



LIBERTY INSTITUTE®

# RELIGIOUS LIBERTY PROTECTION KIT

*—for—*

## CHRISTIAN SCHOOLS

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GUARD YOUR SCHOOL  
FROM LEGAL ATTACK

FIRST



LIBERTY





Dear Christian Educator,

Thank you for your desire to protect **your school's right to minister** against increasingly hostile legal threats to your freedom to believe and to act upon your beliefs. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.

A handwritten signature in black ink that reads "Kelly Shackelford". The signature is fluid and cursive, with a large, stylized "K" and "S".

Kelly Shackelford, Esq.  
President, CEO & Chief Counsel

## **LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR CHRISTIAN SCHOOLS**

Cover and page design: David Malphurs

The Liberty Institute® *Religious Liberty Protection Kit for Christian Schools* provides general guidance in aiding your school in preparing governance documents and risk management for increasing legal threats to religious freedom. These Religious Liberty Templates and Guides are not to be used as a substitute for legal advice. Because the law is constantly changing and each school's policies and documents are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in these Religious Liberty Templates and Guides have not been subject to change, amendment, reversal, or revision. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by going to [FirstLiberty.org](http://FirstLiberty.org), selecting the "Contact" menu option at the top of the page, and then selecting "Request Legal Assistance."

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## WHY YOUR CHRISTIAN SCHOOL NEEDS LEGAL PROTECTION

In a world where hostility toward religion is on the rise, it's not a matter of if, but when, Christian schools will be faced with damaging, anti-religious legal attacks. That's why First Liberty now offers the free-of-charge Religious Liberty Templates and Guides, such as those in this booklet, to Christian schools and other faith-based schools.

We want to help protect Christian schools and other faith-based schools from legal and financial ruin from individuals and organizations that are offended by traditional religious viewpoints and seek to litigate claims to further a larger political or cultural agenda.

First Liberty's world class constitutional attorneys are trained to identify risks and develop solutions for Christian schools and other faith-based schools. We created Religious Liberty Templates and Guides for Christian schools and other faith-based schools to use as a resource in drafting bylaws, articles of incorporation, employment manuals, discipline policies, and other corporate documents to try to avoid risk exposure. You may utilize the language that we have provided verbatim in amending or drafting your own governance documents.

The Religious Liberty Templates and Guides were created to ensure maximum possible legal protection for religious entities to freely hold and act upon their sincerely held religious beliefs. We also seek to safeguard religious entities by accurately informing them as to the present state of the law so they can act in compliance with existing law and identify legal pitfalls that may hinder their ability to minister.

We encourage faith-based schools to work diligently to ensure their beliefs are written down, codified, and enforced so that they have the tool kit needed to prove the sincerity of their faith.

# 5 SIMPLE STEPS TO PROTECT YOUR SCHOOL

**STEP 1:** Gather and review your governing documents and policies. The relevant documents should include at least the following (or your versions thereof):

- Articles of Incorporation
- Bylaws/Constitution
- Mission Statement
- Purpose Statement
- Facility Use Policy (or facility rental application)
- Historical Creeds or Confessions
- Statements of Doctrine
- Statements of Faith
- Standards of Morals and Conduct/Honor Code
- Employee and Volunteer Handbooks
- Employee and Volunteer Contracts
- Medical/Pharmaceutical Plans
- School Charts
- Website Content

**STEP 2:** Compare and contrast. Review your own governing documents, policies, and statements of faith and compare them with our Religious Liberty Templates and Guides to determine what areas need to be addressed (and how to address them).

**STEP 3:** Amend and adopt. Make certain that your documents address all of the issues that we set forth in our Religious Liberty Templates and Guides. We have incorporated significant and thorough case law in drafting the Religious Liberty Templates and Guides in an attempt to ensure legal protection and compliance for your religious entity. Therefore, we suggest that you utilize the language that we have provided verbatim in amending or drafting your own governance documents. Make certain that all documents and written policies express your beliefs consistently.

**STEP 4:** Be thorough. We encourage you to work diligently to ensure that your beliefs are written down, codified, and enforced so that you have the tool kit needed to prove the sincerity of your faith. In a legal climate where religious legal

intrusions are becoming increasingly problematic, we encourage you to thoroughly document those beliefs that you intend to defend, particularly as they relate to morality, conduct, marriage, and sexuality.

