



FAMILY AND RELIGIOUS LIBERTY ACCOMPLISHMENTS OF THE TRUMP ADMINISTRATION

An overview of events occurring 2017-2020

To date, the administration of President Donald Trump has taken significant action to protect the family and defend religious liberty:

2017

On February 22, the Department of Education, in conjunction with the Department of Justice (DOJ) [rescinded President Obama's guidance](#) that required public schools to allow transgender students to use the bathrooms and showers of their choice.

On April 7, President Trump's nominee [Neil Gorsuch](#) was confirmed to the Supreme Court. Justice Gorsuch has already developed a reputation as an originalist who will rule the right way on religious liberty issues. Gorsuch is representative of President Trump's judicial nominees overall.

On May 4, President Trump signed an [Executive Order Promoting Free Speech and Religious Liberty](#) (known as the "Religious Liberty Executive Order"), broadly setting forth religious liberty as a policy priority of the administration, and requiring all federal agencies to take action to protect it. The order also more specifically addressed conscience protections, forthcoming guidance from the DOJ, and religious liberty in the context of free speech.

On August 25, President Trump announced [changes to the Obama administration's Department of Defense \(DOD\) policy](#) which had allowed military personnel to serve even if they openly self-identified as transgender. (A DOD study found the Obama administration's policy to be detrimental to military readiness, lethality, and unit cohesion.)

On September 7, DOJ filed an amicus brief with the Supreme Court defending the religious freedom rights of baker [Jack Phillips in Masterpiece Cakeshop v. Colorado Civil Rights Commission](#). This filing is representative of other actions defending religious freedom taking place throughout the Trump administration DOJ.

On October 6, DOJ issued [guidance](#) and an [implementing memo](#) (as instructed by the Religious Liberty Executive Order) to all federal agencies explaining religious freedom law and how religious liberty must be protected. This guidance laid out a broad defense of religious liberty based on multiple statutes and

2018

provided each federal agency with guidelines for protecting religious liberty. On January 16, DOJ filed an [amicus brief](#) with the District Court of Appeals for the District of Columbia on behalf of the Archdiocese of Washington, D.C. The Archdiocese had wanted to promote a religious message during the Christmas holiday but, had been denied advertising space within the District's public transit system.

On January 18, DOJ filed an amicus brief with the Supreme Court in *Espinoza v. Montana Department of Revenue* [defending the First Amendment rights of parents and students](#) who attend a religious school, to participate in a private school scholarship program.

On January 18, The Department of Health and Human Services (HHS) announced a new [Conscience and Religious Freedom Division](#) within its Office of Civil Rights (OCR). This new division was established to enforce federal laws that protect conscience rights and religious freedom.

On March 23, 2018, the White House and DOD issued a new policy allowing existing personnel to remain in the military while [preventing those who have been diagnosed with "gender dysphoria" or had undergone gender transition surgery from joining the military](#). Those who are transgender and stable for 36 months could join so long as they serve in accordance with their biological sex.

On June 13, DOJ announced the [Place to Worship Initiative](#), designed to increase enforcement and public awareness of the Religious Land Use and Institutionalized Persons Act (RLUIPA). This federal law protects places of worship and other religious uses of property. Through this initiative, federal prosecutors will receive training about legal protections for houses of worship.

On July 30, DOJ announced a [Religious Liberty Task Force](#) to fully implement religious liberty guidance and policy across all components of the DOJ.

On October 6, President Trump's nominee [Brett Kavanaugh](#) was confirmed to the Supreme Court. Kavanaugh is the second constitutional originalist the president saw confirmed to the Court.

On November 7, HHS finalized two regulations to protect conscience and religious liberty from long-running problems with the [Obamacare "HHS contraceptive mandate."](#) These two final regulations exempt organizations with either a moral or religious objection to purchasing insurance with coverage of contraceptives and abortion-causing drugs and devices. The regulations were upheld by the Supreme Court on July 8, 2020.

On December 26, DOJ filed an amicus brief with the Supreme Court [defending a publicly-displayed cross-shaped veteran's memorial](#) that had been challenged as a violation of the Establishment Clause. This position is representative of the Trump administration's originalist approach to the Constitution concerning First Amendment rights and other issues. Such an approach results in legal analysis that interprets the law rather than injecting policy preferences into it.

On April 12, the Trump administration's policy on [military service](#) by those with gender dysphoria went into effect. This policy will help halt the deterioration of military readiness, lethality, and unit cohesion caused by social experimentation in the military.

