

10 WAYS TO

PROTECT YOUR CHURCH

FROM RELIGIOUS FREEDOM THREATS



ALLIANCE DEFENDING FREEDOM

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Churches can help keep the doors open for the Gospel by joining ADF Church Alliance. This legal membership provides focused, practical legal help to churches of all sizes and denominations.



BECOME A MEMBER AND RECEIVE:

Legal reviews of your church bylaws, policies, and other governing documents.

Direct access to attorneys to answer religious freedom questions and offer legal advice.

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

Learn more at [ADFChurchAlliance.org](https://www.ADFChurchAlliance.org)

Protecting Your Church

Ensure your church has the basic documents in place to provide broad religious liberty protections. Use the checklist to begin assessing the needs of your church.

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

SUPREME COURT JUSTICE SAMUEL ALITO

Obergefell v. Hodges (Dissenting)

Introduction

Our nation is in a time of cultural transition.

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. Our fundamental freedoms—namely, freedom of speech and religion—are no longer obvious to many of our neighbors.

A new perspective—that sexual autonomy trumps religious freedom—is impacting churches across this nation. This new philosophy is coupled with an increasing devaluation of religion in public life and a cultural belief that churches are no longer vital or even beneficial to the flourishing of communities.

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

Those promoting these laws use public sympathy—often gained through misleading rhetoric about “discrimination”—to silence dissenting voices. No church will remain immune if it holds true to Scripture’s teachings about human sexuality.

ADF Church Alliance exists to legally prepare and protect churches in the midst of legal challenges facing the Church. These challenges extend beyond SOGs. Challenges can extend to employment, land



use, tax exemption, facility use, government mandates, access to government property and benefits, and more. The scope and nature of the threat posed by the elevation of sexual autonomy and the devaluation of faith warrants the attention of your church. This guide provides a glimpse at what churches can do to protect not only themselves, but the entire Church. In the following pages, you will find examples of what other Christians around the country are facing; how your church may be vulnerable to similar threats; and what you can do to secure crucial protections to help enable you to weather the legal challenges of this generation.

Today, it is not a question of if churches will be threatened or sued for standing true to God’s Word—the question is solely when and where such cases will arise.

The freedom of your church—and the Church—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 these pages.

WE ARE
ALLIANCE DEFENDING FREEDOM



3,200

ADF WORKS WITH OVER 3,200
ALLIED ATTORNEYS



80%

ADF HAS WON NEARLY
80% OF OUR CASES



54

ADF PLAYED A ROLE IN 54
U.S. SUPREME COURT VICTORIES



ALLIANCE DEFENDING
FREEDOM

FOR FAITH. FOR JUSTICE.

Alliance Defending Freedom launched ADF Church Alliance in 2017 to help every church with its religious freedom legal needs.

PROACTIVE STEPS FOR CHURCHES TO BUILD A FOUNDATION OF RELIGIOUS FREEDOM PROTECTIONS

01

Statement of Faith

A statement of faith should be the foundational document for every church. The statement expresses the church's core religious beliefs and serves as clear evidence of those beliefs in the event that they are called into question in a lawsuit. The statement also serves as the backbone of the church's policies and procedures.

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

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

A statement of faith that includes beliefs about marriage and human sexuality helps protect churches in at least two ways. First, it may discourage those looking for “easy” lawsuits from bringing claims. Once the church clearly states its religious beliefs on these matters, it is more difficult for opponents to argue that the church acted with discriminatory motives. Second, the statement will make it easier for the church to defend itself if it is sued. Courts generally regard a clear statement of faith as an expres-

sion of the church's doctrine, and defer to it as the First Amendment requires.

Adopting a statement of faith makes it more likely a court will conclude the church acted on its well-documented and sincere religious beliefs, rather than an improper motive. It also allows the church to articulate a positive, overarching statement on human sexuality, and not be mischaracterized as being only “against” something.

Members of ADF Church Alliance can receive legal guidance so any changes to a statement of faith help protect your church's religious liberty. ADF attorneys review governing documents of member churches and make recommendations.

