



PROTECTING YOUR MINISTRY

*A Legal Guide to Protecting
Churches, Christian Schools, and Christian Ministries
from Religious Freedom Threats*

PROTECTING YOUR MINISTRY

VIDEO SERIES

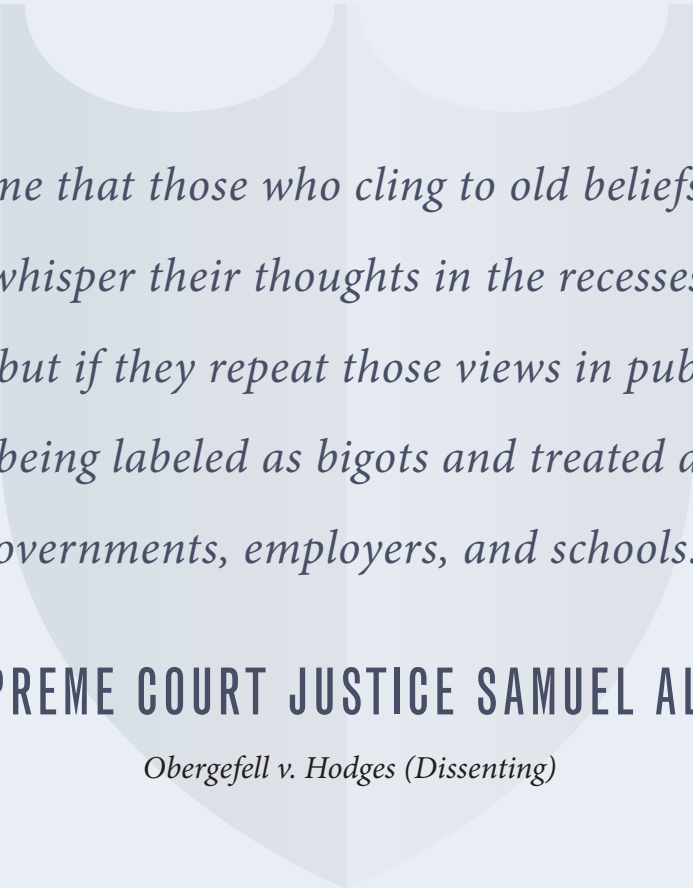
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“I assume that those who cling to old beliefs will be able to whisper their thoughts in the recesses of their homes, but if they repeat those views in public, they will risk being labeled as bigots and treated as such by governments, employers, and schools.”¹

SUPREME COURT JUSTICE SAMUEL ALITO

Obergefell v. Hodges (Dissenting)

INTRODUCTION

In the culture, in the courts, even in casual conversation, it is increasingly obvious that we have lost sight of over 200 years of social and legal tradition that has secured our fundamental freedoms—namely, freedom of speech and religion.

A new perspective—that sexual autonomy trumps religious freedom—has begun to impact churches, ministries, and people of faith across this nation. This new philosophy is coupled with an increasing devaluation of religion in public life and a cultural belief that churches are no longer vital, and in some cases no longer even beneficial, to the life of a community.

These ideas have led, in part, to the passage of sexual orientation and gender identity laws (SOGIs). SOGIs elevate sexual special interests over our cherished fundamental freedoms, especially religious freedom. These laws place terms like “sexual orientation” or “gender identity” in the same category as race or religion. But they are not designed for the innocent purpose of ensuring all people receive basic services. Rather, their practical effect is to legally compel Christians to accept, endorse, and even promote messages, ideas, and events that violate their faith.

Those promoting these laws use public sympathy—often gained through misleading rhetoric about “discrimination”—to silence dissenting voices. And no ministry will remain immune if it holds true to Scripture’s teachings about human sexuality. Indeed, some SOGI laws are worded so broadly that even a sermon on biblical sexual ethics could fall under their authority.

Alliance Defending Freedom created this manual to help you prepare for the legal intrusions some of your fellow believers around the country have

already faced, and for other challenges on the near horizon. Alliance Defending Freedom exists to help you deal with a variety of legal challenges facing churches, religious ministries, and believers today, including issues not specifically addressed in this manual: civic engagement of churches and pastors, tax exemption, equal access to government facilities and programs, and the freedom to live out your faith in your business, workplace, or school. You can connect with us at: [**www.ADFlegal.org/church**](http://www.ADFlegal.org/church).

But the scope and nature of the threat posed by the elevation of sexual autonomy and the devaluation of faith warrants special, focused attention. This guide provides that focus. In the following pages, you will find examples of what other Christians around the country are facing; how your church, school, or ministry may be vulnerable to similar threats; and what you can do to secure crucial legal protections to help enable you to weather the fast-approaching legal storms.

SOGIs have already been invoked to attempt to force Christian photographers, bakers, florists, and other creative professionals to create custom-design artwork celebrating same-sex weddings. They have been used to attempt to force Christian adoption agencies to choose between placing children in motherless and fatherless same-sex homes or go out of business. And SOGIs have even been used to try to force churches to violate their theological beliefs and open sensitive sex-specific areas—like showers, changing areas, and restrooms—to members of the opposite biological sex.

The freedom of your ministry to remain a compassionate but faithful witness to God’s truth in our world today may depend on a thoughtful consideration of the information in this manual.







PROTECTING YOUR MINISTRY

Use the checklists below to ensure your ministry has the broadest religious liberty protections under the law.

This handbook is designed for all types of churches, faith-based schools, and Christian ministries. “Christian ministries” include a broad spectrum of nonprofit, faith-based organizations such as pregnancy resource centers, religious publishers, campus ministries, relief agencies, missions groups, hospitals, counseling centers, adoption agencies, and food banks.










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Look for the colored shield icon throughout this guide for information that pertains to your ministry category.

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Allied Attorneys



and Partners with Over
300
Allied Organizations

God-Granted Success Record



ADF Has Won Nearly
80%
of All Our Cases



and Played a Role In
52
Supreme Court Victories



ADF advocates for religious liberty, the sanctity of life, and marriage and family.

To learn more about ADF and our work, visit ADFLegal.org.

PROACTIVE STEPS FOR CHURCHES, CHRISTIAN SCHOOLS & CHRISTIAN MINISTRIES

The action items listed under this section apply to churches, Christian schools, and Christian ministries and help ensure the broadest religious liberty protections available under the law.



1.0 Statement of Faith

A statement of faith should be the foundational document for every faith-based organization. The statement expresses the ministry's core religious beliefs and serves as clear evidence of those beliefs in the event that they are called into question in a lawsuit. The statement also serves as the backbone of the organization's policies and procedures. The key policies and procedures discussed in this guide all point back to the statement of faith. All actions of the church or ministry should be filtered first through these core beliefs. The statement of faith is the starting point and the key component of protecting religious liberty.

Because of its importance, the statement of faith should appear in the organization's bylaws or other policy documents. Churches and ministries that fall under a denomination's statement of faith or religious position statement should either expressly adopt that statement or incorporate it by reference into their bylaws or other policy documents. Courts, and others, will not necessarily assume that a ministry adheres to the beliefs of its denomination or faith tradition unless the organization affirmatively makes that connection clear.

If circumstances make it difficult to include the statement of faith in the bylaws, it should be adopted as a governing document for the church or organization. The key is not necessarily where

the statement of faith resides, but that it serves as a binding document that reflects faith beliefs and governs all the actions of the church or ministry.

The statement of faith should address a broad range of religious beliefs—and the more detailed, the better—but because of the current legal climate, two topics deserve particular mention: marriage and human sexuality.

A statement of faith that includes beliefs about marriage and human sexuality helps protect religious organizations in at least two ways. First, it may discourage those looking for “easy” lawsuits from bringing claims. Once the organization clearly states its religious beliefs on these matters, it is more difficult to argue that the organization acted with discriminatory motives. Second, the statement will make it easier for the organization to defend itself if it is sued. Courts generally regard a clear statement of faith as an expression of the organization's doctrine, and defer to it as the First Amendment requires. Adopting a statement of faith makes it more likely a court will conclude the organization acted on its well-documented and sincere religious beliefs, rather than an improper motive. It also allows the organization to articulate a positive, overarching statement on human sexuality, and not be mischaracterized as being only “against” something.

