR2810 — submitted
- Hirono Amendment #582 to HR2810 — submitted
- Hirono Amendment #583 to HR2810 — submitted
- Hirono Amendment #584 to HR2810 — submitted
- Young Amendment #585 to HR2810 — submitted
- King Amendment #603 to HR2810 — submitted
- King Amendment #604 to HR2810 — submitted
- Markey Amendment #605 to HR2810 — submitted
- Markey Amendment #606 to HR2810 — submitted

- **Markey Amendment #607 to HR2810 — submitted**
- **Markey Amendment #608 to HR2810 — submitted**
- **Graham Amendment #586 to HR1628 — submitted**

Alexander Charow, Floor Monitor
SRC
Email: (b) (6)

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Thursday, July 27, 2017 8:06 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Thursday, July 27, 2017 8:05:39 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

THURSDAY, JULY 27, 2017 AT 08:05 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **McCain Amendment #609 to HR2810 — submitted**
- **Hirono Amendment #610 to HR2810 — submitted**
- **Hirono Amendment #611 to HR2810 — submitted**
- **Cortez Masto Amendment #612 to HR2810 — submitted**
- **Cortez Masto Amendment #613 to HR2810 — submitted**
- **Cortez Masto Amendment #614 to HR2810 — submitted**
- **Cortez Masto Amendment #615 to HR2810 — submitted**
- **Sanders Amendment #616 to HR1628 — submitted**
- **Tillis Amendment #621 to HR2810 — submitted**
- **Sanders Amendment #617 to HR1628 — submitted**
- **Sanders Amendment #618 to HR1628 — submitted**
- **Sanders Amendment #619 to HR1628 — submitted**
- **Johnson Amendment #620 to HR1628 — submitted**

Alexander Charow, Floor Monitor

SRC

Email: (b) (6) [redacted]

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Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Friday, July 28, 2017 12:08 AM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Friday, July 28, 2017 12:08:01 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

FRIDAY, JULY 28, 2017 AT 12:07 AM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Casey Amendment #676 to HR2810 — submitted**
- **Schatz Amendment #677 to HR2810 — submitted**
- **Markey Amendment #678 to HR2810 — submitted**
- **Markey Amendment #679 to HR2810 — submitted**
- **Boozman Amendment #680 to HR2810 — submitted**
- **Johnson Amendment #681 to HR2810 — submitted**
- **Perdue Amendment #682 to HR2810 — submitted**
- **Toomey Amendment #683 to HR2810 — submitted**
- **Toomey Amendment #684 to HR2810 — submitted**
- **Warren Amendment #685 to HR2810 — submitted**
- **Warren Amendment #687 to HR2810 — submitted**
- **Blumenthal Amendment #692 to HR2810 — submitted**
- **Booker Amendment #693 to HR2810 — submitted**
- **Booker Amendment #694 to HR2810 — submitted**
- **Booker Amendment #695 to HR2810 — submitted**
- **Booker Amendment #696 to HR2810 — submitted**

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Monday, July 31, 2017 5:33 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Monday, July 31, 2017 5:32:59 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

MONDAY, JULY 31, 2017 AT 05:32 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Crapo Amendment #736 to HR2810 — submitted**
- **Johnson Amendment #737 to HR2810 — submitted**

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

To change your Trunkline email subscriptions, please visit your **user profile** page.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, August 1, 2017 8:05 PM
To: Cutrona, Danielle (OAG)
Subject: FW: Cloakroom Wrap Up

From: Cloakroom
Sent: Tuesday, August 1, 2017 8:04:28 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: Cloakroom Wrap Up

Wrap Up Memo

TUESDAY, AUGUST 1, 2017 AT 08:04 PM

Cloakroom Wrap Up

Roll Call Votes:

Confirmation of Executive Calendar #178, Christopher A. Wray, of Georgia, to be Director of the Federal Bureau of Investigation. Confirmed. (92-5)

Confirmation of Executive Calendar #172, Kevin Christopher Newsom, of Alabama, to be United States Circuit Judge for the Eleventh Circuit. Confirmed. (66-31)

Executive Session:

DEPARTMENT OF DEFENSE

Cal. #61 – Elaine McCusker, of Virginia, to be a Principal Deputy Under Secretary of Defense.

Cal. #63 – Robert Daigle, of Virginia, to be Director of Cost Assessment and Program Evaluation.

Cal. #162 - Robert R. Hood, of Georgia, to be an Assistant Secretary of Defense.

Cal. #174 – Richard V. Spencer, of Wyoming, to be Secretary of the Navy.

Cal. #194 – Ryan McCarthy, of Illinois, to be Under Secretary of the Army.

Cal. #246 – Lucian Niemeyer, of Pennsylvania, to be an Assistant Secretary of Defense.

Cal. #248 – Matthew P. Donovan, of Virginia, to be Under Secretary of the Air Force.

Cal. #249 – Ellen M. Lord, of Rhode Island, to be Under Secretary of Defense for Acquisition, Technology, and Logistics.

Wrap Up:

S.Res.237 – Legal Counsel

S.860 – Juvenile Justice, with a Grassley amendment (by voice vote)

Cal. #95, S.190 – Pass Act

Cal. #23, S.178 – Elder Abuse, with a Grassley amendment (by voice vote)

Cal. #116, H.R.601 – READ Act, with a Rubio amendment (by voice vote)

S.114 – VA Choice (by voice vote)

H.R.339 – Northern Mariana Islands, with a Murkowski/Cantwell amendment

H.R.2210 – Sergeant Joseph George Kusick VA Community Living Center

H.R.2288 – Vets Appeals Improvements and Modernization Act, with an Isakson amendment

Cal. #93, S.582 – Office of Special Counsel Reauthorization, with a Johnson amendment

S.717 – POWER Act

S.Res.203 – PTSD

S.Res.194 – Elder Abuse

S.Res.214 – Juneteenth Day

S.Res.215 – Car Collector

S.Res.231 – Whistleblower

S.Res.213 – Dallas Police Department

S.Res.233 – Airborne Day

S.Res.221 – Lobster Day

S.Res.239 – Pittsburg Penguins

S.Res.240 – Florida Gators Baseball

S.Res.241 – Purple Heath Recognition Day

H.R.510 - Rapid DNA

Wednesday, August 2nd:

The Senate will convene at 10:00am. Following any Leader remarks, the Senate will proceed to Executive Session to resume consideration of Executive Calendar #175, Marvin Kaplan, of Kansas, to be a Member of the National Labor Relations Board with all time until 11:00am equally divided between the two Leaders or their designees.

At 11:00am, the Senate will proceed to a roll call vote on the motion to invoke cloture on the Kaplan nomination.

Please note, Leader McConnell has filed cloture on the motion to proceed to H.R.2430, FDA Reauthorization Act of 2017.

Wrap Up Memos are sent from the Senate Republican Cloakroom using the telephone alert system. An E-mail copy is sent to offices and posted on Trunkline (http://gop.senate.gov) as a convenience, but primary notification will always come via telephone. If you have questions about wrap up memos, unanimous consent items or other floor scheduling matters, please call the Cloakroom at (202) 224-6191. Please do not reply to this message.

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Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, August 2, 2017 8:30 AM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Wednesday, August 2, 2017 8:29:34 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

WEDNESDAY, AUGUST 2, 2017 AT 08:29 AM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Johnson Amendment #746 to S582 — disposed**
  To permit an Inspector General to withhold certain material from the Office of Special Counsel if the material is derived from, or pertains to, intelligence activities.
  Aug 01, 2017 Amendment SA 746 agreed to in Senate by Unanimous Consent.
- **Isakson Amendment #745 to HR2288 — pending**
  N/A
  Aug 01, 2017 Amendment SA 745 proposed by Senator Portman for Senator Isakson.

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

To change your Trunkline email subscriptions, please visit your **user profile** page.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, August 2, 2017 8:42 AM
To: Cutrona, Danielle (OAG)
Subject: FW: Wednesday, August 2, 2017

From: Majority Whip
Sent: Wednesday, August 2, 2017 8:40:50 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: Wednesday, August 2, 2017

Whip Notice

WEDNESDAY, AUGUST 2, 2017 AT 08:40 AM

Whip Notice

The Senate will convene at 10:00am. Following any Leader remarks, the Senate will proceed to Executive Session to resume consideration of Executive Calendar #175, Marvin Kaplan, of Kansas, to be a Member of the National Labor Relations Board with all time until 11:00am equally divided between the two Leaders or their designees.

At 11:00am, the Senate will proceed to a roll call vote on the motion to invoke cloture on the Kaplan nomination.

Please note, Leader McConnell has filed cloture on the motion to proceed to H.R.2430, FDA Reauthorization Act of 2017.

Look Ahead:

Nominations, FDA User Fees, NDAA, Debt Limit, Appropriations, and VA Choice

Tuesday's Session:

Roll Call Votes:

Confirmation of Executive Calendar #178, Christopher A. Wray, of Georgia, to be

Director of the Federal Bureau of Investigation. Confirmed. (92-5)

Confirmation of Executive Calendar #172, Kevin Christopher Newsom, of Alabama, to be United States Circuit Judge for the Eleventh Circuit. Confirmed. (66-31)

Executive Session:

DEPARTMENT OF DEFENSE

Cal. #61 – Elaine McCusker, of Virginia, to be a Principal Deputy Under Secretary of Defense.

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Cal. #194 – Ryan McCarthy, of Illinois, to be Under Secretary of the Army.

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Cal. #248 – Matthew P. Donovan, of Virginia, to be Under Secretary of the Air Force.

Cal. #249 – Ellen M. Lord, of Rhode Island, to be Under Secretary of Defense for Acquisition, Technology, and Logistics.

UC Items:

S.Res.237 – Legal Counsel

S.860 – Juvenile Justice, with a Grassley amendment (by voice vote)

Cal. #95, S.190 – Pass Act

Cal. #23, S.178 – Elder Abuse, with a Grassley amendment (by voice vote)

Cal. #116, H.R.601 – READ Act, with a Rubio amendment (by voice vote)

S.114 – VA Choice (by voice vote)

H.R.339 – Northern Mariana Islands, with a Murkowski/Cantwell amendment

H.R.2210 – Sergeant Joseph George Kusick VA Community Living Center

H.R.2288 – Vets Appeals Improvements and Modernization Act, with an Isakson amendment

Cal. #93, S.582 – Office of Special Counsel Reauthorization, with a Johnson amendment

S.717 – POWER Act

S.Res.203 – PTSD

S.Res.194 – Elder Abuse

S.Res.214 – Juneteenth Day

S.Res.215 – Car Collector

S.Res.231 – Whistleblower

S.Res.213 – Dallas Police Department

S.Res.233 – Airborne Day

S.Res.221 – Lobster Day

S.Res.239 – Pittsburg Penguins

S.Res.240 – Florida Gators Baseball

S.Res.241 – Purple Heart Recognition Day

H.R.510 - Rapid DNA

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, August 2, 2017 9:22 AM
To: Cutrona, Danielle (OAG)
Subject: FW: CORRECTION: Cloakroom Wrap Up

From: Cloakroom
Sent: Wednesday, August 2, 2017 9:21:54 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: CORRECTION: Cloakroom Wrap Up

Wrap Up Memo

WEDNESDAY, AUGUST 2, 2017 AT 09:21 AM

CORRECTION: Cloakroom Wrap Up

Roll Call Votes:

Confirmation of Executive Calendar #178, Christopher A. Wray, of Georgia, to be Director of the Federal Bureau of Investigation. Confirmed. (92-5)

Confirmation of Executive Calendar #172, Kevin Christopher Newsom, of Alabama, to be United States Circuit Judge for the Eleventh Circuit. Confirmed. (66-31)

Executive Session:

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Wrap Up:

S.Res.237 – Legal Counsel

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S.114 – VA Choice (by voice vote)

H.R.339 – Northern Mariana Islands, with a Murkowski/Cantwell amendment

H.R.2210 – Sergeant Joseph George Kusick VA Community Living Center

H.R.2288 – Vets Appeals Improvements and Modernization Act, with an Isakson amendment

Cal. #93, S.582 – Office of Special Counsel Reauthorization, with a Johnson amendment

S.717 – POWER Act

S.Res.203 – PTSD

S.Res.194 – Elder Abuse

S.Res.214 – Juneteenth Day

S.Res.215 – Car Collector

S.Res.231 – Whistleblower

S.Res.213 – Dallas Police Department

S.Res.233 – Airborne Day

S.Res.221 – Lobster Day

S.Res.239 – Pittsburgh Penguins

S.Res.240 – Florida Gators Baseball

S.Res.241 – Purple Heart Recognition Day

H.R.510 - Rapid DNA

Wednesday, August 2nd:

The Senate will convene at 10:00am. Following any Leader remarks, the Senate will proceed to Executive Session to resume consideration of Executive Calendar #175, Marvin Kaplan, of Kansas, to be a Member of the National Labor Relations Board with all time until 11:00am equally divided between the two Leaders or their designees.

At 11:00am, the Senate will proceed to a roll call vote on the motion to invoke cloture on the Kaplan nomination.

Please note, Leader McConnell has filed cloture on the motion to proceed to H.R.2430, FDA Reauthorization Act of 2017.

Wrap Up Memos are sent from the Senate Republican Cloakroom using the telephone alert system. An E-mail copy is sent to offices and posted on Trunkline (http://gop.senate.gov) as a convenience, but primary notification will always come via telephone. If you have questions about wrap up memos, unanimous consent items or other floor scheduling matters, please call the Cloakroom at (202) 224-6191. Please do not reply to this message.

To change your Trunkline email subscriptions, please visit your **user profile** page.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Thursday, August 3, 2017 1:51 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Thursday, August 3, 2017 1:50:31 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

THURSDAY, AUGUST 3, 2017 AT 01:50 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Johnson Amendment #753 to S204 — disposed**
  In the nature of a substitute.
  Aug 03, 2017 Amendment SA 753 agreed to in Senate by Unanimous Consent.

