



Office of the Attorney General
Washington, D. C. 20530

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENTS AND AGENCIES
FROM: THE ATTORNEY GENERAL *Jeff Sessions*
SUBJECT: Federal Law Protections for Religious Liberty

On October 17, 2017, the Attorney General of the United States issued a memorandum regarding the proper interpretation of federal statutory and constitutional protections for religious liberty. See Memorandum for All Executive Departments and Agencies, Federal Law Protections for Religious Liberty (Oct. 6, 2017). In the nine years since, the Supreme Court has issued opinions that further define federal protections for religious liberty. Considering those decisions, and the continued need to provide direction to federal agencies on how to protect religious liberty, I am updating and reissuing that memorandum and its appendix to provide guidance to all administrative agencies and executive departments in the proper execution of federal law.

Principles of Religious Liberty

Religious liberty is a foundational principle of our nation. As James Madison once observed, 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 Similarly, George Washington proclaimed, in a 1790 letter to the Jewish community in Newport, Rhode Island, that in the United States, “[a]ll possess alike liberty of conscience and immunities of citizenship” and that “it is now no more that toleration is spoken of, as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights.”²

Over two centuries later, President Donald Trump, marking the 850th Anniversary of the Martyrdom of Saint Thomas Becket in 2020, reaffirmed this commitment: “As Americans, we were first united by our belief that ‘rebellion to tyrants is obedience to God’ and that defending liberty is more important than life itself. If we are to continue to be the land of the free, no government official, no governor, no bureaucrat, no judge, and no legislator must be allowed to decree what is orthodox in matters of religion or to require religious believers to violate their consciences. No right is more fundamental to a peaceful, prosperous, and virtuous society than the right to follow one’s religious convictions.”³

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 See George Washington, Letter to Newport Hebrew Congregation (Aug. 18, 1790), in 6 Papers of George Washington 285 (Mark A. Mastromarino ed., 1996).

³ Proclamation No. 10129, 86 Fed. Reg. 215 (Jan. 4, 2021).

Religious liberty is not merely a right to personal religious beliefs or even to worship in a particular place. It also encompasses religious observance and practice as displayed in a person's daily life. 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 government activity, including employment, contracting, and programming. The following twenty-one principles should guide administrative agencies and executive departments in protecting these liberties. These principles should be understood and interpreted consistent with 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 both 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.

2. The Establishment Clause must be interpreted in the light of historical practices and understandings.

The Establishment Clause and the Free Exercise Clause have complementary purposes, working together to protect the religious freedom of all Americans. The government must interpret the Establishment Clause by reference to historical practices and understandings, with the knowledge that officials in all three branches of government have acknowledged the role of religion and prayer in American life since the Founding. John Adams, for example, wrote that our Constitution "was made only for a moral and religious people" and that it "is wholly inadequate to the government of any other." Letter from President John Adams to the Massachusetts Militia (Oct. 11, 1798), in 9 *Works of John Adams* 229 (C. Adams ed. 1971). History and tradition reveal that the Establishment Clause forbids the government from coercing religious observance, discriminating against individuals on the basis of religious belief or practice, discriminating between religious groups, or abridging religious communities' autonomy or interfering in their internal affairs. It does not compel the government to purge from public life anything an objective observer may think endorses religion. Religious activity in the public square and private religious expression by government employees cannot be proscribed via heckler's veto.

3. 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, reinforce that protection by 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.

4. The freedom of religion extends to persons acting through organizations.

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

5. Americans do not give up their freedom of religion by participating in the marketplace, partaking of the public square, or interacting with the 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 depending on the context, individuals and organizations do not give up their religious-liberty protections by providing or receiving social services, education, or healthcare; by earning or seeking to earn a living; by employing others to do the same; by receiving government grants or contracts; or by otherwise interacting with the federal government or with state or local governments.

6. Government may not target religious conduct or speech.

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.

