



# PROTECTING

FROM SEXUAL ORIENTATION

# YOUR

GENDER IDENTITY

# MINISTRY

L A W S U I T S

A Legal Guide for Southern Baptist and  
Evangelical Churches, Schools, and Ministries



THE ETHICS & RELIGIOUS  
LIBERTY COMMISSION  
OF THE SOUTHERN BAPTIST CONVENTION

*“There can be a conflict between religious liberty and sexual liberty, but in almost all cases the sexual liberty should win....”<sup>1</sup>*

**CHAI FELDBLUM**

*Commissioner, Equal Employment Opportunity Commission (EEOC)*

*“The church will not negotiate the terms of any surrender. We must advocate for the church to faithfully live out its convictions in the public square.”*

**DEAN INSERRA**

*Senior Pastor, City Church, Tallahassee, FL*



RUSSELL MOORE

One of the most basic affirmations of Christianity is the expectation that all of us will one day stand in judgment. We will have no government agency and no denominational entity standing there with us. Since we will stand alone at judgment, we argue that no government has the authority to steamroll the human conscience. This is one of many reasons why Baptists have been tireless advocates of religious freedom from the earliest days of the American experiment.

As Baptists, we're insistent that the paving over of the conscience isn't bad just for Christians, but for any person who longs to carry out his life freely.

Abrupt changes in the culture about marriage and sexuality have catapulted the Christian view of marriage and sexuality into a collision course with the Sexual Revolution. These disputes about what constitute a healthy vision for marriage and sexuality, sadly, have resulted in the cultural harassment, intimidation, and even legal punishment for those whose consciences are held captive to the Scripture's teaching on God's purpose for marriage and sexuality.

Considering just how fast culture is shifting on its views of sexuality and religious liberty, I am thrilled that the Ethics and Religious Liberty Commission is partnering with our friends at Alliance Defending Freedom to produce a trusted resource sure to help equip Christians and churches. In it, you'll find trusted resources on how churches, Christian schools, and Christian ministries should navigate and prepare themselves for the changing culture and all the attendant legal challenges that come with it.

New times bring with it new challenges and opportunities. It is my conviction that the moment we find ourselves in will set the trajectory for the future of religious liberty for decades or centuries to come. Despite the opposition that may come against us, we ought to have the confidence of people who have heard a word from God and the compassion of a people who are on a mission with God. Culture can do many things, and some things worse than others, but the culture cannot get Jesus back into his cemetery plot.

In the long term, the sexual revolution cannot keep its promises. As the church works, as it always has, to pick up the pieces of a broken culture around it, let's do so with an eye toward protecting and strengthening what God has entrusted to us.

For the Kingdom,

A handwritten signature in blue ink that reads "Russell D. Moore". The signature is fluid and cursive.

Russell Moore

*President of the Ethics and Religious Liberty Commission of the Southern Baptist Convention*

# INTRODUCTION

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

A new concept – that “sexual liberty” trumps religious freedom – has begun to impact churches, ministries, and Christians across this nation.

This concept has led to the passage of *sexual orientation, gender identity* ordinances (SOGIs). SOGIs elevate sexual special interests over our cherished fundamental freedoms, especially religious freedom. These ordinances 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 ordinances use public sympathy – gained through misleading rhetoric about “discrimination” – to silence dissenting voices. And no ministry will remain immune if they remain true to Scripture’s teachings about sexuality and gender.

Alliance Defending Freedom and the Ethics and Religious Liberty Commission have partnered together to create this manual, meant to help you prepare for the legal intrusions some of your fellow believers and Christian leaders around the country have already faced, and for other threats on the near horizon.

Alliance Defending Freedom exists to help you deal with a variety of legal challenges facing

churches, religious nonprofits, and believers today, including issues not specifically addressed in this manual: civic engagement of churches and pastors, zoning, tax exemption, equal access to government facilities or programs, and the right to live out your faith in your business, workplace, or school. You can explore the basics on these issues at: [www.AllianceDefendingFreedom.org/Church](http://www.AllianceDefendingFreedom.org/Church).

But the scope and nature of the threat posed by SOGIs and related laws 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 been invoked to attempt to force Christian photographers, bakers, and florists to participate in same-sex ceremonies, in violation of their religious beliefs about sexuality and marriage. They have been used to attempt to force a Christian printer to create advertisements celebrating a “gay pride” festival. SOGIs have been used to attempt to force Christian owners of wedding venues to host same-sex ceremonies, and Christian adoption agencies to choose between placing babies in motherless or fatherless same-sex homes or go out of business.

The ability 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. Sparing yourself and your ministry some of what other brothers and sisters in Christ have already suffered will help you continue to fulfill your vital Gospel mission.

# BARRONELLE STUTZMAN

## *Arlene's Flowers*

Leonardo da Vinci had his paints, Michelangelo had his sculptures, Beethoven had his notes and chords. Barronelle Stutzman has flowers. Name the occasion – wedding, funeral, birthday, prom – and she can weave a bouquet or arrangement to fit. For decades, she's been delighting the people of rural Richland, Washington with her floral creations. Give her an armful of delphiniums, daisies, or daffodils – and a challenge – and she can transform those blossoms into anything from a Disney cartoon character to a tractor, a choir of angels to a quilting bee.

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

Barronelle had put together all kinds of wonderful creations for the special events and occasions important to Rob, and so it nearly broke her heart the day he came in and asked her to come up with 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 another man, and Barronelle's Christian faith is grounded in Scripture that teaches marriage as the union of one man and one woman.

She broke it to him as gently as she could, and he said he understood, even hugging her as she told him. His partner, though, did not. The outrage he shared on Facebook drew attention from those attempting to push same-sex marriage on Americans ... including the state's new attorney general, Bob Ferguson.

Ferguson determined to make an example of Barronelle. He filed a consumer protection 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. They got flowers for their ceremony, 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, with the ACLU, have since filed their own lawsuit, which is now combined with the state's.)

In the months following the lawsuit and a barrage of media coverage, Barronelle's shop was deluged by phone calls and buried in hate mail from people who knew very little about what really happened between Barronelle and Rob and who denounced her decision and mocked the faith that inspired it. But over time, those calls thinned out ... to be replaced, more and more, by

countless letters and cards and emails of support from people all over the world who'd read of her situation and admired her courage.