HORIZON CHRISTIAN FELLOWSHIP V. WILLIAMSON

Spaghetti suppers and spirituality don't mix. At least, that's what Massachusetts state officials would like to believe.

In 2016, the Massachusetts legislature passed a law adding gender identity to the state's law prohibiting discrimination in places of public accommodation. And even though the law does not specifically mention churches, the Massachusetts Human Rights Commission issued an official guidance document stating that when churches host events open to the public, such as a "spaghetti supper," they qualify as public accommodations and must comply with the law. The state's attorney general—the highest law enforcement officer in Massachusetts—also listed houses of worship on her website as unqualified places of public accommodation.

Practically, that meant that Massachusetts churches would be forced to open their locker rooms, showers, and other private areas to members of the opposite sex according to their "gender identity." It also meant that churches could be in danger of violating the law if they publicly communicated their beliefs about human sexuality. In addition, the law contained severe criminal penalties, including jail time.

Four Massachusetts churches—Horizon Christian Fellowship, Swansea Abundant Life Assembly of God, House of Destiny Ministries, and Faith Christian Fellowship of Haverhill—could not in good conscience comply with this mandate.

These four diverse churches are very involved in serving their communities. The churches host various outreach events, such as

giving out Thanksgiving meals to the homeless, ministering to those with alcohol addiction, and handing out school supplies to needy kids.

For them, serving the needy is an important part of demonstrating the Gospel in action and sharing God's love with

their community. But the Bible is also clear on sexuality. And these churches could not compromise their convictions, or the privacy and safety of those in their church.

Even though they faced crippling fines and jail time simply for operating consistently with their faith, these churches knew they could not back down. So, Alliance Defending Freedom filed suit on their behalf.

State officials quickly reversed course after the lawsuit was filed and admitted that the First Amendment protects a church's freedom to operate consistently with its faith, even when engaged in community outreach activities.

The official state gender identity guidance was also revised, and

they now recognize the freedom of churches to express views consistent with their faith and operate their facilities in a manner that doesn't violate their religious beliefs.

On December 12, 2016, the four Massachusetts churches and their pastors voluntarily dismissed their lawsuit.

And now, these Massachusetts churches are free to continue living out their faith in their communities, serving their neighbors, and serving up hot meals. The pastors celebrated their win with a spaghetti supper.



These churches could not compromise their convictions, or the privacy and safety of those in their church.



WATCH THEIR STORY: alln.cc/MApastors



1.1 Statement on Marriage and Sexuality

Marriage matters. God created and sanctioned marriage to bring together men and women, the complementary halves of humanity, by joining them in “one-flesh” unions (Gen. 2:18-25).

Marriage between one man and one woman for life uniquely reflects Christ’s relationship with His Church (Eph. 5:21-33). Marriage also serves as the foundational unit of a stable society, and provides the best chance that children will grow up in the same home with both their mom and their dad (1 Cor. 7:2). Among many other negative cultural developments over the last several decades, the general acceptance of sex outside of marriage and other sexual sins constitute direct attacks upon this timeless and universal institution.

Sex matters.² God wonderfully and immutably creates each person as either male or female, and these two distinct, complementary sexes together reflect the image and nature of God (Gen. 1:26-27). But some individuals reject their biological sex and, relying on the gender identity theory, claim to be the opposite sex. In so doing, they reject God’s design and the person He created them to be.

Issues of marriage and sexuality now regularly confront religious organizations. Churches are receiving requests to use their facilities for same-sex ceremonies or to endorse those views by admitting individuals in same-sex relationships into church membership. Christian schools are being asked to employ persons who identify as transgender (or other “genders”) or admit students who do not adhere to a Christian sexual ethic. And Christian ministries are facing difficult decisions concerning employees in same-sex

relationships and employees who are confused about their sex.

As a result, it is important that religious organizations develop a clear statement on marriage and sexuality within their statements of faith. Every employee, student, marriage applicant, and volunteer should be aware of the organization’s religious position on these (and other) issues prior to entering an official relationship with the organization.

Remember: this statement is not intended to limit the organization’s ability to serve a particular group, but it protects the ministry from being forced to operate contrary to its religious beliefs.

The organization’s statement of belief concerning marriage and sexuality can take various forms; there is no magic language that must be copied verbatim. Ideally, the statement (or statements) should be added to an already existing statement of faith.

A simple statement of belief can be seamlessly inserted into the organization’s current statement of faith. Otherwise, an organization can adopt a separate statement on marriage and sexuality which provides a more detailed explanation of their beliefs.



To access sample statements of belief and statements on marriage and sexuality that are specific to your organization, visit:

ADFLegal.org/PYM



1.2 Statement on the Sanctity of Human Life

Churches, Christian schools, and Christian ministries should consider adopting a statement of belief concerning the sanctity of human life from conception to natural death.

Pro-abortion organizations continue to advocate for a requirement that all organizations—including churches and faith-based ministries—pay for contraception, abortion-inducing drugs and devices, and even elective surgical abortions for their employees. These efforts have resulted in the federal government attempting to force religious organizations, including Christian colleges, to provide abortifacients to their employees and students. Some states have even quietly mandated that insurers include abortion coverage in all their available health plans, including those offered to churches and other religious employers. At the same time, advocates of euthanasia and physician-assisted suicide continue to press for the right to terminate life they no longer consider to be of value.

Some Christian ministries even face difficult employment decisions concerning employees who either choose or publicly advocate for abortion, euthanasia, or physician-assisted suicide contrary to the ministry's religious beliefs.

Religious organizations should review their policies, and contact their insurance brokers and agents to ensure they are not inadvertently covering life-ending drugs and devices that violate their conscience. Ministries should also consider adopting a statement of belief on the sanctity of human life to clearly define their religious beliefs on this issue.



For example statements on the sanctity of human life specific to your organization, visit:

ADFLegal.org/PYM

1.0 SUMMARY:

- Adopt a comprehensive statement of faith
- Adopt a statement on marriage, gender, and sexuality
- Adopt a statement on the sanctity of human life

SKYLINE WESLEYAN CHURCH

In August 2014, the California Department of Managed Health Care (DMHC) quietly sent letters to private insurance companies doing business in the state, announcing that it was requiring all healthcare plans to provide coverage for elective abortions in their health insurance policies, including plans offered by churches, Christian schools, and Christian ministries. The DMHC did not open its plan to public discussion but worked with Planned Parenthood instead.

It delivered the mandate quietly, but its effects were anything but.

Skyline Wesleyan Church in San Diego couldn't believe it when the church found out that its healthcare plan suddenly began covering elective abortions, and that it could no longer purchase a policy that excluded coverage for abortion. This left the church and its pastor, Jim Garlow, with an impossible choice: either pay for abortions or stop providing health insurance for church employees.

Paying for elective abortions violates the Christian belief that human life is sacred and should be protected. And choosing not to

provide health insurance for church employees would mean the church has to pay crippling fines and penalties under Obamacare.

That's not really a choice at all.

The California DMHC has claimed that elective abortions are "basic healthcare services." However, existing law and regulations in California define "basic healthcare services" as services that are "medically necessary." It's pretty clear that an elective abortion, which is a voluntary procedure, is not always "medically necessary."

So, Alliance Defending Freedom filed a lawsuit against the California DMHC on Skyline's behalf.

It is clear that state officials overstepped their bounds at both the state and federal level.



Skyline Wesleyan Church in San Diego couldn't believe it when the church found out that its healthcare plan suddenly began covering elective abortions and that it could no longer purchase a policy that excluded coverage for abortion.



There are conscience protections in place at the federal level that make it illegal to discriminate against a health insurance plan because it does not "provide, pay for, provide coverage of, or refer for abortions."