7. Government may not target individuals or entities for special disabilities based on religion.

Much as government may not restrict actions because they are undertaken based on religious beliefs, government may not target individuals or entities because of their religion or the religion of their members. Government may not exclude religious organizations as such from secular aid programs. For example, the Supreme Court has held that if a government provides reimbursement for scrap tires to replace child playground surfaces at schools, it may not deny participation in that program to religious schools. Nor may government deny religious schools, including schools with curricula and activities that include religious elements, the right to participate in a voucher or similar program because of their religious status or teaching.

8. Government may not use discriminatory enforcement of neutral, generally applicable laws as a proxy for religious discrimination.

Although government generally may subject religious persons and organizations to neutral, generally applicable laws—e.g., across-the-board prohibitions or certain time, place, and manner restrictions on speech—government may not apply such laws in a discriminatory way or in a manner that treats comparable secular activity more favorably than religious exercise. 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 church or other 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.

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

Together, the Free Exercise Clause and the Establishment Clause 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 to accept female candidates for the priesthood. Nor may government require that religious organizations employ personnel whose personal conduct conflicts with their religious tenets in roles key to the organizations' religious mission.

10. Government may not interfere with parental rights to direct the religious upbringing of their children.

Parents have the right to direct the religious upbringing and education of their children. This right extends beyond a mere right to teach religion in the confines of one's home and encompasses the choices parents make for their children outside the home. Government policies that substantially interfere with the religious development of children violate this right. Government may not choose to condition the availability of public benefits, such as public schooling, upon parents' willingness to surrender their religious freedom.

11. The Religious Freedom Restoration Act of 1993 ("RFRA") prohibits the federal government from substantially burdening any aspect of religious observance, practice, or speech, unless imposition of that burden 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. RFRA also provides for a cause of action against government officials in their personal capacities and allows for the recovery of monetary damages from such officials.

12. RFRA's protection extends not only 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 that, at the time of the Court's decision, had 500 stores and more than 13,000 employees—is protected by RFRA.

13. RFRA protects sincerely held religious beliefs, regardless of the centrality of the belief.

RFRA applies to all sincerely held religious beliefs, whether central to, or mandated by, a particular religious organization or tradition. Religious adherents must often 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.

14. 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.

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 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. Likewise, 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.

In contrast, a law that infringes, even severely, on 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.

15. The strict scrutiny standard applicable to RFRA is exceptionally demanding. Once a religious adherent has identified a substantial burden, 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 federal 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.

16. 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 the strict scrutiny analysis under RFRA, the fact that an exemption from a legal obligation 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.

17. 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 discharge, fail or refuse to hire, 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. But the provision does not apply in the same way to religious employers, who have certain constitutional and statutory protections for religious hiring decisions.

18. Title VII's protection extends to discrimination based on religious observance or practice as well as belief, unless the employer cannot reasonably accommodate such observance or practice without incurring substantial hardship.

Under Title VII, religious observance or practice is protected except when an employer can establish that a particular aspect of such observance or practice cannot reasonably be accommodated without substantial increased costs in the overall context of the business. For example, covered employers are required to adjust employee work schedules for Sabbath observance, religious holidays, and other religious observances, even if such accommodations

impose some costs on the business, unless such costs are substantial in the overall context of the business. 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.

19. 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. The Clinton Guidelines reflect a basic principle that an employee may not be disciplined, suspended, or fired for engaging in religious observance, even while in public in the workplace.

20. 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 employment 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 certain provisions of Title VII, including 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, both RFRA and the principle of church autonomy under the Religion Clauses of the Constitution protect religious employers’ authority to make employment decisions consistent with their religious mission.

21. 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 using private funds, nor to effectively relinquish their federal statutory protections for religious hiring decisions.

Guidance to Agencies 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. In particular, all agencies should review and follow the Guidelines on Religious Exercise and Religious Expression in the Federal Workplace, which President Clinton issued on August 14, 1997, and the Office of Legal Counsel's September 18, 2025, opinion addressing those Guidelines in the light of more recent Supreme Court precedent. All agencies should also consider practical steps to improve safeguards for religious liberty in the federal workplace, including by making available subject-matter experts who can answer questions about religious nondiscrimination rules; informational websites that employees may access to learn more about their religious accommodation rights; and training about federal protections for religious observance and practice in the workplace.