With her case still pending – in a legal system that has been increasingly hostile in recent years, to choices of conscience from people of faith – she is drawing a lot of encouragement from these fellow believers. The way ahead may be difficult, but she will stand by her beliefs and trust her Lord, no matter what the court rulings may be. Barronelle is a wonderful florist, but she'd be the first to tell you: no one promised her a rose garden.








# PROTECTING YOUR MINISTRY

*Make sure your ministry has the broadest religious liberty protections under the law. Use the checklist below, specific to your type of ministry, to verify your protection.*



## CHURCH CHECKLIST







-  **Statement of Faith** *Page 5*
-  **Religious Employment Criteria** *Page 11*
-  **Facility Use Policy** *Page 14*
-  **Formal Membership Policy** *Page 16*
-  **Marriage Policy** *Page 18*

We've adapted this manual to help focus on Southern Baptist and Evangelical contexts.

“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.













## CHRISTIAN MINISTRY CHECKLIST

-  **Statement of Faith** *Page 5*
-  **Religious Employment Criteria** *Page 11*
-  **Facility Use Policy** *Page 14*
-  **Religious Mission Statement** *Page 20*
-  **Code of Christian Conduct** *Page 20*
-  **Emphasize Religious Character** *Page 21*



## CHRISTIAN SCHOOL CHECKLIST

-  **Statement of Faith** *Page 5*
-  **Religious Employment Criteria** *Page 11*
-  **Facility Use Policy** *Page 14*
-  **Religious Mission Statement** *Page 20*
-  **Code of Christian Conduct** *Page 20*
-  **Emphasize Religious Character** *Page 21*
-  **Admissions Procedures** *Page 23*
-  **Religious Instruction** *Page 24*
-  **Handbooks** *Page 24*
-  **Disciplinary Procedures** *Page 24*



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

# PROACTIVE STEPS FOR CHURCHES, CHRISTIAN SCHOOLS & CHRISTIAN MINISTRIES

*The action items listed under this section are applicable to all churches, Christian schools, and Christian ministries<sup>2</sup> to ensure the broadest religious liberty protections available under the law.*

## 1.0 Statement of Faith

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A statement of faith should serve as the foundational document for churches, Christian schools, and Christian ministries. Such a statement not only expresses the organization's core religious beliefs, but also serves as clear evidence of those beliefs should they be questioned in a lawsuit. Generally, courts will not question an organization's self-proclaimed religious beliefs, particularly if they appear in a statement of faith or other governing document.<sup>3</sup>

The statement of faith should cover a broad range of religious beliefs – and the more detailed, the better – but because of the current cultural climate, three topics deserve particular mention.



### 1.1 Statement on Marriage, Gender, and Sexuality

It should go without saying that 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. (1 Cor 7:2.) It provides the best chance that children will grow up in the same home with both their mom and their dad. Among many other negative cultural developments over the last several decades, the general acceptance of sex outside of marriage and other sexual sins, including homosexual behavior, constitute direct attacks upon this timeless and universal institution.

Gender, likewise, matters. God wonderfully and immutably creates each person as male or female, and these distinct, complementary genders together reflect the image and nature of God. (Gen 1:26-27.) But some individuals reject their biological sex<sup>4</sup> and often present as the opposite sex. In so doing, these confused individuals reject God's design and the person He created them to be.

Issues of marriage and gender now regularly confront religious organizations. Churches are receiving requests to use their facilities for same-sex ceremonies, in direct violation of their beliefs. Christian schools are being asked to employ persons who identify as transgender. 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 churches, Christian



schools, and Christian ministries develop a clear statement on marriage, gender, and sexuality within their statements of faith. It is likewise important that every employee, student, marriage applicant, and volunteer be aware of the organization's religious position on these (and other) issues prior to entering a formal relationship with the organization. Remember: this statement is not intended to limit the organization's ability to reach or serve a particular group, but rather to protect it from being forced to operate in a way that violates its religious beliefs.

A statement on marriage, gender, and 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 improper 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 required by the First Amendment. 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.

*Two sample statements of religious belief concerning marriage, gender, and sexuality are provided in Appendix A on page 27.*



## 1.2 Statement of Final Authority for Matters of Faith and Conduct

It is impossible to anticipate every doctrinal dispute that a church, Christian school, or Christian ministry might encounter. New disputes arise regularly, and it is important that Christian organizations be able to respond in a legally defensible way to these issues.

For example, decades or even centuries ago, when many of the existing Church creeds and statements of faith were written, no one contemplated marriage was anything but the union of a man and a woman. No one could foresee that many would not only advocate for marriage redefinition, but also demand that churches host same-sex ceremonies. Consequently, few Christian organizations were prepared when the current cultural war about marriage broke out.

Each Christian organization should have a statement that clearly identifies (1) the source of religious authority for matters of faith and conduct, and (2) the final human interpreter of that source for the organization. Such 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 denotes that authority resides in a designated individual or group (e.g. minister, bishop, elder board, executive committee, or board of directors) who is authorized to state the organization's beliefs and practices on any disputed issue.

The general legal rule is that courts should not question this position.<sup>5</sup> Below is a sample statement.

### SAMPLE STATEMENT

#### **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] is [the organization]'s final interpretive authority on the Bible's meaning and application.

# JON AND ELAINE HUGUENIN

## *Elane Photography*

**F**or Elaine Huguenin, the nightmare began with a seemingly innocuous e-mail.

Newlywed and newly arrived in Albuquerque, she and her husband, Jon, were just starting to make a go of their fledgling wedding photography business.

*The Huguenins have suffered great criticism for their stand, and have been forced to discontinue wedding photography.*

Elaine found she had a rare gift for capturing those quiet moments that wedding couples want preserved for a lifetime. Her portfolio was growing, and so was her reputation in New Mexico bridal circles. Then came the e-mail:

*"We are researching potential photographers for our commitment*

*ceremony... This is a same-gender ceremony. If you are open to helping us celebrate our day we'd like to receive pricing information. Thanks."*

Carefully, prayerfully, politely, Elaine crafted her reply:

*"As a company, we photograph traditional weddings, engagements, seniors, and several other things such as political photographs and singers' portfolios. Thank you for your interest...."*

Two months passed before the same woman wrote back with a more probing question: *"Are you saying that your company does not offer your photography services to same-sex couples?"*

Elaine tried again to explain: *"Yes, you are correct in saying we do not photograph same-sex weddings, but again, thanks for checking out our site!"*

Months later, the New Mexico Department of Human Rights

contacted her. A complaint had been filed alleging Elaine had violated the state antidiscrimination laws by discriminating on the basis of sexual orientation.