In August 2019, DOJ filed amicus briefs with the Supreme Court in two important religious liberty cases, [R.G. & G.R. Harris Funeral Homes, Inc. v. Equal](#)

2019

2020

[Employment Opportunity Commission](#) and [Bostock v. Clayton County/Altitude Express, Inc. v. Zarda](#). Through these filings, DOJ advanced a biologically binary definition of sex and those who operate accordingly, whether because of science or religious belief.

On August 15, the Department of Labor (DOL) proposed a new regulation that would clarify the scope and application of [religious exemptions for federal contractors](#). Under the Obama administration, the scope of religious exemption at the DOL was severely narrowed. The current DOL relied on the history of our nation's preservation of religious liberty, the First Amendment, and Supreme Court decisions to re-invigorate the exemption to its historical and constitutional parameters.

On October 11, 2019, Attorney General Barr [delivered a striking defense of religious liberty](#) at Notre Dame Law School. He noted, "[t]he imperative of protecting religious freedom was not just a nod in the direction of piety. It reflects the Framers' belief that religion was indispensable to sustaining our free system of government." The Attorney General proceeded to remind the audience that religion gives us the "right rules to live by." Barr highlighted the recent attacks on religious liberty, and that the DOJ under his leadership has been fighting back and protecting religious liberty.

On November 19, HHS issued a rule [removing burdensome requirements](#) that all grantees, including those that are faith-based, must accept same-sex marriages and profess gender identity as valid in order to be eligible to participate in grant programs. This included the adoption and foster care space, where these requirements had been used to shut down faith-based providers of foster care and adoption.

On January 16, the Departments of Education and Justice issued [guidance on constitutionally protected prayer and religious expression](#) in public elementary and secondary schools. This guidance ensures that prayer in schools is properly protected and not unconstitutionally prohibited or curtailed.

On January 16, the White House Office of Management and Budget (OMB) sent a memo to the heads of executive departments and agencies [providing guidance on Executive Order \(EO\) 13798](#) "Promoting Free Speech and Religious Liberty." In order to protect the ability of religious organizations to operate in the public square, this memo required the agencies to review the EO and publish policies on how they will comply.

On January 17, nine federal agencies (the Departments of [Agriculture](#), [Education](#), [Homeland Security](#), [Veterans Affairs](#), [Justice](#), [Labor](#), [Health and Human Services](#), and [Housing and Urban Development](#), along with the [U.S. Agency for International Development](#)) proposed rules leveling the playing field for faith-based organizations wishing to participate in grant programs or become a contractor. The rules eliminated two requirements placed on faith-based organizations that were not placed on secular organizations.

On March 24, [DOJ filed a statement of interest](#) in a case protecting women against men intruding on their sporting competitions. The statement made clear that athletic qualifications on the basis of "gender identity" were harmful to women's sports.

On April 3, the Small Business Administration (SBA) issued a FAQ document confirming that [churches and religious nonprofits are eligible for assistance](#) like



the Paycheck Protection Program (PPP) in the coronavirus relief legislation known as the CARES Act. These clarifying protections ensure organizations would not be discriminated against based on their religious affiliation and would not have to give up their religious freedom in order to participate in these programs. In addition, the administration used an affiliation rule to ensure that large abortion providers like Planned Parenthood would not be eligible for coronavirus relief in the CARES Act. On April 14, DOJ filed a statement of interest [protecting the religious liberty of church-goers in Greenville, Mississippi](#). During the coronavirus pandemic, the city of Greenville banned all religious services, even those that were able to abide by social distancing standards with drive-in church services.

On April 17, the Department of Homeland Security included “clergy for essential support” in its [list of personnel and entities deemed “essential”](#) for purposes of responding to the coronavirus. This designation allows clergy and pastors more freedom to continue to operate and serve those around them in need at this time.

On April 27, Attorney General William Barr directed federal prosecutors to monitor and, if necessary, [take action to correct state and local policies that discriminate against religious institutions](#) and believers while battling the coronavirus pandemic.

On May 3, DOJ filed a statement of interest [supporting the religious freedom of Lighthouse Fellowship Church](#) in Chincoteague Island, Virginia. After the church held a 16-person worship service on Palm Sunday (following strict social distancing protocols), a criminal citation and summons were issued against the pastor pursuant to Governor Ralph Northam’s executive order which banned in-person religious services but allowed large gatherings for businesses like liquor stores and dry cleaners.

As of May 12, the Trump administration has [overseen the confirmation](#) of 193 federal judges, including two Supreme Court justices and 51 federal appeals court judges. Counting seven other judicial confirmations for roles outside the federal court system, President Trump has confirmed 200 judges so far during his time in office. An overwhelming number of President Trump’s judicial nominees have been constitutional originalists, who will interpret the law as written, rather than interpret it according to their personal policy preferences. As judges, these nominees will rule correctly on religious liberty and pro-life issues.