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

To change your Trunkline email subscriptions, please visit your **user profile** page.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Thursday, September 7, 2017 12:33 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Thursday, September 7, 2017 12:33:23 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

THURSDAY, SEPTEMBER 7, 2017 AT 12:33 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Shaheen Amendment #807 to S920 — disposed**
  To improve the bill.
  Sep 06, 2017 Amendment SA 807 agreed to in Senate by Unanimous Consent.
- **Grassley Amendment #787 to S1107 — disposed**
  In the nature of a substitute.
  Sep 05, 2017 Amendment SA 787 agreed to in Senate by Unanimous Consent.
- **McConnell Amendment #808 to HR601 — pending**
  In the nature of a substitute.
  Sep 06, 2017 Amendment SA 808 proposed by Senator McConnell.
- **McConnell Amendment #809 to HR601 — pending**
  To change the enactment date.
  Sep 06, 2017 Amendment SA 809 proposed by Senator McConnell to Amendment SA 808.
- **Baldwin Amendment #774 to HR2810 — submitted**
- **Klobuchar Amendment #775 to HR2810 — submitted**

- Van Hollen Amendment #776 to HR2810 — submitted
- Heinrich Amendment #777 to HR2810 — submitted
- Heinrich Amendment #778 to HR2810 — submitted
- Gardner Amendment #779 to HR2810 — submitted
- Inhofe Amendment #780 to HR2810 — submitted
- Tillis Amendment #781 to HR2810 — submitted
- Feinstein Amendment #782 to HR2810 — submitted
- Schatz Amendment #783 to HR2810 — submitted
- Wicker Amendment #784 to HR2810 — submitted
- Wicker Amendment #785 to HR2810 — submitted
- Wicker Amendment #786 to HR2810 — submitted
- Daines Amendment #788 to HR2810 — submitted
- Cornyn Amendment #789 to HR2810 — submitted
- Duckworth Amendment #790 to HR2810 — submitted
- Duckworth Amendment #791 to HR2810 — submitted
- Johnson Amendment #792 to HR2810 — submitted
- Young Amendment #793 to HR2810 — submitted
- Warren Amendment #794 to HR2810 — submitted
- Crapo Amendment #795 to HR2810 — submitted
- Cornyn Amendment #796 to HR2810 — submitted
- Peters Amendment #797 to HR2810 — submitted
- Hirono Amendment #798 to HR2810 — submitted
- Hirono Amendment #799 to HR2810 — submitted
- Boozman Amendment #800 to HR2810 — submitted
- Gillibrand Amendment #801 to HR2810 — submitted
- Cardin Amendment #802 to HR2810 — submitted
- Cardin Amendment #803 to HR2810 — submitted
- Fischer Amendment #804 to HR2810 — submitted
- Cornyn Amendment #805 to HR2810 — submitted
- Schatz Amendment #806 to HR2810 — submitted
- Cardin Amendment #810 to HR2810 — submitted
- Cardin Amendment #811 to HR2810 — submitted
- Graham Amendment #812 to HR2810 — submitted
- Graham Amendment #813 to HR2810 — submitted
- Graham Amendment #814 to HR2810 — submitted
- Graham Amendment #815 to HR2810 — submitted

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

To change your Trunkline email subscriptions, please visit your **user profile** page.

Non-responsive record

[redacted]

From: Silver, Matthew [mailto:(b) (6)
Sent: Monday, September 11, 2017 3:16 PM
To: Cheng, Ivy (OLA) <ICheng@jmd.usdoj.gov>
Subject: Religious Liberty EO

Hi Ivy-

Good to speak with you last week. Following up on our conversation, attached is a letter House Members sent to the President prior to the signing of the Executive Order. As you can see, it outlines a number of religious liberty/conscience protection priorities. While a number of these were not included in the final EO issued, Members want to make sure that the Department is aware of and understand these priorities as it develops its guidance for agencies. I am also linking the Senate-led letter on the same issue as well.

Happy to provide any additional details on these items. Just let me know what you think in terms of timing for a meeting. Thanks.

Matthew

https://www.wicker.senate.gov/public/_cache/files/2547125e-d4c4-433e-9f53-031124be3f5b/signed-senate-letter-to-potus-on-religious-liberty-eo-4-3-17.pdf

Respectfully,

Matthew Silver
Legislative Director
Representative Warren Davidson (OH-08)
1004 Longworth House Office Building
(202)-225-6205

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, September 12, 2017 9:20 AM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Tuesday, September 12, 2017 9:19:32 AM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

TUESDAY, SEPTEMBER 12, 2017 AT 09:19 AM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Warren Amendment #855 to HR2810 — submitted**
- **Brown Amendment #856 to HR2810 — submitted**
- **Donnelly Amendment #857 to HR2810 — submitted**
- **Donnelly Amendment #858 to HR2810 — submitted**
- **Booker Amendment #859 to HR2810 — submitted**
- **Schumer Amendment #860 to HR2810 — submitted**
- **Blumenthal Amendment #861 to HR2810 — submitted**
- **Blumenthal Amendment #862 to HR2810 — submitted**
- **Blumenthal Amendment #863 to HR2810 — submitted**
- **Blumenthal Amendment #864 to HR2810 — submitted**
- **Blumenthal Amendment #865 to HR2810 — submitted**
- **Blumenthal Amendment #866 to HR2810 — submitted**
- **Warren Amendment #867 to HR2810 — submitted**
- **Van Hollen Amendment #868 to HR2810 — submitted**
- **Gillibrand Amendment #869 to HR2810 — submitted**
- **Cotton Amendment #870 to HR2810 — submitted**
- **Paul Amendment #871 to HR2810 — submitted**

- **Paul Amendment #872 to HR2810 — submitted**
- **Ernst Amendment #873 to HR2810 — submitted**
- **McCain Amendment #874 to HR2810 — submitted**
- **McCain Amendment #875 to HR2810 — submitted**
- **McCain Amendment #876 to HR2810 — submitted**
- **Johnson Amendment #877 to HR2810 — submitted**
- **Johnson Amendment #878 to HR2810 — submitted**
- **Johnson Amendment #879 to HR2810 — submitted**
- **Tillis Amendment #880 to HR2810 — submitted**
- **Wicker Amendment #881 to HR2810 — submitted**
- **Young Amendment #882 to HR2810 — submitted**
- **Blumenthal Amendment #883 to HR2810 — submitted**
- **Shaheen Amendment #884 to HR2810 — submitted**
- **Cantwell Amendment #885 to HR2810 — submitted**
- **Cantwell Amendment #886 to HR2810 — submitted**
- **Cantwell Amendment #887 to HR2810 — submitted**
- **Cantwell Amendment #888 to HR2810 — submitted**
- **Cantwell Amendment #889 to HR2810 — submitted**
- **Brown Amendment #890 to HR2810 — submitted**
- **Leahy Amendment #891 to HR2810 — submitted**
- **Hoeven Amendment #892 to HR2810 — submitted**
- **Manchin Amendment #893 to HR2810 — submitted**
- **Manchin Amendment #894 to HR2810 — submitted**
- **Heinrich Amendment #895 to HR2810 — submitted**

Alexander Charow, Floor Monitor
SRC

Email: (b) (6) [redacted]

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Tuesday, September 12, 2017 5:13 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Tuesday, September 12, 2017 5:12:30 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

TUESDAY, SEPTEMBER 12, 2017 AT 05:12 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Menendez Amendment #992 to HR2810 — submitted**
- **Rubio Amendment #993 to HR2810 — submitted**
- **Johnson Amendment #994 to HR2810 — submitted**

Alexander Charow, Floor Monitor
SRC

Email: (b) (6) [redacted]

To change your Trunkline email subscriptions, please visit your **user profile** page.

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Monday, September 18, 2017 7:31 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Monday, September 18, 2017 7:31:07 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

MONDAY, SEPTEMBER 18, 2017 AT 07:31 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Kaine Amendment #277 to HR2810 — disposed**
  N/A
  Sep 18, 2017 Amendment SA 277 agreed to in Senate by Unanimous Consent.
- **Tester Amendment #434 to HR2810 — disposed**
  N/A
  Sep 18, 2017 Amendment SA 434 agreed to in Senate by Unanimous Consent.
- **Lee Amendment #470 to HR2810 — disposed**
  N/A
  Sep 18, 2017 Amendment SA 470 agreed to in Senate by Unanimous Consent.
- **Moran Amendment #601 to HR2810 — disposed**
  N/A
  Sep 18, 2017 Amendment SA 601 agreed to in Senate by Unanimous Consent.
- **Heitkamp Amendment #574 to HR2810 — disposed**

N/A

Sep 18, 2017 Amendment SA 574 agreed to in Senate by Unanimous Consent.

- **Merkley Amendment #660 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 660 agreed to in Senate by Unanimous Consent.

- **Portman Amendment #712 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 712 agreed to in Senate by Unanimous Consent.

- **Whitehouse Amendment #750 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 750 agreed to in Senate by Unanimous Consent.

- **Van Hollen Amendment #756 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 756 agreed to in Senate by Unanimous Consent.

- **Inhofe Amendment #780 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 780 agreed to in Senate by Unanimous Consent.

- **Murray Amendment #833 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 833 agreed to in Senate by Unanimous Consent.

- **Ernst Amendment #873 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 873 agreed to in Senate by Unanimous Consent.

- **McCain Amendment #874 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 874 agreed to in Senate by Unanimous Consent.

- **Johnson Amendment #879 to HR2810 — disposed**

  N/A

N/A

Sep 18, 2017 Amendment SA 879 agreed to in Senate by Unanimous Consent.

- **Brown Amendment #890 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 890 agreed to in Senate by Unanimous Consent.

- **Cardin Amendment #900 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 900 agreed to in Senate by Unanimous Consent.

- **Leahy Amendment #903 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 903 agreed to in Senate by Unanimous Consent.

- **Baldwin Amendment #904 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 904 agreed to in Senate by Unanimous Consent.

- **Murkowski Amendment #908 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 908 agreed to in Senate by Unanimous Consent.

- **Rubio Amendment #927 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 927 agreed to in Senate by Unanimous Consent.

- **Isakson Amendment #943 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 943 agreed to in Senate by Unanimous Consent.

- **Flake Amendment #945 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 945 agreed to in Senate by Unanimous Consent.

- **Peters Amendment #950 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 950 agreed to in Senate by Unanimous

Sep 18, 2017 Amendment SA 990 agreed to in Senate by Unanimous Consent.

- **Heitkamp Amendment #976 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 976 agreed to in Senate by Unanimous Consent.

- **Cantwell Amendment #995 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 995 agreed to in Senate by Unanimous Consent.

- **Moran Amendment #1006 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1006 agreed to in Senate by Unanimous Consent.

- **Stabenow Amendment #1014 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1014 agreed to in Senate by Unanimous Consent.

- **Whitehouse Amendment #1015 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1015 agreed to in Senate by Unanimous Consent.

- **Harris Amendment #1021 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1021 agreed to in Senate by Unanimous Consent.

- **Sanders Amendment #1023 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1023 agreed to in Senate by Unanimous Consent.

- **Tillis Amendment #1031 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1031 agreed to in Senate by Unanimous Consent.

- **Isakson Amendment #1032 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1032 agreed to in Senate by Unanimous Consent.

Consent.

- **Perdue Amendment #1033 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1033 agreed to in Senate by Unanimous Consent.

- **Strange Amendment #1034 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1034 agreed to in Senate by Unanimous Consent.

- **Lankford Amendment #1038 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1038 agreed to in Senate by Unanimous Consent.

- **Rounds Amendment #1039 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1039 agreed to in Senate by Unanimous Consent.

- **Scott Amendment #1050 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1050 agreed to in Senate by Unanimous Consent.

- **Portman Amendment #1055 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1055 agreed to in Senate by Unanimous Consent.

- **Tillis Amendment #1063 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1063 agreed to in Senate by Unanimous Consent.

- **Cantwell Amendment #1065 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1065 agreed to in Senate by Unanimous Consent.

- **Sullivan Amendment #1073 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1073 agreed to in Senate by Unanimous Consent.

- **Strange Amendment #1086 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1086 agreed to in Senate by Unanimous Consent.
- **Bennet Amendment #1087 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1087 agreed to in Senate by Unanimous Consent.
- **Wyden Amendment #1088 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1088 agreed to in Senate by Unanimous Consent.
- **Kaine Amendment #1089 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1089 agreed to in Senate by Unanimous Consent.
- **Cortez Masto Amendment #1094 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1094 agreed to in Senate by Unanimous Consent.
- **Graham Amendment #1096 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1096 agreed to in Senate by Unanimous Consent.
- **Durbin Amendment #1100 to HR2810 — disposed**

  N/A

  Sep 18, 2017 Amendment SA 1100 agreed to in Senate by Unanimous Consent.

Alexander Charow, Floor Monitor
SRC
Email: (b) (6) [redacted]

Teller, Paul S. EOP/WHO

From: Teller, Paul S. EOP/WHO
Sent: Thursday, October 5, 2017 11:41 AM
To: Tucker, Rachael (OAG); Cutrona, Danielle (OAG)
Subject: FW: [EXTERNAL]
Attachments: CNP_DOJ Guidance Ltr to President Trump[5].pdf

FYI guys

Paul Teller
Special Assistant to the President for Legislative Affairs The White House Paul.S.Teller@who.eop.gov

-----Original Message-----
From: Tony Perkins [mailto(b) (6) [redacted]
Sent: Thursday, October 5, 2017 7:20 AM
To: Teller, Paul S. EOP/WHO <Paul.S.Teller@who.eop.gov>
Subject: [EXTERNAL]

COUNCIL FOR NATIONAL POLICY

October 4, 2017

President Donald Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We are writing to you concerning your Executive Order issued on May 4, 2017, protecting religious freedom. We want to thank you for your strong and positive statements regarding the protection and promotion of our First Amendment Freedom of Religion. In your May 4, executive order you directed the Department of Justice (DOJ) to issue guidance to implement religious freedom throughout executive agencies and the Department of Health and Human Services (HHS) to issue new regulations related to the unfair HHS contraceptive mandate. Mr. President, it has been five months, and nothing has changed, no guidance has been issued.

