
CRIMINAL LAW AND PROCEDURE

WHAT IS PRIVATE, AND WHAT IS PROTECTED, IN THE PRIVACY PROTECTION ACT?

By Priscilla Adams*

The Privacy Protection Act (PPA) labors under a bit of a misnomer; for what it primarily protects is First Amendment freedom-of-the-press values, not privacy. The PPA is a “gap-filler,” enacted to afford “the press and certain other persons not suspected of committing a crime with protections not provided... by the Fourth Amendment.”¹ Limited by a few enumerated exceptions, the PPA prohibits a government officer or employee in connection with the investigation or prosecution of a criminal offense from searching for and then seizing work product or documentary materials possessed by a person in connection with a purpose to disseminate information to the public.² The Act applies to law enforcement at every level of government and limits the use of search warrants when seeking to obtain evidence from those engaged in First Amendment activities.

Work product is material which is created (either by the possessor or another person) in anticipation of communicating such material to the public. It includes mental impressions, conclusions, opinions, or theories of the person who created, prepared, produced, or authored the material.³ Documentary material refers to materials upon which information is recorded. It includes written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically, or electronically recorded cards, tapes, or discs.⁴ Specifically excluded from the PPA’s protection is contraband (the fruits of a crime or things criminally possessed, or property designed for use, or which is or has been used to commit a criminal offense).⁵

The PPA was passed in 1980, in response to *Zurcher v. Stanford Daily*,⁶ in which the Supreme Court held that the First Amendment does not require any special rule limiting the use of warrants to execute a search of the press. *Zurcher* arose from a series of events that began to unfold on April 9, 1971, when officers from the Palo Alto Police Department and the Santa Clara County Sheriff’s Department were involved in a violent clash with student protestors occupying Stanford University Hospital’s administrative offices. Nine police officers were injured, but they were able to identify only two of their attackers. The student newspaper, the *Stanford Daily* ran a special edition on April 11 devoted to the protest and violence.⁷ After the special edition was distributed, police obtained a warrant to search the paper’s offices for negatives, film, and pictures depicting the events that occurred at the hospital on April 9. There was never a suggestion by the police that anyone on staff at *Stanford Daily* was involved in the attack. Rather, the warrant claimed the newspaper had evidence relating to the attack on the officers.⁸

Stanford Daily and members of its staff brought a civil rights action against the police officers and other law

enforcement officials claiming that the search of the newspaper office was illegal. A federal district court ruled for the newspaper, holding that due to First Amendment considerations, third party searches of newspaper offices are impermissible in all but a very few situations.⁹ The court found that the search of the *Stanford Daily* offices was unlawful because (1) it was a third party search of those not suspected of any criminal wrong-doing, and (2) there were no affidavits submitted to the magistrate demonstrating probable cause that the materials would be destroyed or that a subpoena was otherwise impractical.¹⁰ The court of appeals affirmed per curiam, adopting the opinion of the district court.¹¹

The Supreme Court reversed, holding that the search of *The Daily’s* newsroom was valid and constitutional. The Court explained:

Under existing law, valid warrants may be issued to search *any* property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found. Nothing on the face of the Amendment suggests that a third-party search warrant should not normally issue.¹²

As to the respondents’ argument that searches of newspaper offices for evidence of crime would seriously impede the press in their attempt to acquire, analyze, and disseminate the news, the Court held that neither the Fourth Amendment, nor cases involving First Amendment values, requires any special rule limiting the use of search warrants.¹³ The Framers took great care to subjects all searches to the test of reasonableness and to the rule requiring search warrants to be issued by neutral magistrates.¹⁴

Properly administered, the preconditions for a warrant—probable cause, specificity with respect to the place to be searched and the things to be seized, and overall reasonableness—should afford sufficient protection against the harms that are assertedly threatened by warrants for searching newspaper offices.¹⁵

A great deal has changed in the nearly three decades since Congress passed the PPA, nearly four decades since the events unfolded at the *Stanford Daily News* offices. Gone are the days when you had to be Robert Woodward or Carl Bernstein to reach an audience. Today, anyone with access to a computer and an Internet connection can publish her views and opinions via a blog,¹⁶ even if she is not employed as a writer, journalist or reporter. Such information can easily fall within the description of materials afforded protection under the PPA; therefore, it is crucial that law enforcement and others involved in the search and seizure of evidence fully understand the PPA.

