PROTECTING YOUR MINISTRY

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

MASSACHUSETTS FAMILY INSTITUTE

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alln.cc/PYMTalks

Look for this symbol throughout this guide for links to videos that answer some frequently asked questions.
“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.”

SUPREME COURT JUSTICE SAMUEL ALITO

Obergefell v. Hodges (Dissenting)
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.

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.

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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.

*The sample policies throughout this manual are exemplary only. They should be adapted to fit the specific beliefs and practices of your ministry.*

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

VIDEO FAQ: Do I need a statement of faith for every ministry of the church?

FIND OUT AT: alln.cc/PYM_4
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.

Thankfully, 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.
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. 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 birth 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.

The two belief statements on page 7 could be seamlessly inserted into the organization’s current statement of faith. But if the organization prefers to adopt a separate and more detailed statement on marriage and sexuality, please see Appendix A on page 31 for an additional sample.
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, such as the sample below, to clearly define their religious beliefs on this issue.

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**SAMPLE STATEMENT ON THE SANCTITY OF HUMAN LIFE**

We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life. (Ps. 139.)

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**SAMPLE STATEMENT OF BELIEF**

We believe that God wonderfully and immutably creates each person as either male or female, and that these two distinct, complementary sexes together reflect the image and nature of God.

We believe that God created marriage to be exclusively the union of one man and one woman, and that intimate sexual activity is to occur exclusively within that union.

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**1.0 SUMMARY:**

- Adopt a comprehensive statement of faith
- Adopt a statement on marriage, gender, and sexuality (*see examples at Appendix A*)
- Adopt a statement on the sanctity of human life
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. The DMHC did not open its plan to public discussion. 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.

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.
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. Below is a sample statement.

SAMPLE STATEMENT OF FINAL AUTHORITY

Final Authority for Matters of Belief and Conduct

The statement of faith does not exhaust the extent of our beliefs. The Bible itself, as the inspired and infallible Word of God that speaks with final authority concerning truth, morality, and the proper conduct of mankind, is the sole and final source of all that we believe. For purposes of [the organization]’s faith, doctrine, practice, policy, and discipline, our [minister/executive committee/board of directors/congregation] is [the organization]’s final interpretive authority on the Bible’s application.
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. 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.”

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. 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.

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. 23.) 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.

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.
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.
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. 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.”

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.

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.

*Examples of religious job descriptions are provided in Appendix B on pages 32-35.*

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### 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
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 birth 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.

Thankfully, 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 and which don’t.

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.
You would think promoting children’s safety would be as simple for state officials as A-B-C. Missouri officials, though, seem to have 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?

It’s a question with far-reaching implications for churches and government officials all over America … and Trinity Lutheran is where the rubber meets the playground.

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.
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.

**VIDEO FAQ:** Will my church be forced to host same-sex weddings?

**FIND OUT AT:** alln.cc/PYMp16
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.

A sample facility use policy is available at Appendix C on page 36.

**VIDEO FAQ:** Should I close church facilities to all non-member requests?

**FIND OUT AT:** alln.cc/PYMp17

### 4.0 SUMMARY:

- Create a facility use policy (see example at Appendix C)
- 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
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 plans to appeal 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. Thankfully, churches enjoy considerable freedom under the U.S. Constitution to govern themselves consistently with their faith, even when doing so causes injuries that might otherwise be actionable in court.

But this freedom has limitations. Only those individuals who “unite” with a church have consented to the church’s authority over them. In order for a church to have the best claim to immunity against an alleged injury that resulted from church discipline, 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. 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 also develop a written membership agreement, such as the sample agreement provided below.

A more comprehensive sample Membership Agreement appears in Appendix D on page 40.

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**SAMPLE CHURCH MEMBERSHIP AGREEMENT**

The membership of this Church shall be composed of individuals who are believers in the Lord Jesus Christ and affirm the tenets of the Church Constitution, and who offer evidence, by their confession and their conduct, that they are living in accord with their affirmations and this Constitution and Bylaws, and are actively pursuing and continuing in a vital fellowship with the Lord, Jesus Christ. The [membership/elder board/pastoral board, etc.] of this Church shall have final authority in all matters of church governance, as set forth and described in the Bylaws.
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. 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.

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. 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. 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.
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.\textsuperscript{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 undertake 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.\textsuperscript{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.