Agencies Engaged in Rulemaking

In formulating rules, regulations, and policies, administrative agencies should 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 Faith Office 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 affect religious liberty for compliance with the principles of religious liberty outlined in this memorandum and appendix before finalizing those rules, regulations, or policies.

The Department of Justice's Office of Legal Policy will 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. 72,995, 72,995 (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, 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*, 575 U.S. 92, 96 (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. Finally, agency officials should be reminded that they may be sued in their individual capacities if they violate RFRA and, under certain circumstances, may be required to pay monetary damages to a successful plaintiff.

Agencies Engaged in Contracting and Grant Distribution

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. And religious entities that participate in a grant program may not be forced to choose between curtailing their government-funded mission and taking actions inconsistent with their religious beliefs except in the narrowest of circumstances. Furthermore, absent unusual circumstances, agencies should not condition receipt of a government contract or grant on the effective relinquishment of a religious organization's exemption under Section 702 of the Civil Rights Act of 1964 for religious hiring practices, or any other constitutional or statutory protection for religious organizations.

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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.

I. Constitutional Protections

The People, acting through the 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. Those protections have been incorporated against the States. *Everson v. Bd. of Educ.*, 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[.]” *Emp’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 E. 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. *Carson v. Makin*, 596 U.S. 767, 786–89 (2022); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 478–79 (2018); *Smith*, 494 U.S. at 877; *McDaniel v. Paty*, 435 U.S. 618, 627 (1978). And, subject to certain historically based limits on the First Amendment’s 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 W. Va. 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.”).

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. *Smith*, 494 U.S. at 877; accord *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 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. See *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022); *Smith*, 494 U.S. at 877. 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 Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 525–26, 547 (1993); see also *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 714–16 (2014) (concluding that 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. 449, 458 (2017) (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,” *Lukumi*, 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 463 (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.” *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. *Lukumi*, 508 U.S. at 533–34 (internal quotation marks omitted). A law is not neutral if, in its application, the government “proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature,” *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021), or if the application of a law is accompanied by “official expressions of hostility” to religion, *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 584 U.S. 617, 639 (2018). A law is also 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.” *Lukumi*, 508 U.S. 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 individual exemptions,” *Smith*, 494 U.S. at 884; *accord Fulton*, 593 U.S. at 542; *Lukumi*, 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.” *Lukumi*, 508 U.S. at 531. A generally applicable government program—for example, a decision by a state to subsidize private education—cannot single out religious private schools for exclusion from the subsidy. *Carson*, 596 U.S. at 781; *Espinoza*, 591 U.S. at 475–76. Stated differently, 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 or organization’s religious character is neither neutral nor generally applicable. See *Trinity Lutheran*, 582 U.S. at 462–63. 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 *Lukumi*, 508 U.S. at 533–36, 542–45. Thus, any government regulation that “treat[s] any comparable secular activity more favorably than religious exercise” is neither neutral nor generally applicable. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Nonetheless, the requirements of neutrality 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 the Free Exercise Clause if it restricts both 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; *Mahmoud v. Taylor*, 606 U.S. 522, 546–47 (2025); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1295–97 (10th Cir. 2004). 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 LDS student to University requirement that student actors use profanity and take God’s name in vain during classroom acting exercises). Strict scrutiny is the “most rigorous” form of scrutiny identified by the Supreme Court. *Lukumi*, 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, *Students for Fair Admission, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023), and content-based restrictions on the freedom of speech, *Reed v. Town of Gilbert*, 576 U.S. 155, 165 (2015). 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.” *Lukumi*, 508

U.S. at 546 (internal quotation marks omitted). “[O]nly in rare cases” will a law survive this level of scrutiny. *Id.* An “interest in separating church and state more fiercely than the Federal Constitution cannot qualify as compelling in the face of the infringement of free exercise.” *Carson*, 596 at 781 (alteration and quotation marks omitted).

