

SUBCHAPTER II—ATTORNEY GENERAL
GUIDELINES

§ 2000aa-11. Guidelines for Federal officers and employees

(a) Procedures to obtain documentary evidence; protection of certain privacy interests

The Attorney General shall, within six months of October 13, 1980, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained;

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this subchapter be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) Use of search warrants; reports to Congress

The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3).

(Pub. L. 96-440, title II, §201, Oct. 13, 1980, 94 Stat. 1882.)

§ 2000aa-12. Binding nature of guidelines; disciplinary actions for violations; legal proceedings for non-compliance prohibited

Guidelines issued by the Attorney General under this subchapter shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this subchapter may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

(Pub. L. 96-440, title II, §202, Oct. 13, 1980, 94 Stat. 1883.)

CHAPTER 21B—RELIGIOUS FREEDOM RESTORATION

Sec.

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§ 2000bb. Congressional findings and declaration of purposes

(a) Findings

The Congress finds that—

(1) the framers of the Constitution, recognizing free exercise of religion as an unalienable right, secured its protection in the First Amendment to the Constitution;

(2) laws ‘neutral’ toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise;

(3) governments should not substantially burden religious exercise without compelling justification;

(4) in *Employment Division v. Smith*, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion; and

(5) the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.

(b) Purposes

The purposes of this chapter are—

(1) to restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened; and

(2) to provide a claim or defense to persons whose religious exercise is substantially burdened by government.

(Pub. L. 103-141, §2, Nov. 16, 1993, 107 Stat. 1488.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original ‘‘this Act’’, meaning Pub. L. 103-141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

CONSTITUTIONALITY

For constitutionality of section 2 of Pub. L. 103-141, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

SHORT TITLE

Pub. L. 103-141, §1, Nov. 16, 1993, 107 Stat. 1488, provided that: ‘‘This Act [enacting this chapter and amending section 1988 of this title and section 504 of Title 5, Government Organization and Employees] may be cited as the ‘Religious Freedom Restoration Act of 1993.’’’

EX. ORD. NO. 13798. PROMOTING FREE SPEECH AND
RELIGIOUS LIBERTY

Ex. Ord. No. 13798, May 4, 2017, 82 F.R. 21675, provided:
By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

SECTION 1. *Policy.* It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. 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. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

SEC. 2. *Respecting Religious and Political Speech.* All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not 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 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 by the Department of the Treasury. As used in this section, the term "adverse action" means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

SEC. 3. *Conscience Protections with Respect to Preventive-Care Mandate.* The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg-13(a)(4) of title 42, United States Code.

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.

SEC. 5. *Severability.* If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 2000bb-1. Free exercise of religion protected

(a) In general

Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception

Government may substantially burden a person's exercise of religion only if 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.

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(Pub. L. 103-141, §3, Nov. 16, 1993, 107 Stat. 1488.)

§ 2000bb-2. Definitions

As used in this chapter—

(1) the term "government" includes a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States, or of a covered entity;

(2) the term "covered entity" means the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States;

(3) the term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion; and

(4) the term "exercise of religion" means religious exercise, as defined in section 2000cc-5 of this title.

(Pub. L. 103-141, §5, Nov. 16, 1993, 107 Stat. 1489; Pub. L. 106-274, §7(a), Sept. 22, 2000, 114 Stat. 806.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 103-141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2000bb of this title and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106-274, §7(a)(1), substituted "or of a covered entity" for "a State, or a subdivision of a State".

Par. (2). Pub. L. 106-274, §7(a)(2), substituted "term 'covered entity' means" for "term 'State' includes".

Par. (4). Pub. L. 106-274, §7(a)(3), substituted "religious exercise, as defined in section 2000cc-5 of this title" for "the exercise of religion under the First Amendment to the Constitution".