Alliance Defending Freedom then stepped in and pointed out to the courts that:

- a) the Constitution protects Elaine's right to tailor the expression that she creates to the convictions of her conscience;
- b) the First Amendment protects for-profit businesses, like Elane Photography; and
- c) the same-sex couple themselves admit they had no trouble finding another photographer – so their suit is essentially about punishing Elaine for not supporting same-sex unions.

The state of New Mexico showed itself deaf to all of those considerations. The Human Rights Commission ordered the

Huguenins to pay almost \$7,000 in attorneys' fees, a decision the state's supreme court upheld. One judge – in a concurring opinion – wrote the Huguenins "now are compelled by law to *compromise* the very religious beliefs that inspire their lives," as "the price of citizenship." ADF appealed to the U.S. Supreme Court, which declined to hear the Huguenins' case.

The Huguenins have suffered great criticism for their stand, and have been forced to discontinue wedding photography. It remains

for other Christian photographers to continue the ongoing fight to preserve their legal right, as artists, to exercise their God-given creativity without violating their religious convictions.





### 1.3 Statement on the Sanctity of Human Life

Churches, Christian schools, and Christian ministries should also consider adopting a statement of religious belief concerning the sanctity of human life.

Certain pro-abortion organizations continue to advocate for requiring all organizations – including faith-based ministries – to pay for contraception and certain abortion-inducing drugs and devices for their employees. The federal government has attempted to force some religious organizations, including for-profits like Tyndale House Publishers and even nonprofit Christian

colleges, to provide abortifacients to their employees and students. Some Christian ministries are facing difficult employment decisions concerning employees who either choose or publicly advocate for abortion in a manner contrary to the ministry's religious beliefs. In addition, advocates of euthanasia and physician-assisted suicide continue to press for the right to terminate life they no longer consider to be of value.

Adopting a statement on the sanctity of human life will help the religious organization when it encounters these situations.

### 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.)

### 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 final authority concerning matters of faith and conduct
- Adopt a statement on the sanctity of human life

## HOUSTON PASTORS



Hernan Castaño



Magda Hermida



Khanh Huynh



Steve Riggle



Dave Welch

It's not something many are willing to believe.

Europe may encroach on its churches, and Christians have long been persecuted in Asia, but this – *this* 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, gender identity law which, among other things, prohibits 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.

## 2.0 Religious Employment Criteria

Every church, Christian school, and Christian ministry should consider establishing religious criteria for its employees and volunteers. Federal law prohibits employment discrimination based on race, color, religion, sex, national origin, or age.<sup>6</sup> However, “religious organizations” may consider an applicant or employee’s religious beliefs in hiring and firing.<sup>7</sup> And under a doctrine known as the “ministerial exception,” churches, Christian schools, and other qualifying organizations are exempt from employment non-discrimination laws for hiring and firing their ministerial employees – individuals who are tasked with performing the organization’s rituals or teaching and explaining its beliefs.<sup>8</sup>

State and municipal employment non-discrimination laws often mirror federal law, prohibiting discrimination based on religion and unchangeable characteristics such as race, color, and national origin. But an increasing number of states and municipalities also prohibit discrimination in employment based on unbiblical behavior related to sexual orientation and gender identity. Most state laws and municipal ordinances also provide some level of exemptions for religious organizations, but these exemptions vary widely. Regardless, the First Amendment, which trumps state and local law to the contrary, should provide great protection for employment decisions made by religious entities.

Should an employment dispute arise, Christian organizations can best avail themselves of the First Amendment’s protection if they create and faithfully enforce religious employment criteria for every employee.



### 2.1 Signed Statement of Faith

First, and at a minimum, the organization should require all employees and volunteers to sign a statement affirming that they agree with the organization’s statement of faith and are willing to comply with the organization’s standards of conduct (if any). (See Statement of Faith, pg. 5; Code of Christian Conduct, pg. 20.) 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.



### 2.2 Religious Job Descriptions

Second, the organization should create written 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 characteristics or skills are necessary for the position.

Although every position within a church or ministry furthers the organization’s religious mission, the link between an employment or volunteer

position and the organization's mission cannot be assumed. Clearly articulate this link in writing.

When feasible, a religious organization should assign its employees duties that involve ministerial, teaching, or other spiritual qualifications – 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. Consider requiring all employees to participate in devotional or prayer time, or to even lead these on occasion.

Employees with some duties usually performed by (or associated with) clergy are more likely to be viewed as “minister-like” by the courts.<sup>9</sup> Consequently, courts are more likely to apply the ministerial exception to employment law claims based on alleged discrimination.

As noted above, it is important to bear in mind 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 ministering, teaching, or communicating beliefs. In a recent case, the United States Supreme Court held that a Christian school teacher met the definition of a “minister.”<sup>10</sup>

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. Any religious educational qualifications, duties, responsibilities, or activities should be clear in the position description. Finally, remember that one need not have the title “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 the 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.<sup>11</sup>

Finally, Christian ministries must consistently apply their employment standards and handle similar cases alike. For example, organizations might be legally vulnerable if they terminate an unmarried, pregnant female employee on religious grounds, but do not terminate a male employee known to have engaged in extramarital sexual relations. Consistency in employment decisions will make it more likely courts will find the organization acted properly and did not commit employment discrimination should a disgruntled former employee file suit.

## 2.0 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

# DONALD AND EVELYN KNAPP

## *Hitching Post Wedding Chapel*

It's hard for ministers who've spent their lives helping others say "I do" to come to the point where they have to say, "I don't."

But the way Donald and Evelyn Knapp of Coeur d'Alene, Idaho see it, city officials really haven't left them any choice.

In June 2013, those officials instituted a sexual orientation non-discrimination ordinance. When the courts opted to override Idaho's voter-approved constitutional amendment affirming marriage as the union of one man and one woman shortly thereafter, that put the Knapps, who are unwilling to divorce themselves from the biblical meaning of marriage, on the wrong side of the law.

