



## EXECUTIVE ORDER NO. 733

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### PROMOTING AND DEFENDING RELIGIOUS LIBERTY THROUGH IMPLEMENTATION OF THE ALABAMA RELIGIOUS FREEDOM AMENDMENT

**WHEREAS** religious liberty is America’s “first freedom”;

**WHEREAS** this is so in part because the United States Constitution’s religious-freedom provisions are the very first protections listed in the Bill of Rights;

**WHEREAS** this is so, as well, because religious liberty is the foundation on which all other liberties rest;

**WHEREAS** Alabama’s own Constitution includes numerous protections for religious liberty, even more so than the United States Constitution, *see* Ala. Const. art. I, §§ 3-3.02;

**WHEREAS** among these protections is the Alabama Religious Freedom Amendment, ratified by the people of Alabama in 1998 in response to the invalidation of certain religious-liberty protections passed by Congress;

**WHEREAS** the Alabama Religious Freedom Amendment recognizes that “competing government interests” will sometimes (albeit rarely) take precedence over religious exercise;

**WHEREAS**, at its core, however, the Amendment prohibits government from imposing *any* burden on an individual’s religious exercise without a compelling justification, *see* Ala. Const. art. I, § 3.01(V);

**WHEREAS**, to date, no known steps have been taken to formally implement the Alabama Religious Freedom Amendment within the executive branch of state government;

**WHEREAS** the United States Supreme Court has observed that 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); and

**WHEREAS** the United States Supreme Court last year reaffirmed the importance and validity of public expressions of faith in *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022);

**NOW, THEREFORE**, I, Kay Ivey, Governor of the State of Alabama, by virtue of the authority vested in me by the Constitution and laws of the State of Alabama, and in particular the Alabama Religious Freedom Amendment, do hereby promulgate this executive order, effective immediately:

1. **General policy.** The executive branch of state government shall enforce the Alabama Religious Freedom Amendment to the greatest extent practicable and permitted by law.
  - a. **Strict scrutiny.** A state executive-branch agency may not burden an individual or organization's freedom of religion, even if the burden results from a rule of general applicability, unless it does so (i) in furtherance of a compelling governmental interest and (ii) by the least restrictive means of furthering that compelling governmental interest.
  - b. **Freedom of religion.** For purposes of this order, "freedom of religion" shall include not only the meaning given to that phrase in the Alabama Religious Freedom Amendment – that is, "the free exercise of religion under Article I, Section 3" of the Alabama Constitution, Ala. Const. art. I, § 3.01(IV)(2) – but also the free-exercise rights set forth in Amendment 942 to the Alabama Constitution, now appearing as Article I, Section 3.02. Reading these definitions together, "freedom of religion" includes each of the following rights:
    - i. The right to be free from religion "established by law";
    - ii. The right to be free from preferences "given by law" to any religious sect, society, denomination, or mode of worship;
    - iii. The right not to be compelled by law to attend any place of worship;

- iv. The right not to pay any “tithes, taxes, or other rate” for building or repairing any place of worship, or for maintaining any minister or ministry;
- v. The right to be free from religious tests as a qualification for holding any “office or public trust” under this state;
- vi. The right to enjoy the civil rights, privileges, and capacities of any citizen without those rights, privileges, or capacities being “affected” (that is, diminished or enlarged) on account of one’s religious principles; and
- vii. The right to worship God according to the dictates of his or her own conscience.

2. **Specific protections for licensees, contractors, etc.** In furtherance of the Alabama Religious Freedom Amendment, state executive-branch agencies shall, at a minimum, provide specific protections for the religious exercise of government licensees, contractors and grant recipients, recipients of government benefits, and state employees.

- a. **Licensees.** A state executive-branch agency shall protect the religious-exercise rights of current or prospective licensees (i.e., any person or entity authorized or seeking to be authorized to engage in any profession, trade, business, or activity that requires state government licensure, certification, permitting, chartering, or other formal permission) as follows:
  - i. The agency shall not discriminate against a current or prospective licensee based on religion, religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice, except in furtherance of a compelling governmental interest and by the least restrictive means of furthering that compelling governmental interest.
  - ii. The agency shall not penalize a current or prospective licensee for acting or failing to act because of any religious belief displayed by that action or failure to act.