The HHS mandate remains in place, and the religious freedom of religious organizations like Little Sisters of the Poor is still being infringed upon. FEMA refuses to treat religious non-profits, who are helping in disaster relief the same as other non-profits. These policies are discriminatory.

We are very eager to see DOJ issue "guidance" to lay out a greater defense of religious freedom. After eight years of religious hostility conservative voters who supported you are asking that your administration issue the DOJ guidance required by your order.

Also, we ask that your administration abide by your Executive Order and implement the HHS contraceptive mandate regulation that was "leaked" earlier this year. If the federal government can breach our First Amendment Freedom of religion, none of our other constitutional freedoms are safe.

Sincerely,

The Honorable Tony Perkins
President, Council for National Policy
President, Family Research Council

William L. Walton
Chairman
CNP Action, Inc.

Rebecca Hagelin
Secretary
Council for National Policy

The Honorable Bob McEwen
Former Member, Ohio
U.S. House of Representatives

444 NORTH CAPITOL STREET, NW • SUITE 830 • WASHINGTON, DC 20001
PHONE (202) 207-0165 • FAX (202) 207-0173 • E-MAIL CNP@CFNP.ORG

The Honorable Donald P. Hodel
Former Secretary of Energy
Former Secretary of the Interior

Richard A. Viguerie
Chairman
Conservative HQ

Roxanne Phillips
Executive Committee
Council for National Policy

Kelly Shackelford
President & CEO
First Liberty Institute

Barry Meguiar
President
Meguiar's, Inc.

Trent England
Executive Vice President
Oklahoma Council of Public Affairs

Tim LeFever
Chairman
Capitol Resource Institute

Stuart Epperson
Chairman of the Board
Salem Media Group

The Honorable Jim DeMint
Former Member
United States Senate

Marjorie Dannenfelser
President
Susan B. Anthony List

The Honorable J. Kenneth Blackwell
Chairman
Constitutional Congress, Inc.

Diana Banister
President and Partner
Shirley & Banister Public Affairs

Rich Bott
Chairman/CEO
Bott Radio Network

William Mills
President
WPM Exploration

Keet Lewis
Co-Founder
Lewis Group Intl.

L. Brent Bozell III
Founder and President
Media Research Center

Art Ally
President
Timothy Partners, Ltd.

The Honorable Colin A. Hanna
President
Let Freedom Ring

The Honorable James C. Miller III
Budget Director
President Ronald Regan

The Honorable Paul Pressler
Retired
Texas Court of Appeals

David N. Bossie
President
Citizens United

Lt. Gen. William G. Boykin (Ret.)
Executive Vice President
Family Research Council

Tom Fitton
President
Judicial Watch

Adam Brandon
President
FreedomWorks

David Bozell
President
ForAmerica

Alfred S. Regnery
Chairman
Law Enforcement Legal Defense Fund

Ed Corrigan
Former Executive Director
Senate Steering Committee

Cleta Mitchell, Esq.

Dr. James C. Dobson
President
Family Talk

The Honorable Jason Rapert
Senator
Arkansas State Senate

The Honorable Mike Spence
Founding President
Conservative Republicans of California

The Honorable Mike Hill
Former Member
Florida State House

Alan Sears
Founder
Alliance Defending Freedom

Dr. Carol M. Swain
Former Professor of Politics
Vanderbilt University

Jeff Hunt
Vice President of Public Policy
Colorado Christian University

Cathi Herrod
President
Center for Arizona Policy

Tim Macy
Chairman
Gun Owners of America

Bill Ledbetter
Pastor
Fairview Baptist Church

Allen Hébert
Chairman
American-Chinese Fellowship of Houston

Debbie Wuthnow
Executive Director
iVoterGuide

Rod Vandenbos
CEO
BuzzBox Beverages, Inc.

Larry Beasley
President/CEO
The Washington Times

Gary Frazier
Executive Vice President
United in Purpose

Richard H. Wright
Owner
Wright House LLC

Dr. Russell J. Kilpatrick
M.D.
Brigadier General, USAF (Ret.)

Willes K. Lee
President
National Federation of Republican Assemblies

J. Craig Brown II
Vice President of Entrepreneurship
Ohio Christian University

R.O. Broekhuizen
Retired Pastor

Paavo Ensio
Owner
Umii

Jay Mount
President
MDS Communications

Joe Knott
Attorney
Knott & Boyle

Gina Gleason
Executive Director
Faith and Public Policy

Joseph Farah
Founder and Chief Executive Officer
WND.com

Richard D. Hayes
Partner
Hayes, Berry, White & Vanzant, LLP

Gary Marx
Former Executive Director
Faith & Freedom Coalition

Jon Gibson
CEO
Jon Gibson Company

Randall S. Page
Chief of Staff
Bob Jones University

Floyd Brown
Chairman
Western Center for Journalism

Khadine Ritter
President
Eagle Forum of Ohio

Kevin D. Freeman
Founder
NSIC Institute

Len Munsil
President
Arizona Christian University

Rickey McCrary
Senior Partner
Insurance One Agency

Kristan Hawkins
President
Student for Life of America

William J. Federer
Author
AmericanMinute.com

Ralph A. Rebandt, II
Senior Pastor, Oakland Hills Community Church & Chaplain, Michigan Association of Chiefs of Police

Tricia Erickson
President
Angel Pictures & Publicity, Inc.

Troy Newman
President
Operation Rescue

William J. Becker Jr.
Founder/President/CEO/Chief Counsel
FreedomX

Star Parker
President
Center for Urban Renewal & Education

Penny Nance
CEO and President
Concerned Women for America

C. Preston Noell III
President
Tradition, Family, Property, Inc.

Bradley Mattes
President
Life Issues Institute

Nancy Schulze
Founder
Republican Congressional Wives Speakers & "Women for Trump" Bus Tour

Nick Roos
President
Roos Wellness

Paul Blair
President
Reclaiming America for Christ

Hunter W. Lundy
Senior Partner
Lundy, Lundy, Soileau & South LLP

Tom McClusky
President
March for Life Action

Ralph Alfons Schmidt
Director
Schmidt Family Foundation

Dr. Everett Piper
President
Oklahoma Wesleyan University

James N. Clymer
Former National Chairman
Constitution Party

Peggy Dau
Special Liaison Representative
The Voice of the Martyrs

Jerome R. Corsi, Ph.D.
Washington Bureau Chief
Infowars.com

Dr. Rick Scarborough
Founder
Vision America

Caroline Lewis
Owner
Percipio Communications

John Park
Conservative Activist and Donor

David A. Martin
Healthcare Entrepreneur

The Honorable Gary L. Bauer
President
American Values

Tim Wildmon
President, American Family Association & American Family Radio

Lewis K. Uhler
Founder and President
National Tax Limitation Committee

Craig Dance
CEO
Champion Coach, Inc.

Janet Morana
Executive Director
Priests for Life

Lee Beaman
CEO
Beaman Automotive Group

Steven Berger
Pastor
Grace Chapel

Susan A. Carleson
Chairman/CEO
American Civil Rights Union

Donna Hearne
CEO
Constitutional Coalition

Anne Schlafly Cori
Chairman
Eagle Forum

Ellen Grigsby
Director of Institutional Partnerships
Open Doors USA

Jeff D. Reeter
Managing Partner
The Texas Financial Group

Dan Negrea

Dick Bott
Founder
Bott Radio Network

Mario Navarro da Costa
Director, Washington Bureau
Tradition, Family, Property

Ann Drexel
Conservative Activist

Don Woodsmall
President
Truth at Wake Forest, Inc.

Malcolm S. Morris
Chairman
Stewart Title Guaranty Company

Dr. Oren Paris
President
Ecclesia College

Brad Dacus
President
Pacific Justice Institute

Samuel B. Casey
Managing Director & General Counsel
Jubilee Campaign

Kelly Kullberg
President
America Conservancy

Scott Brown
Chairman, Board of Trustees
Emmanuel Christian School

E.C. Sykes
CEO
Black Box Network Services

Christopher J. Yep
President
TRIUNE Health Group

Martha Boneta
Executive Vice President
Citizens for the Republic

Leslee Unruh
Founder
Alpha Center

Allen Unruh
Chiropractic Doctor

Gevie White
Investor

The Honorable Penny Pullen
President
Life Advocacy Resource Project

Kathleen Patten
President and CEO
American Target Advertising

Heather R. Higgins
President and CEO
Independent Women's Voice

Carrie L. Lukas
President
Independent Women's Forum

Seitz, Sarah (Lankford)

From:	Seitz, Sarah (Lankford)
Sent:	Friday, October 6, 2017 10:27 AM
To:	Escalona, Prim F. (OLA); Hildabrand, Dorothy W. (OLA)
Subject:	RE: Press Release and Background Call from AG Sessions- EMBARGOED

Thank you

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

From: Escalona, Prim F. (OLA) [mailto:Prim.F.Escalona@usdoj.gov]
Sent: Friday, October 06, 2017 10:26 AM
To: Seitz, Sarah (Lankford) <Sarah_Seitz@lankford.senate.gov>; Hildabrand, Dorothy W. (OLA) <Dorothy.W.Hildabrand@usdoj.gov>
Subject: RE: Press Release and Background Call from AG Sessions- EMBARGOED

Dorothy will be sending it to you shortly. Thanks!

From: Seitz, Sarah (Lankford) [mailto:(b) (6)
Sent: Friday, October 6, 2017 10:21 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Cc: Escalona, Prim F. (OLA) <pfescalona@jmd.usdoj.gov>
Subject: RE: Press Release and Background Call from AG Sessions- EMBARGOED

Thank you.

When can we see the text of the guidance itself?

Sarah Seitz
Legislative Counsel
Senator James Lankford (R-OK)
316 Hart Senate Office Building, Washington, D.C.
202-224-5754

From: Hildabrand, Dorothy W. (OLA) [mailto:Dorothy.W.Hildabrand@usdoj.gov]
Sent: Friday, October 06, 2017 10:20 AM
To: Seitz, Sarah (Lankford) <(b) (6)
Cc: Escalona, Prim F. (OLA) <Prim.F.Escalona@usdoj.gov>
Subject: Press Release and Background Call from AG Sessions- EMBARGOED

Dear Sarah,

The Department of Justice will be releasing the attached press release regarding guidance on federal law

protections for religious liberty at 11:30 am and wanted to send an advance copy to you. **This information is embargoed until 11:30 am.**

There will be a 10:30 am call for Republican staff members to provide background information. The phone line is (b) (6) and the passcode is (b) (6)

Feel free to contact me with any questions.

Thanks,
Dorothy

Dorothy Hildabrand
Research Assistant
Office of Legislative Affairs
U.S. Department of Justice
Phone: 202-305-7851
Email: Dorothy.W.Hildabrand@usdoj.gov

McCormack, Lauren (Blunt)

From:	McCormack, Lauren (Blunt)
Sent:	Friday, October 6, 2017 11:07 AM
To:	Hildabrand, Dorothy W. (OLA); Escalona, Prim F. (OLA)
Subject:	RE: Background Info on religious liberty guidance- EMBARGOED until 11:30 am

Hi Prim and Dorothy,

What does this guidance and HHS's new contraceptive rule out today mean for the pending DOJ litigation with Little Sisters?

Thank you,
Lauren

From: Hildabrand, Dorothy W. (OLA) [mailto:Dorothy.W.Hildabrand@usdoj.gov]
Sent: Friday, October 06, 2017 10:54 AM
To: McCormack, Lauren (Blunt) <(b) (6) [redacted]
Subject: RE: Background Info on religious liberty guidance- EMBARGOED until 11:30 am

Lauren,

It's fine to share with Republican Hill staff, as long as they keep it embargoed until 11:30 am.

Thanks,
Dorothy

From: McCormack, Lauren (Blunt) [mailto:(b) (6) [redacted]
Sent: Friday, October 6, 2017 10:36 AM
To: Hildabrand, Dorothy W. (OLA) <dwhildabrand@jmd.usdoj.gov>
Subject: RE: Background Info on religious liberty guidance- EMBARGOED until 11:30 am

Thank you, Dorothy. May I share this information with interested Senate Republican staff, and can those staff contact you with questions?

From: Hildabrand, Dorothy W. (OLA) [mailto:Dorothy.W.Hildabrand@usdoj.gov]
Sent: Friday, October 06, 2017 10:33 AM
To: McCormack, Lauren (Blunt) <(b) (6) [redacted]
Subject: FW: Background Info on religious liberty guidance- EMBARGOED until 11:30 am

Dear Lauren,

Please see the attached guidance and background information regarding the religious liberty announcement. **This information is embargoed until 11:30 am.**

Feel free to contact me with any questions.

Thanks,
Dorothy

Dorothy Hildabrand
Research Assistant
Office of Legislative Affairs
U.S. Department of Justice
Phone: 202-305-7851
Email: Dorothy.W.Hildabrand@usdoj.gov

U.S. Department of Justice

From: U.S. Department of Justice
Sent: Friday, October 6, 2017 12:17 PM
To: Cutrona, Danielle (OAG)
Subject: U.S. Department of Justice Twitter Update

You are subscribed to Twitter for U.S. Department of Justice. This information has recently been updated, and is now available.

Justice Department TheJusticeDept 06 Oct
Attorney General Sessions Issues Guidance On Federal Law Protections For Religious Liberty https://t.co/pMEjzvGWcZ
Details | Retweet

Seitz, Sarah (Lankford)

From: Seitz, Sarah (Lankford)
Sent: Friday, October 6, 2017 4:01 PM
Subject: FW: (RELEASE): Senator Lankford Statement on Administration Actions to Protect Religious Freedom

JAMES LANKFORD
UNITED STATES SENATOR FOR OKLAHOMA

FOR IMMEDIATE RELEASE
Contact: 202-224-5754
Darrell "D.J." Jordan, Aly Beley
October 6, 2017
PERMALINK

Senator Lankford Statement on Administration Actions to Protect Religious Freedom

OKLAHOMA CITY, OK – Senator James Lankford (R-OK) today applauded the Department of Justice's guidance on religious freedom, and the interim final rule issued by the Departments of Health and Human Services, Treasury, and Labor, on conscience protections:

"I applaud today's guidance issued by the Department of Justice and the clarity it provides for a fundamental American right – religious freedom. As the guidance notes, 'religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice.' It is not the place of government to determine what a person's religion requires. The ability to live out your faith, or have no faith, is a First Amendment right; the federal government must honor that as much as possible, especially when there are reasonable accommodations. The fundamental right to the free exercise of religion was also evidenced in today's rule issued by the Labor, Treasury, and Health and Human Services Departments. That rule not only provides conscience protections to those who have religious or moral objections to requirements in a health care plan, it also concluded that previous mandates violated federal law. Colleges, universities, nonprofits, and people should never be placed in a position where they have to violate their faith to please the government."

