



PROTECTING YOUR MINISTRY

10 Best Practices to Prepare Your Ministry for Religious Freedom Legal Challenges

ALLIANCE DEFENDING FREEDOM

MINISTRY ALLIANCE

PSALMS 62:2-62:6

Lead me to the rock that is higher than I.
 For thou hast been a refuge for me.
 A strong tower from the enemy for ever.
 I will dwell in thy tabernacle for ever.
 I will take refuge in the covert of thy wings. Selah
 For thou, O God, hast heard my voice.
 Thou hast given us the heritage of those that fear thy name.
 Thou wilt prolong the king's life: His years shall be as many generations.
 He shall abide before God for ever.
 Oh prepare lovingkindness and truth, that they may preserve him, that they may preserve him.
 Oh prepare lovingkindness and truth, that they may preserve him, that they may preserve him.
 That I may daily perform my vows.
 That I may daily perform my vows.

ADF Ministry Alliance is a legal membership that provides religious liberty help to churches and ministries across the nation.

MEMBERS RECEIVE:



Legal review of your ministry's bylaws, governing documents, and policies.



Access to legal resources and trending news about laws impacting ministries' religious freedom.



Direct access to attorneys who provide you with personalized religious freedom advice and support.



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

Don't navigate changing laws alone.
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INTRODUCTION

As Jesus concluded his earthly ministry, he charged his disciples with this critical mission: “Go . . . and make disciples of all nations.” Matt. 28:19 (ESV). This statement still resonates today, catalyzing churches and ministries to help expand Christ’s Kingdom through faithful love and service to God and others.

In the United States, the constitutional guarantees of religious freedom and free speech empower ministries to freely serve those with spiritual, physical, and emotional needs while fostering an environment that allows the Good News to spread far and wide. Both the Kingdom and the common good benefit from the blessings of God-given liberty.

But as more Americans embrace a worldview that rejects objective truth, activists have sought to restrict the freedom of ministries to fulfill their mission. That poses a danger to everyone.

Here are some examples:

- Some state governments now compel churches to cover abortion and “sex-reassignment” procedures in employee health insurance plans.
- Other state governments refuse to allow churches and ministries to hire only people of like faith if that faith includes beliefs about human sexuality or even when life begins.
- Government officials also increasingly attach “strings” to public benefits, programs, licensure, and accreditation schemes that exclude organizations that hold to traditional Christian beliefs.
- We have seen the rise of sexual orientation and gender identity (SOGI) laws that elevate sexual orientation and gender identity to protected class status, severely endangering individuals and organizations who affirm biblical beliefs about marriage and sexuality.

ADF Ministry Alliance wants to help prepare ministries like yours for the fierce legal challenges ahead, challenges encompassing SOGI laws but also related to a ministry’s land use, tax exemption, government mandates, access to government property and benefits, and more.

We provide practical legal help in the form of document reviews, access to attorneys, easy-to-understand legal resources, and legal representation, if necessary and appropriate, so that you can focus on what matters most: serving people and sharing the Gospel. To learn more about the program or sign up, please go to ADFMinistryAlliance.org, or call us at 1-833-233-2559.

In the following pages, you will find examples of what other Christians around the country face, how your ministry may be vulnerable to similar threats, and what you can do to secure crucial protections to help you navigate the pressing legal challenges of this generation.

The freedom of your ministry to remain a compassionate but faithful witness to God’s truth, love, and work in our world today may depend on a thoughtful consideration of the information in these pages. Our prayer is that this resource equips and encourages you to continue fulfilling the work God calls you to.

CHURCH LEADERS

Since churches sometimes face different types of legal challenges than other ministries, be sure to review the bonus content at the end of this resource that applies specifically to churches.