**STEP 5: Be consistent.** Beyond specifying in detail your sincerely held religious beliefs in your governing documents, consistent application and enforcement of those beliefs is vital. Consistently adhere to the policies that you adopt in order to avoid legal problems that arise from applying a “double standard.”

# TEMPLATES AND GUIDES TO PROTECT YOUR SCHOOL

For an online version of these documents go to  
[FirstLiberty.org/kits](http://FirstLiberty.org/kits)

## STATEMENT OF FAITH: MARRIAGE AND HUMAN SEXUALITY

### Preamble

We believe that all matters of faith and conduct must be evaluated on the basis of Holy Scripture, which is our infallible guide. (2 Timothy 3:16-17) Since the Holy Bible does speak to the nature of human beings and their sexuality, it is imperative that we correctly understand and articulate what the Bible teaches on these matters.

We are committed to the home and family as set forth in Holy Scripture. We believe God has ordained and created marriage to exist between one man and one woman, with absolute marital fidelity. The Bible sets forth specific home and family values, which include the distinct roles of husbands and wives, fathers and mothers, and children. It is our firm conviction that we uphold the dignity of each individual as we embrace the unchanging and longstanding principles of scriptural truth.

### Religious Beliefs

Based on Holy Scripture and the constant moral teaching of the universal Church, we believe:

**Marriage – [Educational Institution]** defines marriage as the permanent, exclusive, comprehensive, and conjugal “one flesh” union of one man and one woman, intrinsically ordered to procreation and biological family, and in furtherance of the moral, spiritual, and public good of binding father, mother, and child. (Genesis 1:27-28, Genesis 2:18-24, Matthew 19:4-9, Mark 10:5-9, Ephesians 5:31-33)

**Sexual Immorality – [Educational Institution]** believes that sexual acts outside marriage are prohibited as sinful. Consequently, **[Educational Institution]** members must resist and refrain from any and all sexual acts outside marriage – including but not limited to adultery, fornication, incest, zoophilia, pornography, prostitution, masturbation, voyeurism, pedophilia, exhibitionism, sodomy, polygamy, polyamory, sologamy, or same-sex sexual acts. (Exodus 20:14, Leviticus 18:7-23, Leviticus 20:10-21, Deuteronomy 5:18, Matthew 15:19, Matthew 5:27-28, Romans 1:26-27, 1 Corinthians 6:9-13, 1 Thessalonians 4:3, Hebrews 13:4, Galatians 5:19, Ephesians 4:17-19, Colossians 3:5)

**Gender Identity – [Educational Institution]** believes that God created mankind in His image: male (man) and female (woman), sexually different but with equal personal dignity. Consequently, **[Educational Institution]** members must affirm their biological sex and refrain from any and all attempts to physically change, alter, or disagree with their predominant biological sex – including but not limited to elective sex-reassignment, transvestite, transgender, or non-binary “genderqueer” acts or conduct. (Genesis 1:26-28, Romans 1:26-32, 1 Corinthians 6:9-11)

**Sexual Orientation – [Educational Institution]** believes that God created and ordered human sexuality to the permanent, exclusive, comprehensive, and conjugal “one flesh” union of man and woman, intrinsically ordered to procreation and biological family, and in furtherance of the moral, spiritual, and public good of binding father, mother, and child. Consequently, **[Educational Institution]** members must affirm the sexual complementarity of man and woman and resist any and all same-sex sexual attractions and refrain from any and all same-sex sexual acts or conduct, which are intrinsically disordered. (Genesis 1:27, Genesis 2:24, Matthew 19:4-6, Mark 10:5-9, Romans 1:26-27, 1 Corinthians 6:9-11, Ephesians 5:25-27, Revelation 19:7-9, Revelation 21:2)

**Sexual Redemption – [Educational Institution]** believes that all have sinned and fall short of the glory of God and should seek redemption through confession, repentance, baptism, and faith in Jesus