See Appendix E, page 42 for a sample marriage and wedding policy.

### VIDEO FAQ: What should my church do now that the Supreme Court has redefined marriage?

FIND OUT AT: alln.cc/PYMp22

### 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
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
When the U.S. Supreme Court redefined marriage in 2015, Carl and Angel Larsen were troubled, especially as they saw Christians being punished and marginalized for their belief in how Scripture defines marriage—as a lifelong union between one man and one woman.

The Larsens, married for 14 years, have long had a passion to see marriage flourish and often counsel both married and engaged couples. Carl has even officiated two weddings. But as they witnessed the cultural tides shifting, they felt a tug to do more to help promote and celebrate the biblical definition of marriage.

As they prepared to launch into wedding cinematography, however, they ran into an obstacle.

According to state officials, a Minnesota law requires the Larsens to make films celebrating same-sex weddings if they create films celebrating marriage between a man and a woman. And if they decline, the penalties include a civil penalty paid to the state, triple compensatory damages, punitive damages of up to $25,000, and even up to 90 days in jail.

As you can see, the Larsens face a dilemma. Either they must create a government-mandated message—a message that contradicts the very beliefs that fuel their desire to jump into the wedding industry—or they will face an investigation, prosecution, and possible jail time.

So, ADF filed a pre-enforcement challenge on Carl and Angel’s behalf, seeking a court order that says Minnesota cannot threaten them with fines and jail time if they decline to promote a message with which they disagree.

In the meantime, the Larsens are forced to relinquish their free speech rights and have refrained from creating any wedding films at all. Goodbye, free speech and religious freedom. Hello, compelled speech.

Thankfully, the Larsens have First Amendment protections, which require that creative professionals be treated equally and that their rights be protected, regardless of the popularity of their views.

Every American—including creative professionals—should be free to peacefully live and work according to their faith.

That’s why ADF will continue to fight for this freedom for the Larsens in their ongoing case, as well as our many other creative professional clients seeking the same freedom. Please be in prayer for these courageous clients who face severe government penalties simply for living and working consistently with their religious beliefs.
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 in Appendix F, pg. 43). 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.

**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 birth 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 birth 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.\textsuperscript{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.\textit{(Sample provided in Appendix F on page 43.)}

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.\textsuperscript{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
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 trans. 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 feminizing hormone therapy. 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.
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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*A word on sample policies: The sample policies throughout this manual are demonstrative only. There is no magic language that should be copied verbatim. Each ministry should use the sample language or policy as a starting point, and individually tailor it to suit the particular faith tradition, organizational structure, and practices of the organization. The policies and bylaws you adopt should be yours and reflect the needs and beliefs of your organization. Including scriptural references is encouraged, although not legally required.

Sample Statement on Marriage and Sexuality

We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complementary sexes together reflect the image and nature of God (Gen. 1:26-27). Rejection of one’s biological sex is a rejection of the image of God within that person.

We believe that the term “marriage” has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture (Gen. 2:18-25). We believe that God intends sexual intimacy to occur only between a man and a woman who are married to each other (1 Cor. 6:18; 7:2-5; Heb. 13:4). We believe that God has commanded that no intimate sexual activity be engaged in outside of a marriage between a man and a woman.

We believe that any form of sexual immorality (including adultery, fornication, homosexual behavior, bisexual conduct, bestiality, incest, or use of pornography) is sinful and offensive to God (Matt. 15:18-20; 1 Cor. 6:9-10).

We believe that in order to preserve the function and integrity of [the organization] as the local Body of Christ, and to provide a biblical role model to [the organization] members and the community, it is imperative that all persons employed by [the organization] in any capacity, or who serve as volunteers, agree to and abide by this Statement on Marriage, Gender, and Sexuality (Matt 5:16; Phil 2:14-16; 1 Thess 5:22).

We believe that God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ (Acts 3:19-21; Rom 10:9-10; 1 Cor 6:9-11).

We believe that every person must be afforded compassion, love, kindness, respect, and dignity (Mark 12:28-31; Luke 6:31). Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with Scripture nor the doctrines of [the organization].
Sample Job Description 1

Position: Pastor

Ministry Purpose: In accordance with 1 Timothy 3:1-7, 1 Timothy 5:17, Titus 1:5-9, and 1 Peter 5:1-4, the Pastor is responsible for leading the Church body in carrying out its mission as a New Testament Church. As such, the Pastor is responsible to proclaim the Gospel of Jesus Christ, to conduct the ordinances and functions of worship, to teach and equip the Church body, to engage in pastoral care, to provide administrative leadership in all areas of church life, and to supervise church staff.