WE ARE ALLIANCE DEFENDING FREEDOM



3,500+
MEMBERS A PART OF THE ADF
MINISTRY ALLIANCE



80%
ADF HAS WON ABOUT 80%
OF ALL CASES



65+
ADF PLAYED A ROLE IN MORE THAN 65
U.S. SUPREME COURT VICTORIES

It's becoming harder for leaders to navigate the legal and cultural issues their ministries face. Many activists and government officials are pushing laws and policies that would prevent ministries from operating according to their biblical beliefs. That's why we created an affordable legal membership program that provides direct access to expert religious freedom attorneys, so you can get back to focusing on what matters most: serving people and sharing the Gospel.

Visit ADFMinistryAlliance.org to learn more.

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

01 STATEMENT OF FAITH

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

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

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

A statement of faith that includes beliefs about marriage and human sexuality helps protect ministries in at least four ways.

1. It may discourage those looking for lawsuits from bringing claims. Once the ministry clearly states its religious beliefs on these matters, it is more difficult for opponents to argue that it acted with discriminatory motives.
2. 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 ministry's doctrine and defer to it as the First Amendment requires.
3. Adopting a statement of faith makes it more likely that a court will conclude the ministry acted on its well-documented and sincere religious beliefs rather than an improper motive.
4. It also allows the ministry to articulate a positive, overarching statement on human sexuality and avoid the mischaracterization of only being "against" something.

Members of ADF Ministry Alliance can receive legal guidance to help ensure any changes to a statement of faith better protect your ministry's religious liberty. ADF attorneys review governing documents of member ministries and guide you through our recommendations. This practical, focused review ensures that governing statements, bylaws, and policies crafted by your organization account for religious freedom protections.

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02 STATEMENT ON MARRIAGE AND SEXUALITY

Marriage matters.¹ 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 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 biological 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 ministries. Camps, conference centers, homeless shelters, and more are receiving requests to allow males to sleep in the same rooms as females. Christian schools are asked to employ persons who identify as the opposite sex (or other “genders”) or admit students who do not adhere to a Christian sexual ethic. Many types of Christian ministries are facing difficult decisions like these.

As a result, religious organizations should develop a clear statement on marriage and sexuality. This statement should exist within the statement of faith, or it can be adopted as a separate statement that provides a more detailed explanation of these beliefs. Every employee, student, and volunteer should be aware of the ministry’s religious position on these (and other) issues before entering an official relationship with the organization.

The ministry’s statement of belief concerning marriage and sexuality can take various forms; there is no magic language that a ministry must copy verbatim.

Remember: this statement is not intended to limit the organization’s ability to serve; instead, it helps protect it from being forced to operate contrary to its religious beliefs.

REAL LIFE CASE #1

BETHEL MINISTRIES V. SALMON

Bethel Christian Academy in Maryland is a private Christian school that serves around 220 pre-K through eighth-grade students. Its mission is to “create an authentic Christian learning community to train students to know, love, and serve the Lord Jesus Christ, and to equip them spiritually and academically to be lights to the world.”

But the school isn't only committed to providing a quality education for kids; it's also providing things like before and after-school programs where students can have meals, work on their homework, and participate in activities while their parents are at work.

It happily serves children with diverse backgrounds, educating students from over 40 countries, including children who recently immigrated to the United States and families with different or no religious affiliations. Around 90 percent of the school's students are from minority populations, and many are eligible to receive financial aid from the state.

Bethel Christian Academy was a part of the state's BOOST program, a voucher program designed to give low-income families a chance to send their kids to a top-notch school. But in August 2018, families who received financial aid through BOOST received some bad news. Maryland informed these families—only weeks before classes started—that they would no longer be able to use that financial aid at Bethel Christian Academy, leaving many of them scrambling to enroll their kids in a different school. As if that weren't bad enough, the state also demanded that Bethel pay back the more than \$100,000 it had received from families using BOOST funding.

Why the sudden change? Bethel's Christian beliefs.