That's not even mentioning the fact that the state and U.S. constitutions protect the church's right to free exercise of religion.

That's why ADF is standing with Skyline. No church should be forced by the government to violate their religious beliefs. And they should especially not be forced to pay for the taking of a human life.

WORLD VISION

Being able to hire employees that share the vision for your organization is important for its success. An employee that is committed to the mission can help further it, rather than working against it.

That's why, when World Vision found out that three of its employees did not believe in the deity of Jesus Christ or the Trinity, they dismissed those employees. Since these employees had submitted personal statements about their relationship with Jesus Christ and agreed to World Vision's Statement of Faith, Core Values, and Mission Statement when they were hired, you would think that would be the end of it.

But that's not what happened.

Even though those employees had signed on to a statement of faith that includes the belief that "there is one God, eternally existent in three persons: Father, Son, and the Holy Spirit," they sued World Vision for religious discrimination. They claimed that World Vision isn't really a religious organization and therefore should be required to hire people who don't subscribe to the ministry's theology.

And while there is no dispute that these employees were fired for religious reasons, under law, World Vision is only permitted to make such hiring and firing decisions if it is a religious organization.

That's the question the courts had to decide, asking whether the organization:

1. Is organized for a religious purpose;
2. Is engaged primarily in carrying out that religious purpose;
3. Holds itself out to the public as an entity for carrying out that religious purpose; and
4. Does not engage primarily or substantially in the exchange of goods or services for money beyond nominal amounts.

World Vision is a Christian humanitarian organization that exists to follow "Jesus Christ in working with the poor and oppressed to promote human transformation, seek justice, and bear witness to the good news of the Kingdom of God."

For an organization such as World Vision, it is important for its employees to hold to the same religious beliefs. World Vision's religious beliefs are the very reason for its existence and the avenue through which it spreads the Gospel. To be forced to hire employees who do not share this vision would contradict World Vision's very mission.

By explaining the foundational beliefs of the organization in its bylaws plainly and consistently, World Vision made it clear that it was a religious organization. That secured World Vision the protections under law that allow it to make employment decisions based on its beliefs. Because of this, the U.S. Court of Appeals for the Ninth Circuit ruled in World Vision's favor, confirming that ministries can maintain their ability to protect their religious character by hiring people of like faith.



They just need to stay true to their religious principles in all aspects of the ministry.

This is an important case for all religious organizations that want the freedom to hire and fire employees that will help further its mission, not undermine it. And it also speaks to the importance of making it clear in the bylaws that your organization is religious, if you wish to operate it according to those beliefs.

2.0 Statement of Final Authority for Matters of Faith and Conduct



Even with a detailed statement of faith, it is impossible to anticipate every doctrinal dispute that a church, Christian school, or other faith-based ministry might encounter.

For example, decades or even centuries ago, when many of the existing Church creeds and statements of faith were written, no one would have argued that marriage was anything but the union of a man and a woman. No one could foresee that some would not only advocate for marriage redefinition, but also demand that Christian ministries bless and celebrate same-sex unions.

Consequently, few Christian organizations were prepared when challenged over their position on same-sex unions.

Because new issues can arise, it is important that organizations be able to respond to these issues in a legally defensible way. To do so, each faith-based organization should identify (1) the source of religious authority for matters of faith and conduct, and (2) the final human interpreter of

that source for the organization. This type of a statement should provide a “catch-all” to cover unforeseeable threats that might arise in the future.

A statement of authority for matters of faith and conduct clearly indicates that authority resides in a designated individual or group (e.g., minister, bishop, elder board, executive committee, board of directors, or congregation) authorized to speak for the organization and state its position on any disputed issue.

This statement can be included in the bylaws or other policy documents. The general legal rule is that courts should not question this position.³



To access sample statements of final authority specific to your ministry, visit:

ADFLegal.org/PYM

FORT DES MOINES CHURCH OF CHRIST V. JACKSON

When a church has an “open-door policy” to anyone who might be interested in learning more about the Gospel, does that mean it must have an “open-door policy” for its locker rooms, showers, and other private spaces as well?

That’s what the Iowa Civil Rights Commission tried to claim when it interpreted state law to mean that churches who open their worship services and other church activities to nonmembers are considered to be public accommodations subject to the state’s nondiscrimination law.

According to state law, public accommodations are prohibited from “indicating” that a person is “unwelcome” based on his or her “gender identity.” Under this theory, a person may claim a gender identity that is contrary to their biological sex—and thus a man may demand that he be affirmed as a woman. Because the law was so broad, the Civil Rights Commission claimed that churches that open their services and events to the public must censor their speech about human sexuality and open up their showers, restrooms, and other private spaces to the opposite sex.

Fort Des Moines Church of Christ is active in its community and welcomes everyone to learn more about the Gospel. Their motto is “Love God...Love People...Serve Everyone.” For the church, it’s all connected. Their love for God drives their motivation to love and serve others.

This left Fort Des Moines Church of Christ with an impossible choice. Either stop proclaiming what the Bible says about sexuality and sacrifice the privacy and safety of their members, or close their doors completely to the public.

They couldn’t do either. The Bible is clear on matters of sexuality, and it is also clear that Christians are called to be a light to their communities.

That’s why Alliance Defending Freedom filed suit on behalf of this Iowa church.

A federal district court held that churches are not public accommodations subject to this government control. The court clarified that churches are not businesses and that the activities of the church are motivated by their religious purpose. The government has no right to determine which church activities qualify as religious.

Churches have the right to communicate their beliefs about human sexuality without government censorship and operate their facilities consistently with their faith. And ADF will continue to fight for that right.

Thanks to the stand of this Iowa church, all churches in Iowa can continue to operate consistently with their faith for God’s glory. And Fort Des Moines Church of Christ can continue to keep their doors open wide to love and serve those who step inside.



3.0 Religious Employment Criteria

Every church, Christian school, and Christian ministry should establish written religious criteria for its employees and volunteers. Federal law prohibits employment discrimination based on race, color, religion, sex, national origin, or age.⁴ While Congress has repeatedly refused to add sexual orientation and gender identity to this list of protected categories, some federal agencies have attempted to interpret “sex discrimination” to include “sexual orientation” and “gender identity.”⁵

But, while there are efforts underway to restrict the freedom of churches, “religious organizations”—for the time being—may consider an applicant’s or employee’s religious beliefs in hiring and firing.^{6,7} And under a constitutional doctrine known as the “ministerial exception,” churches, Christian schools, and other qualifying organizations are exempt from employment nondiscrimination laws for hiring and firing their ministerial employees—individuals who are tasked with performing the organization’s rituals or teaching and explaining its beliefs.⁸

State and municipal employment nondiscrimination laws generally mirror federal law, prohibiting discrimination based on religion and unchangeable characteristics such as race, color, and national origin. But some states and an increasing number of municipalities also prohibit discrimination in employment based on sexual orientation and gender identity. Although most state laws and municipal ordinances also provide some exemption for religious organizations, these exemptions vary widely. Regardless, the First Amendment—which trumps federal, state, and

local laws—should protect religious employment decisions made by religious entities.

If an employment dispute arises, Christian organizations can take advantage of the First Amendment protection if they create and consistently enforce religious employment criteria for every employee.



3.1 Signed Statement of Faith

First, and at a minimum, the ministry should require all employees and volunteers to sign a statement affirming that they have read, agree with, and are willing to abide by the organization’s statement of faith (and standards of conduct, if any). (See Statement of Faith, pg. 4; Code of Christian Conduct, pg. 24.) This step is critical. Some Christian ministries have lost the freedom to select employees that live consistently with their faith because they hired individuals that did not share their same fundamental beliefs.⁹

As a matter of best practice, employees should sign these documents on an annual or semi-annual basis, and employers should retain these signed statements as part of the individual’s permanent record.

It is also good practice to note either on the signed statement, or in the employee handbook, that violation of the organization’s statement of faith constitutes good cause to terminate employment.