The Knapps have been operating the Hitching Post Wedding Chapel in Coeur d'Alene for 25 years. Both ordained ministers, and married for 47 years themselves, the chapel is their ministry. They perform religious wedding ceremonies that include references to God, invoke His blessing on the union, and share brief remarks drawn from the Bible to encourage the couple and point them toward a successful marriage. They also provide each couple they marry with a CD that includes two sermons about marriage, and recommend Christian books on the subject. They charge a small fee for their services.

City officials told the Knapps – privately and publicly – that unless they agreed to perform same-sex ceremonies at their chapel, they'd be in violation of city law. The penalty, they were told, was up to 180 days in jail and up to \$1,000 in fines for the initial violation and each day it continued.

On October 15, 2014, Idaho county officials began issuing same-sex marriage licenses. Two days later, the Knapps received a request to perform a same-sex wedding ceremony at The Hitching Post. The Knapps respectfully declined because of their religious beliefs and ministerial vows. Knowing the city viewed this denial as a violation of the ordinance and put them at risk of being

prosecuted and sent to jail, the Knapps asked ADF attorneys to immediately file a federal lawsuit and a motion for a temporary restraining order to stop the city from following through on its threats.

The city initially responded to the lawsuit by confirming that the Knapps were subject to the ordinance because they ran a for-profit business. But intense public scrutiny and criticism quickly changed its mind, and the city has now told the Knapps that they will not be prosecuted. However,

the lawsuit is moving forward because the city has refused to amend the ordinance to make it clear that it does not cover for-profits operated according to religious beliefs, leaving other religious business owners who object to participating in same-sex ceremonies subject to prosecution.

How the Knapps' case will ultimately be resolved is yet to be determined. But what it underscores is how the very government invested with protecting our personal religious freedom is itself trying to force us to forfeit that freedom.



*That put the Knapps, who are unwilling to divorce themselves from the biblical meaning of marriage, on the wrong side of the law.*





## 3.0 Facility Use Policy

A facility use policy is critical for any church, Christian school, or Christian ministry that owns a building and permits its facilities to be used outside of normal business operations.

Many churches fear that the government will force them to violate their religious beliefs and allow same-sex ceremonies in their buildings. Some of these churches have even prohibited all outside groups from using church facilities – an unwarranted reaction that limits the church’s ability to serve its community. Despite attempts to require churches to host same-sex ceremonies, church buildings are private property and used primarily for the exercise of religion throughout the week.<sup>12</sup> As such, the use of church buildings is clearly subject to First Amendment protection and churches have the right to ensure that any use of their facilities is consistent with their religious beliefs. Under current law, no church is forced to open its buildings for uses that conflict with its religious teachings.

But those advocating for marriage redefinition hope to change the current law that protects churches. And it is not clear, even under the current law, how much protection other Christian organizations have from being compelled to open their facilities for uses that conflict with their doctrine. Churches, Christian schools, and Christian ministries can strengthen their religious liberty protections by adopting a facility use policy that outlines the religious nature of the building and restricts its use to those acting

in a manner consistent with the organization’s biblical beliefs. A policy is clear evidence of the organization’s beliefs and practice regarding use of its property and why certain practices or activities are never permitted.

Christian organizations that rent their facilities to outside organizations should consider doing 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 ministry, or more like a for-profit business engaged in commerce. Facilities that are rented out at less than market rates are more indicative of a ministry.

There is no “one-size-fits-all” policy for all religious groups. The important point is 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. *A sample facilities use policy is available at Appendix B on page 28.*

### 3.0 SUMMARY:

- Create a facility use policy (see example at Appendix B)
- Identify the religious purpose of the building
- Restrict facility use to those acting consistent with your organization’s beliefs

# ROBERT AND CYNTHIA GIFFORD

## *Liberty Ridge Farms*

Same-sex couples all over America are trampling a lot of innocent people in their rush to redefine marriage.

The latest family to be plowed over is the Giffords, whose beautiful farm in upstate New York is first and foremost their home and private property – property they cheerfully open from time to time to the general public for pumpkin picking, pig racing, corn mazes, and even occasionally a wedding on the ground floor of the barn that contains their home.

When the Giffords host weddings, they go whole hog: greeting guests at the gate, ferrying them to the barn in their farm trolley, decorating the premises, arranging for flowers and fireworks, and providing cake and refreshments. They even make available a bridal suite in their living quarters above the ground floor.

There's just one hitch, for people thinking of marrying at the Giffords'. They only host weddings between a man and a woman, since the Giffords are Christians who believe this union represents God's design for marriage. They gently explained this a while back to two lesbians who asked to reserve their barn for their upcoming same-sex ceremony. But the women didn't care for the message, didn't respect the family's convictions, and didn't take kindly to "no" for an answer. When Mrs. Gifford invited them to visit the farm, to discuss holding a reception there, the women refused. Interestingly, they did not tell her they were tape-recording the conversation.



The women then filed a complaint with the New York State Division of Human Rights. The judge who heard their case disregarded the fact that the Giffords have hired homosexuals; that they've hosted birthday parties for homosexuals on their property; that they were happy to have the women take part in any of the farm's other special public events; or that the family's

God-given right to live out their religious beliefs is ensured, supported, and spelled out in the Constitution. The judge just found the Giffords guilty of discrimination and fined them \$13,000, with the promise to keep on fining them if they ever say "no" to a same-sex ceremony again.

That's not all. If the Giffords didn't pay the fines within 60 days, the judge ordered they pay nine percent interest. In addition to the money, he ordered the Giffords to prominently display a poster on their property addressing anti-discrimination laws. He further ordered the family and employees to undergo "anti-discrimination" training, perhaps to enlighten them on the errors of their religious convictions.

The Giffords are weighing their options for what to do next. For now, they are standing by their convictions to challenge this unjust law and follow their moral beliefs against yet another tyrannical consequence of marriage redefinition.