Primary Responsibilities: The following constitute the major responsibilities of the Pastor:

I. Worship
   1. To regularly preach and teach the Word of God and ensure the faithful proclamation of the Gospel.
   2. To plan and lead worship services, Bible studies, etc. in conjunction with other pastors/elders.
   3. To officiate at weddings, funerals, nursing home services, etc.
   4. To administer the ordinances of baptism and the Lord’s Supper.

II. Pastoral Care
    1. To provide pastoral care through visitation, counseling, and prayer.

III. Outreach
    1. To lead the church in effective evangelism and reach out to the unconverted with the good news of Jesus Christ.
    2. To direct the assimilation of new members into the life of the congregation.
    3. To encourage all organizations and ministries of the church to carry out their work with an emphasis on welcoming others to participate in the mission work of Christ.

IV. Administration
    1. To oversee the administration and management of all areas of the congregation’s ministry.
    2. To support, supervise, manage, and evaluate the staff of the congregation.
    3. To promote faithful financial stewardship and congregational benevolence.
Qualifications: The pastor shall be:

- [Religious training/educational requirements].
- Ordained/called by [ecclesiastical body].
- Devoted to his wife; a one-woman man who manages his household well (Titus 1:6; 1 Tim. 3:2).
- Humble, gentle, peaceful, and a lover of good (Titus 1:7-8; 1 Tim. 3:3).
- Sober, self-controlled, and respectable (Titus 1:8; 1 Tim. 3:2, 7).
- Hospitable (Titus 1:8; 1 Tim. 3:2).
- A faithful steward with financial integrity (Titus 1:7; 1 Tim. 3:3; 1 Peter 5:3).
- Above reproach (Titus 1:8).
- Spiritually mature, respectable, and an example to the church (1 Tim. 3:6-7; 1 Peter 5:3).
- Able to teach (Titus 1:9; 1 Tim. 3:2).
- Able to unreservedly affirm the Church’s statement of faith.

Sample Job Description 2

Position: Church Secretary

Ministry Purpose: Consistent with Romans 12:9-15 and Ephesians 4:11-12, the Church Secretary is responsible for assisting the Pastor and staff in carrying out the daily service practices of the New Testament Church.

Primary Responsibilities: The following constitute the major responsibilities of the Secretary:

I. Spiritual Responsibilities

The Secretary shall:

1. Seek to be a role model in attitude, speech, and actions in a consistent daily walk with Jesus Christ.
2. Show by example the importance of Scripture memorization, Bible study, prayer, witnessing, and Christian fellowship.
3. Be prepared to explain the church’s religious beliefs and practices to visitors and callers.
4. Be always ready to pray with those who contact the church in need.

5. Be prepared to provide religious resources and assistance to those who inquire.

II. **Office Administration**

1. Greet and assist all visitors to the church office.

2. Answer the telephone.

3. Process all incoming and outgoing mail and email.

4. Prepare correspondence and miscellaneous documents as needed by church staff.

5. Prepare weekly bulletin and monthly newsletter.

6. Maintain the church calendar and bulletin boards.

7. Maintain church records.

8. Organize and schedule office personnel.

9. Keep ministerial staff, deacons, and others informed of crises and ministry opportunities within the congregation and community.

10. Assist the Treasurer and Finance Committee with all church budget reports and accountability.

**Qualifications:** The Secretary shall:

- Have a personal relationship with Jesus Christ.

- Faithfully attend and financially support the Church.

- Possess strong written, verbal, and organizational skills.

- Possess excellent people skills and a friendly demeanor.

- Agree to uphold the Church’s statement of faith, and be willing to submit to the standards outlined in the Employee Handbook.

- [Insert academic qualifications].

**Reports to:** Pastor
Sample Job Description 3

**Position:** Christian School Teacher

**Ministry Purpose:** The Teacher is responsible for training the next generation of Christian leaders and equipping them for a life of service to their Savior, homes, churches, vocations, and communities.