3.2 Religious Job Description

Second, the ministry should create written job descriptions for every employment and volunteer position. These job descriptions will be unique to each organization and position, but the descriptions should explain how the position furthers the organization's religious mission, what the responsibilities and duties of the position include, and what training or skills are necessary for the position.

Although every position within a church or ministry furthers its religious mission, for legal purposes the link between an employment or volunteer position and the organization's mission cannot be assumed. Clearly articulate this link in writing.

Religious organizations should take particular care to highlight responsibilities that involve communicating the faith or other spiritual duties that directly further the religious mission. For example, if a church receptionist answers the phone, the job description might detail how the receptionist is required to answer basic questions about the church's faith, provide religious resources, or pray with callers.

Employees with some duties usually performed by (or associated with) clergy are more likely to be viewed as "ministerial" by the courts, such as Christian school teachers who incorporate faith into their teaching, pray with students, or lead them in prayer or worship.¹⁰ Consequently, courts are more likely to apply the ministerial exception to employment law claims based on alleged discrimination.

As noted previously, it is important to remember that the term "minister" applies not only to the head of a religious congregation, such as a pastor or priest, but also to any employee charged with teaching or communicating beliefs. In a recent case, the U.S. Supreme Court held that a Christian school teacher was a "minister."¹¹

A church, Christian school, or Christian ministry that employs an individual held out as a minister should make that distinction clear in the job title. Likewise, any religious educational qualifications should be clear. But most importantly, the position description should detail any religious responsibilities or duties that reflect a role in conveying church teaching and carrying out its mission. Finally, remember that an employee does not need the job title of "minister" for the ministry to claim the ministerial exception. The exception applies to those charged with ministering, teaching, or communicating beliefs.

Employee job descriptions should also include any religious grounds for limiting employment opportunities, especially if the limitations involve any categories protected by law (such as religion or sex). For example, if a church or Christian school believes that only men may hold certain positions, this criteria should be clearly stated in the job description with scriptural or ecclesiastical support.¹²

It is also important that Christian ministries consistently apply their employment standards and handle similar cases alike. For example, organizations should not terminate an unmarried,

pregnant female employee on religious grounds, but retain a male employee known to have engaged in extramarital sexual relations. Consistency in employment decisions is critical.

One final note: some ministries have included a general nondiscrimination provision in their employment and other policies. These provisions often say that the organization does not discriminate on the basis of sex, race, age, disability, etc. While there are well-meaning motives behind these nondiscrimination provisions, these types of provisions can be highly problematic if not properly vetted by legal

counsel. If a faith-based organization wants or needs to include a nondiscrimination provision for a specific reason, seek the advice of an attorney before doing so.



For examples of religious job descriptions specific to your organization, visit:

[ADFLegal.org/PYM](https://adfllegal.org/PYM)

3.0 SUMMARY:

- Require all employees to sign a statement affirming that they agree with your organization's statement of faith
- Require all employees to sign a statement affirming that they are willing to abide by your organization's standards of conduct
- List religious job descriptions for every employment position, taking special note of any ministerial positions
- List religious grounds for limiting employment opportunities
- Consistently apply all employment standards



4.0 Facility Use Policy

A facility use policy is critical for any church, Christian school, or other ministry that allows its facilities to be used by members and non-members alike.

Churches and faith-based ministries still have great freedom to use their buildings consistently with their faith. But some government officials are working hard to change that. For example, there is a significant push to treat churches like businesses or “public accommodations” and to ignore the fact that a church’s building is integral to accomplishing its mission, and in some traditions, is considered to be sanctified. There is also a significant push to require religious ministries to open sensitive sex-specific privacy areas—such as showers, locker rooms, and restrooms—to members of the opposite biological sex.

Because of these concerns, some churches have decided to prohibit all outside groups from using their facilities and restrict building use to members only. This step is not yet necessary and limits the church’s ability to serve its community. No court has ever held that a church must open its buildings for uses that violate its beliefs. Church buildings are still private property and used primarily for religious exercise. As such, the use of church buildings is protected by the First Amendment, and churches have the right to operate their facilities consistently with their faith. But it is not clear how much protection other Christian ministries have from being compelled to open their facilities for uses that conflict with their doctrine.

Religious organizations can strengthen their religious liberty protections by adopting a facility use policy that outlines the religious nature of the building and prohibits uses that conflict with the ministry’s beliefs. This policy is clear evidence of the organization’s beliefs and practices regarding use of its property and why certain practices or activities are never permitted.

Churches and other ministries do not need to limit outside use of their facilities to overtly religious activities (like Bible studies or worship) but should instead prohibit uses that conflict with the organization’s beliefs. The statement of faith is the foundation of the facility use policy and all potential users should be required to read the statement of faith and certify that—to the best of their knowledge—they will not use the facilities in any way that violates the ministry’s religious beliefs. Requiring this certification makes it clear that the facility is not an ordinary commercial facility that can be rented for any purpose, but is instead a physical manifestation of the ministry’s religious beliefs.

Churches and religious organizations also do not need to limit use of their facilities to people who “agree with” their religious beliefs. It is sufficient to require that the event not violate the organization’s beliefs. For example, while the Red Cross may not agree with a church’s religious beliefs, a church could still host a Red Cross blood drive because that use is neither inconsistent with, nor in violation of, the church’s beliefs. Similarly, a local school district would not be able to certify that it agreed with a church’s religious beliefs but could still use the church’s facility for a graduation



Is your church prepared?

Your local church can address every issue discussed in this legal manual, and much more, by becoming an ADF Church Alliance member!

MEMBERS RECEIVE:

A religious liberty audit, including review of your church's organizational documents.

Direct access to religious liberty lawyers to answer questions and offer legal advice.

Legal representation in cases involving your church's religious liberty.

FIND FOCUSED AND PRACTICAL LEGAL HELP:

ADFChurchAlliance.org



ALLIANCE DEFENDING FREEDOM

CHURCH ALLIANCE

or a school board meeting because such uses do not violate the church's statement of faith. Indeed, continuing to allow these community uses furthers a church's place as a vital and necessary part of the community.

The facility use policy should apply to all facility uses, regardless of whether it is a long-term or one-time use, by members or non members, or for a fee or gratuitously. Christian organizations that rent their buildings to outside organizations should do so at less than market rates. When evaluating whether an organization is "religious" enough to merit certain legal protections, courts often consider whether the organization looks more like a ministry, or more like a for-profit business engaged in commerce. Facilities that are rented out at less than market rates or for nominal fees are more indicative of a ministry. Even when

renting at less than market rates, ministries are at greatest risk when renting their space to commercial or for-profit entities and should seek legal counsel before doing so.

There is no one-size-fits-all facility use policy for all religious groups. It is important to create a policy that covers situations unique to your organization's ministry and mission, buildings or facilities, and religious beliefs. Take the time to craft a specific policy addressing each of these areas for your organization, and then train your staff on the proper application of this policy.



For sample facility use policies specific to your organization, visit:

[ADFLegal.org/PYM](https://adfllegal.org/PYM)

4.0 SUMMARY:

- Implement a facility use policy
- Identify the religious purpose of the building
- Restrict facility use to those acting consistent with your organization's beliefs
- Train your staff on proper application of policy

TRINITY LUTHERAN CHILD LEARNING CENTER

You would think promoting children’s safety would be as simple for state officials as A-B-C. Missouri officials, though, apparently had other priorities.

Several years ago, Missouri initiated a scrap tire program that allows the government to safely and easily dispense with the tens of thousands of old tires it collects every year. The tires are an environmentalist’s nightmare, taking up acres of landfill while awaiting the stray spark that could set off billowing plumes of poisonous smoke. The solution: convert them into a rubber ground cover perfectly tailored to children’s playgrounds.

Every parent knows what happens when unprotected knees, elbows, and heads hit the hard ground at the bottom of a playground slide or swing set: howls and tears at best—and sometimes, serious injuries. But a while back, someone realized that covering that ground with a thick carpet of rubber allowed for much softer, safer landings—and suddenly, rubber ground cover became popular in parks, children’s hospitals, and schools all over the country.