The state of Maryland didn't like what it saw in Bethel's student handbook, especially its stated beliefs about marriage and sexuality. Along with stating it believed in the biblical definition of marriage, the school required its students to not engage in any sexual conduct, which is appropriate considering Bethel's student body is pre-K through 8th grade.

But that didn't stop Maryland from removing Bethel from the BOOST program. The state claimed that Bethel discriminated based on sexual orientation in its admissions process. But this was false. Bethel admits any qualified student applicant, Christian or not. And it has never discriminated against an applicant based on an applicant's sexual orientation.

Clearly, the state made this decision based solely on its opposition to Bethel's religious beliefs about marriage, beliefs which Bethel made unmistakably clear in its statement on marriage and sexuality. The school's constitutional defenses were bolstered because it made its foundational beliefs clear.

Thankfully, a federal district court agreed, ruling that Maryland officials violated the First Amendment rights of the church-run grade school.

03

STATEMENT ON THE SANCTITY OF HUMAN LIFE

Christian ministries should consider adopting a statement of belief concerning the sanctity of human life from conception to natural death. Like the statement on marriage and sexuality, this statement should exist within the ministry's statement of faith.

Pro-abortion organizations continue to advocate for a requirement that all organizations—including faith-based ministries—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 Christian ministries.

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

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

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



ADF Ministry 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 guide. Your ministry can use the samples as a starting point if you don't already have documents in place. Whenever members have questions about their ministry's governing documents and how they can better protect their ministry, they can receive direct religious liberty legal advice from ADF attorneys.

Join the alliance today by visiting [ADFMinistryAlliance.org](https://www.ADFMinistryAlliance.org)

REAL LIFE CASE #2

CEDAR PARK ASSEMBLY OF GOD OF KIRKLAND V. KREIDLER

Cedar Park Church, outside of Seattle, Washington, is well-known for its commitment to the belief that all human life is precious and worth protecting.

And that commitment goes far beyond just voicing its beliefs on its website or in a Sunday service. Cedar Park puts those beliefs into action.

The church is involved in various pro-life ministries. It partners with foster care and adoption agencies, supports a local pregnancy center, and even co-founded an adoption agency for frozen embryos remaining after in vitro fertilization. Cedar Park hosts “Presentation Sunday” every year to pray for couples struggling with infertility.

Cedar Park also includes its beliefs about the sanctity of human life in its bylaws and employee handbook. Every member of its staff signs a statement of faith that includes these beliefs as well.

But a state law undermined this church’s pro-life culture.

In 2018, the Washington State Senate passed a law mandating that healthcare plans offering maternity care must also pay for elective abortions. If Cedar Park were to refuse, it would face fines and criminal penalties, and its leaders could even face imprisonment.

Cedar Park took a stand, and Alliance Defending Freedom attorneys represented this church in court to challenge Washington’s law.

Thankfully, the U.S. Court of Appeals for the 9th Circuit eventually ruled that Cedar Park had a legitimate case against the State of Washington. The court affirmed that the church suffered a free-exercise injury due to the government’s pro-abortion law.

No church should be forced to cover abortions, and certainly not a church like Cedar Park that dedicates its ministry to protecting and celebrating life.



04

STATEMENT OF FINAL AUTHORITY FOR MATTERS OF FAITH AND CONDUCT

Even with a detailed statement of faith, it's impossible to anticipate every doctrinal dispute that a faith-based ministry might encounter.

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

Because new issues can arise, Christian organizations need to be able to respond in a legally defensible way. Each ministry should identify (1) the source of religious authority for matters of faith and conduct and (2) the final human interpreter of that source for the organization. This type of 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., pastor, executive committee, executive director, board of deacons, president, CEO, board of directors, etc.) authorized to speak for the ministry 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 Ministry Alliance keeps members updated on laws that impact the religious freedom of ministries. As the laws change, our attorneys can help you navigate them. You can have peace of mind knowing that your ministry has the proper documents and protections in place. And if a law threatens your ministry's religious liberty, you can know that ADF is ready to stand with your ministry through litigation if necessary.