On May 15, the DOL issued [guidance](#) implementing the administration’s Religious Liberty Executive Order and the DOJ religious liberty guidance. The DOL guidance also cited to the OMB memo from earlier this year which directed all grant-administering agencies to detail how they will protect religious liberty in the context of such grants, and included specific action steps to ensure that religious liberty is protected.

On June 12, facing strong opposition from LGBT rights organizations, HHS finalized its regulation that [clarifies that discrimination on the basis of sex](#) in section 1557 of the Affordable Care Act is to be interpreted under the plain meaning of the word. Therefore, it does not include “gender identity” or “termination of pregnancy” as set forth by a 2016 Obama administration regulation. The HHS rule will continue to enforce existing civil rights protections; however, it makes clear that the federal government will not force physicians to participate in gender reassignment surgeries or abortions.

On June 19, the DOJ filed a [statement of interest](#) defending the constitutionality of Idaho’s Fairness in Women’s Sports Act. The Fairness in Women’s Sports Act ensures that only biologically female athletes are permitted to compete in female sports. By restricting male athletes from participating, female athletes have a fair shot when competing.

On June 24, President Trump issued an executive order to strengthen [America's foster care and adoption system](#). Among other things, this action seeks to increase partnerships with faith-based organizations to care for children and preserve families.

On June 30, the White House released a [statement](#) praising the Supreme Court ruling on *Espinoza v. Montana Department of Revenue*. This ruling is a victory for religious freedom, ensuring that religious schools are not discriminated against in state voucher programs.

On July 8, HHS Secretary Alex Azar issued a statement [celebrating the Supreme Court ruling](#) in *Little Sisters of the Poor v. Pennsylvania*. The ruling upheld the Trump administration's expansion of religious freedom protections under the Affordable Care Act's contraception mandate.

On July 21, OCR resolved a [religious discrimination](#) complaint against the Prince George's Hospital Center of the University of Maryland Medical System (UMMS). Because of COVID-19 restrictions, the hospital denied a patient's request to have a Catholic priest visit the hospital to provide spiritual care. OCR worked with the hospital system to revise their visitor's policy to allow religious visitations during the pandemic.

On August 20, OCR [resolved a civil rights complaint](#) against the state of Utah, helping the state amend their crisis standards of care (CSC) guidelines to ensure the elderly and disabled are not discriminated against when medical resources are scarce. This is now OCR's seventh resolution helping states create CSC plans that value the dignity of all human life.

On August 25, USAID released its updated [Gender Equality and Women's Empowerment Policy](#) with the purpose of empowering women and girls to participate fully in and equally benefit from the development of their societies. The updated policy takes into account the biological differences between males and females and recognizes the importance of strengthening "families and communities" to achieving its goal.

On September 8, DOJ filed an amicus brief with the Supreme Court of Indiana in support of [the Catholic Archdiocese of Indianapolis'](#) right protected by the First Amendment to "decide for itself who should personify its beliefs, inculcate its teachings, and instruct students at religious high schools affiliated with the Archdiocese."

On September 9, the Department of Education published a final rule on "Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities." This rule makes clear that [First Amendment rights are to be upheld on campuses](#). It provides colleges and universities controlled by religious organizations with guidance on how to protect religious freedom in the context of Title IX. The rule also levels the playing field for religious groups on campuses and upholds their right to assemble and free speech.

On September 21, DOJ filed a statement of interest in a case "challenging New Mexico's more stringent COVID-19 capacity limits on private schools than public schools." In doing so, the Trump administration is supporting parents' rights to [select the school of their choice](#) for their children.

On September 26, President Trump nominated constitutional originalist [Judge Amy Coney Barrett](#) to fill the late Justice Ruth Bader Ginsberg's vacant seat on the Supreme Court.



On October 2, DOJ filed a statement of interest in federal court supporting [Capitol Hill Baptist Church](#)'s lawsuit against DC Mayor Muriel Bowser "arguing the Constitution and federal law require the District of Columbia to accommodate Capitol Hill Baptist Church's effort to hold worship services outdoors, at least to the same extent the District of Columbia allows other forms of outdoor First Amendment activity, such as peaceful protests."

On October 20, HHS OCR [resolved two religious discrimination complaints](#) involving hospital policies that restricted clergy access to patients during the COVID-19 pandemic. The first involved a Maryland hospital's policy that denied a new mother's request to have her son baptized because she had tested positive for COVID-19. The other case involved a Virginia hospital's policy that prohibited a Catholic priest from administering last rites to a COVID-positive patient who was in an end of life situation. Both policies have been updated to ensure that religious freedom is not diminished at the expense of public health policies.

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