Of note, today's Labor, Treasury, and Health and Human Services Departments regulation said, *"We have concluded that requiring such compliance through the Mandate or accommodation has constituted a substantial burden on the religious exercise of many such entities or individuals, and because we conclude requiring such compliance did not serve a compelling interest and was not the least restrictive means of serving a compelling interest, we now believe that requiring such compliance led to the violation of RFRA in many instances.""*

###

For more information about Senator Lankford, visit: www.lankford.senate.gov

Watts, Brad (Judiciary-Rep)

From: Watts, Brad (Judiciary-Rep)
Sent: Wednesday, October 18, 2017 4:48 PM
To: Cutrona, Danielle (OAG)
Subject: FW: New Amendments Found

From: SRC Amendment Tracker
Sent: Wednesday, October 18, 2017 4:48:07 PM (UTC-05:00) Eastern Time (US & Canada)
Subject: New Amendments Found

Amendment Tracker

WEDNESDAY, OCTOBER 18, 2017 AT 04:48 PM

New Amendments Found

Amendment changes observed in the last 15 minutes:

- **Booker Amendment #1246 to HConRes71 — submitted**
- **Booker Amendment #1247 to HConRes71 — submitted**
- **Booker Amendment #1248 to HConRes71 — submitted**
- **Kaine Amendment #1249 to HConRes71 — submitted**
- **Klobuchar Amendment #1250 to HConRes71 — submitted**
- **Klobuchar Amendment #1251 to HConRes71 — submitted**
- **Klobuchar Amendment #1252 to HConRes71 — submitted**
- **Klobuchar Amendment #1253 to HConRes71 — submitted**
- **Klobuchar Amendment #1254 to HConRes71 — submitted**
- **Klobuchar Amendment #1255 to HConRes71 — submitted**
- **Klobuchar Amendment #1256 to HConRes71 — submitted**
- **Klobuchar Amendment #1257 to HConRes71 — submitted**
- **Klobuchar Amendment #1258 to HConRes71 — submitted**
- **Klobuchar Amendment #1259 to HConRes71 — submitted**
- **Klobuchar Amendment #1260 to HConRes71 — submitted**
- **Klobuchar Amendment #1261 to HConRes71 — submitted**
- **Klobuchar Amendment #1262 to HConRes71 — submitted**

- **Klobuchar Amendment #1263 to HConRes71 — submitted**
- **Klobuchar Amendment #1264 to HConRes71 — submitted**
- **Heitkamp Amendment #1265 to HConRes71 — submitted**
- **Heitkamp Amendment #1266 to HConRes71 — submitted**
- **Warner Amendment #1267 to HConRes71 — submitted**
- **Warner Amendment #1268 to HConRes71 — submitted**
- **Manchin Amendment #1269 to HConRes71 — submitted**
- **Manchin Amendment #1270 to HConRes71 — submitted**
- **Wyden Amendment #1271 to HConRes71 — submitted**
- **Wyden Amendment #1272 to HConRes71 — submitted**
- **Wyden Amendment #1273 to HConRes71 — submitted**
- **Markey Amendment #1274 to HConRes71 — submitted**
- **Coons Amendment #1275 to HConRes71 — submitted**
- **Harris Amendment #1276 to HConRes71 — submitted**
- **Paul Amendment #1277 to HConRes71 — submitted**
- **Paul Amendment #1278 to HConRes71 — submitted**
- **Heinrich Amendment #1279 to HConRes71 — submitted**
- **Heinrich Amendment #1280 to HConRes71 — submitted**
- **Feinstein Amendment #1281 to HConRes71 — submitted**
- **Johnson Amendment #1282 to HConRes71 — submitted**
- **Cassidy Amendment #1283 to HConRes71 — submitted**
- **Cassidy Amendment #1284 to HConRes71 — submitted**
- **Cassidy Amendment #1285 to HConRes71 — submitted**

Alexander Charow, Floor Monitor
SRC

Email: (b) (6) [redacted]

Hinchman, Robert (OLP)

From:	Hinchman, Robert (OLP)
Sent:	Friday, October 20, 2017 2:34 PM
To:	Hughes, Richard (OLC); Golden, Melissa (OLC); Ranelli, Joanna (OLC)
Cc:	Jones, Kevin R (OLP); Crytzer, Katherine (OLP); Dickey, Jennifer (OLP)
Subject:	OLP165 Religious Liberties Notice 2017_10_12 1230 with billing codes.docx
Attachments:	OLP165 Religious Liberties Notice 2017_10_12 1230 with billing codes.docx

TO: OLC - Richard, Melissa, Joanna,

cc: OLP - Katie, Kevin, Jennifer

In a few minutes, I'll be delivering to OLC the signed original of the attached Notice with an accompanying Memorandum.

Would you please send the Notice and Memorandum to the *Register* for publication?

Thanks.

Bob

Billing Code: 4410-13; 4410-BB

DEPARTMENT OF JUSTICE

Federal Law Protections for Religious Liberty

OLP Docket No. 165

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice provides the text of the Attorney General's Memorandum of October 6, 2017, for all executive departments and agencies entitled "Federal Law Protections for Religious Liberty" and the appendix to this Memorandum.

DATES: This notice is effective on October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Dickey, Counsel, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530, phone (202) 514-4601.

SUPPLEMENTARY INFORMATION:

The President instructed the Attorney General to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order 13798, § 4 (May 4, 2017). Pursuant to that instruction and consistent with the authority to provide advice and opinions on questions of existing law to the Executive Branch, the Attorney General issued the following memorandum to the heads of all executive departments and agencies on October 6, 2017.

Date

Beth Ann Williams
Assistant Attorney General
Office of Legal Policy

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Law Protections for Religious Liberty

The President has instructed me to issue guidance interpreting religious liberty protections in federal law, as appropriate. Exec. Order No. 13798 § 4, 82 Fed. Reg. 21675 (May 4, 2017). Consistent with that instruction, I am issuing this memorandum and appendix to guide all administrative agencies and executive departments in the execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of enduring importance in America, enshrined in our Constitution and other sources of federal law. As James Madison explained in his Memorial and Remonstrance Against Religious Assessments, the free exercise of religion "is in its nature an unalienable right" because the duty owed to one's Creator "is precedent, both in order of time and in degree of obligation, to the claims of Civil Society."[1] Religious liberty is not merely a right to personal religious beliefs or even to worship in a sacred place. It also encompasses religious observance and practice. Except in the narrowest circumstances, no one should be forced to choose between living out his or her faith and complying with the law. Therefore, to the greatest extent practicable and permitted by law, religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. The following twenty principles should guide administrative agencies and executive departments in carrying out this task. These principles should be understood and interpreted in light of the legal analysis set forth in the appendix to this memorandum.

1. The freedom of religion is a fundamental right of paramount importance, expressly protected by federal law.

Religious liberty is enshrined in the text of our Constitution and in numerous federal statutes. It encompasses the right of all Americans to exercise their religion freely, without being coerced to join an established church or to satisfy a religious test as a qualification for public office. It also encompasses the right of all Americans to express their religious beliefs, subject to the same narrow limits that apply to all forms of speech. In the United States, the free exercise of religion is not a mere policy preference to be traded against other policy preferences. It is a fundamental right.

---

[1] James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), *in* 5 THE FOUNDERS' CONSTITUTION 82 (Philip B. Kurland & Ralph Lerner eds., 1987).

2. The free exercise of religion includes the right to *act* or *abstain from action* in accordance with one's religious beliefs.

The Free Exercise Clause protects not just the right to believe or the right to worship; it protects the right to perform or abstain from performing certain physical acts in accordance with one's beliefs. Federal statutes, including the Religious Freedom Restoration Act of 1993 ("RFRA"), support that protection, broadly defining the exercise of religion to encompass all aspects of observance and practice, whether or not central to, or required by, a particular religious faith.

3. The freedom of religion extends to persons *and* organizations.

The Free Exercise Clause protects not just persons, but persons collectively exercising their religion through churches or other religious denominations, religious organizations, schools, private associations, and even businesses.

4. Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with government.

Constitutional protections for religious liberty are not conditioned upon the willingness of a religious person or organization to remain separate from civil society. Although the application of the relevant protections may differ in different contexts, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by seeking to earn or earning a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with federal, state, or local governments.

5. Government may not restrict acts or abstentions because of the beliefs they display.

To avoid the very sort of religious persecution and intolerance that led to the founding of the United States, the Free Exercise Clause of the Constitution protects against government actions that target religious conduct. Except in rare circumstances, government may not treat the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons. For example, government may not attempt to target religious persons or conduct by allowing the distribution of political leaflets in a park but forbidding the distribution of religious leaflets in the same park.

6. Government may not target religious individuals or entities for special disabilities based on their religion.

Much as government may not restrict actions only because of religious belief, government may not target persons or individuals because of their religion. Government may not exclude religious organizations as such from secular aid programs, at least when the aid is not being used for explicitly religious activities such as worship or proselytization. For example, the Supreme Court has held that if government provides reimbursement for scrap tires to replace child

playground surfaces, it may not deny participation in that program to religious schools. Nor may government deny religious schools including schools whose curricula and activities include religious elements the right to participate in a voucher program, so long as the aid reaches the schools through independent decisions of parents.

7. Government may not target religious individuals or entities through discriminatory enforcement of neutral, generally applicable laws.

Although government generally may subject religious persons and organizations to neutral, generally applicable laws e.g., across-the-board criminal prohibitions or certain time, place, and manner restrictions on speech government may not apply such laws in a discriminatory way. For instance, the Internal Revenue Service may not enforce the Johnson Amendment which prohibits 501(c)(3) non-profit organizations from intervening in a political campaign on behalf of a candidate against a religious non-profit organization under circumstances in which it would not enforce the amendment against a secular non-profit organization. Likewise, the National Park Service may not require religious groups to obtain permits to hand out fliers in a park if it does not require similarly situated secular groups to do so, and no federal agency tasked with issuing permits for land use may deny a permit to an Islamic Center seeking to build a mosque when the agency has granted, or would grant, a permit to similarly situated secular organizations or religious groups.

8. Government may not officially favor or disfavor particular religious groups.

Together, the Free Exercise Clause and the Establishment Clause prohibit government from officially preferring one religious group to another. This principle of denominational neutrality means, for example, that government cannot selectively impose regulatory burdens on some denominations but not others. It likewise cannot favor some religious groups for participation in the Combined Federal Campaign over others based on the groups' religious beliefs.

9. Government may not interfere with the autonomy of a religious organization.

Together, the Free Exercise Clause and the Establishment Clause also restrict governmental interference in intra-denominational disputes about doctrine, discipline, or qualifications for ministry or membership. For example, government may not impose its nondiscrimination rules to require Catholic seminaries or Orthodox Jewish yeshivas to accept female priests or rabbis.

10. The Religious Freedom Restoration Act of 1993 prohibits the federal government from substantially burdening any aspect of religious observance or practice, unless imposition of that burden on a particular religious adherent satisfies strict scrutiny.

RFRA prohibits the federal government from substantially burdening a person's exercise of religion, unless the federal government demonstrates that application of such burden to the religious adherent is the least restrictive means of achieving a compelling governmental interest. RFRA applies to all actions by federal administrative agencies, including rulemaking, adjudication or other enforcement actions, and grant or contract distribution and administration.

11. RFRA's protection extends not just to individuals, but also to organizations, associations, and at least some for-profit corporations.

RFRA protects the exercise of religion by individuals and by corporations, companies, associations, firms, partnerships, societies, and joint stock companies. For example, the Supreme Court has held that Hobby Lobby, a closely held, for-profit corporation with more than 500 stores and 13,000 employees, is protected by RFRA.

12. RFRA does not permit the federal government to second-guess the reasonableness of a religious belief.

RFRA applies to all sincerely held religious beliefs, whether or not central to, or mandated by, a particular religious organization or tradition. Religious adherents will often be required to draw lines in the application of their religious beliefs, and government is not competent to assess the reasonableness of such lines drawn, nor would it be appropriate for government to do so. Thus, for example, a government agency may not second-guess the determination of a factory worker that, consistent with his religious precepts, he can work on a line producing steel that might someday make its way into armaments but cannot work on a line producing the armaments themselves. Nor may the Department of Health and Human Services second-guess the determination of a religious employer that providing contraceptive coverage to its employees would make the employer complicit in wrongdoing in violation of the organization's religious precepts.

13. A governmental action substantially burdens an exercise of religion under RFRA if it bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice.

Because the government cannot second-guess the reasonableness of a religious belief or the adherent's assessment of the religious connection between the government mandate and the underlying religious belief, the substantial burden test focuses on the extent of governmental compulsion involved. In general, a government action that bans an aspect of an adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, will qualify as a substantial burden on the exercise of religion. For example, a Bureau of Prisons regulation that bans a devout Muslim from growing even a half-inch beard in accordance with his religious beliefs substantially burdens his religious practice. Likewise, a Department of Health and Human Services regulation requiring employers to provide insurance coverage for contraceptive drugs in violation of their religious beliefs or face significant fines substantially burdens their religious practice, and a law that conditions receipt of significant government benefits on willingness to work on Saturday substantially burdens the religious practice of those who, as a matter of religious observance or practice, do not work on that day. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden.