The PPA’s protection of documents held at a newspaper office that shuns computers in favor of reporters’ notebooks and filing cabinets may be straightforward, but this is not always the case when police are executing a warrant for documents maintained on a computer. Computers and other digital devices are capable of storing massive quantities of data as well as a wide

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variety of information; evidence of criminal wrongdoing could co-exist alongside material intended for dissemination to the public. What should an officer do when confronted with the issue of commingled material located in a computer—some of which is protected under the PPA and some which is not? The PPA does not explicitly address the issue of liability for the seizure of communicative material that is technically difficult to separate from evidence seized pursuant to a valid warrant.

The first case that attempted to apply the PPA to electronic publishers was *Steve Jackson Games, Inc. v. U.S. Secret Service*.¹⁷ Steve Jackson Games (SJG) was a small company located in Texas. In addition to producing fantasy role playing games, it ran “Illuminati,” an electronic bulletin board system (BBS). The BBS provided its users with a means to send and receive e-mail, published newsletter articles, and generally provided the users with a forum in which they could comment on the games and publications of SJG.¹⁸ The Secret Service was investigating Loyd Blankenship, an employee of SJG who served as a co-SYSOP (system operator) of Illuminati. As a co-SYSOP, Blankenship had the ability to review anything on the BBS, and perhaps the ability to delete anything from the system.¹⁹ Blankenship also operated a bulletin board system out of his home (Phoenix), one of the many systems that distributed “Phrack,” an electronic journal that contained a stolen telephone company document.²⁰

The Secret Service obtained a warrant to “search for and seize and thereafter read the information stored and contained in computer hardware... and computer software... and written material and documents relating to the use of the computer system... relative to the computer programs and equipment at the business known as Steve Jackson Games...”²¹ The agent conducting the seizure was informed by a SJG employee that the company was in the publishing business, but did not grasp the importance of this fact because he was unaware of the PPA.²² Among the material seized were the draft and backup materials for a book that was intended for immediate publication, drafts of magazines to be published, and the BBS and its contents which included announcements and comments on published articles.²³ SJG, Steve Jackson, and some of the BBS users (none of whom were suspected of any criminal wrongdoing) filed suit against the Secret Service for violation of the PPA and the Electronic Communication Privacy Act,²⁴ resulting from the seizure of computers, disks, and other materials from SJG.²⁵

Finding that work product and documentary material was seized, the court held that the Secret Service’s continued seizure and refusal to promptly return the work product material as requested by Steve Jackson and his lawyers constituted a violation of the PPA.²⁶ The PPA does not address the issue of timing for the return of inadvertently seized PPA material, nor does *Steve Jackson Games* state when the PPA materials should have been returned. However, the court in *Steve Jackson Games* noted that it was months before the majority of the PPA material was returned, even though the agent stated the materials could have been duplicated and returned to SJG in a period of a few hours, or at the most, eight days from the time of the seizure.²⁷ At the very least, *Steve Jackson Games* seems to direct officers to return inadvertently seized PPA materials as soon as they can.

It is not clear exactly which items led to the violation of the PPA. Was it the seizure of the papers, computers, BBS, or all of these taken together? The court awarded SJG more than \$50,000 in expenses and damages for violation of the PPA. The individual users of the BBS were not allowed recovery under the Act, but the court did not address whether this was because they were not considered publishers or because their messages on the BBS did not constitute work product subject to PPA protection.²⁸

It is a violation for an officer to search for or seize work product possessed by a person “reasonably believed” to have a purpose to disseminate that material to the public.²⁹ What exactly constitutes this “reason to believe”? Does this impose a duty to inquire upon agents conducting a search? The language used by the court in *Steve Jackson Games* seems to answer that question in the negative. In that case, the court recognized that the agent failed to make a reasonable investigation of the company, yet still declined to find from a preponderance of evidence that on March 1, 1990, the date on which the search warrant was executed, the agent nor any other employee or agent of the United States had reason to believe that the property seized would include work product of one believed to have a purpose to disseminate such information to the public.³⁰ However, at some point on March 1, 1990, during the course of the search, the agents were told by a SJG employee that the company was in the publishing business.³¹ Because of this, the court found that liability attached on March 2—the time at which the agents knew that SJG was in the publishing business, and that they had seized work product material pursuant to a warrant in violation of the PPA.³² While not every officer who executes a search warrant will be told by the subject of the search, “we are in the business of disseminating to the public a newspaper, book, or other public communication,” an officer must keep in mind that the subject of a search could possess material intended for publication, thus triggering the PPA.