*[The judge] ordered the family and employees to undergo "anti-discrimination" training, perhaps to enlighten them on the errors of their religious convictions.*

# PROACTIVE STEPS FOR SPECIFIC ORGANIZATIONS

## 4.0 Churches

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### 4.1 Churches – Formal Membership Policy

Sadly, church members sometimes engage in behavior that necessitates church discipline. Such discipline is Biblical and consistent with nearly every church tradition, though some specific approaches vary. (See, e.g., Matt 18:15-20.) And, on occasion, those who have been disciplined by their church (or removed as members) have then sued.<sup>13</sup>

Thankfully, churches enjoy considerable freedom under the United States Constitution to govern themselves as they see fit,<sup>14</sup> even when doing so causes injuries that would otherwise be actionable in court.<sup>15</sup> But this freedom has limitations. Only those individuals who “unite” with a church have consented to the church’s authority over them.<sup>16</sup> In order for a church to have the best claim to immunity against an alleged injury that resulted from church discipline,<sup>17</sup> 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 potentially enjoy less protection from

legal liability when they impose church discipline on those who merely attend church.<sup>18</sup> This does not mean that a church should adopt a form of government to which it does not subscribe. For example, “members” are not necessarily voting members in the congregational model, but may be designated as members through some other model in which they affirm they are committed to and part of a church body, even if there is no voting or say in church practices.

Churches with formal members have greater legal protection when they find it necessary to impose church discipline on their members. But to further protect themselves, churches should implement a written membership policy that explains the (1) procedures for becoming a member, (2) procedures for member discipline, and (3) procedures for rescinding membership.

#### 4.1.1 Formal Membership Policy: Procedures for Becoming a Member

Churches should 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.<sup>19</sup>

Churches should also develop a written membership agreement, such as the sample agreement provided below:

*A more comprehensive sample Membership Agreement appears in Appendix C on page 33.*

## 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.

### 4.1.2 Formal Membership Policy: Procedures for Member Discipline

Generally, churches cannot be held legally liable because they discipline church members or terminate their membership.<sup>20</sup> 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.<sup>21</sup> 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. The church should also consult legal counsel before discussing any details related to the discipline and termination.

### 4.1.3 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.<sup>22</sup> 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.<sup>23</sup> Therefore, the circumstances and timing of when church members may terminate their memberships must be clearly set forth and agreed to by both the church and the member.

Once a member has rescinded her membership, she no longer consents to the church's doctrine and authority, potentially limiting the church's legal authority to discipline her. At least one state court has allowed a suit to proceed against the elders of a church who attempted to discipline

an individual after she formally withdrew her membership.<sup>24</sup> A formal revocation policy clarifies for all parties involved, including the court, when the membership terminated.

Because at least one court has ruled that members can voluntarily waive their right to terminate their membership, churches should consider including in their membership policy a provision prohibiting the voluntary resignation or withdrawal of membership once the disciplinary process begins. Otherwise, if the church continues discipline designed to restore a wayward member after she withdraws from membership, the church may be found liable if the former member sues.<sup>25</sup> Because church members can only waive their right to rescind membership if it is voluntary and intentional, it is a good idea to have church members sign an explicit statement that they have read and agree to this provision.

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.<sup>26</sup> As in other areas, churches should consult in-state legal counsel for more specific advice.



## 4.2 Churches – Marriage Policy

In addition to a statement of religious belief concerning marriage, gender, and sexuality (pg. 5), and a facility use policy (pg. 14), churches should also adopt a comprehensive policy concerning the marriages their pastors or ministers may solemnize or otherwise participate in.

### SAMPLE MARRIAGE POLICY

Because God has ordained marriage and defined it as the covenant relationship between a man, a woman, and Himself, [the Church] will only recognize marriages between a biological man and a biological woman. Further, the [pastors/ministers] and staff of [the Church] shall only participate in weddings and solemnize marriages between one man and one woman. Finally, the facilities and property of [the Church] shall only host weddings between one man and one woman.

### 4.0 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 policy

# SCOTT AND NANCY HOFFMAN

## *Ocean Grove Camp Meeting Association*

To Scott and Nancy Hoffman, being asked to assume leadership at the Ocean Grove Camp Meeting Association presented an extraordinary opportunity. The beachfront religious retreat is one of the jewels of the Eastern Seaboard – tucked away on a New Jersey peninsula between two lakes and the beautiful Atlantic, it's within a 50-mile radius of one-sixth of the county's population.

The place was founded after the Civil War by Methodists who bought the land from the State and obtained a charter from the legislature setting Ocean Grove apart as “a place on the shore for the perpetual worship of Jesus Christ.”

Today, the wooden auditorium, built in 1869, is a national historical landmark. A boardwalk runs the half-mile length of the beach, and alongside it is a beautiful open-air pavilion: a picturesque setting for many of

Ocean Grove's church activities: morning Bible studies, weekly worship services, and Gospel music concerts. Seaside Sunday

*The Hoffmans tried to head off the legal hurricane by announcing that, henceforth, no more weddings of any kind would be hosted in the pavilion. It didn't help.*

services at the pavilion often draw in passing tourists, Hoffman says, with the result that “many people come to Jesus Christ [who] didn't even know they were going to church that day.”

The Hoffmans barely began working at Ocean Grove when controversy engulfed them. In February 2007, the New Jersey

legislature legalized “civil unions” for same-sex couples. Soon, couples began asking to use the Ocean Grove pavilion for their same-sex ceremonies. When they were refused, based on the organization's religious beliefs, some couples filed discrimination complaints with the New Jersey Division on Civil Rights, asserting that Ocean Grove's pavilion – one of its places of worship – was a place of public accommodation subject to the state's

nondiscrimination law. They claimed that a structure owned by a religious group and used for religious services wasn't a worship facility . . . and urged the state to enshrine this nonsense in legal stone.

The Hoffmans tried to head off the legal hurricane by announcing that, henceforth, no more weddings of any kind would be hosted in the pavilion. It didn't help. Neither, in the end, did an effort to go on the offensive: Ocean Grove, with the assistance of Alliance Defending Freedom, filed a federal lawsuit charging the

state with violating the religious group's rights protected by the First Amendment. A federal court dismissed the lawsuit, clearing the way for a five-year legal battle before the New Jersey Division on Civil Rights, which eventually declared that the pavilion was not a religious facility and that Ocean Grove was guilty of discrimination. To end the legal battle and appease state officials, Ocean Grove stopped hosting weddings of any kind in its seaside pavilion – a policy it continues today.

Soon after the Division on Civil Rights' decision, Hurricane Sandy swept the New Jersey coast, shattering homes and towns for miles above and below Ocean Grove. Miraculously, the epic storm left the little seaside pavilion virtually unscathed. Regrettably, the state officials didn't follow a similar course.