This practical, focused review ensures that governing statements, bylaws, and policies crafted by your church take into account religious freedom protections.

Learn more at
[ADFChurchAlliance.org](https://www.ADFChurchAlliance.org)

REAL LIFE CASE #1

HORIZON CHRISTIAN FELLOWSHIP V. WILLIAMSON

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

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

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

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

These four diverse churches are very involved in serving their communities. The churches host various outreach events, such as giving out Thanksgiving meals to the homeless, ministering to those with alcohol addiction, and handing out school supplies to needy kids.

For them, serving the needy is an important part of demonstrating the Gospel in action and sharing God's love with their community. But the Bible is also clear on sexuality. And these churches could not compromise their convictions, or the privacy and safety of those in their church.



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

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

The official state gender identity guidance was also revised, and they now recognize the freedom of churches to express views consistent with their faith and operate their facilities in a manner that doesn't violate their religious beliefs.

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

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

02

Statement on Marriage

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), and provides the best chance that children will grow up in the same home with both their mom and their dad.

Sex matters.² God wonderfully and immutably creates each person as either male or female (Gen. 1:26-27). But some individuals reject their birth sex and, relying on constantly changing gender identity theory, claim to be the opposite sex. In so doing, they reject God’s design and the person He created them to be.

Issues of marriage and sexuality now regularly confront churches. Churches are receiving requests to use their facilities for same-sex ceremonies or

to endorse those views by admitting individuals in same-sex relationships into church membership.

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

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

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

03

Statement on the Sanctity of Human Life

Churches should consider adopting a statement of belief concerning the sanctity of human life from conception to natural death. This statement, like the statement on marriage and sexuality, should exist within the church’s statement of faith.

Pro-abortion organizations continue to advocate for a requirement that all organizations—including churches—pay for abortion-inducing drugs and devices, and even elective surgical abortions for their employees. Some states have even quietly mandated that insurers include abortion coverage in all their available health plans, including those offered to churches.

At the same time, advocates of euthanasia and physician-assisted suicide continue to press for a false “right” to terminate human life they no longer consider to be of value.

Some churches face difficult employment decisions concerning employees who either choose or publicly advocate for abortion, euthanasia, or physician-assisted suicide contrary to the church’s religious beliefs.

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

ADF Church Alliance provides members with a wide array of resources, through a members-only website. This site provides members with on-demand access to videos, articles, webinars, and sample versions of many of the documents mentioned in this book. Your church can use the samples as a starting point if you don’t already have documents in place. Whenever members have questions about their church governing documents and how they can better protect their church, they can receive direct religious liberty legal advice from ADF attorneys.

Learn more at
[ADFChurchAlliance.org](https://www.ADFChurchAlliance.org)

REAL LIFE CASE #2

SKYLINE WESLEYAN CHURCH

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

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

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

Paying for elective abortions violates the Christian belief that human life is sacred and should be protected. And choosing not to provide health insurance for church employees would mean the church has to pay crippling fines and penalties under Obamacare.

That's not really a choice at all.



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

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

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

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

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

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

04

Statement of Final Authority for Matters of Faith and Conduct

Even with a detailed statement of faith, it is impossible to anticipate every doctrinal dispute that a church might encounter.

For example, decades or even centuries ago, when many of the existing church creeds and statements of faith were written, no one would have argued that marriage was anything but the union of a man and a woman. Consequently, few were prepared when challenged over their position on same-sex unions.

Because new issues can arise, it is important for churches to be able to respond in a legally defensible way. To do so, each church should identify (1) the source of religious authority for matters of faith and conduct, and (2) the final human interpreter of that source for the church. This type of a statement should provide a “catch-all” to cover unforeseeable threats that might arise in the future.

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

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

ADF Church Alliance keeps members updated on laws that have an impact on the religious freedom of the Church. As the laws change, our attorneys can help you navigate them. You can have peace of mind knowing that your church has the proper documents and protections in place. And if a law threatens your church’s religious liberty, you can know that ADF is ready to stand with your church, through litigation if necessary.