The Free Exercise Clause, much like the Free Speech Clause, requires equal treatment of religious adherents. *See Trinity Lutheran*, 582 U.S. at 458; *cf. Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001) (recognizing that the 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 the Establishment Clause does not justify discrimination against a 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 Kennedy*, 597 U.S. at 536–37; *Town of Greece v. Galloway*, 572 U.S. 565, 575–78 (2014); *Good News Club*, 533 U.S. at 115. But it “does not include anything like a ‘modified heckler’s veto, in which religious activity can be proscribed’ based on ‘perceptions’ or ‘discomfort.’” *Kennedy*, 597 U.S. at 534 (quoting *Good News Club*, 533 U.S. at 119). Instead, 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*, 572 U.S. at 584–85; *Larson v. Valente*, 456 U.S. 228, 244–46 (1982); *Cath. Charities Bureau, Inc. v. Wisc. Lab. & Indus. Rev. Comm’n*, 605 U.S. 238, 247 (2025). Religious adherents and organizations may, like nonreligious adherents and organizations, receive indirect financial aid through independent choice, or direct financial aid. *See, e.g., Espinoza*, 591 U.S. at 475–77 (tuition assistance to parents who send their children to private schools); *Trinity Lutheran*, 582 U.S. at 458 (scrap tire program); *Carson*, 596 U.S. at 781 (tuition assistance program); *Zelman v. Simmons-Harris*, 536 U.S. 639, 652 (2002) (school voucher program).

Whether a particular practice comports with the Establishment Clause should be analyzed by considering “historical practices and understandings.” *Kennedy*, 597 U.S. at 535 (citing *Town of Greece*, 572 U.S. at 577). There is “an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789.” *Van Orden v. Perry*, 545 U.S. 677, 686 (2005) (quoting *Lynch v. Donnelly*, 465 U.S. 668, 674 (1984)). Accordingly, public officials may make “official references to the value and invocation of Divine guidance.” *Lynch*, 465 U.S. at 675; *see also Zorach*, 343 U.S. at 312–13 (describing “appeals to the Almighty in the messages of the Chief Executive” as acceptable under the First Amendment). Additionally, proclamations and “Executive Orders and other official announcements of Presidents and of the Congress” can proclaim holidays “in religious terms.” *Lynch*, 465 U.S. at

675–76. Allowing for such religious activity in the public square upholds our Constitution’s “recognition of the important role that religion plays in the lives of many Americans.” *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 63 (2019).

Similarly, a public official generally may participate in private religious activity provided others are not coerced into participating. *See Kennedy*, 597 U.S. at 540–41 (“[T]his Court’s traditional understanding [is] that permitting private speech is not the same thing as coercing others to participate in it.”). “Government may not coerce anyone to attend church, nor may it force citizens to engage in a formal religious exercise.” *Id.* at 536–37 (internal quotes omitted); *see also* Guidelines on Religious Exercise and Religious Expression in the Federal Workplace (Aug. 14, 1997), available at <https://clintonwhitehouse4.archives.gov/WHNew/html/19970819-3275.html>.

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., concurring); *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.”).

II. 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, 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” established without animus or discriminatory intent. *See id.* § 2000bb-1(a). It 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 the one involved in *Hobby Lobby*, 573 U.S. at 706–08. RFRA also provides for a cause of action against government officials in their personal capacities and allows for the recovery of monetary damages from such officials. *Tanzin v. Tanvir*, 592 U.S. 43, 52 (2020).

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 person’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 the prospective punishment is as minor as a five-dollar fine. *Yoder*, 406 U.S. at 208, 218. The denial of, or a condition on the receipt of, government benefits also 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.

In contrast, a law that infringes, even severely, on 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).

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.” *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). The government similarly has a compelling interest in enforcing criminal prohibitions against acts causing death or serious bodily injury, such as female genital mutilation. *See* 18 U.S.C. § 116(c). 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 in denying an accommodation to the particular claimant. *Id.* at 430, 435–38.

As an 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., Singh v. Berger*, 56 F.4th 88, 97 (D.C. Cir. 2022); *see also* Secretary of the Army, Army Directive 2017-03, Policy for Brigade-Level Approval of Certain Requests for Religious Accommodation ¶ 3 (Jan. 3, 2017) (recognizing

“successful examples of Soldiers currently serving with” an accommodation for “the wear[ing] of a hijab; the wear[ing] of a beard; and the wear[ing] of a turban or under turban/patka, with uncut beard and uncut hair” and providing for accommodation of these practices in the Army).