On the other hand, the court in *Lambert v. Polk County, Iowa*,³³ when discussing an entitlement to a preliminary injunction, held that it was improbable that a private citizen would prevail on a claim that officers violated the PPA when they seized a videotape he made that depicted a fatal street fight.³⁴ The court noted that there was nothing about the way the plaintiff presented himself to the officers that would have led them to reasonably believe that his purpose was to disseminate the tape to the public. He was not an employee of a news station, nor did he tell police that he intended to sell the tape to a news station so it could be disseminated to the public.³⁵

The PPA contains exceptions to the general rule that a subpoena must be issued if one wants to obtain work product or documentary materials held by one intending to disseminate the material to the public. A warrant may be used to search for or seize work product if (1) there is probable cause to believe that the person possessing such material has committed or is committing the criminal offense to which the material relates;³⁶ or (2) there is reason to believe that the immediate seizure of materials is necessary to prevent the death or serious bodily injury of person.³⁷

In addition to the criminal suspect and serious bodily injury exceptions, there are two additional exceptions under

which documentary materials may be seized with a warrant. The destruction of evidence exception provides that an officer may search for and seize material relating to a criminal investigation if there is reason to believe that the giving of notice pursuant to a subpoena would result in the destruction, alteration, or concealment of such materials.³⁸ Finally, a warrant may be used if the materials were not produced in response to a court order mandating compliance with the subpoena, and all appellate remedies have been exhausted; or there is reason to believe that the delay caused by further proceedings would threaten the interests of justice.³⁹

The case, *Berglund v. City of Maplewood*,⁴⁰ in which plaintiffs brought a claim against the city alleging the warrantless seizure of their videotape violated their rights under the PPA, illustrates two of these exceptions. Plaintiffs Kevin Berglund and Robert Zick wanted to film for their local access television show a banquet being held in honor of departing city council members, but were denied entry due to their refusal to pay the required admission fee. When plaintiffs refused to leave the premises, a confrontation between plaintiffs and the officers ensued. Defendants arrested Berglund and charged him with disorderly conduct, obstructing legal process and obstructing legal process with force. Berglund recorded the altercation on his video camera, which he gave to Zick upon his arrest. Zick refused to give the tape to the police when requested to do so.⁴¹ Police confiscated the videotape, later testifying that they did so because they believed it contained evidence of the crime of disorderly conduct and because they feared the tape would be tampered with if they did not take it.⁴² Without even reaching the question as to whether the PPA applied to the material on the tape, the court held that the defendants' actions fit within the criminal suspect and destruction of evidence exceptions provided under the Act.⁴³

The criminal suspect exception allows an officer to search for and seize work product or documentary materials if there is probable cause to believe that the person possessing the materials has committed the criminal offense to which the materials relate.⁴⁴ The *Berglund* court found the defendants' acts fit squarely within this exception, in that the officers seized the tape from a camera that Berglund had held and operated, and the tape contained evidence of Berglund's disorderly conduct.⁴⁵ Furthermore, an objectively reasonable officer would have reason to believe that Zick, who was Berglund's companion, would erase or tamper with the tape that contained evidence of Berglund's conduct; therefore, the destruction of evidence exception also protected the officers' acts.⁴⁶

In *Guest v. Leis*,⁴⁷ an online BBS was seized pursuant to a valid warrant in an obscenity investigation. Subscribers to the BBS received passwords that enabled them to e-mail and take part in chat room conversations, on-line games, and conferences. Users were also able to download computer programs, pictures, and other files. The users of the BBS and the BBS operator brought suit against the sheriff, his department, and deputies, claiming that these defendants violated the PPA by seizing materials intended for publication.⁴⁸ Although not clear as to what constituted the PPA-protected material, the court assumed that PPA-protected material was on the system.⁴⁹ Defendants claimed that whereas the operator of the bulletin board had

standing to bring suit as the possessor of the information at issue, the users of that system did not.