Missouri’s scrap tire program seemed a natural win-win for all involved. The state turns its tires into something schools want, and school administrators don’t have to pay for the expensive transformation process by which tires become playground rugs. Instead, they apply for a grant that will reimburse them for investing in the rubber ground cover.

The good people of Trinity Lutheran Church in Columbia eagerly joined in the competition for Missouri’s scrap tire grant. The children attending their preschool are as lively and fragile

as those at other education centers, and, while church-owned, Trinity’s school opens its popular playground area to families throughout the surrounding neighborhood, seven days a week.

Trinity’s administrators went through all the right motions, filling out the mountain of state paperwork, clarifying the myriad details, and meeting all the appropriate deadlines. Out of 44 competing schools, they qualified fifth—easily good enough to receive a reimbursement grant.

But the church didn’t get a grant—it got a denial letter saying that the Missouri Constitution prohibited the state from giving “aid” to a church. Even though Trinity’s school was clearly qualified, the state denied it simply because it was owned by a church.

Trinity contacted Alliance Defending Freedom attorneys, who raised a legal point that worked its way up to the U.S. Supreme Court: Do churches have the right to participate equally in

government programs without being discriminated against solely because of their religious status? If not, where does that lead? Should city police, firefighters, and paramedics stop responding to emergencies on church property out of a misguided desire to avoid “aiding” religion?

In 2017, the Supreme Court ruled in favor of Trinity Lutheran. Writing for the majority, Chief Justice Roberts concluded that, “the exclusion of Trinity Lutheran from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution all the same, and cannot stand.”



WATCH THEIR STORY: alln.cc/TrinityLutheran

BARRONELLE STUTZMAN of ARLENE'S FLOWERS

Leonardo da Vinci had his paints, Michelangelo had his marble, and Beethoven had his melodies and rhythms. Barronelle Stutzman has flowers. Name the occasion—wedding, funeral, birthday—and she can design a custom bouquet or arrangement to fit. For decades, she's been delighting the people of Richland, Washington with her unique floral creations.

Everybody enjoys creativity, but only a handful can really appreciate it ... bringing their own sixth sense of understanding to just how delicate or clever or masterfully crafted the work of the artist really is. That's why Barronelle and her customer Rob Ingersoll became fast friends. Rob wasn't just one of her best customers. He really understood how much of herself Barronelle pours into the floral arrangements she weaves so well.

Barronelle had designed all kinds of wonderful creations for the special events and occasions important to Rob. That made it all the more painful to her on the day he asked her to create something original for the most important occasion of all—the one occasion she could not, in good conscience, help him celebrate. Rob said he was marrying his partner, another man, and Barronelle's Christian faith is grounded in Scripture that teaches marriage is the union of one man and one woman.

She told him as gently and lovingly as she could, and he said he understood, even hugging her as they spoke. His partner, though, did not understand. He shared his outrage on Facebook, and his words drew attention from those attempting to silence dissent from same-sex marriage ... including the state's new attorney general, Bob Ferguson.

Ferguson determined to make an example of Barronelle. He filed a lawsuit against her, charging her with illegally discriminating against Rob on the basis of his sexual orientation. It was an unusual course of action, given that neither Rob nor his partner had filed a formal complaint with the state. They easily got flowers for their ceremony from another florist, so that was hardly the problem. The state Human Rights Commission, charged with instigating action in such matters, hadn't pursued a claim. But Ferguson made it a personal priority, not only filing the lawsuit but denouncing Barronelle from political stumps all

over the state. (Taking his lead, Rob and his partner, along with the ACLU, subsequently filed their own lawsuit, which is now combined with the state's.)

The lawsuit came with a barrage of media coverage, and Barronelle's shop was deluged by phone calls and buried in hate mail. People who knew very little about what really happened between Barronelle and Rob angrily denounced her decision and mocked the faith that inspired it. But as the months went by, the angry calls and letters were slowly replaced, more and more, by countless letters and cards and emails of support from people all over the world who read of her situation and admired her courage.



In February 2017, the Washington Supreme Court ruled against Barronelle, and in favor of the attorney general and the ACLU's position. She has appealed her case to the U.S. Supreme Court. Faced by a legal system that has been increasingly hostile in recent years to freedom of conscience claims by people of faith, she is drawing great encouragement from fellow believers. The way ahead may be difficult, but she will stand by her faith and trust in her Lord, no matter what the court rulings may be. Barronelle is a wonderful florist, but she'd be the first to tell you: in this life, no one promised her a rose garden.



WATCH HER STORY: alln.cc/Barronelle

PROACTIVE STEPS FOR SPECIFIC ORGANIZATIONS

5.0 Churches



5.1 Churches – Formal Membership Policy

Church members sometimes engage in behavior that necessitates church discipline. Such discipline is consistent with nearly every church tradition, though specific approaches may vary. And, on occasion, those who have been disciplined by their church or removed as members have then sued.¹³ Thankfully, churches enjoy considerable freedom under the U.S. Constitution to govern themselves consistently with their faith,¹⁴ even when doing so causes injuries that might otherwise be actionable in court.¹⁵

But this freedom has limitations. Only those individuals who “unite” with a church have consented to the church’s authority over them.¹⁶ In order for a church to have the best claim to immunity against an alleged injury that resulted from church discipline,¹⁷ the alleged victim must have been a church member when the discipline occurred. This is very difficult to determine if the church does not have a formal membership policy.

Not every church has members in the traditional congregational approach to membership. Churches that do not have formal members must be aware that they could potentially have greater legal exposure when they exercise church discipline.¹⁸ This is not to suggest that a church adopt a form of government to which it does not subscribe. “Members” do not need to be voting

members as reflected in the congregational model, but may simply be individuals who affirm they are committed to and part of a church body, even if they have no voting or say in church practices.

Churches with a formal membership policy have greater legal protection when they find it necessary to impose church discipline on their members. This policy should be added to their bylaws and explain the (1) procedures for becoming a member, (2) procedures for member discipline, and (3) procedures for rescinding membership. (But bear in mind even non members attending a church may still be instructed to leave the building if their behavior is disruptive of services or church activities.)



5.1.1 Formal Membership Policy: Procedures for Becoming a Member

Churches should establish a procedure for how individuals become members of the church. The procedure should be communicated to prospective members and should explain how formal acceptance into membership is communicated to a member. The main point is to establish a way of distinguishing church members from those who simply attend the church.

It is best practice to provide all prospective members a copy of the church statement of faith and membership policy, and have them sign a statement saying that they have read and agree to the terms of membership. Of course, churches should also make every effort to follow their membership policy consistently.¹⁹

Churches should ensure that the procedures they establish for becoming a member are included in a written membership agreement.



For information on how to access examples of membership agreements, visit:

www.ADFlegal.org/ChurchAlliance



5.1.2 Formal Membership Policy: Procedures for Member Discipline

Generally, churches cannot be held legally liable when they discipline church members or terminate their membership.²⁰ But courts have found exceptions to this rule. The most common exception occurs when church leaders reveal to the congregation the behavior that led to discipline, without having in place church policies that allow them to do so. This can lead to lawsuits against the church for invasion of privacy, intentional infliction of emotional distress, defamation, and so forth.²¹

A church can avoid these types of lawsuits by implementing clear procedures for member discipline and membership termination. If the church believes it may be necessary to reveal to the congregation the reason for church discipline

or membership termination, the timing and means by which this can take place should be clearly set forth in the procedure for member discipline. It is also important to remember that publicly revealing the reasons for church discipline should only be done in the case of a church member and not with a non member.

It is also wise to consult legal counsel before publicly discussing any details related to the discipline and termination.



5.1.3 Formal Membership Policy: Disassociating Membership

Just as the church should have a written policy for becoming a member, it should also have written procedures in its bylaws for how and when members can disassociate from the church.