Join the alliance today by visiting ADFMinistryAlliance.org

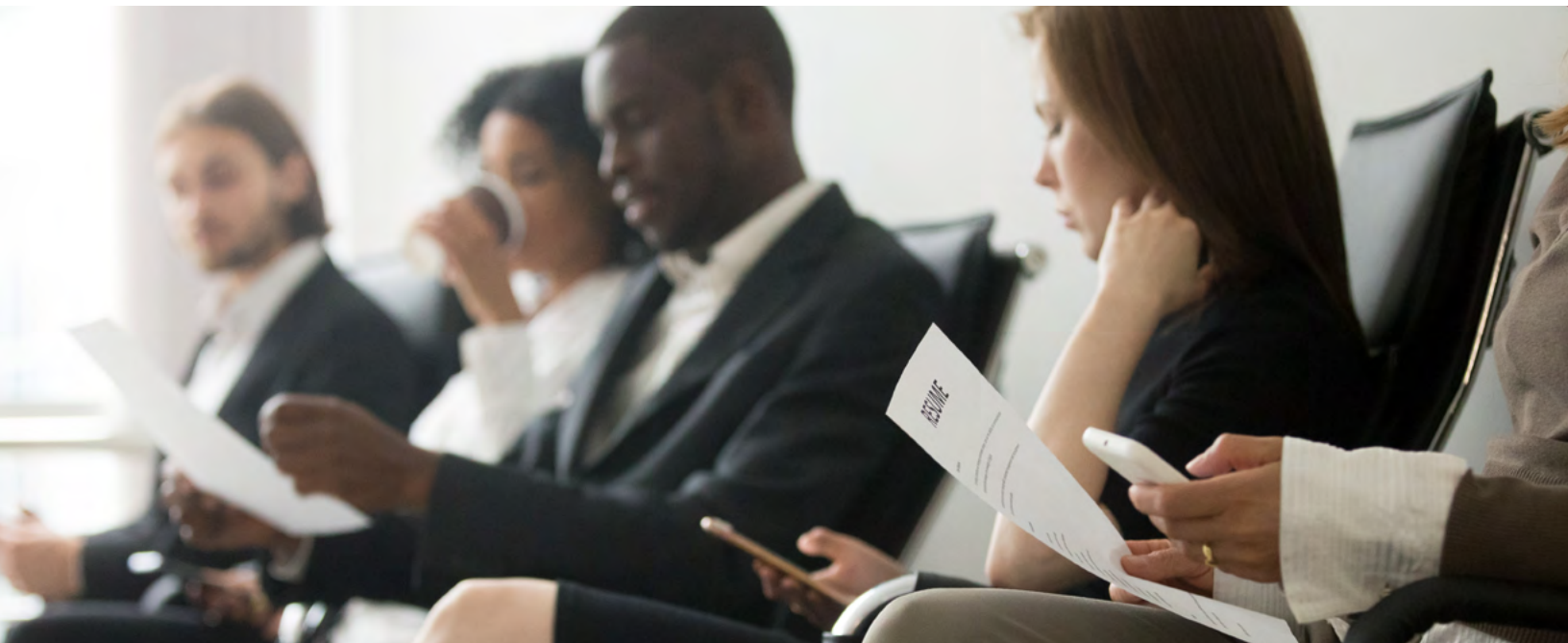
05 RELIGIOUS EMPLOYMENT CRITERIA

Generally, religious organizations have a First Amendment right to make employment decisions based on their religious beliefs. Thus, every Christian ministry should establish written religious criteria for its employees and volunteers.