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*, 573 U.S. at 728. 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 729–30. 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 730–31; *see also O Centro*, 546 U.S. at 433, 436–37.

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 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.* § 2000cc3(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 sincerely held religious belief 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).

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 or that a law fails to satisfy strict scrutiny to enforce the antidiscrimination and equal terms provisions listed in subsection (b) of section 2000cc. *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). Although most RLUIPA cases involve houses of worship, the law also applies to religious schools, religious camps, religious retreat centers, and religious social service facilities. *See* Letter for State, County, and Municipal Officials, from Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division, U.S. Dep’t of Justice, *Re: The Religious Land Use and Institutionalized Persons Act* (Dec. 15, 2016).

C. Other Civil Rights Laws

Understanding that religious exercise is essential to our society, Congress has recognized that it is not enough to limit governmental action that substantially burdens the exercise of religion. Instead, Congress has also sought to root out private discrimination, including in places of public accommodation, 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 transactions 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, 723ld(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), 300x65(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., Lukumi*, 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.

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 to the Executive Office of the President).

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); *see also Groff v. DeJoy*, 600 U.S. 447, 458 (2023). 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. By requiring a reasonable accommodation, Title VII employs the same standard as the Americans with Disabilities Act (ADA). *Compare* 42 U.S.C. § 2000e(j) (Title VII), *with* 42 U.S.C. § 12112(b)(5) (ADA); *see also* Michael W. McConnell, *Accommodation of Religion: An Update and A Response to the Critics*, 60 Geo. Wash. L. Rev. 685, 704 (1992) (noting that in Title VII, Congress used "the same statutory standard that it applies to accommodation of persons with disabilities"). And as the Supreme Court has recognized in interpreting the ADA's reasonable accommodation requirement, "[a]n *ineffective* modification or adjustment will not *accommodate* a disabled individual's limitations." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 400 (2002) (quotation marks omitted). Thus, as a textual matter, Title VII requires an employer to consider what adjustment or modification to its policies would effectively address the employee's concern; an ineffective modification or adjustment is insufficient. *See id.* (recognizing that "the word 'accommodation,' . . . conveys the need for effectiveness"). Several circuit courts have concluded that an accommodation under Title VII "must eliminate the conflict between the employee's religious practice and job requirement." *See Groff v. DeJoy*, 35 F.4th 162, 170 (3d Cir. 2022), *vacated on other grounds and remanded*, 600 U.S. 447 (2023) (collecting cases). 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). "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 because Title VII "gives [religious practices] favored treatment." *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015).

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 poses an “undue hardship” if it imposes a burden that is “substantial in the overall context of an employer’s business.” *Groff*, 600 U.S. at 468. This test requires consideration of all relevant factors, including the nature, size and operating cost of an employer, but “no undue hardship is imposed by temporary costs, voluntary shift swapping, occasional shift swapping, or administrative costs.” *Id.* at 470–71. A court may consider “an accommodation’s effect on co-workers,” but not if such effect “is attributable to employee animosity to a particular religion, to religion in general, or to the very notion of accommodating religious practice.” *Id.* at 472. Further, “Title VII requires that an employer reasonably accommodate an employee’s practice of religion, not merely that it assess the reasonableness of a particular possible accommodation or accommodations.” *Id.* at 473. In general, Title VII expects 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 (citation omitted).

Religious speech and expression provides fertile ground for 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*, 575 U.S. at 771–72.

The federal government’s approach to free exercise in the federal workplace provides useful guidance on such reasonable accommodations. President Trump has made accommodating religious exercise a priority of this administration. *See* Memorandum for the Heads and Acting Heads of Departments and Agencies, from U.S. Office of Personnel Management Director Scott Kuper, Re: Protecting Religious Expression in the Federal Workplace (July 28, 2025); *see also* Memorandum for the Heads and Acting Heads of Departments and Agencies, from U.S. Office of Personnel Management Director Scott Kuper, Re: Reasonable Accommodations for Religious purposes (July 28, 2025). And these principles are longstanding, for example, since 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. Clinton Guidelines, § 1(A).