Courts have held that church members have a First Amendment right to terminate their membership.²² But courts have also held that a member's right to terminate his or her membership can be waived as long as the waiver is knowing, voluntary, and intelligent—an extremely high bar to meet.²³ Therefore, the circumstances and timing of when church members may terminate their memberships must be clearly set forth in a membership policy and agreed to by both the church and the member.

A church should carefully consider what its religious beliefs require. Many churches allow members to terminate their membership at any time. If a church allows its members to resign membership in the midst of discipline, the church should establish

procedures to cease disciplinary proceedings when the membership is terminated. Once a member has rescinded his or her membership, that individual no longer consents to the church's doctrine and authority, potentially limiting the church's legal authority to discipline that person. One state court allowed a suit to proceed against the elders of a church who attempted to discipline a person after that individual resigned membership.²⁴

But if a church decides to prohibit its members from terminating their membership in the midst of discipline, that church should make the prohibition clear in the membership policy and require each member to knowingly and voluntarily waive his or her right to terminate church membership during discipline.

Otherwise, if the church continues discipline designed to restore a wayward member after he or she withdraws from membership, the church may be found legally liable if the former member sues.²⁵

A knowing, intelligent, and voluntary waiver is a very high standard to meet. Potential members must not only clearly understand that they have the legal right to withdraw their church membership at any time, but they must also voluntarily relinquish that right, preferably in writing. Anything less will not be recognized by a court. Churches should not attempt to craft this aspect of their membership policy without consulting legal counsel.

If these steps are followed, courts are much less likely to consider a lawsuit against a church for its internal discipline process, unless the church's conduct was so "extreme and outrageous" that a court finds intruding on its religious liberty justified.²⁶ As in other areas, churches should consult in-state legal counsel for more specific advice.



5.2 Churches – Marriage & Wedding Policy

In addition to a statement of religious belief concerning marriage and sexuality (pg. 6), churches should also adopt a marriage and wedding policy. This policy, grounded in the statement of faith, should define biblical marriage, specify criteria for holding a wedding at the church, and clearly define standards for the marriages the church pastors may solemnize or otherwise participate in.



For information on how to access example marriage and wedding policies, visit:

www.ADFlegal.org/ChurchAlliance

5.0 SUMMARY:

- Create written procedures for becoming a church member
- Create written procedures for church member discipline
- Create written procedures for disassociating from church membership
- Create a church marriage and wedding policy

HOUSTON PASTORS



Hernan Castano



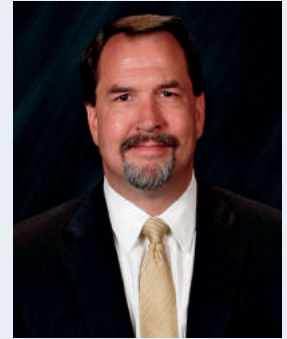
Magda Hermida



Khanh Huynh



Steve Riggle



Dave Welch

Europe may encroach on its churches, and Christians have long been persecuted in Asia, but America is the land of the free. We put “In God We Trust” on our money. We say “under God” in the Pledge. We sing “God Bless America” at ballgames. How bad can it really get?

Ask the Houston Five.

In June 2014, the City of Houston’s leaders implemented a sexual orientation and gender identity (SOGI) law that, among other things, prohibited discrimination on the basis of “gender identity” in places like public restrooms. It was not a popular decision: 82 percent of Houstonians opposed the decree. Petitions rapidly circulated throughout the city, signed by citizens demanding that the new law be repealed, or placed on a ballot for the voters to decide. Some of the city’s pastors openly discussed the law and its implications from the pulpit—a right the First Amendment protects.

The citizens of Houston supplied more than three times the required number of signatures to place the law on the ballot. The city secretary legally certified the petitions—meaning that the City Council either had to repeal the law or it had to be put to a vote of the people. Yet the mayor and the city attorney unlawfully refused the certification.

In response, a group of citizens filed a lawsuit, pressing the city to comply with the law and honor the petitions. Instead, in the course of preparing for trial, the city’s attorneys served subpoenas against five local pastors, demanding 17 categories of information—including copies of their sermons “related to . . . the Petition,

Mayor Annise Parker, homosexuality, or gender identity prepared by, delivered by, revised by, or approved by you or in your possession,” as well as any personal communications they might have had with church members or others about the bathroom law, homosexuality, or gender identity.

ADF attorneys filed a motion in a Texas court to block that subpoena, along with an accompanying brief pointing out that neither the pastors nor their churches were even involved in the lawsuit, and that the information being subpoenaed had nothing to do with the lawsuit. City officials apparently wanted to see if the pastors had ever opposed or criticized them . . . and to intimidate them, other pastors, and any other citizens from ever doing so again. Mayor Parker even took to Twitter and wrote, “if the 5 pastors used pulpits for politics, their sermons are fair game.” In effect, it was an aggressive bid to control—through explicit legal action or implicit political pressure—what preachers preach, and what Christians believe about social issues.

The City of Houston’s actions posed a “clear and present danger” to religious freedom. This was a critical “trial balloon” being floated in the culture. Those pressing the agenda the council supports were watching closely to see not only how the citizens of Houston and the media reacted, but how Christians across America responded to this direct onslaught against their most basic, cherished liberties. Fortunately, the public outcry in this instance was so great that the mayor and the city attorney eventually withdrew the subpoenas from the victorious Houston Five.





6.0 Christian Schools and Christian Ministries



6.1 Mission Statement

Christian schools and Christian ministries should articulate the distinctly religious purpose for their existence through a mission statement. This mission statement should be grounded on the organization's religious beliefs and statement of faith. For example, a Christian school's purpose might be, in part, to "train the next generation of Christian leaders and equip them for a life of service to their Savior, homes, churches, vocations, and communities."

When possible, include within the mission statement a speech component—some message the organization wants to communicate to the outside world through its speech and conduct. For example, a Christian ministry operating a wedding chapel might see its purpose, in part, as communicating the theological belief that marriage is only the union of one man and one woman, which reflects Christ's relationship with His Church. Also include an associational component within the mission statement—that is, a desire to associate with like-minded people who will further the organization's religious purpose and beliefs. Including these components may allow for a possible free speech and free associational defense in addition to any other constitutional defenses.

Place the mission statement in the organization's bylaws, governing documents, and employee and student handbooks.



6.2 Code of Christian Conduct

Religious schools and ministries should adopt a code of Christian conduct, grounded in the statement of faith, which establishes parameters for acceptable behavior for employees, teachers, administrators, students, etc.

The code should address a variety of behaviors pertinent to the ministry's particular context: for example, respect for authority, cheating, stealing, and so forth. While the level of detail and specific types of conduct addressed will vary from organization to organization, ministries are encouraged to clearly address the gender identity theory because it is a current cultural issue. Make clear that the ministry believes God immutably creates each person as either male or female, and that employees and students are expected to conform their conduct and dress to reflect these beliefs. Cite the organization's statement on marriage and sexuality to highlight why this conduct is biblically required.

Finally, include a warning that the ministry has the right to discipline or ask an employee or student to withdraw for any reason, but that failure to comply with expected standards of conduct will subject the student or employee to potential disciplinary action, up to and including expulsion or dismissal.



6.3 Emphasize Religious Character

Organizations that highlight their religious character have far greater religious liberty protections than those organizations that omit or conceal their religious character. Courts tend to evaluate whether an organization is religious, in part, based on its activities and presentation to the community.