14. The strict scrutiny standard applicable to RFRA is exceptionally demanding.

Once a religious adherent has identified a substantial burden on his or her religious belief, the federal government can impose that burden on the adherent only if it is the least restrictive means of achieving a compelling governmental interest. Only those interests of the highest order can outweigh legitimate claims to the free exercise of religion, and such interests must be evaluated not in broad generalities but as applied to the particular adherent. Even if the federal government could show the necessary interest, it would also have to show that its chosen restriction on free exercise is the least restrictive means of achieving that interest. That analysis requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program.

15. RFRA applies even where a religious adherent seeks an exemption from a legal obligation requiring the adherent to confer benefits on third parties.

Although burdens imposed on third parties are relevant to RFRA analysis, the fact that an exemption would deprive a third party of a benefit does not categorically render an exemption unavailable. Once an adherent identifies a substantial burden on his or her religious exercise, RFRA requires the federal government to establish that denial of an accommodation or exemption to that adherent is the least restrictive means of achieving a compelling governmental interest.

16. Title VII of the Civil Rights Act of 1964, as amended, prohibits covered employers from discriminating against individuals on the basis of their religion.

Employers covered by Title VII may not fail or refuse to hire, discharge, or discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of that individual's religion. Such employers also may not classify their employees or applicants in a way that would deprive or tend to deprive any individual of employment opportunities because of the individual's religion. This protection applies regardless of whether the individual is a member of a religious majority or minority. But the protection does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

17. Title VII's protection extends to discrimination on the basis of religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without undue hardship on the business.

Title VII defines "religion" broadly to include all aspects of religious observance or practice, except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without undue hardship to the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, unless doing so would create an undue hardship, such as materially compromising operations or violating a collective bargaining agreement. Title VII might also require an employer to modify a no-head-coverings policy to allow a Jewish employee to wear a yarmulke or a Muslim employee to wear a headscarf. An

employer who contends that it cannot reasonably accommodate a religious observance or practice must establish undue hardship on its business with specificity; it cannot rely on assumptions about hardships that might result from an accommodation.

18. The Clinton Guidelines on Religious Exercise and Religious Expression in the Federal Workplace provide useful examples for private employers of reasonable accommodations for religious observance and practice in the workplace.

President Clinton issued Guidelines on Religious Exercise and Religious Expression in the Federal Workplace ("Clinton Guidelines") explaining that federal employees may keep religious materials on their private desks and read them during breaks; discuss their religious views with other employees, subject to the same limitations as other forms of employee expression; display religious messages on clothing or wear religious medallions; and invite others to attend worship services at their churches, except to the extent that such speech becomes excessive or harassing. The Clinton Guidelines have the force of an Executive Order, and they also provide useful guidance to private employers about ways in which religious observance and practice can reasonably be accommodated in the workplace.

19. Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers' religious precepts.

Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes have an express statutory exemption from Title VII's prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations' religious precepts. For example, a Lutheran secondary school may choose to employ only practicing Lutherans, only practicing Christians, or only those willing to adhere to a code of conduct consistent with the precepts of the Lutheran community sponsoring the school. Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.

20. As a general matter, the federal government may not condition receipt of a federal grant or contract on the effective relinquishment of a religious organization's hiring exemptions or attributes of its religious character.

Religious organizations are entitled to compete on equal footing for federal financial assistance used to support government programs. Such organizations generally may not be required to alter their religious character to participate in a government program, nor to cease engaging in explicitly religious activities outside the program, nor effectively to relinquish their federal statutory protections for religious hiring decisions.

Guidance for Implementing Religious Liberty Principles

Agencies must pay keen attention, in everything they do, to the foregoing principles of religious liberty.

Agencies As Employers

Administrative agencies should review their current policies and practices to ensure that they comply with all applicable federal laws and policies regarding accommodation for religious observance and practice in the federal workplace, and all agencies must observe such laws going forward. In particular, all agencies should review the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, to ensure that they are following those Guidelines. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including through subject-matter experts who can answer questions about religious nondiscrimination rules, information websites that employees may access to learn more about their religious accommodation rights, and training for all employees about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should also proactively consider potential burdens on the exercise of religion and possible accommodations of those burdens. Agencies should consider designating an officer to review proposed rules with religious accommodation in mind or developing some other process to do so. In developing that process, agencies should consider drawing upon the expertise of the White House Office of Faith-Based and Neighborhood Partnerships to identify concerns about the effect of potential agency action on religious exercise. Regardless of the process chosen, agencies should ensure that they review all proposed rules, regulations, and policies that have the potential to have an effect on religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies. The Office of Legal Policy will also review any proposed agency or executive action upon which the Department's comments, opinion, or concurrence are sought, *see, e.g.*, Exec. Order 12250 § 1-2, 45 Fed. Reg. 72995 (Nov. 2, 1980), to ensure that such action complies with the principles of religious liberty outlined in this memorandum and appendix. The Department will not concur in any proposed action that does not comply with federal law protections for religious liberty as interpreted in this memorandum and appendix, and it will transmit any concerns it has about the proposed action to the agency or the Office of Management and Budget as appropriate. If, despite these internal reviews, a member of the public identifies a significant concern about a prospective rule's compliance with federal protections governing religious liberty during a period for public comment on the rule, the agency should carefully consider and respond to that request in its decision. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015). In appropriate circumstances, an agency might explain that it will consider requests for accommodations on a case-by-case basis rather than in the rule itself, but the agency should provide a reasoned basis for that approach.

Agencies Engaged in Enforcement Actions

Much like administrative agencies engaged in rulemaking, agencies considering potential enforcement actions should consider whether such actions are consistent with federal protections for religious liberty. In particular, agencies should remember that RFRA applies to agency enforcement just as it applies to every other governmental action. An agency should consider RFRA when setting agency-wide enforcement rules and priorities, as well as when making decisions to pursue or continue any particular enforcement action, and when formulating any generally applicable rules announced in an agency adjudication.

Agencies should remember that discriminatory enforcement of an otherwise nondiscriminatory law can also violate the Constitution. Thus, agencies may not target or single out religious organizations or religious conduct for disadvantageous treatment in enforcement priorities or actions. The President identified one area where this could be a problem in Executive Order 13798, when he directed the Secretary of the Treasury, to the extent permitted by law, not to take any "adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of *similar character*" from a non-religious perspective has not been treated as participation or intervention in a political campaign. Exec. Order No. 13798, § 2, 82 Fed. Reg. at 21675. But the requirement of nondiscrimination toward religious organizations and conduct applies across the enforcement activities of the Executive Branch, including within the enforcement components of the Department of Justice.

Agencies Engaged in Contracting and Distribution of Grants

Agencies also must not discriminate against religious organizations in their contracting or grant-making activities. Religious organizations should be given the opportunity to compete for government grants or contracts and participate in government programs on an equal basis with nonreligious organizations. Absent unusual circumstances, agencies should not 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. In particular, agencies should not attempt through conditions on grants or contracts to meddle in the internal governance affairs of religious organizations or to limit those organizations' otherwise protected activities.

* * *

Any questions about this memorandum or the appendix should be addressed to the Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, phone (202) 514-4601.

APPENDIX

Although not an exhaustive treatment of all federal protections for religious liberty, this appendix summarizes the key constitutional and federal statutory protections for religious liberty and sets forth the legal basis for the religious liberty principles described in the foregoing memorandum.

Constitutional Protections

The people, acting through their Constitution, have singled out religious liberty as deserving of unique protection. In the original version of the Constitution, the people agreed that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." U.S. Const., art. VI, cl. 3. The people then amended the Constitution during the First Congress to clarify that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I, cl. 1. Those protections have been incorporated against the States. *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 15 (1947) (Establishment Clause); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (Free Exercise Clause).

A. Free Exercise Clause

The Free Exercise Clause recognizes and guarantees Americans the "right to believe and profess whatever religious doctrine [they] desire[]." *Empl't Div. v. Smith*, 494 U.S. 872, 877 (1990). Government may not attempt to *regulate* religious beliefs, *compel* religious beliefs, or *punish* religious beliefs. *See id.*; *see also Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *Torcaso v. Watkins*, 367 U.S. 488, 492 93, 495 (1961); *United States v. Ballard*, 322 U.S. 78, 86 (1944). It may not lend its power to one side in intra-denominational disputes about dogma, authority, discipline, or qualifications for ministry or membership. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012); *Smith*, 494 U.S. at 877; *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724 25 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church*, 344 U.S. 94, 116, 120 21 (1952). It may not discriminate against or impose special burdens upon individuals because of their religious beliefs or status. *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And with the exception of certain historical limits on the freedom of speech, government may not punish or otherwise harass churches, church officials, or religious adherents for speaking on religious topics or sharing their religious beliefs. *See Widmar v. Vincent*, 454 U.S. 263, 269 (1981); *see also* U.S. Const., amend. I, cl. 3. The Constitution's protection against government regulation of religious belief is absolute; it is not subject to limitation or balancing against the interests of the government. *Smith*, 494 U.S. at 877; *Sherbert*, 374 U.S. at 402; *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

The Free Exercise Clause protects beliefs rooted in religion, even if such beliefs are not mandated by a particular religious organization or shared among adherents of a particular religious

tradition. *Frazee v. Illinois Dept. of Emp't Sec.*, 489 U.S. 829, 833 34 (1989). As the Supreme Court has repeatedly counseled, "religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection." *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531 (1993) (internal quotation marks omitted). They must merely be "sincerely held." *Frazee*, 489 U.S. at 834.

Importantly, the protection of the Free Exercise Clause also extends to acts undertaken in accordance with such sincerely-held beliefs. That conclusion flows from the plain text of the First Amendment, which guarantees the freedom to "*exercise*" religion, not just the freedom to "believe" in religion. *See Smith*, 494 U.S. at 877; *see also Thomas*, 450 U.S. at 716; *Paty*, 435 U.S. at 627; *Sherbert*, 374 U.S. at 403 04; *Wisconsin v. Yoder*, 406 U.S. 205, 219 20 (1972). Moreover, no other interpretation would actually guarantee the freedom of belief that Americans have so long regarded as central to individual liberty. Many, if not most, religious beliefs require external observance and practice through physical acts or abstention from acts. The tie between physical acts and religious beliefs may be readily apparent (e.g., attendance at a worship service) or not (e.g., service to one's community at a soup kitchen or a decision to close one's business on a particular day of the week). The "exercise of religion" encompasses all aspects of religious observance and practice. And because individuals may act collectively through associations and organizations, it encompasses the exercise of religion by such entities as well. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 199; *Church of the Lukumi Babalu Aye*, 508 U.S. at 525 26, 547; *see also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770, 2772 73 (2014) (even a closely held for-profit corporation may exercise religion if operated in accordance with asserted religious principles).

As with most constitutional protections, however, the protection afforded to Americans by the Free Exercise Clause for physical acts is not absolute, *Smith*, 491 U.S. at 878 79, and the Supreme Court has identified certain principles to guide the analysis of the scope of that protection. First, government may not restrict "acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display," *id.* at 877, nor "target the religious for special disabilities based on their religious status," *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. , (2017) (slip op. at 6) (internal quotation marks omitted), for it was precisely such "historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause." *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 (internal quotation marks omitted). The Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion" just as surely as it protects against "outright prohibitions" on religious exercise. *Trinity Lutheran*, 582 U.S. at (slip op. at 11) (internal quotation marks omitted). "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Id.* (quoting *Sherbert*, 374 U.S. at 404).

Because a law cannot have as its official "object or purpose . . . the suppression of religion or religious conduct," courts must "survey meticulously" the text and operation of a law to ensure that it is actually neutral and of general applicability. *Church of the Lukumi Babalu Aye*, 508 U.S. at 533 34 (internal quotation marks omitted). A law is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; visits "gratuitous restrictions

on religious conduct"; or "accomplishes . . . a 'religious gerrymander,' an impermissible attempt to target [certain individuals] and their religious practices." *Id.* at 533 35, 538 (internal quotation marks omitted). A law is not generally applicable if "in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief," *id.* at 543, including by "fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than . . . does" the prohibited conduct, *id.*, or enables, expressly or de facto, "a system of individualized exemptions," as discussed in *Smith*, 494 U.S. at 884; *see also Church of the Lukumi Babalu Aye*, 508 U.S. at 537.

"Neutrality and general applicability are interrelated, . . . [and] failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Id.* at 531. For example, a law that disqualifies a religious person or organization from a right to compete for a public benefit including a grant or contract because of the person's religious character is neither neutral nor generally applicable. *See Trinity Lutheran*, 582 U.S. at (slip op. at 9 11). Likewise, a law that selectively prohibits the killing of animals for religious reasons and fails to prohibit the killing of animals for many nonreligious reasons, or that selectively prohibits a business from refusing to stock a product for religious reasons but fails to prohibit such refusal for myriad commercial reasons, is neither neutral, nor generally applicable. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 533 36, 542 45. Nonetheless, the requirements of neutral and general applicability are separate, and any law burdening religious practice that fails one or both must be subjected to strict scrutiny, *id.* at 546.

Second, even a neutral, generally applicable law is subject to strict scrutiny under this Clause if it restricts the free exercise of religion and another constitutionally protected liberty, such as the freedom of speech or association, or the right to control the upbringing of one's children. *See Smith*, 494 U.S. at 881 82; *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295 97 (10th Cir. 2004). Many Free Exercise cases fall in this category. For example, a law that seeks to compel a private person's speech or expression contrary to his or her religious beliefs implicates both the freedoms of speech and free exercise. *See, e.g.*, *Wooley v. Maynard*, 430 U.S. 705, 707 08 (1977) (challenge by Jehovah's Witnesses to requirement that state license plates display the motto "Live Free or Die"); *Axson-Flynn*, 356 F.3d at 1280 (challenge by Mormon student to University requirement that student actors use profanity and take God's name in vain during classroom acting exercises). A law taxing or prohibiting door-to-door solicitation, at least as applied to individuals distributing religious literature and seeking contributions, likewise implicates the freedoms of speech and free exercise. *Murdock v. Pennsylvania*, 319 U.S. 105, 108 09 (1943) (challenge by Jehovah's Witnesses to tax on canvassing or soliciting); *Cantwell*, 310 U.S. at 307 (same). A law requiring children to receive certain education, contrary to the religious beliefs of their parents, implicates both the parents' right to the care, custody, and control of their children and to free exercise. *Yoder*, 406 U.S. at 227 29 (challenge by Amish parents to law requiring high school attendance).