Federal law explicitly prohibits employment discrimination based on race, color, religion, sex, national origin, or age.⁴ However, the U.S. Supreme Court ruled in June 2020 that an employer can also be held liable under federal employment law—which prohibits discrimination based on “sex”—when the employer terminates an employee based solely on an employee’s sexual orientation or transgender status.⁵ Although there are exceptions for religious organizations that give employment preference to members of their religion, the Supreme Court has yet to clarify the scope of these exceptions precisely. This uncertainty in the law means that ministries must carefully craft their documents and policies.

In addition, state and municipal employment nondiscrimination laws generally mirror federal law, prohibiting discrimination based on religion, sex, and race. But many city and state laws also include “sexual orientation” and “gender identity” as protected classes.

The First Amendment—which trumps federal, state, and local laws—protects religious employment decisions made by religious entities. This means that “religious organizations” may still consider an applicant’s or employee’s religious beliefs in hiring and firing.^{6,7} And under a constitutional doctrine known as the “ministerial exception,” religious organizations remain free to make their own staffing decisions when the person in question is a “ministerial” employee: someone tasked with leading a religious organization, teaching and explaining its beliefs, or conducting worship or other important religious ceremonies or rituals.⁸



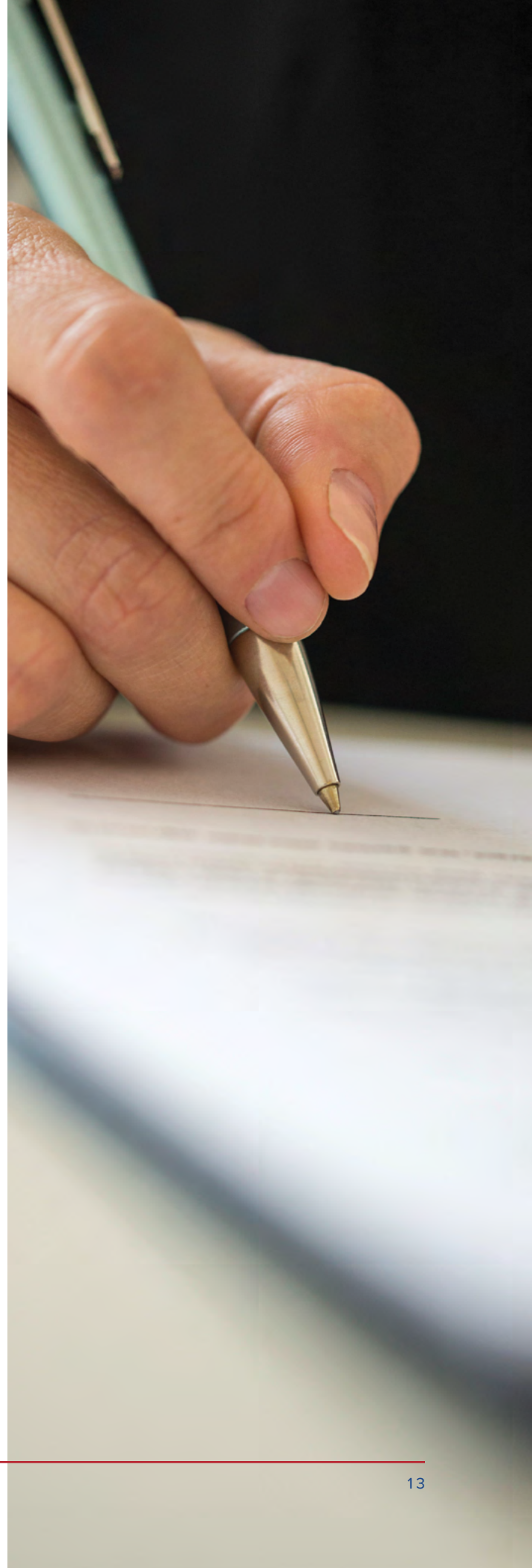
06 SIGNED STATEMENT OF FAITH



At a minimum, the ministry should require all employees and volunteers to sign a statement affirming that they have read, agree with, and are willing to abide by the ministry'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 who did not share their same fundamental beliefs.⁹

As a matter of best practice, employees should sign these documents annually or semiannually. Employers should retain these signed statements as part of the individual's permanent record.