## 5.0 Christian Schools and Christian Ministries



### 5.1 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 likeminded people who will further the organization’s religious purpose and beliefs.

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



### 5.2 Code of Christian Conduct

Christian schools and Christian ministries should adopt a code of Christian conduct, grounded in the statement of faith, which establishes parameters for acceptable behavior.

In light of current issues with sexual orientation and gender identity, this code of conduct should address: (1) dressing in conformance with one’s biological sex; (2) using the restrooms, locker rooms, and changing facilities conforming with one’s biological sex; and (3) abstaining from all intimate sexual conduct outside the marital union of one man and one woman. Cite the organization’s statement on marriage, gender, and sexuality to highlight why this conduct is Biblically required. Wherever possible, tie these requirements to scriptural or ecclesiastical teaching.

The code should also address non-sexual behaviors such as cheating, stealing, respect for authority, and so forth. Include a warning that the school has the right to discipline or ask a 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.



### 5.3 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.<sup>27</sup>

### 5.0 SUMMARY:

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



# DON AND PHYLLIS YOUNG

## *Aloha Bed & Breakfast*

**D**on and Phyllis Young are a senior adult couple who have lived in their home in Hawaii since 1978. Humble and hard-working, they're proud of their house and eager to share it, supplementing their limited retirement income by renting rooms to the public as a bed-and-breakfast.

In their minds, though, guests are family – if you stay with the Youngs, you don't hide away in your room. You join them for dinner and conversation, to watch an old movie, or to sit in on their weekly Bible study with friends. It's not that big of a house anyway, and it doesn't offer a lot of the frills of high-end hotels. If you stay here, it's strictly for the down-home experience and the chance to make some new friends.

Given the close quarters, it's not surprising that the Youngs have firm standards for the type of conduct allowed in their home. As devout Catholics, one of their requirements is that any couple sharing a bedroom should be married – and married in the man-and-woman, biblical sense of that increasingly beleaguered term.

When Phyllis explained that to a lesbian couple who called to inquire about her rates, they took offense – enough offense to take the Youngs to court. It didn't matter to the couple – nor, as it turned out, to the Hawaii Civil Rights Commission – that the Youngs kindly referred them to



another, newer, nearby bed-and-breakfast place with comparable rates and location. For the lesbian couple, a principle was at stake.

For the Youngs, what's at stake is their faith, and their religious freedom, as protected by the Constitution. Unfortunately, the judge who recently heard their case said he thought the affront to the lesbians trumped the Youngs' constitutional freedoms. The Youngs (represented by Alliance Defending Freedom allied attorneys) have appealed.

So far, what neither the lesbian couple nor the tribunals involved have understood is that the standards the Youngs hold to are not something they reserve for only guests in their home.

When their own daughter wanted to come home for a weekend and share a bedroom with her then live-in boyfriend, Don and Phyllis said no: separate bedrooms, or stay somewhere else. Separate bedrooms it was – but today, daughter and boyfriend are wife and husband ... encouraged in that admirable direction, perhaps, by the standards of a mom and dad who held fast to their beliefs when it would have been easier to relax them.

It would be even easier to revise those beliefs now, in the face of so much legal pressure. But in a house as small as the Youngs', there just isn't room for that much compromise.

*When their own daughter wanted to come home for a weekend and share a bedroom with her then live-in boyfriend, Don and Phyllis said no: separate bedrooms, or stay somewhere else.*

## 6.0 Christian Schools Only



### 6.1 Admissions Procedures

Each Christian school should have a well-defined admissions procedure that includes clear statements that the school is a Christian ministry. The procedure should also 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 D, pg. 36.*) 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 “biological father” and “biological mother,” and the status of the parents’ relationship (i.e. married, divorced, deceased, never married), as well as an “alternative family information” section for step-

or adoptive parents, or guardians. 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).

#### 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.



## 6.2 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. A 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.<sup>28</sup>

Christian schools should consider requiring 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.



## 6.3 Parent, Student, and Teacher Handbooks

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

Christian schools should also require all employees, parents, and students (especially those in grades 7-12) to sign a written agreement statement affirming that they have read, are in agreement with, and are willing to abide by the established standards of the school as outlined in the handbook. (*Sample provided in Appendix D on page 36.*)

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.



## 6.4 Disciplinary and Dismissal Procedures

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

### 6.0 SUMMARY:

- Establish clear school admissions, disciplinary, and dismissal procedures
- Infuse the curriculum and teacher instruction with religious teaching
- Include your school's mission statement and statement of faith in all handbooks
- Include two disclaimers in all handbooks, noting that the handbooks do not create a contract and are subject to change at any time
- 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

# CHRISTIAN SCHOOLS

A brief glance at five recent cases gives a glimpse of what's coming for Christian school administrators in the years ahead, as those promoting the same-sex and transgender ideology set their sights on infiltrating schools, both public and private. Their goal is not so much to assert their own preferences as to acclimate the culture by breaking down moral boundaries, undermining opposition from the church, and influencing children to embrace and emulate their behavior.

- 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 the dress code, the male teacher suddenly announced that he was transgender. At the time of the lawsuit, the former teacher was presenting as a female, including adopting a feminine name, wearing women's clothing, and taking 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 felt 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.

Yes, so far these are somewhat isolated cases – but change is in the air. And those pressing their same-sex and transgender political ideology 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.

# CONCLUSION

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

That’s what this guidebook is all about. Adopting the action steps recommended in the previous pages cannot insulate your church, Christian school, or Christian ministry from all attacks by marriage counterfeits and those advocating for

complete sexual license. 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 wants to talk to you in the event your group faces such a challenge.

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 lost and hurting souls all around you.



THE ETHICS & RELIGIOUS  
LIBERTY COMMISSION  
OF THE SOUTHERN BAPTIST CONVENTION

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*These samples are demonstrative only: there is no magic language that must be copied verbatim. Each organization should tailor the statement to suit the needs of its particular group and faith tradition. Including scriptural references is encouraged, although not legally required.*

## Statement on Marriage, Gender, and Sexuality

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We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complementary genders 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, and 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 [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 Church Facility Use Policy

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## Purpose Statement

The church's facilities were provided through God's benevolence and by the sacrificial generosity of church members. The church desires that its facilities be used for the fellowship of the Body of Christ and to bring God glory. Although the facilities are not generally open to the public, we make our facilities available to approved non-members as a witness to our faith, in a spirit of Christian charity, and as a means of demonstrating the Gospel of Jesus Christ in practice.