**Primary Responsibilities:** The following constitute the major responsibilities of the Teacher:

I. **Spiritual**

   The Teacher shall:

   1. Seek to be a role model in attitude, speech, and actions in a consistent daily walk with Jesus Christ.
   2. Show by example the importance of Scripture memorization, Bible study, prayer, witnessing, and Christian fellowship.
   3. Integrate Biblical principles and a Christian worldview into all curricula and teaching.
   4. Lead [chapel/prayer time/etc.] on a [insert desired timeframe] basis.
   5. Be prepared to communicate the school’s religious beliefs to students and others who inquire.
   6. Be ready to pray with and/or offer spiritual advice to students.
   7. Follow Matthew 18 principles in addressing issues with students, parents, staff, and administration.

II. **Academic**

   1. [Insert responsibilities specific to the subject matter].

**Qualifications:** The Teacher shall:

- Have a personal relationship with Jesus Christ.
- Be committed to the school’s Christian mission and philosophy of faith-based education.
- Faithfully attend and financially support a local church whose beliefs are in agreement with the school.
- Agree to uphold the school’s statement of faith, and be willing to submit to the standards outlined in the Employee Handbook.
- [Insert academic qualifications, licensure requirements, and necessary certification.]
Sample Church Facility Use Policy

Facility Purpose Statement

The Church's facilities were provided by God's benevolence and the sacrificial generosity of its members. All Church property is consecrated and set apart to worship God (Col. 3:17), and therefore is to be used exclusively to glorify God and edify the Body of Christ. Although the facilities are not generally open to the public, the Church makes its facilities available to approved members and non-members on a case-by-case basis as a witness to its faith, in a spirit of Christian charity, and as a means of demonstrating the Gospel of Jesus Christ in practice.

The Church's facilities may not be used for activities that contradict, or are inconsistent with, the Church's beliefs, as summarized in the Church's statement of faith. This restricted facility use policy is necessary for two reasons. First, the Church may not in good conscience materially cooperate in activities or promote beliefs that are contrary to its faith (2 Cor. 6:14; 1 Thess. 5:22). Second, the Church must present a consistent public witness to the community through its stewardship of its property. Allowing facilities to be used by those who express beliefs or engage in practices contrary to the Church's faith would have a severe, negative impact on the message that the Church strives to promote and could cause confusion and scandal to Church members and the community. Therefore, only events that are consistent with the Church's religious beliefs, as determined by[ pastor/elders/official designee], shall be permitted.

Approved Users

The [pastor/elders/official designee] must approve all Church facility use requests. Priority shall be given to Church members and Church-sponsored groups or activities.

In the Church's sole discretion, Church facilities may be made available to [members and] non-members or outside groups (the “User”) meeting the following qualifications:

1. The User must affirm that the planned facility use does not violate the Church's faith and practice.
2. The User must submit a signed “Church Facility Reservation Request and Agreement” form.
3. The User must agree to abide by the Church's rules of conduct for facility use, as stated below and as described in any additional instructions by Church staff.
4. The User must take responsibility for the facilities and equipment used.

Event Requests and Scheduling

Facility use requests shall be made to [pastor/secretary/events coordinator] by submitting the “Church Facility Reservation Request and Agreement” form. The event will be reserved and placed on the church calendar only when the [pastor/elders/official designee] approves the use.
Fees

Use of Church facilities is subject to a security deposit of $____ and a nonrefundable maintenance fee of $____, which may be waived in the [pastor's/elders'/official designee's] sole discretion. Church members are exempt from this fee because maintenance of the facilities are derived from member tithes and offerings.

Facility Use Guidelines

1. Users may only enter and use those areas of the facilities that have been reserved.
2. Food and Beverages: [e.g., not allowed, not allowed without lid, restricted to certain areas, etc.]
3. Alcohol: [e.g., no alcohol may be served on church property.] [Note: If a church allows alcohol, it does risk additional liability. If alcohol is permitted, the church should prohibit both serving alcohol to minors and open and unsupervised serving of alcohol where minors are present.]
4. Smoking is prohibited in any indoor Church facility.
5. Sex-specific changing areas, restrooms, and showers are to be used by members of the designated biological sex only.
6. Church equipment must be returned to original placement, unless arranged otherwise prior to the event.
7. All lights must be turned off and doors locked upon departure.
8. Abusive or foul language, violent behavior, and drug or alcohol abuse are strictly prohibited on church premises. Any person exhibiting such behavior will be required to leave the premises.