Learn more at
ADFChurchAlliance.org

1-4 RECAP:

- Adopt a comprehensive statement of faith
- Adopt a statement on marriage and sexuality
- Adopt a statement on the sanctity of human life
- Adopt a statement of final authority for matters of faith and conduct

05

Religious Employment Criteria

Every church should establish written religious criteria for its employees and volunteers. Federal law prohibits employment discrimination based on race, color, religion, sex, national origin, or age.⁴ Congress has repeatedly refused to add sexual orientation and gender identity to this list of protected categories, but support for such proposals is growing. Some federal agencies and courts have even interpreted “sex discrimination” to include “sexual orientation” and “gender identity.”⁵

While there are efforts underway to restrict the freedom of churches, churches may still consider an applicant’s or employee’s religious beliefs in hiring and firing.^{6,7} Under a constitutional doctrine known as the “ministerial exception,” churches are exempt from employment nondiscrimination laws for hiring and firing their ministerial employees—individuals who are tasked with performing the church’s rituals or teaching and explaining its beliefs. ⁸

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

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

06

Signed Statement of Faith

At a minimum, the church should require all employees and volunteers to sign a statement affirming that they have read, agree with, and are willing to abide by the church's statement of faith (and standards of conduct, if any). This first step is critical. Some Christian ministries have lost the freedom to select employees that live consistently with their faith because they hired individuals that did not share their same fundamental beliefs. 9

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

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

REAL LIFE CASE #3

HOUSTON PASTORS



Hernan Castano



Magda Hermina



Khan Huynh



Steve Riggie



Dave Welch

Europe may encroach on its churches, and Christians have long been persecuted in Asia, but America is the land of the free.

We put “In God We Trust” on our money. We say “under God” in the Pledge. We sing “God Bless America” at ballgames. How bad can it really get?

Ask the Houston Five.

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

The citizens of Houston supplied more than three times the required number of signatures to place the law on the ballot. The city secretary

legally certified the petitions—meaning that the City Council either had to repeal the law or it had to be put to a vote of the people. Yet the mayor and the city attorney unlawfully refused the certification.

In response, a group of citizens filed a lawsuit, pressing the city to comply with the law and honor the petitions. Instead, in the course of preparing for trial, the city’s attorneys served subpoenas against five local pastors, demanding 17 categories of information—including copies of their sermons “related to . . . the Petition, Mayor Annise Parker, homosexuality, or gender identity prepared by, delivered by, revised by, or approved by you or in your possession,” as well as any personal communications they might have had with church members or others about the bathroom law, homosexuality, or gender identity.

ADF attorneys filed a motion in a Texas court to block that subpoena, along with an accompanying brief pointing out that neither the pastors nor their churches were even involved in the lawsuit, and that the information being subpoenaed had nothing to do with the lawsuit. City officials apparently wanted to see if

the pastors had ever opposed or criticized them . . . and to intimidate them, other pastors, and any other citizens from ever doing so again. Mayor Parker even took to Twitter and wrote, “if the 5 pastors used pulpits for politics, their sermons are fair game.” In effect, it was an aggressive bid to control—through explicit legal action or implicit political pressure—what preachers preach, and what Christians believe about social issues.

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

07

Religious Job Description

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

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

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

As noted previously, it is important to remember that the term "minister" applies not only to the head of a religious congregation, such as a pastor or priest, but also to any employee charged with teaching or communicating beliefs. In a landmark case, the U.S. Supreme Court held that a Christian school teacher was a "minister."¹⁰

A church that employs an individual held out as a minister should make that distinction clear in the job title. Likewise, any religious educational qualifications should be clear. But most importantly, the position description should detail any religious responsibilities or duties that reflect a role in con-

veying church teaching and carrying out its mission. Finally, remember that an employee does not need the job title of "minister" for the church to claim the ministerial exception. The exception applies to those charged with ministering, teaching, or communicating beliefs.

Employee job descriptions should also include any religious grounds for limiting employment opportunities, especially if the limitations involve any categories protected by law (such as religion or sex).