Strict scrutiny is the "most rigorous" form of scrutiny identified by the Supreme Court. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546; *see also City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) ("Requiring a State to demonstrate a compelling interest and show that it has adopted the least restrictive means of achieving that interest is the most demanding test known to constitutional law."). It is the same standard applied to governmental classifications based on race, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007), and

restrictions on the freedom of speech, *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). *See Church of the Lukumi Babalu Aye*, 508 U.S. at 546 47. Under this level of scrutiny, government must establish that a challenged law "advance[s] interests of the highest order" and is "narrowly tailored in pursuit of those interests." *Id.* at 546 (internal quotation marks omitted). "[O]nly in rare cases" will a law survive this level of scrutiny. *Id.*

Of course, even when a law is neutral and generally applicable, government may run afoul of the Free Exercise Clause if it interprets or applies the law in a manner that discriminates against religious observance and practice. *See, e.g.*, *Church of the Lukumi Babalu Aye*, 508 U.S. at 537 (government discriminatorily interpreted an ordinance prohibiting the unnecessary killing of animals as prohibiting only killing of animals for religious reasons); *Fowler v. Rhode Island*, 345 U.S. 67, 69 70 (1953) (government discriminatorily enforced ordinance prohibiting meetings in public parks against only certain religious groups). The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. *See Trinity Lutheran*, 582 U.S. at (slip op. at 6); *cf. Good News Club v. Milford Central Sch.*, 533 U.S. 98, 114 (2001) (recognizing that Establishment Clause does not justify discrimination against religious clubs seeking use of public meeting spaces); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 837, 841 (1995) (recognizing that Establishment Clause does not justify discrimination against religious student newspaper's participation in neutral reimbursement program). That is true regardless of whether the discriminatory application is initiated by the government itself or by private requests or complaints. *See, e.g.*, *Fowler*, 345 U.S. at 69; *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951).

B. Establishment Clause

The Establishment Clause, too, protects religious liberty. It prohibits government from establishing a religion and coercing Americans to follow it. *See Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1819 20 (2014); *Good News Club*, 533 U.S. at 115. It restricts government from interfering in the internal governance or ecclesiastical decisions of a religious organization. *Hosanna-Tabor*, 565 U.S. at 188 89. And it prohibits government from officially favoring or disfavoring particular religious groups as such or officially advocating particular religious points of view. *See Galloway*, 134 S. Ct. at 1824; *Larson v. Valente*, 456 U.S. 228, 244 46 (1982). Indeed, "a significant factor in upholding governmental programs in the face of Establishment Clause attack is their *neutrality* towards religion." *Rosenberger*, 515 U.S. at 839 (emphasis added). That "guarantee of neutrality is respected, not offended, when the government, following neutral criteria and evenhanded policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." *Id.* Thus, religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or, in certain circumstances, direct financial aid through a secular-aid program. *See, e.g.*, *Trinity Lutheran*, 582 U.S. at (slip. op. at 6) (scrap tire program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (voucher program).

C. Religious Test Clause

Finally, the Religious Test Clause, though rarely invoked, provides a critical guarantee to religious adherents that they may serve in American public life. The Clause reflects the judgment

of the Framers that a diversity of religious viewpoints in government would enhance the liberty of all Americans. And after the Religion Clauses were incorporated against the States, the Supreme Court shared this view, rejecting a Tennessee law that "establishe[d] as a condition of office the willingness to eschew certain protected religious practices." *Paty*, 435 U.S. at 632 (Brennan, J., and Marshall, J., concurring in judgment); *see also id.* at 629 (plurality op.) ("[T]he American experience provides no persuasive support for the fear that clergymen in public office will be less careful of anti-establishment interests or less faithful to their oaths of civil office than their unordained counterparts.").

Statutory Protections

Recognizing the centrality of religious liberty to our nation, Congress has buttressed these constitutional rights with statutory protections for religious observance and practice. These protections can be found in, among other statutes, the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*; the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*; and the American Indian Religious Freedom Act, 42 U.S.C. § 1996. Such protections ensure not only that government tolerates religious observance and practice, but that it embraces religious adherents as full members of society, able to contribute through employment, use of public accommodations, and participation in government programs. The considered judgment of the United States is that we are stronger through accommodation of religion than segregation or isolation of it.

A. Religious Freedom Restoration Act of 1993 (RFRA)

The Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb *et seq.*, prohibits the federal government from "substantially burden[ing] a person's exercise of religion" unless "it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." *Id.* § 2000bb-1(a), (b). The Act applies even where the burden arises out of a "rule of general applicability" passed without animus or discriminatory intent. *See id.* § 2000bb-1(a). It applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *see* §§ 2000bb-2(4), 2000cc-5(7), and covers "individuals" as well as "corporations, companies, associations, firms, partnerships, societies, and joint stock companies," 1 U.S.C. § 1, including for-profit, closely-held corporations like those involved in *Hobby Lobby*, 134 S. Ct. at 2768.

Subject to the exceptions identified below, a law "substantially burden[s] a person's exercise of religion," 42 U.S.C. § 2000bb-1, if it bans an aspect of the adherent's religious observance or practice, compels an act inconsistent with that observance or practice, or substantially pressures the adherent to modify such observance or practice, *see Sherbert*, 374 U.S. at 405 06. The "threat of criminal sanction" will satisfy these principles, even when, as in *Yoder*, the prospective punishment is a mere $5 fine. 406 U.S. at 208, 218. And the denial of, or condition on the receipt of, government benefits may substantially burden the exercise of religion under these principles. *Sherbert*, 374 U.S. at 405 06; *see also Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 141 (1987); *Thomas*, 450 U.S. at 717 18. But a law that infringes, even severely, an aspect of an adherent's religious observance or practice that the adherent himself

regards as unimportant or inconsequential imposes no substantial burden on that adherent. And a law that regulates only the government's internal affairs and does not involve any governmental compulsion on the religious adherent likewise imposes no substantial burden. *See, e.g.*, *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 448 49 (1988); *Bowen v. Roy*, 476 U.S. 693, 699 700 (1986).

As with claims under the Free Exercise Clause, RFRA does not permit a court to inquire into the reasonableness of a religious belief, including into the adherent's assessment of the religious connection between a belief asserted and what the government forbids, requires, or prevents. *Hobby Lobby*, 134 S. Ct. at 2778. If the proffered belief is sincere, it is not the place of the government or a court to second-guess it. *Id.* A good illustration of the point is *Thomas v. Review Board of Indiana Employment Security Division* one of the *Sherbert* line of cases, whose analytical test Congress sought, through RFRA, to restore, 42 U.S.C. § 2000bb. There, the Supreme Court concluded that the denial of unemployment benefits was a substantial burden on the sincerely held religious beliefs of a Jehovah's Witness who had quit his job after he was transferred from a department producing sheet steel that could be used for military armaments to a department producing turrets for military tanks. *Thomas*, 450 U.S. at 716 18. In doing so, the Court rejected the lower court's inquiry into "what [the claimant's] belief was and what the religious basis of his belief was," noting that no one had challenged the sincerity of the claimant's religious beliefs and that "[c]ourts should not undertake to dissect religious beliefs because the believer admits that he is struggling with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ." *Id.* at 714 15 (internal quotation marks omitted). The Court likewise rejected the lower court's comparison of the claimant's views to those of other Jehovah's Witnesses, noting that "[i]ntrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences." *Id.* at 715. The Supreme Court reinforced this reasoning in *Hobby Lobby*, rejecting the argument that "the connection between what the objecting parties [were required to] do (provide health-insurance coverage for four methods of contraception that may operate after the fertilization of an egg) and the end that they [found] to be morally wrong (destruction of an embryo) [wa]s simply too attenuated." 134 S. Ct. at 2777. The Court explained that the plaintiff corporations had a sincerely-held religious belief that provision of the coverage was morally wrong, and it was "not for us to say that their religious beliefs are mistaken or insubstantial." *Id.* at 2779.

Government bears a heavy burden to justify a substantial burden on the exercise of religion. "[O]nly those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Thomas*, 450 U.S. at 718 (quoting *Yoder*, 406 U.S. at 215). Such interests include, for example, the "fundamental, overriding interest in eradicating racial discrimination in education discrimination that prevailed, with official approval, for the first 165 years of this Nation's history," *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983), and the interest in ensuring the "mandatory and continuous participation" that is "indispensable to the fiscal vitality of the social security system," *United States v. Lee*, 455 U.S. 252, 258 59 (1982). But "broadly formulated interests justifying the general applicability of government mandates" are insufficient. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The government must establish a compelling interest to deny an accommodation to the particular claimant. *Id.* at 430, 435 38. For example, the military may have a compelling interest in its

uniform and grooming policy to ensure military readiness and protect our national security, but it does not necessarily follow that those interests would justify denying a particular soldier's request for an accommodation from the uniform and grooming policy. *See, e.g.*, Secretary of the Army, Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation (2017) (recognizing the "successful examples of Soldiers currently serving with" an accommodation for "the wear of a hijab; the wear of a beard; and the wear of a turban or under-turban/patka, with uncut beard and uncut hair" and providing for a reasonable accommodation of these practices in the Army). The military would have to show that it has a compelling interest in denying that particular accommodation. An asserted compelling interest in denying an accommodation to a particular claimant is undermined by evidence that exemptions or accommodations have been granted for other interests. *See O Centro*, 546 U.S. at 433, 436 37; *see also Hobby Lobby*, 134 S. Ct. at 2780.

The compelling-interest requirement applies even where the accommodation sought is "an exemption from a legal obligation requiring [the claimant] to confer benefits on third parties." *Hobby Lobby*, 134 S. Ct. at 2781 n.37. Although "in applying RFRA 'courts must take adequate account of the burdens a requested accommodation may impose on nonbeneficiaries,'" the Supreme Court has explained that almost any governmental regulation could be reframed as a legal obligation requiring a claimant to confer benefits on third parties. *Id.* (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005)). As nothing in the text of RFRA admits of an exception for laws requiring a claimant to confer benefits on third parties, 42 U.S.C. § 2000bb-1, and such an exception would have the potential to swallow the rule, the Supreme Court has rejected the proposition that RFRA accommodations are categorically unavailable for laws requiring claimants to confer benefits on third parties. *Hobby Lobby*, 134 S. Ct. at 2781 n.37.

Even if the government can identify a compelling interest, the government must also show that denial of an accommodation is the least restrictive means of serving that compelling governmental interest. This standard is "exceptionally demanding." *Hobby Lobby*, 134 S. Ct. at 2780. It requires the government to show that it cannot accommodate the religious adherent while achieving its interest through a viable alternative, which may include, in certain circumstances, expenditure of additional funds, modification of existing exemptions, or creation of a new program. *Id.* at 2781. Indeed, the existence of exemptions for other individuals or entities that could be expanded to accommodate the claimant, while still serving the government's stated interests, will generally defeat a RFRA defense, as the government bears the burden to establish that no accommodation is viable. *See id.* at 2781 82.

B. Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)

Although Congress's leadership in adopting RFRA led many States to pass analogous statutes, Congress recognized the unique threat to religious liberty posed by certain categories of state action and passed the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) to address them. RLUIPA extends a standard analogous to RFRA to state and local government actions regulating land use and institutionalized persons where "the substantial burden is imposed in a program or activity that receives Federal financial assistance" or "the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes." 42 U.S.C. §§ 2000cc(a)(2), 2000cc-1(b).

RLUIPA's protections must "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by [RLUIPA] and the Constitution." *Id.* § 2000cc-3(g). RLUIPA applies to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," *id.* § 2000cc-5(7)(A), and treats "[t]he use, building, or conversion of real property for the purpose of religious exercise" as the "religious exercise of the person or entity that uses or intends to use the property for that purpose," *id.* § 2000cc-5(7)(B). Like RFRA, RLUIPA prohibits government from substantially burdening an exercise of religion unless imposition of the burden on the religious adherent is the least restrictive means of furthering a compelling governmental interest. *See id.* § 2000cc-1(a). That standard "may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise." *Id.* § 2000cc-3(c); *cf. Holt v. Hobbs*, 135 S. Ct. 853, 860, 864 65 (2015).

With respect to land use in particular, RLUIPA also requires that government not "treat[] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 U.S.C. § 2000cc(b)(1), "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination," *id.* § 2000cc(b)(2), or "impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction," *id.* § 2000cc(b)(3). A claimant need not show a substantial burden on the exercise of religion to enforce these antidiscrimination and equal terms provisions listed in § 2000cc(b). *See id.* § 2000cc(b); *see also Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253, 262 64 (3d Cir. 2007), *cert. denied*, 553 U.S. 1065 (2008). Although most RLUIPA cases involve places of worship like churches, mosques, synagogues, and temples, the law applies more broadly to religious schools, religious camps, religious retreat centers, and religious social service facilities. Letter from U.S. Dep't of Justice Civil Rights Division to State, County, and Municipal Officials re: The Religious Land Use and Institutionalized Persons Act (Dec. 15, 2016).

C. Other Civil Rights Laws

To incorporate religious adherents fully into society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. It must also root out public and private discrimination based on religion. Religious discrimination stood alongside discrimination based on race, color, and national origin, as an evil to be addressed in the Civil Rights Act of 1964, and Congress has continued to legislate against such discrimination over time. Today, the United States Code includes specific prohibitions on religious discrimination in places of public accommodation, 42 U.S.C. § 2000a; in public facilities, *id.* § 2000b; in public education, *id.* § 2000c-6; in employment, *id.* §§ 2000e, 2000e-2, 2000e-16; in the sale or rental of housing, *id.* § 3604; in the provision of certain real-estate transaction or brokerage services, *id.* §§ 3605, 3606; in federal jury service, 28 U.S.C. § 1862; in access to limited open forums for speech, 20 U.S.C. § 4071; and in participation in or receipt of benefits from various federally-funded programs, 15 U.S.C. § 3151; 20 U.S.C. §§ 1066c(d), 1071(a)(2), 1087-4, 7231d(b)(2), 7914; 31 U.S.C. § 6711(b)(3); 42 U.S.C. §§ 290cc-33(a)(2), 300w-7(a)(2), 300x-57(a)(2), 300x-65(f), 604a(g), 708(a)(2), 5057(c), 5151(a), 5309(a), 6727(a), 9858l(a)(2), 10406(2)(B), 10504(a), 10604(e), 12635(c)(1), 12832, 13791(g)(3), 13925(b)(13)(A).