Insurance

For all non-Church-sponsored events, the User must obtain liability insurance coverage in the amount of $____, naming the Church as an additional insured. The User must also sign a “Facility Use and an Indemnity and Hold Harmless Agreement.”

Church Facility Reservation Request and Agreement

Name: ________________________________________________________________

Address: _____________________________________________________________

Phone Number: ______________________________________________________

Email: ______________________________________________________________

Website: _____________________________________________________________
Please state whether you are a:

☐ Church Member  ☐ Church-Sponsored Ministry  ☐ Non-Member  ☐ Non-Member Group/Organization

For non-member groups, please state the organization’s purpose and mission:

__________________________________________________________________________

Requested date:__________________  Requested time:__________________

Describe the proposed event/activity:

__________________________________________________________________________

__________________________________________________________________________

Estimated number of attendees: ____________________________________________

Rooms needed (check all that apply):

☐ Sanctuary  ☐ Chapel  ☐ Classroom (#_____)  ☐ Kitchen  ☐ Fellowship Hall  ☐ Parking Lot

Equipment, room set-up, or A/V needs: ______________________________________

Wedding Addendum:

The Church believes marriage to be a religious institution. All weddings held on Church property must conform to the Church’s “Marriage and Wedding Policy” which is available upon request.

If you are requesting use of the Church’s facilities for a wedding and/or wedding reception, please list the names and contact information of the bride, groom, and officiant:

Bride:  Groom:

__________________________________________________________________________

__________________________________________________________________________

Please list the name, contact information, and religious affiliation of the person officiating the wedding:

__________________________________________________________________________

__________________________________________________________________________
Please describe the marriage preparation counseling or training undertaken by the bride and groom:

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________


I (the User) affirm that:

1. I understand that the Church does not allow its facilities to be used in a way that materially conflicts with its faith.

2. To the best of my knowledge, the purpose for which I am requesting use of the Church’s facilities will not contradict the Church’s faith, and I commit to promptly disclose any potential conflict of which I am aware or become aware of to Church staff.

3. I understand that the Church does not allow its facilities to be generally available to the public, and that my use of these facilities is subject to [pastor/elders/official designee] approval, which is conditioned in part on my agreement to the requirements in the “Church Facility Use Policy,” a copy of which I have read and understood.

4. I understand that upon approval of my facilities use request, I will need to provide a security deposit in the amount of $____, a certificate of insurance for at least $____ of coverage, and any other fees required by the Church.

5. I understand that I will be responsible for any damages to the Church facilities resulting from this proposed use of facilities.

6. I understand that the Church believes disputes are to be worked out between parties pursuant to Matthew 18 and 1 Corinthians 6, without recourse to the courts. Accordingly, I agree to attempt resolution of any disputes through Christian mediation.

________________________________________________________________________________________

Name

________________________________________________________________________________________

Date
Sample Church Membership Agreement

We believe that to carry on the religious mission of the church, to preserve the function and integrity of the church as the local Body of Christ, and to provide a biblical role model to the church members and the community, it is imperative that all persons who associate with the church as members should abide by and agree to the following statements and conduct themselves in accordance with them.

A. Statement of Faith

(Initial)

We believe [insert Church’s Statement of Faith here].

[If not included within the Church’s Statement of Faith, insert Church’s Statement on Marriage and Sexuality, Statement on Life, and Statement on Final Interpretive Authority here.]

B. Statement on Church Discipline

(Initial)

The threefold purpose of church discipline is to glorify God by maintaining purity in the local church (1 Cor. 5:6), to edify believers by deterring sin and promoting purity (1 Tim. 5:20), and to promote the spiritual welfare of the offending believer by calling him or her to return to a biblical standard of doctrine and conduct (Gal. 6:1).

The Lord Jesus Christ has entrusted the local church with the authority and responsibility to discipline members for flagrant sin or serious doctrinal error, with the goal of the restoration of the offender. This discipline is entrusted to the Pastoral Staff [Board or similar body] and is to follow the biblical pattern as set forth in Matthew 18:15-20; 1 Corinthians 5; 2 Corinthians 2:7-8; Galatians 6:1; 2 Thessalonians 3:6; Titus 3:10-11; and 2 John 7-11. Any member of this church who practices or affirms a doctrine or conduct that, in the judgment of the Pastoral Staff [Board or similar body], is opposed to the teaching of the Word of God, or is threatening to the testimony of this church, or is divisive to the body, shall be subject to church discipline.