This case underscores one of the differences between information stored in a digital form, for example on a computer server or BBS, and that which is tangible property held in an actual physical location. Defendants relied on *Powell v. Tordoff*⁵⁰ to support their claim that a plaintiff must be in actual possession of physical materials in order to have standing to bring a claim under the PPA.⁵¹ In *Tordoff*, DePugh was the former owner of a building that was being leased by Powell. The building was searched and property seized pursuant to a search warrant. The court dismissed DePugh's PPA claim for lack of standing, noting that the property seized was in the possession of Powell, and it was "the goal of the statute to protect innocent third parties in possession of documents and papers from governmental intrusions which would unnecessarily subject their files and papers to search and seizure."⁵² In *Leis*, however, the Sixth Circuit dismissed this argument noting that § 2000aa-6(a) of the PPA creates a cause of action for any "aggrieved person"⁵³ and the plaintiffs were aggrieved by the seizure of their communications.⁵⁴

The *Leis* court noted that interpretation of the Act presents challenges unforeseen by the drafters—that of a computer search⁵⁵ and the issue of liability for the seizure of PPA-protected material when it occurs *incidentally* to the seizure of evidence pursuant to a valid warrant. Referencing its earlier discussion of the Fourth Amendment claims, the court noted it is unreasonable to require police to sort through extensive computer files in a suspect's office in order to separate out files not covered by the search warrant.⁵⁶ In light of the technical difficulties associated with the search of computers, the court held it was reasonable for the police to seize the computers and their contents in order to find the files specified in the warrant.⁵⁷ Furthermore, there was no liability under the PPA for the seizure of PPA-protected material that was commingled with the non-PPA protected obscenity,⁵⁸ based on the criminal suspect exception.⁵⁹ The court emphasized that police who *seize* PPA-protected materials commingled on a criminal suspect's computer may not then *search* the protected materials.⁶⁰ The Sixth Circuit distinguished the case from *Steve Jackson Games* in which the court awarded PPA damages to the company, but not the bulletin board subscribers. In *Steve Jackson Games* the owner of the computers was not a criminal suspect, and furthermore, the agents read the protected material, a fact which the plaintiffs at the case at bar was unable to prove.⁶¹

Six years after deciding *Leis*, the Sixth Circuit decided *S.H.A.R.K. v. Metro Parks Serving Summit County*,⁶² in which an animal rights organization claimed the park district violated the PPA by seizing cameras the group surreptitiously placed in the park in an attempt to tape a deer-culling operation.⁶³ The district court held that there was not a search or a seizure as envisioned by the PPA, in that the rangers happened to see and subsequently remove the cameras while they were engaged in normal operations, not in connection with the investigation or prosecution of a criminal offense. While acknowledging that the plaintiffs were charged with criminal trespass, the court noted that these charges were brought *after* the cameras were discovered, so the cameras could not have been seized in

connection with an investigation into the trespass.⁶⁴ The Sixth Circuit disagreed with the district court's analysis, finding that there was an issue of fact as to whether the confiscation of the cameras constituted a seizure under the PPA, agreeing with the plaintiffs that a fact-finder could determine that the defendants began a criminal investigation as soon as they discovered the first camera.⁶⁵ However, even if the plaintiffs were correct and the PPA was applicable, the Sixth Circuit stated that this disputed fact was not material, since the plaintiffs would be barred from relief under the Act's suspect exception.⁶⁶

It is interesting to note the language used by the Sixth Circuit when discussing the criminal suspect exception to the PPA. In *Leis*, the court speaks of "innocent material" which might be present on a computer along with evidence of a crime,⁶⁷ stating that the PPA does not prohibit police from searching and seizing evidence on a computer merely because the computer also contains "innocent" (or PPA-protected) materials. A contrary holding, the court reasoned, would enable criminals to safeguard their criminal records or evidence by storing them in a computer on which they have also stored work product or documentary materials.⁶⁸ Presumably, the converse would also be true: work product or documentary material does not lose the protections afforded by the PPA simply because it is located on the computer of a criminal suspect, since by definition, it would not relate to the crime for which he is suspected.

In *S.H.A.R.K.*, the Sixth Circuit refers not to *innocent material*, but *innocent third parties*, noting that "[t]he goal of the [PPA] is to protect innocent third parties in possession of documents and papers from governmental intrusions which would unnecessarily subject their files and papers to search and seizure. Consequently, it is these persons who may avail themselves of the remedy provided by the statute."⁶⁹ The *S.H.A.R.K.* court found there were no "innocent third parties" whose rights were violated by the governmental investigation and search; the target of the investigation and the party subject to the search and seizure were one and the same.⁷⁰ Accordingly, the court concluded that the plaintiffs were not entitled to protection by the PPA against the seizure that occurred.