But facility use will not be permitted to persons or groups holding, advancing, or advocating beliefs or practices that conflict with the church's faith or moral teachings, which are summarized in, among other places, the church's constitution and bylaws. Nor may church facilities be used for activities that contradict, or are deemed inconsistent with, the church's faith or moral teachings. The pastor, or his official designee, is the final decision-maker concerning use of church facilities.

This restricted facility use policy is necessary for two important reasons. First, the church may not in good conscience materially cooperate in activities or beliefs that are contrary to its faith. Allowing its facilities to be used for purposes that contradict the church's beliefs would be material cooperation with that activity, and would be a grave violation of the church's faith and religious practice. (2 Cor 6:14; 1 Thess 5:22.)

Second, it is very important that the church present a consistent message to the community, and that the church staff and members conscientiously maintain that message as part of their witness to the Gospel of Jesus Christ. Allowing facilities to be used by groups or persons 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. It could also cause confusion and scandal to church members and the community because they may reasonably perceive that by allowing use of our facilities, the church agrees with the beliefs or practices of the persons or groups using its facilities.

Therefore, in no event shall persons or groups who hold, advance, or advocate beliefs, or advance, advocate, or engage in practices that contradict the church's faith use any church facility. Nor may church facilities be used in any way that contradicts the church's faith. This policy applies to all church facilities, regardless of whether the facilities are connected to the church's sanctuary, because the church sees all of its property as holy and set apart to worship God. (Col 3:17.)

## Approved Users and Priority of Use

The pastor or official designee must approve all uses of church facilities. Generally, priority shall be given to church members, their immediate families, and organized groups that are part of the ministry, organization, or sponsored activities of the church. Church facilities and equipment will be made available to non-members or outside groups meeting the following qualifications:

1. Groups or persons requesting facility use must affirm that their beliefs and practices and planned uses of the facilities are consistent with the church's faith and practice.
2. The group or person seeking facility use must submit a signed "Church Facility Reservation Request and Agreement" form.
3. The group or person seeking facility use must be willing to take responsibility for the facilities and equipment used and 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.

### Facility Use Hours

Facilities are available between the hours of \_\_\_\_ a.m. and \_\_\_\_ p.m. Use outside these hours may be approved by the pastor or official designee.

### Scheduling Events

Facility use requests shall be made to \_\_\_\_\_ [e.g., 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 or official designee approves the use.

### Fees

Use of church facilities is subject to a use and maintenance fee of \$\_\_\_\_\_ to pay for the upkeep of church facilities. Church members are not required to pay a fee for usage because maintenance of the facilities are derived from member tithes and offerings. *[Note: Whether a church charges a fee for facility use is up to its discretion. But charging below-market rates, or no fee at all, helps churches avoid being considered a public accommodation under local or state law. Public accommodations are generally subject to a variety of laws, including laws regarding nondiscrimination. Because there is greater risk of being subject to these laws when a church charges market rates for facility use, we advise either charging no fee (except for perhaps a cleaning or other incidental fee) or charging a below-market fee. In any event, the church may also wish to require a refundable security deposit to pay for any damages to the facilities].*

### Facility Use Guidelines [OPTIONAL]

1. Alcohol Policy: No alcohol may be served in church facilities. *[Note: If a church allows alcohol, it should be aware that it is exposing itself to additional liability, especially involving claims that could arise on the premises or from intoxicated drivers afterward. Banning alcohol is also more consistent with the limited-use policy of the church. But if alcohol is allowed in a banquet hall or other facilities, the church should note that serving alcohol to minors is prohibited, and that the group using the facilities must not allow open and unsupervised serving of alcohol at events in which minors are present.]*
2. Smoking Policy: [e.g., smoking in any indoor church facilities is prohibited.]



3. Groups are restricted to only those areas of the facility that the group has reserved.
4. Food and beverages in classrooms, worship space.... [e.g., not allowed, not allowed without lid, restricted to certain areas, etc.]
5. Church equipment, such as tables and chairs, must be returned to original placement, unless arranged otherwise prior to the event.
6. All lights must be turned off and doors locked upon departure.
7. Clean-up [address whether it is the responsibility of the group using the facility, and if so, what constitutes satisfactory clean-up. The church may also wish to include a clean-up fee].
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.
9. Any person or group must sign the “Church Facility Reservation Request and Agreement” form prior to reservation of church facilities.

### Insurance

For all non-church-sponsored events, the group or person using the facilities must obtain liability insurance coverage in the amount of at least \$\_\_\_\_\_. The user must also sign a “Facility Use and an Indemnity and Hold Harmless Agreement.”

### Church Facility Reservation Request and Agreement

Name of person or organization requesting use of facilities: \_\_\_\_\_

**Please state whether you are a:**

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

**Contact Information:**

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

If the requested use is by an organization not affiliated with the church, please briefly state the organization’s purpose and mission: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please list the organization’s website, if any: \_\_\_\_\_

Please list the names of the organization's office-holders and leaders: \_\_\_\_\_

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Regardless of type of user, please describe which church facilities you are requesting use of and the purpose for which you intend to use the facilities: \_\_\_\_\_

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What date(s) and time(s) are you requesting to use the facilities: \_\_\_\_\_

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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 and groom:

Bride:

Groom:

_____	_____
_____	_____
_____	_____
_____	_____

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

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

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**I affirm that:**

1. I understand that the church does not allow its facilities to be used in a way that contradicts its faith or by persons or groups holding beliefs that contradict the church's faith.
2. To the best of my knowledge the purpose for which I am requesting use of church 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 to church staff.
3. I am not aware of any beliefs that are professed by me or the organization I represent and which is requesting use of the church's facilities that contradict the beliefs of the church. I agree to promptly disclose any potential conflicts in belief to church staff.
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 the church does not allow its facilities to be generally available to the public, and that my use of these facilities is subject to the pastor's 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.
6. I understand that I will be responsible for any damages to the church facilities resulting from this proposed use of facilities.
7. The church believes disputes are to be worked out between parties without recourse to the courts. See, generally, Matthew Chapter 18 and 1 Corinthians Chapter 6. Accordingly, users of the facility agree to attempt resolution of any disputes through Christian mediation.