A Christian ministry can highlight its religious character through activities such as the following:

- Regularly including prayer, Bible studies, and worship in its activities, including those activities that occur off campus or away from the organization's main facility.
- Emphasizing any affiliation with a church or religious denomination.
- Utilizing religious artwork within the building.
- Noting the organization's religious character through its website, brochures, logo, and tagline.²⁷

6.0 SUMMARY:

- Create a distinctly religious mission statement
- Create a code of Christian conduct
- Emphasize your organization's religious character

CHRISTIAN SCHOOLS

A brief glance at five recent cases gives a glimpse of what's coming for Christian school administrators in the years ahead:

- In 2016, President Obama issued a “Dear Colleague” letter to schools across America, threatening to revoke Title IX federal funding from schools that receive federal funds unless they embraced the new gender identity theory. That meant that public schools must allow students to identify with the gender of their choice (regardless of their biological sex), use names and pronouns consistent with the student’s preferred gender identity, and open up sex-specific privacy areas (like showers, changing areas, and restrooms) and even overnight housing accommodations to members of the opposite biological sex. The guidance was rescinded under President Trump in 2017, but a new administration could reinstate such guidance in the future, and as described in previous sections, some states have attempted to extend the theory to Christian ministries through public accommodation laws.
- In Queens, New York, St. Francis Catholic Preparatory School was sued by a former employee claiming gender-identity discrimination. After 32 years of working with the Catholic institution, when asked to conform his appearance to a sex-specific dress code, the male teacher suddenly announced that he was transgender. By the time of the lawsuit, the former teacher was presenting as a female, including adopting a feminine name, wearing women’s clothing, and taking prescribed feminizing hormones. The school argued that he was terminated for insubordination.
- At another New York City Catholic school, Preston High, administrators expelled two girls for fighting on campus. One of those students filed a lawsuit saying the real reason for her expulsion was because she identifies as lesbian. A judge issued a temporary restraining order, forcing the school to readmit her.
- Officials at Hope Christian School—an Albuquerque, New Mexico Christian preschool—were sued by two men in a homosexual relationship after their child was refused admission to the institution. Because the men’s home environment and beliefs regarding homosexuality and the family were inconsistent with the school’s beliefs, administrators reasoned that the educational relationship would be next to impossible.
- Catholic Fontbonne Academy in Massachusetts extended an offer of employment to a food services director. When filling out hiring paperwork the new employee listed a man as his emergency contact, indicating that the man was his “husband.” Recognizing the conflict with the school’s mission and values, school officials rescinded the offer of employment two days later. The man sued the school, claiming discrimination on the basis of sexual orientation.
- California Lutheran High School Association, which operates a private Christian school, was sued for sexual orientation discrimination after school officials dismissed two female students who were in an unrepentant homosexual relationship. The former students argued that because the school sold items to the public at sporting events—football tickets, concessions, T-shirts, etc.—it might be liable as a “public accommodation.” The Court disagreed given the specific facts of the case, but left open the legal question of whether business transactions in other contexts might be enough to make a Christian school vulnerable to similar lawsuits.

Such cases are becoming increasingly commonplace. And those pressing their same-sex and transgender political agendas are proving much more vigilant in looking for opportunities to sue private Christian schools than school officials have been in preparing for such a legal onslaught.



7.0 Christian Schools Only

7.1 Admissions Criteria & Procedures

Each Christian school should have well-defined admissions criteria and procedures that clearly reflect that the school is a Christian ministry.

The admissions procedures should incorporate circuit-breakers in the admissions process. These circuit breakers are designed to interrupt or terminate the admissions process if the school receives an application evidencing a lifestyle or belief system inconsistent with the school's religious beliefs or mission. School admission should never be automatic.

Circuit breakers can take a number of different forms, but we suggest:

Information Packet

Provide each potential applicant family with an information packet describing the school. Include a clear explanation of the school's religious mission and beliefs. Also include a list of admissions criteria, particularly spiritual and behavioral criteria, which the school uses in evaluating prospective students (sample provided online at ADFlegal.org/PYM). Finally, request that parents and students read the student handbook, and proceed with the application only if they are in agreement with, and willing to abide by, the policies in the handbook.²⁸

Application

In the application, include a section for "father" and "mother." Inquire whether the child lives with both biological parents, and if not, ask that the family explain the circumstances.

Also include an agreement section for parents (and students in grades 7-12) to sign indicating that they

have read the student handbook and discussed it with their student. The agreement should make clear that, by signing, both parents and students certify their consent and submission to all policies in the handbook. Ensure that the school retains any signed statements of agreement as part of the permanent record of the student and family.

It is also good practice to require a copy of each student's birth certificate. This can be used to verify biological sex, age, and citizenship (if applicable). If your state permits a birth certificate to be amended to reflect a "sex change," you should confirm in writing with the parent that the birth certificate they provide reflects the student's biological sex.

Interview

If practicable, conduct personal interviews of all new student applicants and their parents, and use the time to gain insight into family dynamics, faith background, behavior, and so forth.

Notice of Admission or Denial

Communicate a notice of admission or denial of admission in writing. Ensure that records of admission and/or denial are retained for an appropriate period of time.

Schools are not legally required to explain why they denied an applicant admission, but there may be instances where it is appropriate to communicate this information. If a school determines that it must deny admission due to a student's or parent's lifestyle that is inconsistent with the school's religious beliefs, it is always best to seek legal advice prior to issuing the written denial.

7.2 Religious Instruction

To ensure the greatest religious liberty protection for your school, it is important that students are not only taught from a biblical worldview (as understood by the church or ecclesiastical authority), but also receive actual religious instruction. At least one Christian school lost its religious protections because it slipped into teaching more general ethical and moral principles, and no longer engaged in religious instruction.²⁹

Christian schools should consider requiring all teachers, as a condition of employment, to incorporate biblical teaching into their curriculum. Requiring teachers to sign a statement that they understand and agree it is their duty to incorporate religious instruction into their courses is helpful.

7.3 Parent, Student, and Teacher Handbooks

All Christian school handbooks should include the school's mission statement, statement of faith, and code of Christian conduct.

Christian schools should also require all employees, parents, and students (especially those in grades 7-12) to sign a written agreement statement affirming that they have read, are in agreement with, and are willing to abide by the established standards of the school as outlined in the handbook (sample provided online at ADFlegal.org/PYM).

Ensure that signed statements of agreement are retained as part of the permanent records of students and faculty.

Two disclaimers should appear in all handbooks. First, make clear that no handbook serves to contractually bind the school in any way. Second, note that the handbooks are subject to change without notice by the school's governing body.

7.4 Disciplinary and Dismissal Procedures

Christian schools should also establish clear disciplinary and dismissal procedures, and apply these procedures consistently.

7.5 Evaluate Funding Streams

Christian schools that receive any state or federal funds should review their funding streams to ensure that the government cannot use financial assistance as a mechanism to impose criteria that violate the school's convictions. Even funds that seem innocuous should be reviewed—for example, funds available through the National School Lunch Program (NSLP) are a form of federal financial assistance that may subject even private Christian schools to federal nondiscrimination provisions under Title IX of the Education Amendments of 1972.³⁰

It is best to seek legal counsel if you identify a funding stream that might impose criteria or require obligations that violate the school's religious beliefs.

7.0 SUMMARY:

- Infuse the curriculum and teacher instruction with religious teaching
- Include your school's mission statement and statement of faith in all handbooks
- Require all employees, parents, and students to sign a statement affirming that they have read, are in agreement with, and are willing to abide by the school's standards
- Include two disclaimers in all handbooks, noting that the handbooks do not create a contract and are subject to change at any time
- Establish clear school admissions, disciplinary, and dismissal procedures
- Evaluate funding streams

CONCLUSION

Even in—perhaps *especially* in—a changing moral climate, God’s people can continue to make a profound impact as faithful witnesses to His love and truth. Given the freedom to live out and exercise our faith, we can engage a hostile social and political culture in ways that offer clear light and enduring hope amid the gathering spiritual darkness.

That’s the purpose of this guidebook. Adopting the action steps recommended in the previous pages cannot insulate your church, Christian school, or Christian ministry from all threats to its religious freedom. But acting upon these

suggestions will place your organization in a more defensible legal position should it face a lawsuit for discrimination. And you have the assurance that Alliance Defending Freedom is ready to advise you in the event your group faces such a challenge. ADF represents churches, pastors, and Christian ministries to protect their constitutional rights.