Invidious religious discrimination may be directed at religion in general, at a particular religious belief, or at particular aspects of religious observance and practice. *See, e.g.*, *Church of the Lukumi Babalu Aye*, 508 U.S. at 532 33. A law drawn to prohibit a specific religious practice may discriminate just as severely against a religious group as a law drawn to prohibit the religion itself. *See id.* No one would doubt that a law prohibiting the sale and consumption of Kosher meat would discriminate against Jewish people. True equality may also require, depending on the applicable statutes, an awareness of, and willingness reasonably to accommodate, religious observance and practice. Indeed, the denial of reasonable accommodations may be little more than cover for discrimination against a particular religious belief or religion in general and is counter to the general determination of Congress that the United States is best served by the participation of religious adherents in society, not their withdrawal from it.

1. Employment

i. Protections for Religious Employees

Protections for religious individuals in employment are the most obvious example of Congress's instruction that religious observance and practice be reasonably accommodated, not marginalized. In Title VII of the Civil Rights Act, Congress declared it an unlawful employment practice for a covered employer to (1) "fail or refuse to hire or to discharge any individual, or otherwise . . . discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion," as well as (2) to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a); *see also* 42 U.S.C. § 2000e-16(a) (applying Title VII to certain federal-sector employers); 3 U.S.C. § 411(a) (applying Title VII employment in the Executive Office of the President). The protection applies "regardless of whether the discrimination is directed against [members of religious] majorities or minorities." *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 71 72 (1977).

After several courts had held that employers did not violate Title VII when they discharged employees for refusing to work on their Sabbath, Congress amended Title VII to define "[r]eligion" broadly to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j); *Hardison*, 432 U.S. at 74 n.9. Congress thus made clear that discrimination on the basis of religion includes discrimination on the basis of any aspect of an employee's religious observance or practice, at least where such observance or practice can be reasonably accommodated without undue hardship.

Title VII's reasonable accommodation requirement is meaningful. As an initial matter, it requires an employer to consider what adjustment or modification to its policies would effectively address the employee's concern, for "[a]n *ineffective* modification or adjustment will not *accommodate*" a person's religious observance or practice, within the ordinary meaning of that word. *See U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (considering the ordinary

meaning in the context of an ADA claim). Although there is no obligation to provide an employee with his or her preferred reasonable accommodation, *see Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68 (1986), an employer may justify a refusal to accommodate only by showing that "an undue hardship [on its business] would *in fact* result from *each available* alternative method of accommodation." 29 C.F.R. § 1605.2(c)(1) (emphasis added). "A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship." *Id.* Likewise, the fact that an accommodation may grant the religious employee a preference is not evidence of undue hardship as, "[b]y definition, any special 'accommodation' requires the employer to treat an employee . . . differently, *i.e.*, preferentially." *U.S. Airways*, 535 U.S. at 397; *see also E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2034 (2015) ("Title VII does not demand mere neutrality with regard to religious practices that they may be treated no worse than other practices. Rather, it gives them favored treatment.").

Title VII does not, however, require accommodation at all costs. As noted above, an employer is not required to accommodate a religious observance or practice if it would pose an undue hardship on its business. An accommodation might pose an "undue hardship," for example, if it would require the employer to breach an otherwise valid collective bargaining agreement, *see, e.g.*, *Hardison*, 432 U.S. at 79, or carve out a special exception to a seniority system, *id.* at 83; *see also U.S. Airways*, 535 U.S. at 403. Likewise, an accommodation might pose an "undue hardship" if it would impose "more than a de minimis cost" on the business, such as in the case of a company where weekend work is "essential to [the] business" and many employees have religious observances that would prohibit them from working on the weekends, so that accommodations for all such employees would result in significant overtime costs for the employer. *Hardison*, 432 U.S. at 80, 84 & n.15. In general, though, Title VII expects positive results for society from a cooperative process between an employer and its employee "in the search for an acceptable reconciliation of the needs of the employee's religion and the exigencies of the employer's business." *Philbrook*, 479 U.S. at 69 (internal quotations omitted).

The area of religious speech and expression is a useful example of reasonable accommodation. Where speech or expression is part of a person's religious observance and practice, it falls within the scope of Title VII. *See* 42 U.S.C. §§ 2000e, 2000e-2. Speech or expression outside of the scope of an individual's employment can almost always be accommodated without undue hardship to a business. Speech or expression within the scope of an individual's employment, during work hours, or in the workplace may, depending upon the facts and circumstances, be reasonably accommodated. *Cf. Abercrombie*, 135 S. Ct. at 2032.

The federal government's approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. For example, under the Guidelines issued by President Clinton, the federal government permits a federal employee to "keep a Bible or Koran on her private desk and read it during breaks"; to discuss his religious views with other employees, subject "to the same rules of order as apply to other employee expression"; to display religious messages on clothing or wear religious medallions visible to others; and to hand out religious tracts to other employees or invite them to attend worship services at the employee's church, except to the extent that such speech becomes excessive or harassing. Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, § 1(A), Aug. 14, 1997 (hereinafter "Clinton

Guidelines"). The Clinton Guidelines have the force of an Executive Order. *See Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order*, 24 Op. O.L.C. 29, 29 (2000) ("[T]here is no substantive difference in the legal effectiveness of an executive order and a presidential directive that is styled other than as an executive order."); *see also* Memorandum from President William J. Clinton to the Heads of Executive Departments and Agencies (Aug. 14, 1997) ("All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully."). The successful experience of the federal government in applying the Clinton Guidelines over the last twenty years is evidence that religious speech and expression can be reasonably accommodated in the workplace without exposing an employer to liability under workplace harassment laws.

Time off for religious holidays is also often an area of concern. The observance of religious holidays is an "aspect[] of religious observance and practice" and is therefore protected by Title VII. 42 U.S.C. §§ 2000e, 2000e-2. Examples of reasonable accommodations for that practice could include a change of job assignments or lateral transfer to a position whose schedule does not conflict with the employee's religious holidays, 29 C.F.R. § 1605.2(d)(1)(iii); a voluntary work schedule swap with another employee, *id.* § 1065.2(d)(1)(i); or a flexible scheduling scheme that allows employees to arrive or leave early, use floating or optional holidays for religious holidays, or make up time lost on another day, *id.* § 1065.2(d)(1)(ii). Again, the federal government has demonstrated reasonable accommodation through its own practice: Congress has created a flexible scheduling scheme for federal employees, which allows employees to take compensatory time off for religious observances, 5 U.S.C. § 5550a, and the Clinton Guidelines make clear that "[a]n agency must adjust work schedules to accommodate an employee's religious observance for example, Sabbath or religious holiday observance if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency," Clinton Guidelines § 1(C). If an employer regularly permits accommodation in work scheduling for secular conflicts and denies such accommodation for religious conflicts, "such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Philbrook*, 479 U.S. at 71.

Except for certain exceptions discussed in the next section, Title VII's protection against disparate treatment, 42 U.S.C. § 2000e-2(a)(1), is implicated *any time* religious observance or practice is a motivating factor in an employer's covered decision. *Abercrombie*, 135 S. Ct. at 2033. That is true even when an employer acts without actual knowledge of the need for an accommodation from a neutral policy but with "an unsubstantiated suspicion" of the same. *Id.* at 2034.

ii. Protections for Religious Employers

Congress has acknowledged, however, that religion sometimes *is* an appropriate factor in employment decisions, and it has limited Title VII's scope accordingly. Thus, for example, where religion "is a bona fide occupational qualification reasonably necessary to the normal operation of [a] particular business or enterprise," employers may hire and employ individuals based on their religion. 42 U.S.C. § 2000e-2(e)(1). Likewise, where educational institutions are "owned, supported, controlled or managed, [in whole or in substantial part] by a particular religion or by a particular religious corporation, association, or society" or direct their curriculum "toward the

propagation of a particular religion," such institutions may hire and employ individuals of a particular religion. *Id.* And "a religious corporation, association, educational institution, or society" may employ "individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." *Id.* § 2000e-1(a); *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335 36 (1987).

Because Title VII defines "religion" broadly to include "all aspects of religious observance and practice, as well as belief," 42 U.S.C. § 2000e(j), these exemptions include decisions "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *see also Killinger v. Samford Univ.*, 113 F.3d 196, 198 200 (11th Cir. 1997). For example, in *Little*, the Third Circuit held that the exemption applied to a Catholic school's decision to fire a divorced Protestant teacher who, though having agreed to abide by a code of conduct shaped by the doctrines of the Catholic Church, married a baptized Catholic without first pursuing the official annulment process of the Church. 929 F.2d at 946, 951.

Section 702 broadly exempts from its reach religious corporations, associations, educational institutions, and societies. The statute's terms do not limit this exemption to non-profit organizations, to organizations that carry on only religious activities, or to organizations established by a church or formally affiliated therewith. *See* Civil Rights Act of 1964, § 702(a), *codified at* 42 U.S.C. § 2000e-1(a); *see also Hobby Lobby*, 134 S. Ct. at 2773 74; *Corp. of Presiding Bishop*, 483 U.S. at 335 36. The exemption applies whenever the organization is "religious," which means that it is organized for religious purposes and engages in activity consistent with, and in furtherance of, such purposes. Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, charitable organizations like the Salvation Army and World Vision International, and many more. In that way, it is consistent with other broad protections for religious entities in federal law, including, for example, the exemption of religious entities from many of the requirements under the Americans with Disabilities Act. *See* 28 C.F.R. app. C; 56 Fed. Reg. 35544, 35554 (July 26, 1991) (explaining that "[t]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations").

In addition to these explicit exemptions, religious organizations may be entitled to additional exemptions from discrimination laws. *See, e.g.*, *Hosanna-Tabor*, 565 U.S. at 180, 188 90. For example, a religious organization might conclude that it cannot employ an individual who fails faithfully to adhere to the organization's religious tenets, either because doing so might itself inhibit the organization's exercise of religion or because it might dilute an expressive message. *Cf. Boy Scouts of Am. v. Dale*, 530 U.S. 640, 649 55 (2000). Both constitutional and statutory issues arise when governments seek to regulate such decisions.

As a constitutional matter, religious organizations' decisions are protected from governmental interference to the extent they relate to ecclesiastical or internal governance matters. *Hosanna-Tabor*, 565 U.S. at 180, 188 90. It is beyond dispute that "it would violate the First Amendment for courts to apply [employment discrimination] laws to compel the ordination of

women by the Catholic Church or by an Orthodox Jewish seminary." *Id.* at 188. The same is true for other employees who "minister to the faithful," including those who are not themselves the head of the religious congregation and who are not engaged solely in religious functions. *Id.* at 188, 190, 194 95; *see also* Br. of Amicus Curiae the U.S. Supp. Appellee, *Spencer v. World Vision, Inc.*, No. 08-35532 (9th Cir. 2008) (noting that the First Amendment protects "the right to employ staff who share the religious organization's religious beliefs").

Even if a particular associational decision could be construed to fall outside this protection, the government would likely still have to show that any interference with the religious organization's associational rights is justified under strict scrutiny. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (infringements on expressive association are subject to strict scrutiny); *Smith*, 494 U.S. at 882 ("[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns."). The government may be able to meet that standard with respect to race discrimination, *see Bob Jones Univ.*, 461 U.S. at 604, but may not be able to with respect to other forms of discrimination. For example, at least one court has held that forced inclusion of women into a mosque's religious men's meeting would violate the freedom of expressive association. *Donaldson v. Farrakhan*, 762 N.E.2d 835, 840 41 (Mass. 2002). The Supreme Court has also held that the government's interest in addressing sexual-orientation discrimination is not sufficiently compelling to justify an infringement on the expressive association rights of a private organization. *Boy Scouts*, 530 U.S. at 659.

As a statutory matter, RFRA too might require an exemption or accommodation for religious organizations from antidiscrimination laws. For example, "prohibiting religious organizations from hiring only coreligionists can 'impose a significant burden on their exercise of religion, even as applied to employees in programs that must, by law, refrain from specifically religious activities.'" *Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act*, 31 Op. O.L.C. 162, 172 (2007) (quoting *Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001*, 25 Op. O.L.C. 129, 132 (2001)); *see also Corp. of Presiding Bishop*, 483 U.S. at 336 (noting that it would be "a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court w[ould] consider religious" in applying a nondiscrimination provision that applied only to secular, but not religious, activities). If an organization establishes the existence of such a burden, the government must establish that imposing such burden on the organization is the least restrictive means of achieving a compelling governmental interest. That is a demanding standard and thus, even where Congress has not expressly exempted religious organizations from its antidiscrimination laws as it has in other contexts, *see, e.g.*, 42 U.S.C. §§ 3607 (Fair Housing Act), 12187 (Americans with Disabilities Act) RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in government contracts, grants, and other programs. Recognizing that religious organizations can make important contributions to government programs, *see, e.g.*, 22 U.S.C. § 7601(19), Congress has expressly permitted religious organizations to participate in numerous such programs on an equal basis with secular

organizations, *see, e.g.*, 42 U.S.C. §§ 290kk-1, 300x-65 604a, 629i. Where Congress has not expressly so provided, the President has made clear that "[t]he Nation's social service capacity will benefit if all eligible organizations, including faith-based and other neighborhood organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs." Exec. Order No. 13559, § 1, 75 Fed. Reg. 71319, 71319 (Nov. 17, 2010) (amending Exec. Order No. 13279, 67 Fed. Reg. 77141 (2002)). To that end, no organization may be "discriminated against on the basis of religion or religious belief in the administration or distribution of Federal financial assistance under social service programs." *Id.* "Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization)" are eligible to participate in such programs, so long as they conduct such activities outside of the programs directly funded by the federal government and at a separate time and location. *Id.*

The President has assured religious organizations that they are "eligible to compete for Federal financial assistance used to support social service programs and to participate fully in the social services programs supported with Federal financial assistance without impairing their independence, autonomy, expression outside the programs in question, or religious character." *See id.*; *see also* 42 U.S.C. § 290kk-1(e) (similar statutory assurance). Religious organizations that apply for or participate in such programs may continue to carry out their mission, "including the definition, development, practice, and expression of . . . religious beliefs," so long as they do not use any "direct Federal financial assistance" received "to support or engage in any explicitly religious activities" such as worship, religious instruction, or proselytization. Exec. Order No. 13559, § 1. They may also "use their facilities to provide social services supported with Federal financial assistance, without removing or altering religious art, icons, scriptures, or other symbols from these facilities," and they may continue to "retain religious terms" in their names, select "board members on a religious basis, and include religious references in . . . mission statements and other chartering or governing documents." *Id.*

With respect to government contracts in particular, Executive Order 13279, 67 Fed. Reg. 77141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations include independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, which normally apply to government contracts, do "not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities." Exec. Order No. 13279, § 4, *amending* Exec. Order No. 11246, § 204(c), 30 Fed. Reg. 12319, 12935 (Sept. 24, 1965).