Discipline will follow the said biblical pattern and is an effort to bring the individual to repentance and protect the church from unrepentant sin. Discipline may involve exclusion from participation in ministry and communion, as well as dismissal from the fellowship of this church. An individual may be disciplined by the Pastoral Staff [Board or similar body] short of dismissal from the fellowship, as they deem appropriate for the specific circumstance (for example, an individual may remain in certain circumstances a member of this church but be denied the privilege of serving in a particular ministry). The Pastoral Staff [Board or similar body], as is required by Scripture, may report to the congregation the names of those who have lost membership by reason of church discipline, and the reason for that discipline, as described in Matthew 18:15-20.
[Optional provision] The members of this church further acknowledge that while they have the legal right to withdraw or resign their membership at any time, they knowingly and voluntarily waive their right to revoke membership in the midst of the discipline process. They agree to only withdraw or resign their membership if they are not the subject of a discipline proceeding at the time or any disciplinary process of which they are the subject has been concluded as determined by the Pastoral Staff [Board or similar body].

C. Statement on Mediation
(initial)

Members of the church agree to submit any legal dispute with the church for mediation before a mutually agreed-upon mediator, or if none can be agreed upon, one selected by Peacemaker Ministries. Lawsuits between believers, or threats of lawsuits between believers, are a matter of grave concern for the church, are contrary to biblical and church teaching, and mediation is an effort to resolve disputes in a biblical fashion (1 Cor. 6: 1-7).

Mediation will be governed by the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation (ICC Rules), unless modified as stipulated by the parties. In particular, subject to the more detailed provisions of the ICC Rules, mediator(s) will attempt to assist us in reaching a voluntary settlement of any disputes through mediation. The confidentiality of the mediation process will be protected and these matters will not be discussed with people who do not have a necessary interest in them. If settlement can be agreed upon, the conciliators may, at their discretion, issue an advisory opinion. Neither the opinion, nor any communications exchanged in the mediation process, will be admissible for any purpose in any subsequent legal proceeding.

I have reviewed the statements above and agree to be governed by all the provisions herein. [Optional provision: I recognize that I am knowingly and voluntarily waiving my right to revoke membership during church discipline.]

Name

Date
Sample Marriage and Wedding Policy

[Note: This policy should be adapted to fit the church's religious beliefs regarding marriage.]

There are few things as joyous as celebrating a wedding! Here is what you need to know about hosting your wedding at the Church. If you have any questions, please contact ______________ at ________.

God established marriage as a sacred covenant between one man and one woman to reflect Christ’s relationship with His Church (Eph. 5:21-23). In keeping with biblical teaching, the Church requires the following for any couple seeking to celebrate a marriage at the Church:

- **Faith** – Both bride and groom must have a personal relationship with Jesus Christ (2 Cor. 6:14).
- **Celibacy** – The engaged couple must live separately before their wedding day. Sexual intimacy is to be celebrated exclusively within marriage (1 Thess. 4:3).
- **Man / Woman Monogamy** – Marriage is a sacred union of one man and one woman. [The Church does not recognize, nor will it take part in, any ceremony that does not meet this basic criteria (Gen. 2:24; Matt. 19:4-5).]
- **Premarital Counseling** – The engaged couple must participate in [counseling program/length of counseling] prior to the wedding ceremony. Please schedule at least [length of time] in advance to allow adequate time for premarital counseling.
- **Church Membership/Attendance** – Either the bride or groom [or their parents] must be [members/regular attendees] at the Church. [Note: This provision is optional and is not required should the church choose to allow its facilities to be used for weddings of members of the community who are not members of the church.]

Because the Church believes that marriage is designed to be a life-long union, the Church does not take part in remarriages except under the following circumstances:

- **Death** – The former spouse is deceased (Rom. 7:2; 1 Cor. 7:39).
- **Marital Unfaithfulness** – The former spouse committed adultery against the spouse seeking remarriage (Matt. 5: 32, 19:3-9).
- **Desertion** – The spouse seeking remarriage was deserted by an unbelieving spouse (1 Cor. 7:15).

Finally, for any weddings celebrated outside the Church, the [pastors/ministers/clergy] and staff of [the Church] shall only officiate weddings and solemnize marriages between one man and one woman.