Christ. Consequently, [Educational Institution] members must welcome and treat with respect, compassion, and sensitivity all who experience same-sex attractions or confess sexually immoral acts but are committed to resisting sexual temptation, refraining from sexual immorality, and conforming their behavior to [Educational Institution] Statement of Faith. (Matthew 11:28-30, Romans 3:23, Ephesians 2:1-10, I Corinthians 10:13, Hebrews 2:17-18, Hebrews 4:14-16)

**Celibacy** – [Educational Institution] believes that Holy Scripture grants two life-enhancing options for human sexual behavior: (1) the conjugal “one flesh” marital union of one man and one woman, and (2) celibacy. Either is a gift from God, given as He wills for His glory and the good of those who receive and rejoice in His gift to them. Celibacy and faithful singleness is to be celebrated and affirmed within the [Educational Institution]. (Genesis 1:27-28; 2:18, 21-24; Matthew 19:4-6; Mark 10:5-8; Hebrews 13:4; 1 Corinthians 7:1-8; Matthew 19:12; 1 Corinthians 12:12-13; Romans 12:10; 1 Timothy 5:1-2)

### Holy Scripture:

### **Marriage and Human Sexuality**

Genesis 1:26-28

Genesis 2:18-24

Genesis 19:5-10

Exodus 20:14

Leviticus 18:7-23

Leviticus 20:10-21

Deuteronomy 5:18

Judges 19:22-24

Matthew 5:27-28

Matthew 15:19

Matthew 19:4-9

Mark 10:5-9

Romans 1:26-27

1 Corinthians 6:9-13

1 Corinthians 5:11

Galatians 5:19

Ephesians 4:17-19

Ephesians 5:25-27

Ephesians 5:31

Colossians 3:5  
1 Thessalonians 4:3  
Hebrews 13:4  
1 Timothy 1:8-10  
Jude 1:7  
Revelation 19:7-9  
Revelation 21:2

## **Pastoral Care**

Matthew 11:28-30  
Romans 3:23  
Ephesians 2:1-10  
1 Corinthians 10:13  
Hebrews 2:17-18  
Hebrews 4:14-16

## **Application**

All of our members, employees, and volunteers must affirm and adhere to this Doctrinal and Religious Absolute statement on marriage and human sexuality to qualify for involvement with the **[Educational Institution]**. This is necessary to accomplish our religious mission, goals and purpose. Behavior or counter-witnessing that does otherwise will impede and burden our integrity and religious mission. We believe that God's grace can wipe the slate of guilt and sin, though the consequences are still incurred.

## **Authority**

The Bible is the inspired and infallible Word of God, acting as the source of authority over morality, our beliefs, Christian lifestyle and conduct. **[Designated Authority]** is charged with the ministerial responsibility of Biblical interpretation and promulgating religious policy. **[Designated Authority]** will determine life application as well as final matters relating to church theology, philosophy, Christian practice, faith, divine truth, morality, and theological and doctrinal resolutions.

## STATEMENT OF FAITH: ABORTION

### Preamble

We believe that all matters of faith and conduct must be evaluated on the basis of Holy Scripture, which is our inspired, infallible, and inerrant guide. (2 Timothy 3:16–17) Because Holy Scripture speaks to creation and human life, it is imperative that we correctly understand, articulate, and abide by what Holy Scripture teaches on this matter.

We believe that God has created mankind in His image (Imago Dei) and that human life begins at fertilization. God, in his infinite sovereignty, uniquely formed human beings and gave them a special dignity, personal freedom, and individual accountability among all the works of creation. Human beings have been made for relationship with God and to be good and faithful stewards of creation. God created each person's inmost being, knitting each person together in his mother's womb. (Psalm 139:13) As God's individualized and personal creation, each person is fearfully and wonderfully made. (Psalm 139:14) God has ordained all the days of each person's life before they came to be. (Psalm 139:16)

### Religious Beliefs

Based on Holy Scripture and the constant moral teaching of the universal Church, we believe:

From the moment of fertilization until natural death, every human life is sacred because every human life has been created by God, in His image and likeness.

From the moment of fertilization, every human life must be recognized, respected, and protected as having the rights of a person and the inviolable right to life.

The right to life and physical integrity of every unborn human life is inviolable – it is not a

concession made by society or the state, but is instead inherent to the unborn human life by virtue of its creation in the image of God.