Because the religious hiring protection in Executive Order 13279 parallels the Section 702 exemption in Title VII, it should be interpreted to protect the decision "to employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." *Little*, 929 F.2d at 951. That parallel interpretation is consistent with the Supreme Court's repeated counsel that the decision to borrow statutory text in a new statute is "strong indication that the two statutes should be interpreted pari passu." *Northcross v. Bd. of Educ. of Memphis City Sch.*, 412 U.S. 427 (1973) (per curiam); *see also Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich L.P.A.*, 559

U.S. 573, 590 (2010). It is also consistent with the Executive Order's own usage of discrimination on the basis of "religion" as something distinct and more expansive than discrimination on the basis of "religious belief." *See, e.g.*, Exec. Order No. 13279, § 2(c) ("No organization should be discriminated against on the basis of religion *or* religious belief . . . " (emphasis added)); *id.* § 2(d) ("All organizations that receive Federal financial assistance under social services programs should be prohibited from discriminating against beneficiaries or potential beneficiaries of the social services programs on the basis of religion or religious belief. Accordingly, organizations, 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."). Indeed, because the Executive Order uses "on the basis of religion or religious belief" in both the provision prohibiting discrimination against religious organizations and the provision prohibiting discrimination "against beneficiaries or potential beneficiaries," a narrow interpretation of the protection for religious organizations' hiring decisions would lead to a narrow protection for beneficiaries of programs served by such organizations. *See id.* §§ 2(c), (d). It would also lead to inconsistencies in the treatment of religious hiring across government programs, as some program-specific statutes and regulations expressly confirm that "[a] religious organization's exemption provided under section 2000e-1 of this title regarding employment practices shall not be affected by its participation, or receipt of funds from, a designated program." 42 U.S.C. § 290kk-1(e); *see also* 6 C.F.R. § 19.9 (same).

Even absent the Executive Order, however, RFRA would limit the extent to which the government could condition participation in a federal grant or contract program on a religious organization's effective relinquishment of its Section 702 exemption. RFRA applies to all government conduct, not just to legislation or regulation, *see* 42 U.S.C. § 2000bb-1, and the Office of Legal Counsel has determined that application of a religious nondiscrimination law to the hiring decisions of a religious organization can impose a substantial burden on the exercise of religion. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. O.L.C. at 172; *Direct Aid to Faith-Based Organizations*, 25 Op. O.L.C. at 132. Given Congress's "recognition that religious discrimination in employment is permissible in some circumstances," the government will not ordinarily be able to assert a compelling interest in prohibiting that conduct as a general condition of a religious organization's receipt of any particular government grant or contract. *Application of the Religious Freedom Restoration Act to the Award of a Grant*, 31 Op. of O.L.C. at 186. The government will also bear a heavy burden to establish that requiring a particular contractor or grantee effectively to relinquish its Section 702 exemption is the least restrictive means of achieving a compelling governmental interest. *See* 42 U.S.C. § 2000bb-1.

The First Amendment also "supplies a limit on Congress' ability to place conditions on the receipt of funds." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. 2321, 2328 (2013) (internal quotation marks omitted)). Although Congress may specify the activities that it wants to subsidize, it may not "seek to leverage funding" to regulate constitutionally protected conduct "outside the contours of the program itself." *See id.* Thus, if a condition on participation in a government program including eligibility for receipt of federally backed student loans would interfere with a religious organization's constitutionally protected rights, *see, e.g.*,

Hosanna-Tabor, 565 U.S. at 188 89, that condition could raise concerns under the "unconstitutional conditions" doctrine, *see All. for Open Soc'y Int'l, Inc.*, 133 S. Ct. at 2328.

Finally, Congress has provided an additional statutory protection for educational institutions controlled by religious organizations who provide education programs or activities receiving federal financial assistance. Such institutions are exempt from Title IX's prohibition on sex discrimination in those programs and activities where that prohibition "would not be consistent with the religious tenets of such organization[s]." 20 U.S.C. § 1681(a)(3). Although eligible institutions may "claim the exemption" in advance by "submitting in writing to the Assistant Secretary a statement by the highest ranking official of the institution, identifying the provisions . . . [that] conflict with a specific tenet of the religious organization," 34 C.F.R. § 106.12(b), they are not required to do so to have the benefit of it, *see* 20 U.S.C. § 1681.

3. Government Mandates

Congress has undertaken many similar efforts to accommodate religious adherents in diverse areas of federal law. For example, it has exempted individuals who, "by reason of religious training and belief," are conscientiously opposed to war from training and service in the armed forces of the United States. 50 U.S.C. § 3806(j). It has exempted "ritual slaughter and the handling or other preparation of livestock for ritual slaughter" from federal regulations governing methods of animal slaughter. 7 U.S.C. § 1906. It has exempted "private secondary school[s] that maintain[] a religious objection to service in the Armed Forces" from being required to provide military recruiters with access to student recruiting information. 20 U.S.C. § 7908. It has exempted federal employees and contractors with religious objections to the death penalty from being required to "be in attendance at or to participate in any prosecution or execution." 18 U.S.C. § 3597(b). It has allowed individuals with religious objections to certain forms of medical treatment to opt out of such treatment. *See, e.g.*, 33 U.S.C. § 907(k); 42 U.S.C. § 290bb-36(f). It has created tax accommodations for members of religious faiths conscientiously opposed to acceptance of the benefits of any private or public insurance, *see, e.g.*, 26 U.S.C. §§ 1402(g), 3127, and for members of religious orders required to take a vow of poverty, *see, e.g.*, 26 U.S.C. § 3121(r).

Congress has taken special care with respect to programs touching on abortion, sterilization, and other procedures that may raise religious conscience objections. For example, it has prohibited entities receiving certain federal funds for health service programs or research activities from requiring individuals to participate in such program or activity contrary to their religious beliefs. 42 U.S.C. § 300a-7(d), (e). It has prohibited discrimination against health care professionals and entities that refuse to undergo, require, or provide training in the performance of induced abortions; to provide such abortions; or to refer for such abortions, and it will deem accredited any health care professional or entity denied accreditation based on such actions. *Id.* § 238n(a), (b). It has also made clear that receipt of certain federal funds does not require an individual "to perform or assist in the performance of any sterilization procedure or abortion if [doing so] would be contrary to his religious beliefs or moral convictions" nor an entity to "make its facilities available for the performance of" those procedures if such performance "is prohibited by the entity on the basis of religious beliefs or moral convictions," nor an entity to "provide any personnel for the performance or assistance in the performance of" such procedures if such performance or assistance "would be contrary to the religious beliefs or moral convictions of such

personnel." *Id.* § 300a-7(b). Finally, no "qualified health plan[s] offered through an Exchange" may discriminate against any health care professional or entity that refuses to "provide, pay for, provide coverage of, or refer for abortions," § 18023(b)(4); *see also* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. H, § 507(d), 129 Stat. 2242, 2649 (Dec. 18, 2015).

Congress has also been particularly solicitous of the religious freedom of American Indians. In 1978, Congress declared it the "policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." 42 U.S.C. § 1996. Consistent with that policy, it has passed numerous statutes to protect American Indians' right of access for religious purposes to national park lands, Scenic Area lands, and lands held in trust by the United States. *See, e.g.*, 16 U.S.C. §§ 228i(b), 410aaa-75(a), 460uu-47, 543f, 698v-11(b)(11). It has specifically sought to preserve lands of religious significance and has required notification to American Indians of any possible harm to or destruction of such lands. *Id.* § 470cc. Finally, it has provided statutory exemptions for American Indians' use of otherwise regulated articles such as bald eagle feathers and peyote as part of traditional religious practice. *Id.* §§ 668a, 4305(d); 42 U.S.C. § 1996a.

* * *

The depth and breadth of constitutional and statutory protections for religious observance and practice in America confirm the enduring importance of religious freedom to the United States. They also provide clear guidance for all those charged with enforcing federal law: The free exercise of religion is not limited to a right to hold personal religious beliefs or even to worship in a sacred place. It encompasses all aspects of religious observance and practice. To the greatest extent practicable and permitted by law, such religious observance and practice should be reasonably accommodated in all government activity, including employment, contracting, and programming. *See Zorach v. Clauson*, 343 U.S. 306, 314 (1952) ("[Government] follows the best of our traditions . . . [when it] respects the religious nature of our people and accommodates the public service to their spiritual needs.").

Kevin McCarthy

From: Kevin McCarthy
Sent: Monday, October 23, 2017 9:21 PM
To: Cheng, Ivy (OLA)
Subject: The Leader's Daily Schedule - 10/24/17

Kevin McCarthy - Majority Leader

LEADER'S DAILY SCHEDULE

TUESDAY, OCTOBER 24TH

On Tuesday, the House will meet at 10:00 a.m. for morning hour and 12:00 p.m. for legislative business. First votes expected: 1:15 p.m. - 2:15 p.m. Last votes expected: 4:30 p.m. - 5:30 p.m.

One Minute Speeches

Legislation Considered Under Suspension of the Rules:

1) H.R. 3972 - Family Office Technical Correction Act of 2017, as amended *(Sponsored by Rep. Carolyn Maloney / Financial Services Committee)*

2) H.R. 3898 - Otto Warmbier North Korea Nuclear Sanctions Act, as amended *(Sponsored by Rep. Andy Barr / Financial Services Committee)*

3) H.R. 3101 - Strengthening Cybersecurity Information Sharing and Coordination in Our Ports Act of 2017, as amended *(Sponsored by Rep. Norma Torres / Homeland Security Committee)*

Postponed Suspension Vote:

1) H.R. 2142 - INTERDICT Act, as amended *(Sponsored by Rep. Niki Tsongas / Homeland Security Committee)*

H.R. 732 - Stop Settlement Slush Funds Act of 2017 (Structured Rule) *(Sponsored by Rep. Bob Goodlatte / Judiciary Committee)*

The Rule provides for one hour of general debate and makes in order the following amendments:

Rep. Bob Goodlatte Amendment (10 minutes of debate)
Rep. Steve Cohen Amendment (10 minutes of debate)
Rep. Hank Johnson Amendment (10 minutes of debate)
Rep. Sheila Jackson Lee Amendment (10 minutes of debate)
Rep. David Cicilline Amendment (10 minutes of debate)
Rep. John Conyers Amendment (10 minutes of debate)

Special Order Speeches

MAJORITY LEADER FLOOR OFFICE • H-107 U.S. CAPITOL

Kevin McCarthy

From: Kevin McCarthy
Sent: Tuesday, October 24, 2017 7:23 PM
To: Cheng, Ivy (OLA)
Subject: The Leader's Daily Schedule - 10/25/17

Kevin McCarthy - Majority Leader

LEADER'S DAILY SCHEDULE

WEDNESDAY, OCTOBER 25TH

On Wednesday, the House will meet at 10:00 a.m. for morning hour and 12:00 p.m. for legislative business. First votes expected: 1:30 p.m. - 2:30 p.m. Last votes expected: 5:30 p.m. - 6:30 p.m.

One Minute Speeches

Legislation Considered Under Suspension of the Rules:

1) H.R. 1698 - Iran Ballistic Missiles and International Sanctions Enforcement Act, as amended *(Sponsored by Rep. Ed Royce / Foreign Affairs Committee)*

2) H.R. 3342 - Sanctioning Hizballah's Illicit Use of Civilians as Defenseless Shields Act, as amended *(Sponsored by Rep. Mike Gallagher / Foreign Affairs Committee)*

3) H.R. 3329 - Hizballah International Financing Prevention Amendments Act of 2017, as amended *(Sponsored by Rep. Ed Royce / Foreign Affairs Committee)*

4) H.Res. 359 - Urging the European Union to designate Hizballah in its entirety as a terrorist organization and increase pressure on it and its members, as amended *(Sponsored by Rep. Ted Deutch / Foreign Affairs Committee)*

H.R. 469 - Sunshine for Regulations and Regulatory Decrees and Settlements Act of 2017, Rules Committee Print *(Sponsored by Rep. Doug Collins / Judiciary Committee)*

The Rule provides for one hour of general debate and makes in order the following amendments:

Rep. Bob Goodlatte Amendment (10 minutes of debate)
Rep. John Conyers Amendment (10 minutes of debate)
Rep. Hank Johnson Amendment (10 minutes of debate)
Rep. Donald McEachin Amendment (10 minutes of debate)
Rep. David Loebsack Amendment (10 minutes of debate)
Rep. Matt Cartwright Amendment (10 minutes of debate)

Special Order Speeches

MAJORITY LEADER FLOOR OFFICE • H-107 U.S. CAPITOL