The PPA does not use the language "innocent third party" in setting forth from whom the government shall not seize work product or documentary material.

Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce.⁷¹

A civil cause of action for damages, costs, and attorneys' fees is the exclusive remedy available to one who is aggrieved by a search or seizure in violation of the Act;⁷² violations of the PPA will not lead to suppression of evidence.⁷³ Assuming that a party has a claim for damages under the PPA, against whom can he bring a suit? Liability under the PPA attaches to those who search for or seize the work product material, that is, those who conduct the search. Therefore, a district attorney who

reviews a warrant application but otherwise does not engage in conduct that could be viewed as assisting in the execution of the warrant will not be liable under the PPA.⁷⁴ If the violation is committed by federal or local officials the action would be against the United States or the local government, respectively.⁷⁵ The PPA does not authorize suits against municipal officers or employees in their individual capacities.⁷⁶

The Eleventh Amendment provides that a citizen may not bring a suit for monetary damages against a state in federal court,⁷⁷ unless the state expressly waives its immunity and agrees to be sued, or Congress statutorily abrogated immunity by clear and unmistakable language.⁷⁸ The PPA does not abrogate Eleventh Amendment immunity of the states, but rather provides for liability of state officers or employees as individuals if a state declines to waive such immunity.⁷⁹ A state officer's or employee's reasonable good faith belief in the lawfulness of his conduct is a complete defense where the state has not waived its Eleventh Amendment immunity.⁸⁰ A government or governmental unit, however, may not assert this defense on its behalf.⁸¹

What do these cases tell us? What is it, exactly, that the PPA protects—innocent parties or innocent materials? *Leis* points to the latter: just as evidence of a crime located on a criminal suspect's computer does not *gain* status as PPA-protected material due to the presence of work product or documentary material, the presence of criminal evidence will not strip the protections of the PPA from the "innocent material."

The Sixth Circuit in *Leis* notes the difficulty in applying the PPA to cases involving searches of computers, stating that "[t]he PPA does not explicitly address the question of liability for a seizure of communicative material that is technically difficult to separate from the evidence of a crime whose seizure is authorized by a valid warrant."⁸² While it may be impossible to avoid the seizure of PPA-protected material in the context of a computer search, *Leis* makes it clear that the materials may not be searched. Therefore, government agents who conduct searches of computers or other digital devices must be aware of the prohibitions of the PPA, and recognize when the Act is triggered. Unfortunately, *Leis* fails to provide guidelines or procedures that the government should follow in dealing with the seized PPA-protected material. The Sixth Circuit's reference to "innocent third parties" in *S.H.A.R.K.* can be reconciled with analysis since the material seized and subsequently searched in *S.H.A.R.K.* related solely to the plaintiffs' alleged criminal offense of trespass.

Endnotes

- 1 S. Rep. No. 96-874 at 4 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3950.
- 2 Privacy Protection Act, 42 U.S.C. § 2000aa (1980).
- 3 *Id.* at § 2000aa-7(b) (1)-(3).
- 4 *Id.* at § 2000aa-7(a).
- 5 *Id.* at § 2000aa-7(a) & (b).
- 6 *Zurcher v. Stanford Daily*, 536 U.S. 547 (1978).
- 7 *Id.* at 550-551.
- 8 *Id.*

9 Stanford Daily v. Zurcher, 353 F. Supp 124, 135 (N.D. Cal. 1972).

10 *Id.*

11 Stanford Daily v. Zurcher, 550 F.2d 464 (9th Cir. 1977).

12 Zurcher v. Stanford Daily, 536 U.S. 554.

13 *Id.* at 565.

14 *Id.*

15 *Id.* at 565.

16 A blog is a type of website, usually maintained by an individual, in which he or she regularly posts entries of commentary. Blogs may also contain video and graphics. Many blogs provide information on a particular subject, while others serve more as an on-line diary for its creator. <http://en.wikipedia.org/wiki/Blog> (last accessed Apr. 13, 2009).

17 Steve Jackson Games v. U.S. Secret Service, 816 F. Supp. 432 (W.D. Tex. 1993).

18 *Id.* at 440.