Because human life begins at the moment of fertilization, it is against our religious and moral conviction to formally or materially cooperate in the termination of unborn human life.

We are strongly committed to the preservation and defense of unborn human life, which compels our religious, moral, and ethical duty to defend unborn human life from destruction, whether by surgical abortion or use of drugs, devices, or services that have the intent, design, effect, or risk of terminating unborn human life or preventing its implantation and growth post-fertilization.

The Church and all her ministers and ministries should publicly witness to society and to the state regarding the intrinsic, inherent, and inviolable dignity of all human life, from fertilization to natural death.

### **Holy Scripture**

In standing against abortion, this educational institution incorporates by reference the following Holy Scriptures, which are cited in the statements, resolutions, commentaries, or doctrines of Christian denominations that are expressly and vocally opposed to abortion: Lutheran Church – Missouri Synod, Presbyterian Church in America, Roman Catholic Church, and Southern Baptist Convention.

Genesis 1:26-27  
Genesis 25:21-22  
Exodus 20:13  
Psalm 22:9-10  
Psalm 139:13-16  
Isaiah 44:1-2  
Isaiah 49:5  
Job 10:8-12  
Jeremiah 1:4-5  
Luke 1:39-45

## Early Church Fathers

“Thus, you read the word of God, spoken to Jeremiah: ‘Before I formed thee in the womb, I knew thee.’ If God forms us in the womb, He also breathes on us as He did in the beginning: ‘And God formed man and breathed into him the breath of life.’ Nor could God have known man in the womb unless he were a whole man. ‘And before thou camest forth from the womb, I sanctified thee.’ Was it, then, a dead body at that stage? Surely it was not, for “God is the God of the living and not the dead.”

—*Tertullian, De Anima*

“It is not permissible for us to destroy the seed by means of illicit manslaughter once it has been conceived in the womb, so long as blood remains in the person.”

—*Tertullian, Apologia*

“Why sow where the ground makes it its care to destroy the fruit? Where there are many efforts at abortion? Where there is murder before the birth.... Why then dost thou abuse the gift of God, and fight with His laws, and follow after what is a curse as if a blessing, and make the chamber of procreation a chamber for murder, and arm the woman that was given for childbearing unto slaughter?”

—*John Chrysostom, Homily 24*

“[T]his lustful cruelty, or if you please, cruel lust, resorts to such extravagant methods as to use poisonous drugs to secure barrenness; or else, if unsuccessful in this, to destroy the conceived seed by some means previous to birth, preferring that its offspring should rather perish than receive vitality; or if it was advancing to life within the womb, should be slain before it was born.”

—*Augustine, De Nube et Concupiscentia*

“Therefore brothers, you see how perverse they are and hastening wickedness, who are immature, they seek abortion of the conception before the birth; they are those who tell us, ‘I do not see that which you say must be believed.’”

—*Augustine, Sermon 126*

“Thou shalt not slay the child by procuring abortion; nor, again, shalt thou destroy it after it is born.”

—*Barnabas, Letter*

### **Application**

All of our students, employees, administration, and volunteers must affirm and adhere to this Statement of Faith on Abortion to qualify for involvement with the ministry of this educational institution. This is necessary to accomplish our religious mission, goals, and purpose. Behavior or counter-witnessing that does otherwise will impede and burden our integrity and religious mission, inviting scandal on this institution.

This institution believes that all have sinned and fall short of the glory of God and should seek redemption through confession, repentance, baptism, and faith in Jesus Christ. Consequently, students, faculty, administration, and staff must welcome and treat with respect, compassion, and sensitivity all who have endured the tragedy of abortion but are sincerely and resolutely committed to conform their behavior to this institution’s Statement of Faith on Abortion.

### **Authority**

Holy Scripture is the inspired, infallible, and inerrant Word of God, acting as the source of authority over morality, our beliefs, Christian lifestyle, and conduct. **[Designated Authority]** is charged with the ministerial responsibility of Biblical interpretation and application as well as determining final matters relating to institutional policies, Christian practice, faith, divine truth, morality, and theological and doctrinal resolutions.

## MISSION STATEMENT

The purpose of this language for the Mission Statement is to tie together the explicit mission and activities of the educational institution to other documents in which the doctrinal statements of the educational institution are connected, thus reinforcing the application of your sincerely held religious beliefs on matters of human sexuality and abortion.