Bride: ___________________________________________  Groom: _________________________________

Date of Wedding: ______________   Wedding Officiant: _______________________________________

Individual(s) [with Membership at/Attending] [the Church]: ___________________________________

Premarital Counseling Program: _______________________________________   Completed? _______

Is this a remarriage for either party? ___________

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**APPENDIX E**

SAMPLE MARRIAGE AND WEDDING POLICY
Sample Introductory Letter to Prospective Parent

Dear Parents:

Thank you for your interest in our school. We have adopted an admissions policy that opens the school to families who are like-minded spiritually, who are supportive of our faith, philosophy, objectives, and standards of education, and whose children meet our enrollment standards. Our purpose is to serve families who desire not simply a private education, but a distinctively Christian education for their children.

Before applying for admission to our school, please read the Student Handbook provided in this introductory packet. The Student Handbook will introduce you to many of the school’s policies, procedures, and expectations for both parents and students.

The first several pages of the Handbook explain our religious purpose, mission, and beliefs. This school unashamedly believes, teaches, and practices a literal interpretation of the Word of God. If you do not agree with our religious mission and beliefs, enrolling your child in our school will likely cause him or her confusion. For example, if a question regarding biblical lifestyles arises in chapel or your child’s classroom, the teacher will answer from a biblical viewpoint consistent with our mission and belief statement. If your beliefs and lifestyle choices are not in agreement with our doctrinal stance, that answer will likely create conflict in your child’s heart and mind. This internal conflict could drive a wedge between you and your child, cause your child to negatively judge you as a parent, or force your child to choose between our teaching and what he or she learns at home. We respect your desire to place your child in the best possible learning environment, but if you are not in full agreement with our doctrinal positions, it will be best for all concerned if you do not enroll your child at our school.

Biblical principles are integrated into every subject taught at our school. Our staff is committed not only to academic excellence, but also to teaching students how to apply the truths of God’s Word to every aspect of life. If you are in agreement with the teachings of God’s Word, this school will complement the beliefs and ideals your child is taught at home. We look forward to partnering with you to educate your child consistent with God’s truth.
Sample Standards for Evaluating Prospective Students

A. Spiritual Considerations
   1. Personal Christian commitment of parents and student.
   2. Willingness of parents and student to be supportive of the school’s Christian philosophy of education.
   3. Willingness of parents and student to support the administration and faculty in carrying out the goals and programs of the school.

B. Behavioral Considerations
   1. History of acceptable citizenship in previous school experience.
   2. Agreement of parents and student to abide by the behavior standards established by the school.

C. Academic Considerations
   1. Documented record of acceptable grades in previous school experience.
   2. Acceptable scores on achievement tests.

D. Personal Considerations
   1. Student’s special interests, talents, and skills.
   2. School makes no distinction in its admission policy on the basis of race, color, or national and ethnic origin.
Sample Handbook Agreements for Parents and Students

Parents: Please read the following statements carefully and sign below to indicate your agreement.

I hereby affirm that I have read the Student Handbook and discussed its policies with my student. I certify that I consent to and will submit to all governing policies of the school, including all applicable policies in the Student Handbook.

I understand that the standards of the school do not tolerate profanity, obscenity in word or action, dishonor to the Holy Trinity and the Word of God, disrespect to the personnel of the school, or continued disobedience to the established policies of the school.

I understand that the services of the school are engaged by mutual consent, and that either the school or I reserve the right to terminate any or all services at any time. I understand that this Handbook does not contractually bind [School] and is subject to change without notice by decision of [School]’s governing body. Admission to the school is a privilege, not a right, and admission for one school year does not guarantee automatic admission for future school years.

_________________________________________________________________________
Signature of Mother                                                   Date

_________________________________________________________________________
Signature of Father                                                   Date

Students in Grades 7-12: Please read the following statement carefully and sign below to indicate your agreement.

I hereby affirm that I have read the Student Handbook. I certify that I consent to, and will submit to, all governing policies of the school, including all applicable policies in the Student Handbook.

I understand that this Handbook does not contractually bind [School] and is subject to change without notice by decision of [School]’s governing body.

I understand that admission to the school is a privilege, not a right, and that any behavior, either on or off campus, which is not consistent with the school’s standards could result in the loss of that privilege.

_________________________________________________________________________
Signature of Student                                                   Date

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).


6 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.


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.


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.”).


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).