It is also important that churches consistently apply their employment standard and handle similar cases alike. For example, churches should not terminate an unmarried, pregnant female employee on religious grounds, but retain a male employee known to have engaged in extramarital sexual relations. Consistency in employment decisions is critical.

One final note: some churches have included a general nondiscrimination provision in their employment and other policies. These provisions often say that the church does not discriminate on the basis of sex, race, age, disability, etc.

While there are well-meaning motives behind these nondiscrimination provisions, these types of provisions can be highly problematic if not properly vetted by legal counsel. If a church wants or needs to include a nondiscrimination provision for a specific reason, seek the advice of an attorney before doing so.

5-7 RECAP:

- Require all employees to sign a statement affirming that they agree with your church's statement of faith
- Require all employees to sign a statement affirming that they are willing to abide by your church'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

ADF Church Alliance members have access to samples of religious job descriptions and more information relating to religious employment that can help protect your church. If your church has questions or faces an employment claim or situation, you have direct access to attorneys who can advise and advocate for your church's religious liberty.

Find out more about ADF Church Alliance membership at [ADFChurchAlliance.org](https://www.ADFChurchAlliance.org)

REAL LIFE CASE #3

TRINITY LUTHERAN CHURCH OF COLUMBIA

Whether providing support for foster children, donating labor, food, and funds to a local county food bank, or helping with Habitat for Humanity building projects all over the community, Trinity Lutheran Church lives out its mission to make disciples.

The church also operates a child learning center, which has a small playground open for the community. After years of children's use, and many falls and scrapes, the Church looked for new and safer ground cover.

The State of Missouri had initiated a scrap tire program that allows the government to safely and easily dispense with the tens of thousands of old tires it collects every year. Instead of the tires taking up acres of landfill while awaiting the stray spark that could set off billowing plumes of poisonous smoke, they began to convert them into a rubber ground cover perfectly tailored to children's playgrounds.

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

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

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

Trinity contacted Alliance Defending Freedom attorneys, who advocated for the church all the way up to the U.S. Supreme Court. The issues at hand were far from child's play: Do churches have the right to participate equally

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

It's a question with far-reaching implications for churches all over America.

Thankfully, in the summer of 2017, Trinity Lutheran Church won its case at the Supreme Court. The Court ruled 7-2 that the government cannot exclude churches and other faith-based organizations from a secular government program simply because of their religious identity.



08

Facility Use Policy

A facility use policy is critical for any church that allows its facilities to be used by members and non-members alike.

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

Because of these concerns, some churches have decided to prohibit all outside groups from using their facilities and restrict building use to members only. This step is not yet necessary and limits the church’s ability to serve its community. The use of church buildings is protected by the First Amendment, and churches have the right to operate their facilities consistently with their faith.

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

The statement of faith is the foundation of the facility use policy and all potential users should be required to read the statement of faith and certify that—to the best of their knowledge—they will not use the facilities in any way that violates the church’s religious beliefs. Requiring this certification makes it clear that the facility is not an ordinary commercial facility that can be rented for any purpose, but is instead a physical manifestation of the church’s religious beliefs.

Churches also do not need to limit use of their facilities to people who “agree with” their religious beliefs. It is sufficient to require that the event not violate the church’s beliefs.

The facility use policy should apply to all facility uses, regardless of whether it is a long-term or one-time use, by members or non-members, or for a fee or gratuitously.

Churches that rent their buildings to outside organizations should do so at less than market rates. Even when renting at less than market rates, churches are at greatest risk when renting their space to commercial or for-profit entities and should seek legal counsel before doing so.

There is no one-size-fits-all facility use policy for all churches. It is important to create a policy that covers situations unique to your church’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 church, and then train your staff on the proper application of this policy.

09

Marriage & Wedding Policy

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

Members of ADF Church Alliance receive direct access to attorneys when drafting policies. Once members' policies are drafted, our attorneys can review these policies to ensure the greatest religious liberty legal protections are being considered. ADF Church Alliance attorneys then work with your church to walk you through suggested changes and policy implementation.