**CALLING** - We are called to glorify God by instilling in our students the Gospel message of Jesus Christ[1] and educating the next generation of Christians. Our calling includes both introduction to and encouragement to remain in a life of full devotion to Jesus Christ. We are charged with educating, encouraging, equipping, and serving our students and their families, which are an integral part of our **[Educational Institution]**. [2] We do this by directly instilling our Christian philosophies, values, missions and goals[3] in our students through offering a Christ-centered education[4]. Overt liturgical religious purpose (preaching, worship, Bible instruction, communion, baptism) as well as related non-liturgical religious purpose (social service activities, weddings, teaching, ministry, or events) all serve as methods that **[Educational Institution]** utilizes to instill our religious values and beliefs.[5] Even non-liturgical ministries are grounded in **[list any and all written school policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy]** (the “Written Statements of Faith”), of **[Educational Institution]** – and are therefore subject to all of its ministerial, enrollment, discipline, termination and expulsion policies.[6]

**COMMUNITY AND PARTNERSHIP** - We believe that our religious activity and education derives meaning in large measure from participation in a larger religious community. For this reason, parents and family of our student body play a large

role in furthering our mission and viewpoint as a school.[7] We exist to foster a Christ-like, educational environment of persons subscribing to our religious beliefs and faith.[8] **[Educational Institution]** seeks to instill Christian values in students by having teachers and staff spend time with the students, instructing and engaging them in the learning process. In this way, we transmit our Christian system of values to the next generation.[9]

Associating with like-minded Christian families reinforces **[Educational Institution]**'s Christian purpose and is vital to our educational mission to perpetuate the faith.[10] We are committed to being and educating disciples who understand what it means to follow Jesus Christ into a life of worship, fellowship, sacrifice, service and being led by the Spirit. (Matthew 28:19, Acts 1:8, John 15:16, Mark 16:15) Our mission as part of the body of Christ is to participate, share, and encourage each other toward spiritual growth. (1 Thessalonians 5:11, Hebrews 10:23-25, Colossians 3:16) For these reasons, participation in our school requires a tangible commitment to our beliefs, purposes, and mission as outlined in **[Educational Institution]**'s Written Statements of Faith, which are incorporated herein by reference, as if fully set forth herein.

**EXPRESSION OF FAITH - [Educational Institution]** intends to transmit our system of religious beliefs, tradition, Christian morals, reverence and values. [11] We do so by engaging in the community and students' lives, acts of worship, and through all activities, educational and otherwise, in which we participate.[12] Likewise, we believe that all behavior of students and staff of **[Educational Institution]** is communicative in nature, exemplifying and expressing our faith, both publicly and privately.[13] Any student or employee who propounds a point of view contrary to our beliefs as stated in our above-referenced Written Statements of Faith, will impair **[Educational Institution]**'s integrity and ability to educate in accordance with its religious views and message.[14]

**OUTREACH MINISTRY -** We take very seriously **[Educational Institution]**'s charge to be a Christian

presence in a secular world.[15] Therefore, all activities that [Educational Institution] engages in are intended to further its religious purpose, as stated in our Purpose Statement. As such, all of our programs are considered an outgrowth of the mission of [Educational Institution] to preach, teach, evangelize and instill the Gospel message of Jesus Christ.[16]

[1] See *Cline v. Catholic Diocese*, 206 F.3d 651, 655-56 (6th Cir. 1999).

[2] See *Connor v. Archdiocese of Phila.*, 601 Pa. 577, 584 (Pa. 2009).

[3] See *Circle Sch. v. Pappert*, 381 F.3d 172, 182 (3d Cir. 2004).

[4] See *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 699 (2012); see *Connor*, 601 Pa. at 584.

[5] See *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 655-656 (2000).

[6] See *Connor*, 601 Pa. at 584.

[7] See *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 342 (1987); see *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984).

[8] See *Boy Scouts of Am.*, 530 U.S. at 654.

[9] See *id.*, 530 U.S. at 655-656.

[10] See *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 659-660, (Tex. 2007).

[11] See *Boy Scouts of Am.*, 530 U.S. at 655-56 (quoting *Roberts*, 468 U.S. at 636).