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



REAL LIFE CASE #3

SEATTLE'S UNION GOSPEL MISSION V. WOODS

Seattle's Union Gospel Mission faithfully serves the homeless by providing food, shelter, addiction recovery, job placement, and legal services. Its roots go back to the Great Depression when the Mission opened its doors as a soup kitchen. The ministry's religious convictions and evangelization efforts are the foundation for everything it does. This is evident in the Mission's statement of faith:

"As a nonprofit Christian ministry, Seattle's Union Gospel Mission bases its work on the teachings of Jesus Christ. We take seriously His command to feed hungry people, clothe those who are naked, and provide shelter for those who are homeless. We consistently combine our faith with action by serving those in greatest need regardless of their religious beliefs, ethnicity, sexual orientation, or gender identity."

Every staff member must share and live out the Mission's religious beliefs for the Mission to be genuinely successful.

In November 2016, an attorney applied for a position with the Mission's legal aid clinic, which involves talking with clients about Jesus Christ, attending worship services and prayer meetings, and providing legal advice.

The Mission declined to hire the applicant because he didn't share or live according to the ministry's stated Christian beliefs. Among other things, the applicant mentioned no personal relationship with Jesus Christ in his application, was not active in a local church, and didn't provide a pastor's name and contact information as the Mission required. But he still sued the Mission after his application was rejected.

A Washington state trial court initially ruled for the Mission, recognizing that the Mission fell squarely within Washington's statutory exemption for religious nonprofits. But the Washington Supreme Court overrode the exemption and held that the Mission has no First Amendment right to hire only coreligionists – that is, people who share its religious beliefs.

ADF asked the Supreme Court to take up the case; however, it unfortunately denied the request for immediate review. But a statement written by Justice Alito, and joined by Justice Thomas, invited the Mission to come back later after a final state court judgment. Justice Alito noted that the state court has not yet had an opportunity to "address whether applying state employment law to require the Mission to hire someone who is not a coreligionist would infringe the First Amendment."

07

RELIGIOUS JOB DESCRIPTION

The ministry should create written job descriptions for every employment and volunteer position. These job descriptions will be unique to each organization and position. The descriptions should explain how the position furthers the organization's religious mission, the responsibilities and duties, and the training and skills necessary for the role.

Although every position within a ministry furthers its religious mission, for legal purposes, the link between an employment or volunteer position and the organization's mission cannot be assumed. Instead, it should be clearly articulated in writing.

Ministries should take particular care to highlight responsibilities that involve communicating the faith or other spiritual duties that directly further the religious mission.

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

It is important to remember that the term "minister" applies to any employee charged with, among other things, teaching or communicating beliefs. In a landmark case, the U.S. Supreme Court held that a Christian school teacher was a "minister."¹¹

A Christian ministry that employs an individual held out as a minister should make that distinction clear in the job title. Likewise, any religious, educational qualifications should be clear. But most importantly, the position description should detail any religious responsibilities or duties that reflect a role in conveying the ministry's teaching and carrying out its mission.

Finally, remember that an employee does not need the "minister" job title to claim the ministerial exception, although a title with some religious significance is helpful. The exception applies to those charged with ministering, teaching, or communicating beliefs and encompasses various titles within an organization.

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

One final note: some ministries have included a general nondiscrimination provision in their employment and other policies. These provisions often say that the 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 faith-based organization wants or needs to include a nondiscrimination provision for a specific reason, seek the advice of an attorney before doing so.