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); *see also* Memorandum for the Heads of Executive Departments and Agencies, from President William J. Clinton, Re: Religious Exercise and Religious Expression in the Federal Workplace (Aug. 14,

1997) (“All civilian executive branch agencies, officials, and employees must follow these Guidelines carefully.”). Under Title VII and the Clinton Guidelines, federal employers “cannot deny a religious accommodation if the burden imposed on the agency by the accommodation in the context of the agency’s work is insubstantial.” *Religious Liberty Protections for Federal Employees in Light of Recent Legal Developments*, 49 Op. O.L.C. ___, *6 (Sept. 18, 2025) (applying *Groff* to the Clinton Guidelines). The successful experience of the federal government in applying the Clinton Guidelines for almost 30 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 a 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 scheduling scheme that allows employees to 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); *see also Religious Liberty Protections*, 49 Op. O.L.C. at *10–15 (discussing situational telework as a form of religious accommodation). 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*, 575 U.S. at 773–74. 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 773.

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 where they direct their curriculum “toward the propagation of a particular religion,” such institutions may hire and employ individuals of a particular religion. *Id.* § 2000e-2(e)(2). 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); *see also 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 of the Civil Rights Act of 1964 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*, 573 U.S. at 714–16; *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. *See Conway v. Mercy Hosp. St. Louis*, 146 F.4th 704, 708–09 (8th Cir. 2025). Thus, the exemption applies not just to religious denominations and houses of worship, but to religious colleges, religiously based charitable organizations, 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 ADA. *See* 28 C.F.R. app. C; Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 56 Fed. Reg. 35,544, 35,554 (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., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 736–37 (2020); *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. Teachers in religious schools, even those primarily teaching secular subjects, may certainly qualify, regardless of whether the teacher is labeled a “minister” or required to have certain academic achievements. *Our Lady of Guadalupe*, 591 U.S. at 736–37. “A religious institution's explanation of the role of such employees in the life of the religion in question is important.” *Id.* at 757.

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); *see also 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 in a mosque's religious men's meeting would violate the freedom of expressive association. *See 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’” *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 (ADA)—RFRA might require such an exemption.

2. Government Programs

Protections for religious organizations likewise exist in the context of 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, Executive Orders have 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. 71,319, 71,319 (Nov. 17, 2010).

Executive Orders have assured religious organizations that they should be “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.” *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.” Exec. Order No. 13559, § 1, 75 Fed. Reg. at 71,320. 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. 77,141 (Dec. 12, 2002), confirms that the independence and autonomy promised to religious organizations includes independence and autonomy in religious hiring. Specifically, it provides that the employment nondiscrimination requirements in Section 202 of Executive Order 11246, 30 Fed. Reg. 12,319 (Sept. 24, 1965), which applied to government contracts at the time, 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. 13,279, § 4, 67 Fed. Reg. at 77143.

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, 428 (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 treatment 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), 67 Fed. Reg. at 77,142 (“No organization should be discriminated against on the basis of religion or religious belief[.]”).

Indeed, because the Executive Order uses the phrase “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 [title 42] 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 (similar).

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.

Finally, Congress has provided additional statutory protection for educational institutions controlled by religious organizations that 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 [Department of Education] 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 the exemption, *see id.*; *see also* 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(t). 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 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 programs or activities 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; provide such abortions; or 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 or entity (1) “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,” (2) “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,” or (3) “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 [American Health Benefit] Exchange” may discriminate against any health care professional or entity that refuses to “provide, pay for, provide coverage of, or refer for abortions. *Id.* § 18023(b)(4); *see also* Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. B, § 507(d) (2026).

Congress has been particularly solicitous of American Indians’ religious freedom. 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, Congress has passed numerous statutes to protect American Indians’ right of access for religious purposes to national park lands, National 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.

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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. The 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.” *Zorach v. Clauson*, 343 U.S. 306, 314 (1952).