[12] See *id.*

[13] See *id.* at 648; see *Spencer v. World Vision, Inc.*, 633 F.3d 723, 734 (9th Cir. 2011); see *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (D.C. Cir. 2002); see *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 399-400 (1st Cir. 1985).

[14] See *Boy Scouts of Am.*, 530 U.S. at 643 (quoting *Hurley v. Irish-American Gay*, 515 U.S. 557, 576-577 (1995)).

[15] See *Little v. Wuerl*, 929 F.2d 944, 945-46 (3d Cir. 1991).

[16] See *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 622 (6th Cir. 2000); see *Cline v. Catholic Diocese*, 206 F.3d 651, 655-56 (6th Cir. 1999).

## PURPOSE STATEMENT

We are motivated in all facets by our faith in Jesus Christ, attempting to serve as a reflection of God's unconditional love for all people.[1] We seek to honor the Lord in all that we do by operating [Educational Institution] in a manner consistent with Biblical principles.[2] Every activity and speech that [Educational Institution] or its employees, representatives, volunteers, or students engage in shall be consistent with, and in furtherance of, [Educational Institution]'s religious purposes, both publicly and privately.[3] This is because we are committed to putting our faith

into action every day as we use our lives to make a tangible difference for students.[4]

All activities in which **[Educational Institution]** engages are for the dual religious purposes of furthering its Christian mission, message, and viewpoint and educating students in accordance with that mission. Whether the activity has an exclusively religious purpose (e.g. worship service, discipleship classes, or religious teaching) or is an ancillary religious activity (e.g. community service projects, extracurricular activities, or social events), it is intended to glorify God. **[Educational Institution]** conducts all activities in a holistic manner in order to foster, repeat, advertise or express its Christian mission, message and viewpoint.[5] In this way, every school activity itself is infused with a religious purpose, as an act of faith, intending to further **[Educational Institutions]**'s religious beliefs and commitment to the faith as outlined in **[list any and all written school policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy]** (the "Written Statements of Faith"), which are incorporated herein by reference, as if fully set forth herein.[6]

Conveying **[Educational Institution]**'s Christian message is at the heart of all that we do, in life, deed, word and expression.[7] **[Educational Institution]** is dedicated to instilling in our students and the community the Gospel message of Jesus Christ, not simply engaging in organized worship.[8] Provision of charity and community services, including but not limited to care for children, widows, and those in need, as well as evangelism, strengthening Christian leadership, discipleship and Biblical education, are means of fulfilling Christian duty and providing an example of the Christ-like way of life that **[Educational Institution]** seeks to foster.[9] Therefore, all behavior of students and staff of the school is communicative in nature, exemplifying the faith. Associating with like-minded Christian families

reinforces **[Educational Institution]**'s Christian purpose and is vital to the faith's perpetuation. [10]

Finally, the primary, exclusive, and only purposes for which **[Educational Institution]** is organized are religious in nature, including the propagation of our religious faith[11] through biblical education, community services[12], and curriculum[13]. Likewise, **[Educational Institution]** intends to disseminate, teach, and preach the Gospel and teachings of Jesus Christ, to encourage and aid the growth, nurture and spread of Christianity and to render Christian service.[14] The recital of these purposes is intended to be exclusive of any and all other purposes, this **[Educational Institution]** being formed for religious and charitable purposes only.[15]

[1] *Spencer v. World Vision, Inc.*, 633 F.3d 723, 735 (9th Cir. 2011).

[2] *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2766 (2014).

[3] See *World Vision*, 633 F.3d at 434; *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1343 (D.C. Cir. 2002); *Universidad Cent. de Bayamon v. NLRB*, 793 F.2d 383, 399-400, 403 (1st Cir. 1985) (en banc) (Breyer, J.).

[4] See *World Vision*, 633 F.3d at 735.

[5] See *Hurley v. Irish-American Gay*, 515 U.S. 557, 581 (1995).

[6] See *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 344 (1987)(Brennan, J., concurring).

[7] See *World Vision*, 633 F.3d at 434.

[8] See *Cline v. Catholic Diocese*, 206 F3d. 651, 655-56 (6th Cir. 1999).

[9] See *id.*; *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 344 (1987).