Become an ADF Church Alliance member at ADFChurchAlliance.org

8-9 RECAP:

- Create a facility use policy
- Train your staff on proper application of policy
- Create and implement a marriage and wedding policy

REAL LIFE CASE #4

FORT DES MOINES CHURCH OF CHRIST V. JACKSON

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

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



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

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

This left Fort Des Moines Church of Christ with an impossible choice. Either stop proclaiming what the Bible says

about sexuality and sacrifice the privacy and safety of their members, or close their doors completely to the public.

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

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

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

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

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



REAL LIFE CASE #5

CENTRO FAMILIAR CHRISTIAN CHURCH

Centro Familiar Christian Church of Yuma, AZ, had been looking for a new worship center because the movie theater space that it was renting was not adequate for the growing congregation. When it purchased a large vacant building in Yuma's Old Town District, it seemed a perfect fit for a variety of reasons. The building was in foreclosure, selling for much less than what the size and location would normally dictate. And the size and location were excellent – it was the heart of the community with room to grow.

The city however, had different plans. It required religious organizations to obtain a conditional use permit to operate even though businesses did not need one. Churches were being treated less favorably.

When the church applied for the permit, the city refused the church's request. Ironically—given the longtime vacancy of the building—the city refused on the basis that the church would “blight” an arts and entertainment district in the city's Old Town District.

Alliance Defending Freedom filed a lawsuit under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal law designed to protect churches against discriminatory zoning practices. After an appeal to the U.S. Court of Appeals for the Ninth Circuit, Centro Familiar won its federal case. However, while the case was pending, the



city's actions left this congregation with a mortgage to pay on a building it couldn't use while it had to pay for another meeting place at the same time. Eventually, the church could not keep up both payments and had to let its building go. Recognizing this loss, ADF was able to secure damages for the loss the church had sustained by losing the building. The Church was able to secure a new building in a neighboring town where it now enjoys a new home to preach the Gospel.



10

Formal Membership Policy

Church members sometimes engage in behavior that necessitates church discipline. Such discipline is consistent with nearly every church tradition, though specific approaches may vary. And, on occasion, those who have been disciplined by their church or removed as members have then sued.¹¹ Thankfully, churches enjoy considerable freedom under the U.S. Constitution to govern themselves consistently with their faith,¹² even when doing so causes injuries that might otherwise be actionable in court.¹³

This freedom has limitations. Only those individuals who “unite” with a church have consented to the church’s authority over them.¹⁴ In order for a church to have the best claim to immunity against an alleged injury that resulted from church discipline,¹⁵ the alleged victim must have been a church member when the discipline occurred. This is very difficult to determine if the church does not have a formal membership policy.

Not every church has members in the traditional congregational approach to membership. Churches that do not have formal members must be aware that they could potentially have greater legal exposure when they exercise church discipline.¹⁶ This is not to suggest that a church adopt a form of government to which it does not subscribe. “Members” do not need to be voting members as reflected in the congregational model, but may simply be individuals who affirm they are committed to and part of a church body, even if they have no voting or say in church practices.

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

If necessary, members of ADF Church Alliance can receive legal representation involving the church’s religious liberty.

When a church stands for religious freedom, we have seen God use it to impact the Church at large. Several church cases have even reached the United States Supreme Court. These cases have an impact on freedom for the entire country. With each victory, we are keeping the doors open for the Gospel.

Learn more at
[ADFChurchAlliance.org](https://www.ADFChurchAlliance.org).

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 and confusion.

Adopting the action items recommended in the previous pages cannot insulate your church from threats to its religious freedom. But implementing these suggestions will place your church in a more defensible legal position should it face a lawsuit for discrimination.

More robust preparation and protection is available through ADF Church Alliance. Through ADF Church Alliance, we directly advise churches and advocate to keep the legal doors open for the Gospel.

Preparing yourself legally through this membership program will give your church greater freedom to continue presenting the Gospel clearly and effectively to your community—and that freedom may well make an eternal difference for those you serve.