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 Name

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 Date

## Sample Church Membership Agreement

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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].

\_\_\_\_\_ **B. Statement on Marriage, Gender, and Sexuality**

(initial)

[If not included within the Church's Statement of Faith, insert Church's Statement on Marriage, Gender, and Sexuality here.]

\_\_\_\_\_ **C. 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 knowingly and voluntarily agree that a member cannot voluntarily withdraw or resign his or her membership in the midst of the discipline process, and may only voluntarily withdraw or resign his or her membership if they are not the subject of a discipline proceeding at the time or only after a disciplinary process, of which they are the subject, has been concluded as determined by the Pastoral Staff [Board or similar body].

#### \_\_\_\_\_ **D. 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. (Visit: [http://www.peacemaker.net/site/c.nuIWL7MOJtE/b.5335917/k.D8A2/Rules\\_of\\_Procedure.htm](http://www.peacemaker.net/site/c.nuIWL7MOJtE/b.5335917/k.D8A2/Rules_of_Procedure.htm) to access the ICC Rules.) 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.

#### \_\_\_\_\_ **E. Statement on Life**

(initial)

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.)

\_\_\_\_\_ **F. Statement of Final Authority on Matters of Faith and Conduct**

(initial)

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] is [the organization]’s final interpretive authority on the Bible’s meaning and application.

**I have reviewed the statements above as indicated by my initials before each of them, and agree to be governed by all the provisions herein.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

## Sample Introductory Letter to Prospective Parent

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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 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 in God's truth.

## Sample Standards for Evaluating Prospective Students

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### 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

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**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.

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Signature of Mother

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Date

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Signature of Father

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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.

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Signature of Student

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Date

# END NOTES

- 1 Maggie Gallagher, *Banned in Boston: The coming conflict between same-sex marriage and religious liberty*, The Weekly Standard (May 15, 2006), <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/191kgwgh.asp>.
- 2 What is a Christian ministry? 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.
- 3 Even if your religious denomination has adopted an official statement of faith or positional statement, it is still important that the church, Christian school, or Christian ministry at least adopt this statement by reference. Although the denominational statement could provide some legal covering, courts may be hesitant to hold that it applies to your religious organization unless your organization has specifically adopted that denominational statement.
- 4 “Biological sex” means the condition of being male or female, which is determined by a person’s chromosomes, and is identified at birth by a person’s anatomy. Those who reject their biological sex are sometimes referred to as “transgender.”
- 5 *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 42 U.S.C. § 2000e-2; 29 U.S.C. § 621 *et seq.*
- 7 See 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 710 (2012); *McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972).
- 8 *Hosanna-Tabor*, 132 S.Ct. 694; *McClure*, 460 F.2d at 558-61; *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991).
- 9 See, e.g., *Hosanna-Tabor*, 132 S.Ct. 694.
- 10 See *id.*
- 11 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 strategic benefit to one or the other depending on the organization’s specific situation.
- 12 Other considerations may apply to a church that engages in commercial rental of its property.
- 13 See, e.g., *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).
- 14 See *Kedroff*, 344 U.S. at 116.
- 15 *Paul v. Watchtower Bible & Tract Society of New York, Inc.*, 819 F.2d 875, 880 (9th Cir. 1987) (“When the imposition of liability would result in the abridgment of the right to free exercise of religious beliefs, recovery in tort is barred.”).
- 16 *Guinn*, 775 P.2d at 779; accord *Owen v. Bd. of Directors of Rosicrucian Fellowship*, 342 P.2d 424, 426 (Cal. App. 1959) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs.”).
- 17 Examples of potentially actionable injuries include breach of contract, assault, defamation, invasion of privacy, and intentional infliction of emotional distress.
- 18 We are not suggesting that such churches should not conduct church discipline when necessary. Nor are we suggesting that those churches who are opposed to church membership because of their understanding of the Bible should violate their consciences and adopt membership policies. Rather, we are highlighting a legal concern. Such churches might want to consider exploring with competent legal counsel whether there

- would be actions they could take with their parishioners that would be (1) consistent with their doctrinal understanding and (2) provide some measure of legal protection from lawsuits when they apply church discipline.
- 19 The Supreme Court has repeatedly affirmed that churches have the right to decide purely religious and ecclesiastical matters for themselves, but has recognized that if “fraud, collusion, or arbitrariness” is present, the civil courts may be empowered to intervene to decide such a case. *See Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929). Some state courts have reviewed cases brought to challenge membership decisions if the church did not comply with its procedures and bylaws. *See, e.g., Konkel v. Metropolitan Baptist Church, Inc.*, 572 P.2d 99 (Ariz. 1977) (finding that the court had jurisdiction to determine if removal of church members complied with the procedures in the church bylaws); *LeBlanc v. Davis*, 432 So. 2d 239 (La. 1983) (same); *First Baptist Church of Glen Este v. State of Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983) (finding jurisdiction to adjudicate claim that expulsion of members was a result of fraud or collusion); *Hatcher v. S. Carolina Dist. Council of the Assemblies of God, Inc.*, 226 S.E.2d 253 (S.C. 1976) (same).
  - 20 *See Paul*, 819 F.2d at 883.
  - 21 *See, e.g., Snyder v. Evangelical Orthodox Church*, 216 Cal. App.3d 297, 307 (1989) (allowing case against church to go forward because the church’s bylaws were silent about whether confessions could be revealed to the congregation).
  - 22 *See, e.g., Guinn*, 775 P.2d at 776 (“Just as freedom to worship is protected by the First Amendment, so also is the liberty to recede from one’s religious allegiance”).
  - 23 *Id.* at 775-77 (“The right to withdraw one’s implied consent to submit to the disciplinary decisions of a church is constitutionally unqualified; its relinquishment requires a knowing and intelligent waiver.”).
  - 24 *See id.* at 766 (permitting lawsuit against church and elders to proceed when the elders disclosed the details of the conduct of the individual to the church after the individual had explicitly resigned her membership).
  - 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 *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458 (9th Cir. 1993).



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LIBERTY COMMISSION  
OF THE SOUTHERN BAPTIST CONVENTION

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