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

Find out more about joining the ADF Ministry Alliance at [ADFMinistryAlliance.org](https://www.ADFMinistryAlliance.org)

REAL LIFE CASE #4

FULTON V. CITY OF PHILADELPHIA

In 2018, the City of Philadelphia froze all referrals to foster families working with Catholic Social Services (CSS), and the timing was peculiar. The City had issued an urgent call for 300 more foster parents just days before. CSS could have played a key role in helping meet this need. After all, in the previous year, the faith-based agency placed 226 children in loving foster homes while overseeing 100 foster families every day.

But the City of Philadelphia had an agenda. And it decided that this agenda was more important than serving the needs of vulnerable children.

Catholic Social Services and 29 other agencies in the city thoroughly evaluate families to find ones qualified to care for foster youth. Each of the 30 agencies takes a different approach to find families because of the many differences among foster children. And they frequently specialize in placing specific subgroups of children with families, like ones who speak only a language other than English, children with special needs, or children who have developmental disabilities.

This means that the agencies frequently will refer families to other agencies that would better match the families with particular strengths for caring for foster children. The agencies conduct a home study that involves interviews and research.

When an agency certifies a family, it is the agency's endorsement of a particular family for foster care. It works closely with that family if the City agrees to place a foster child in the family's home.

Because of its Catholic beliefs about marriage, CSS cannot certify same-sex couples as foster parents. Other agencies do certify same-sex couples, and CSS has never had a same-sex couple apply for certification as a foster family. If that ever happened, CSS would refer them to an agency nearby that does certify same-sex couples.

Because of the agency's Catholic beliefs about marriage, the City of Philadelphia stopped placing children with families certified by Catholic Social Services, even though the City was desperate to find more available foster homes for children in need.

So, CSS—along with Sharonell Fulton, who has cared for more than 40 foster children in the past 25 years—filed a lawsuit against the City, and the case worked its way to the U.S. Supreme Court. Thankfully, the Court ruled unanimously that the City can't exclude CSS from serving the children and families in Philadelphia because of its religious beliefs.

08

FACILITY USE POLICY

A facility use policy is critical for any ministry that allows its facilities to be used by the public.

Faith-based ministries still have great freedom to use their buildings consistently with their faith. But some government officials are working hard to change that. For example, there is a significant push to require religious ministries to open sensitive sex-specific privacy areas—such as showers, restrooms, and locker rooms—to those who identify as the opposite sex.

It is unclear how much protection Christian ministries have from being compelled to open their facilities for uses conflicting with their doctrine. Religious organizations can strengthen their religious liberty protections by adopting a facility use policy that outlines the religious nature of the building and prohibits uses that conflict with the ministry's beliefs. This policy is clear evidence of the organization's beliefs and practices regarding how its property may be used and why certain practices or activities are never permitted.

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

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

The facility use policy should apply to all facility uses, whether it is a long-term or one-time use, or for a fee or gratuitously. Christian organizations that rent their buildings to outside organizations should do so at less than market rates. Even when renting at less than market rates, ministries are at the greatest risk when renting their space to commercial or for-profit entities and should seek legal counsel before doing so.

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

Members of ADF Ministry Alliance receive direct access to attorneys when drafting policies like this. Once members' policies are drafted, our attorneys can review them to help ensure that religious liberty legal protections are being considered. Members can also consult with our attorneys when having difficult conversations relating to policies in order to maintain the integrity of your ministry's witness.

Become an ADF Ministry Alliance member at [ADFMinistryAlliance.org](https://www.adfministryalliance.org)

For more information about religious freedom and your church's facilities, please see our Church Facility Use Guide.

REAL LIFE CASE #5

CALVARY CHAPEL DAYTON VALLEY V. SISOLACK

Like most churches across the country during the COVID-19 pandemic, Calvary Chapel Dayton Valley in Nevada temporarily shut its doors in compliance with the governor's church gathering ban, livestreaming its services online instead.

But as Nevada started to reopen, the church hoped to resume in-person worship services. Calvary Chapel even developed a comprehensive health and safety plan, including meeting at less than 50 percent of its building's capacity, practicing social distancing, using face masks, and limiting services to 45 minutes.