For more information about ADF Church Alliance and how your church can become a member, please visit our website at ADFChurchAlliance.org or call us at 1-833-233-2559.

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End Notes

1 *Obergefell v. Hodges*, 135 S. Ct. 2584, 2642-43 (2015) (Alito, J., dissenting).

2 In this guide, “sex” refers to male and female as grounded in human reproductive biology. Sex is binary, fixed at conception, and objectively verifiable. “Gender” is used in the sense that contemporary proponents of gender identity theory use it: a fluid, subjectively defined continuum of “genders” that range from male to female to something else. Although “gender” in the past served as a euphemism for sex, in the context of discussing SOGIs, gender is properly understood as a social construct, and should not be confused with biological male-female sex.

3 *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 710 (1976) (the First Amendment commands civil courts to refrain from resolving controversies over religious doctrine as well as disputes over “church polity and church administration”); *id.* at 713 (“religious controversies are not the proper subject of civil court inquiry”); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116–17 (1952) (civil courts prohibited from reviewing internal church disputes involving matters of faith, doctrine, church governance, and polity); *Gunn v. Mariners Church, Inc.*, 2005 WL 1253953 at *2 (Cal. App. 2005) (courts “cannot undertake ... a mission” of finding what is and is not “moral” or “sinful” within the beliefs of a particular church).

4 See 42 U.S.C. § 2000e-2; 29 U.S.C. § 621 *et seq.*

5 See *Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080 (July 15, 2015) (sexual orientation); *Macy v. Dep’t of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012) (gender identity); see also *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017) (sexual orientation); *Zarda v. Altitude Express, Inc.*, 883 F.3d 100 (2d Cir. 2018) (sexual orientation); *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018) (gender identity).

6 See 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 710 (2012); *McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972).

7 It must be noted, however, that the ability to consider an applicant’s or employee’s religious beliefs in hiring or firing does not necessarily mean that the employer may discriminate on protected bases other than religion, such as race, national origin, or sex. See, e.g., *DeMarco v. Holy Cross High School*, 4 F.3d 166, 173 (2d

Cir. 1993). There is an open legal question, then, as to whether a religious employer’s right to prefer members of its own religion may serve as a defense to claims of sexual orientation or gender identity discrimination when “sexual orientation” and “gender identity” have been included as protected classes.

8 *Hosanna-Tabor*, 132 S.Ct. 694; *McClure*, 460 F.2d at 558- 61; *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991).

9 See, e.g., *Barrett v. Fontbonne Acad.*, 2015 WL 9682042 (Mass. Super. 2015).

10 See, e.g., *Hosanna-Tabor*, 132 S.Ct. 694.

11 See, e.g., *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).

12 See *Kedroff*, 344 U.S. at 116.

13 *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.”).

14 *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.”).

15 Examples of potentially actionable injuries include breach of contract, assault, defamation, invasion of privacy, and intentional infliction of emotional distress.

16 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.

ADF CHURCH ALLIANCE

JOIN TODAY

As ADF Church Alliance Members, We Will...

ENGAGE:

You will know the cultural and legal issues facing the Church, so that your church can be prepared. Through our e-newsletters and members-only website, you will have on-demand legal resources tailored to protecting the religious liberty of your church and congregation. You can be confident we are ready to engage in preserving religious freedom for all churches.

EMPOWER:

Whenever you have legal questions, you can consult directly with an ADF attorney. That way, you lead your church knowing your legal options. You can have peace of mind as laws change or when confronting legal issues because we help you navigate them. Your church will have ADF attorneys in your corner.

PROTECT:

Our attorneys will review your church's documents—constitution, bylaws, policies, and more to expose and correct areas where your church may be at risk for religious liberty legal issues. Also, if necessary, we can represent your church—free of additional charge—in cases involving your church's religious freedom.

““”

“If one member suffers, all suffer together; if one member is honored, all rejoice together.”

1 Corinthians 12:26

For more information about ADF Church Alliance and how your church can become a member, please visit our website at ADFChurchAlliance.org or call us at 1-833-233-2559.

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