More than that, preparing yourselves legally will give your group or institution greater freedom to continue presenting the Gospel clearly and effectively to your community—and that freedom may well make an eternal difference for those you serve.



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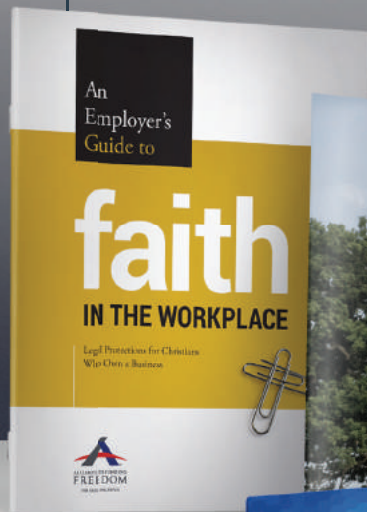
END NOTES

- 1 *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451, at *57 (U.S. June 26, 2015) (Alito, J., dissenting).
- 2 Before turning to the substance of the matter, it helps to be clear about our terminology. In this guide, “sex” refers to male and female as grounded in human reproductive biology. Sex is binary, fixed at conception, and objectively verifiable. “Gender” is used in the sense that contemporary proponents of gender identity theory use it: a fluid, subjectively defined continuum of “genders” that range from male to female to something else. Although “gender” in the past served as a euphemism for sex, in the context of discussing SOGIs, gender is properly understood as a social construct, and should not be confused with biological male-female sex.
- 3 *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 710 (1976) (the First Amendment commands civil courts to refrain from resolving controversies over religious doctrine as well as disputes over “church polity and church administration”); *id.* at 713 (“religious controversies are not the proper subject of civil court inquiry”); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116–17 (1952) (civil courts prohibited from reviewing internal church disputes involving matters of faith, doctrine, church governance, and polity); *Gunn v. Mariners Church, Inc.*, 2005 WL 1253953 at *2 (Cal. App. 2005) (courts “cannot undertake ... a mission” of finding what is and is not “moral” or “sinful” within the beliefs of a particular church).
- 4 See 42 U.S.C. § 2000e-2; 29 U.S.C. § 621 *et seq.*
- 5 See *Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015) (sexual orientation); *Macy v. Dep’t of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (gender identity).
- 6 See 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 710 (2012); *McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972).
- 7 It must be noted, however, that the ability to consider an applicant’s or employee’s religious beliefs in hiring or firing does not necessarily mean that the employer may discriminate on protected bases other than religion, such as race, national origin, or sex. See, e.g., *DeMarco v. Holy Cross High School*, 4 F.3d 166, 173 (2d Cir. 1993). There is an open legal question, then, as to whether a religious employer’s right to prefer members of its own religion may serve as a defense to claims of sexual orientation or gender identity discrimination when “sexual orientation” and “gender identity” have been included as protected classes.
- 8 *Hosanna-Tabor*, 132 S.Ct. 694; *McClure*, 460 F.2d at 558-61; *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991).
- 9 See, e.g., *Barrett v. Fontbonne Acad.*, 2015 WL 9682042 (Mass.Super. 2015).
- 10 See, e.g., *Hosanna-Tabor*, 132 S.Ct. 694.
- 11 See *id.*
- 12 Employers should also consult with in-state legal counsel regarding whether employment contracts should be specifically designated year-to-year or at-will. There could be legal benefit to one or the other depending on the organization’s specific situation.
- 13 See, e.g., *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).
- 14 See *Kedroff*, 344 U.S. at 116.
- 15 *Paul v. Watchtower Bible & Tract Society of New York, Inc.*, 819 F.2d 875, 880 (9th Cir. 1987) (“When the imposition of liability would result in the abridgment of the right to free exercise of religious beliefs, recovery in tort is barred.”).
- 16 *Guinn*, 775 P.2d at 779; accord *Owen v. Bd. of Directors of Rosicrucian Fellowship*, 342 P.2d 424, 426 (Cal. App. 1959) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs.”).
- 17 Examples of potentially actionable injuries include breach of contract, assault, defamation, invasion of privacy, and intentional infliction of emotional distress.

- 18 We are not suggesting that such churches should not conduct church discipline when necessary. Nor are we suggesting that those churches who are opposed to church membership because of their understanding of the Bible should violate their consciences and adopt membership policies. Rather, we are highlighting a legal concern. Such churches might want to consider exploring with competent legal counsel whether there would be actions they could take with their parishioners that would be (1) consistent with their doctrinal understanding and (2) provide some measure of legal protection from lawsuits when they apply church discipline.
- 19 The Supreme Court has repeatedly affirmed that churches have the right to decide purely religious and ecclesiastical matters for themselves, but has recognized that if “fraud, collusion, or arbitrariness” is present, the civil courts may be empowered to intervene to decide such a case. *See Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929). Some state courts have reviewed cases brought to challenge membership decisions if the church did not comply with its procedures and bylaws. *See, e.g., Konkel v. Metropolitan Baptist Church, Inc.*, 572 P.2d 99 (Ariz. 1977) (finding that the court had jurisdiction to determine if removal of church members complied with the procedures in the church bylaws); *LeBlanc v. Davis*, 432 So. 2d 239 (La. 1983) (same); *First Baptist Church of Glen Este v. State of Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983) (finding jurisdiction to adjudicate claim that expulsion of members was a result of fraud or collusion); *Hatcher v. S. Carolina Dist. Council of the Assemblies of God, Inc.*, 226 S.E.2d 253 (S.C. 1976) (same).
- 20 *See Paul*, 819 F.2d at 883.
- 21 *See, e.g., Snyder v. Evangelical Orthodox Church*, 216 Cal. App.3d 297, 307 (1989) (allowing case against church to go forward because the church’s bylaws were silent about whether confessions could be revealed to the congregation).
- 22 *See, e.g., Guinn*, 775 P.2d at 776 (“Just as freedom to worship is protected by the First Amendment, so also is the liberty to recede from one’s religious allegiance”).
- 23 *Id.* at 775-77 (“The right to withdraw one’s implied consent to submit to the disciplinary decisions of a church is constitutionally unqualified; its relinquishment requires a knowing and intelligent waiver.”).
- 24 *See Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).
- 25 *See, e.g., id.*
- 26 *Snyder*, 216 Cal.App.3d at 309. Conduct only rises to the level of “extreme and outrageous” when it is beyond the pale of civilized society. For example, a lawsuit against the Unification Church’s allegedly “fraudulent and deceptive recruitment practices” was allowed to go forward. *See id.*
- 27 *See, e.g., Spencer v. World Vision, Inc.*, 633 F.3d 723, 738-740 (9th Cir. 2011) (discussing various factors demonstrating that World Vision held itself out to the community as a religious organization, including its logo, religious artwork, Christian messaging guidelines, and religious employment criteria).
- 28 Parent may also include a legal guardian.
- 29 *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458 (9th Cir. 1993).
- 30 *See, e.g., Valesky v. Aquinas Acad.*, No. CIV.A. 09-800, 2011 WL 4102584, at *2-3, 12 (W.D. Pa. Sept. 14, 2011) (concluding that participation of Catholic schools in NSLP and E-rate programs subjected the diocese and schools to Title IX); *Irving v. Pui Tak Ctr.*, No. 12 CV 8092, 2013 WL 2251757, at *5 (N.D. Ill. May 22, 2013) (noting that private religious school’s participation in the NSLP was sufficient to subject it to Title VI).

Know Your Legal Rights.

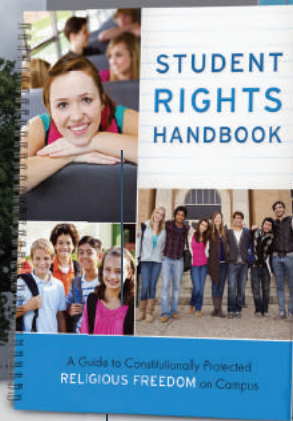
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