- iii. In adopting administrative rules and policies, the agency shall proactively, or upon request by a current or prospective licensee, consider potential burdens on religious exercise, as well as ways to accommodate those burdens.
  - iv. The agency shall not target a religious individual or entity through discriminatory enforcement of neutral, generally applicable laws or administrative rules.
  - v. In determining whether an agency action burdening the free exercise of religion furthers a compelling interest in the least restrictive manner, the agency shall not question the wisdom or value of a current or prospective licensee's religious belief.
- b. **Contractors and grant recipients.** A state executive-branch agency shall protect the religious-exercise rights of current or prospective contractors and grant recipients as follows:
- i. The agency shall not discriminate against a current or prospective contractor or grant recipient based on religion, religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice, except in furtherance of a compelling governmental interest and by the least restrictive means of furthering that compelling governmental interest.
  - ii. The agency shall give prospective contractors and grant recipients that are religious the opportunity to compete for government contracts or grants on an equal basis with nonreligious individuals or entities.
  - iii. The agency shall not require a current or prospective contractor or grant recipient to alter aspects of its religious character as a condition of receiving or maintaining a contract or grant unless strictly necessary to further a compelling governmental interest.

- iv. The agency shall not interfere with a religious contractor or grant recipient's right to employ only persons whose beliefs and conduct are consistent with the entity's religious beliefs.
  - v. In determining whether an agency action burdening the free exercise of religion furthers a compelling interest in the least restrictive manner, the agency shall not question the wisdom or value of any current or prospective contractor or grant recipient's religious beliefs.
- c. **Recipients of government benefits.** A state executive-branch agency shall protect the religious-exercise rights of current or prospective recipients of government benefits as follows:
- i. The agency shall not discriminate against a current or prospective recipient of government benefits based on religion, religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice, except in furtherance of a compelling governmental interest and by the least restrictive means of furthering that compelling governmental interest.
  - ii. In determining whether an agency action burdening the free exercise of religion furthers a compelling interest in the least restrictive manner, the agency shall not question the wisdom or value of any current or prospective government-service recipient's religious beliefs.
- d. **State employees.** A state executive-branch agency shall protect the religious-exercise rights of current or prospective state employees as follows:
- i. The agency shall not discriminate against a current or prospective state employee based on religion, religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice, except in furtherance of a compelling governmental interest and by the least restrictive means of furthering that compelling governmental interest.

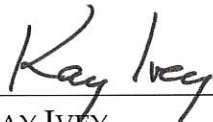
- ii. The agency shall not require religious participation or nonparticipation as a condition of employment.
  - iii. The agency shall not permit or tolerate harassment of a state employee based on religion.
  - iv. The agency shall permit state employees to engage in personal religious expression in government workplaces to the same extent that they permit state employees to engage in expression that is nonreligious.
  - v. In determining whether an agency action burdening the free exercise of religion furthers a compelling interest in the least restrictive manner, the agency shall not question the wisdom or value of any current or prospective state employee's religious beliefs.
3. **Addressing constituent concerns.** Each state executive-branch agency shall respond to any constituent who complains that the agency has burdened his or her free exercise of religion in violation of the Alabama Religious Freedom Amendment or the protections set forth in this executive order. The agency shall work with the constituent to identify ways to eliminate any burden on religious exercise while still furthering its compelling governmental interests.
4. **Applicability.** For purposes of this order, "state executive-branch agency" means any agency, department, board, office, commission, or other entity within the executive branch of state government.
5. **Implementation.** This order shall be implemented to the maximum extent possible consistent with applicable law and subject to the availability of appropriations. In particular, the protections set forth in paragraph 2 represent the Office of the Governor's understanding of current authoritative interpretations of the First Amendment to the United States Constitution; in the event of a conflict between the provisions set forth in paragraph 2, and a controlling, authoritative interpretation of the First Amendment, that controlling interpretation shall prevail over the provisions of paragraph 2. Nothing in this order shall be construed as impairing or otherwise affecting the authority granted by law to an executive branch agency, or the head thereof,

including the Governor of the State of Alabama, except to the extent expressly set forth in this order.

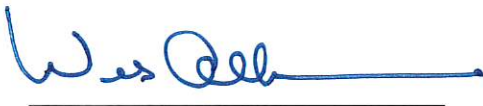
6. **No private right of action.** This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any private party against the State of Alabama, its departments, agencies, or entities, its officers, employees, or agents, or any other person. The sole remedy for any claimed violation is to mediate the claim of violation with the agency through the process afforded through this order.
7. **Effect on prior related orders.** Any previously issued executive order is hereby rescinded to the extent it conflicts with this executive order.

DONE AND ORDERED this 20th day of January 2023.



  
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KAY IVEY  
Governor

ATTESTED

  
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WES ALLEN  
Secretary of State