But Nevada's governor had other plans. Instead of prioritizing religious freedom, he continued restricting church meetings while providing exceptions for "non-essential" businesses—such as casinos, restaurants, bars, theme parks, and gyms.

While these secular businesses could reopen at half capacity, churches faced criminal and civil penalties if they opened their doors to just 50 or more attendees, regardless of safety precautions or their building's maximum capacity.

Calvary Chapel Dayton Valley knew this wasn't right. That's why Alliance Defending Freedom filed a lawsuit on their behalf challenging the governor's unconstitutional treatment of churches.

While the government can prioritize public health and safety, it can't move businesses and non-religious activities to the front of the line for reopening and push churches to the back.

It is unconstitutional to treat churches worse than these secular organizations, yet that is exactly what Nevada was doing. Thankfully, the 9th Circuit Court of Appeals corrected this, eventually ruling in Calvary Chapel's favor.

09 MISSION STATEMENT

Christian ministries that aren't churches 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: a desire to associate with like-minded people who will further the organization's religious purpose and beliefs. Including these components may allow for a possible free speech and free associational defense in addition to any other constitutional defenses.

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





10

CODE OF CHRISTIAN CONDUCT

Ministries should adopt a code of Christian conduct, grounded in the statement of faith, which establishes parameters for acceptable behavior for employees, teachers, administrators, campers, students, and other people who interact with your ministry.

The code should address a variety of behaviors pertinent to the ministry's particular context: for example, respect for authority, cheating, and stealing. While the level of detail and specific types of conduct addressed will vary from organization to organization, ministries are encouraged to address issues of sexuality given that they are current cultural issues.

Make clear that the ministry believes God immutably creates each person as either male or female and that employees and students are expected to conform their conduct and dress to reflect these beliefs. Cite the organization's statement on marriage and sexuality to highlight why this conduct is biblically required.

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



CONCLUSION

In a changing moral climate, God's people can continue to make a profound impact as faithful witnesses to His love and truth. We can engage a hostile social and political culture in ways that offer light and hope amid spiritual darkness and confusion.

Adopting the action items recommended in the previous pages cannot insulate your ministry from threats to its religious freedom. Nor are these recommendations all-inclusive; instead, they are general guidelines.

This guide only scratches the surface regarding actions ministries can take to steward their religious freedom better because every ministry's situation is unique. More robust advice, preparation, and protection are available to ADF Ministry Alliance members.

Through ADF Ministry Alliance, you can experience peace of mind knowing that when legal challenges arise, you are ready to face them so that you can get back to what matters most: serving people and sharing the Gospel.

Preparing yourself through this affordable membership program will give your ministry greater freedom to continue ministering and living out your mission with confidence—and that freedom may well make an eternal difference for those you serve.

For more information about ADF Ministry Alliance and how your ministry can become a member, please visit our website at [ADFMinistryAlliance.org](https://www.ADFMinistryAlliance.org) or call us at 1-833-233-2559.

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BONUS MATERIAL FOR CHURCHES

FORMAL MEMBERSHIP POLICY



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

This freedom has limitations. Only those individuals who “unite” with a church have consented to the church’s authority over them.¹⁴ So, a church has clearer legal protections to discipline its members as opposed to non-members in the event of a lawsuit.¹⁵

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).

MARRIAGE AND 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 a church, and clearly define standards for the marriages a church’s pastor may solemnize or otherwise participate in.

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. Milivojevic*, 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 *Bostock v. Clayton County*, ___ S. Ct. ___, Nos. 17-1618, 17-1623, 18-107, 2020 WL 3146686 (S. Ct. June 15, 2020).

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 *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ___ (2020); *Hosanna-Tabor*, 132 S. Ct. 694; *McClure*, 460 F.2d at 558-61; *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991).

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

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

11 See *id.*

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

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

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.

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