19 *Id.* at 435.

20 *Id.*

21 *Id.* at 439.

22 *Id.* at 437.

23 *Id.* at 439-440.

24 18 U.S.C. §§ 2703, 2711 (1986).

25 *Steve Jackson Games, supra* note 17, at 432, 434-35.

26 *Id.* at 440-41.

27 *Id.* at 437.

28 *Id.* at 441.

29 42 U.S.C. § 2000aa(a).

30 *Steve Jackson Games, supra* note 17, at 440.

31 *Id.* at 437.

32 *Id.* at 438.

33 Lambert v. Polk City, Iowa, 723 F. Supp. 128 (S.D. Iowa 1989).

34 *Id.* at 132.

35 *Id.*

36 42 U.S.C. § 2000aa(a)(1).

37 *Id.* at § 2000aa(a)(2).

38 *Id.* at § 2000aa-6(b)(3).

39 *Id.* at § 2000aa(b).

40 Berglund v. City of Maplewood, 173 F. Supp. 2d 935 (D. Minn. 2001).

41 *Id.* at 940-41.

42 *Id.* at 941.

43 *Id.* at 949-50.

44 *Id.* at 949 (citing 42 U.S.C. § 2000aa(a)(1) & (b)(1)).

45 *Berglund*, 173 F. Supp. 2d at 949.

46 *Id.* (citing 42 U.S.C. § 2000aa(b)(3)).

47 Guest v. Leis, 255 F.3d 325 (6th Cir. 2001).

48 *Id.* at 340.

49 *Id.* at 342.

50 Powell v. Tordoff, 911 F. Supp. 1184 (N.D. Iowa 1995).

51 *Id.* at 1189-90.

52 *Id.* at 1190.

53 *Leis*, 255 F.3d at 341 (citing 18 U.S.C. § 2510(11)) (defining aggrieved person under ECPA Title I as one who was a party to any intercepted wire, oral, or electronic communication or against whom an interception was directed).

54 *Leis, supra* note 47, at 341.

55 *Id.*

56 *Id.* at 341, 334-35.

57 *Id.* at 335.

58 *Id.* at 342.

59 The “suspect exception” provides:
 [T]his provision [barring search and seizure of work product materials] shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if –(1) there is probable cause to believe that the person possessing such materials has committed or is committing the offense to which the materials relate: Provided, however [t]hat a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of [certain federal laws], or if the offense involves the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, the sexual exploitation of children, or the sale or purchase of children under section 2251, 2251A, 2252, or 2252A of Title 18...
 42 U.S.C. § 2000aa(a).

60 *Leis*, 255 F.3d at 342.

61 *Id.* at 342, n.12.

62 *S.H.A.R.K. v. Metro Parks Serving Summit County*, 449 F.3d 553 (6th Cir. 2007).

63 *Id.* at 566.

64 *Id.*

65 *Id.*

66 *Id.*

67 *Leis, supra* note 47, at 325, 342.

68 *Id.*

69 *S.H.A.R.K.*, 499 F.3d at 567 (citing S. REP. NO. 96-874, at 15 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3950, 3961).

70 *S.H.A.R.K.*, 499 F.3d at 567.

71 42 U.S.C. § 2000aa(a).

72 *Id.* at § 2000aa-6(d), (f).

73 *Id.* at § 2000aa-6(e).

74 *Mink v. Suthers*, 482 F.3d 1244, 1258 (8th Cir. 2007), *Citicasters v. McCaskill*, 89 F.3d 1350, 1356 (8th Cir. 1996).

75 42 U.S.C. § 2000aa-6(a)(1).

76 *Davis v. Gracey*, 111 F.3d 1472, 1482 (10th Cir. 1997) (PPA claim against municipal officers in their individual capacities dismissed for lack of subject-matter jurisdiction).

77 *Welch v. Texas Dep’t of Hwys. & Public Transp.*, 483 U.S. 468, 472 (1987), *Barnes v. State of Mo.*, 960 F.2d 63, 64 (8th Cir. 1992).

78 *Barnes v. State of Mo.*, 960 F.2d at 65.

79 *Id.* at 63, 64.

80 42 U.S.C. § 2000aa-6(b).

81 *Id.* at § 2000aa-6(c).

82 *Leis, supra* note 47, at 325, 342.