[10] See *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 659-660, (Tex. 2007)

[11] See *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 501 (1979) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 628 (1971)).

[12] *Amos*, 483 U.S. at 344

[13] See *Spencer v. World Vision, Inc.*, 633 F.3d 723, 727 (9th Cir. 2011).

[14] See *World Vision*, 633 F.3d at 736.

[15] See *id.* at 726.; *Lemon v. Kurtzman*, 403 U.S. 602, 628 (1971).

## FACILITY USE POLICY

### RELIGIOUS ACTIVITIES

All **[Educational Institution]** property and facilities (including furniture, fixtures, and equipment) are holy and set apart to worship God, regardless of the location of the facility. (Colossians 3:17)

**[Educational Institution]** facilities are consecrated to our religious ministry and mission because they are a provision from God. Use of **[Educational Institution]** property shall be for the propagation of the Christian faith, for fellowship, witnessing, religious teaching, and charity. Therefore, all use and occupancy of **[Educational Institution]** property shall be limited to persons of our particular religion, the propagation of religion, or related religious purposes.

All activities on school property must cohere with the religious purpose of **[Educational Institution]** and further its Christian mission, whether the activity has an overt liturgical religious purpose (preaching, worship services, Bible instruction, communion, baptism) or a non-liturgical religious purpose (social service, mentorship, community service, mentorship, benevolence, charity, schools). **[Educational Institution]** conducts all activities in order to advance or express its Christian mission, message and viewpoint. The school's facility use shall be exclusively conditioned on whether the use promotes **[Educational Institution]**'s mission, message and viewpoint, as all facility usage is an opportunity to glorify God. In addition, school property is exclusively reserved for persons and schools who agree to abide by **[Educational Institution]** [list any and all written school policies, governing documents, handbooks, or procedures, including things like employments policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy] (the "Written Statements of Faith"), which are incorporated herein by reference, as if fully set forth herein.

Likewise, **[Educational Institution]** facilities are not generally open to the public and may not be used by persons or groups holding, advancing, or advocating beliefs that conflict with **[Educational Institution]**'s faith or moral teachings – including but not limited to **[Educational Institution]**'s Written Statements of Faith, which are incorporated herein by reference, as if fully set forth herein.

Any facilities that are made available to approved non-members for usage are meant to further **[Educational Institution]**'s calling to minister to others, in the vein of charity and witnessing to our faith. For this reason, **[Educational Institution]** property cannot be used for purposes that contradict the school's beliefs, which would constitute a grave violation of the school's faith and religious practice, as well as degrade **[Educational Institution]**'s religious integrity. (2 Corinthians 6:3; and 14; 2 Thessalonians 5:22)

#### OWNERSHIP/CONTROL

**[Educational Institution Designated Authority]** possesses the exclusive power to enforce conformity of belief. In regards to facility usage, **[Educational Institution]** seeks to avoid member confusion, formal or material cooperation with evil, and scandal by associating with any conduct that contradicts its religious beliefs. (1 Peter 2:12) School property issues or disputes are directly related to religious doctrine and practice, as all facilities are utilized in a manner to advance or express **[Educational Institution]**'s Christian mission, message, and viewpoint. (Colossians 3:17) In the event that school facility use departs in any way from **[Educational Institution]**'s doctrine, mission, Written Statements of Faith, teaching or policies, **[Educational Institution]**'s designated religious authority shall exclusively resolve any disputes. The **[Designated Authority]** alone may make inquiry into the religious law and usage of **[Educational Institution]** facilities and is therefore essential to the resolution of the controversy.

## FACILITY USAGE FEE RATE

[**Educational Institution**] is a not-for-profit corporation. Because the facility is exclusively utilized for religious and ministry purposes, it may be reserved for the below-market rate of \$\_\_\_\_\_. The fee is intended to be used for general maintenance and cleaning of school facilities.

## GUIDELINES AND REQUIREMENTS

Each individual, group, or school utilizing [**Educational Institution**] facilities (including equipment and property) is required to abide by all ministry guidelines, requirements and use restrictions at all times. Each individual, group, or school is required to sign [**Educational Institution**]'s Facilities Usage Agreement.

[**Educational Institution**] incorporates by reference its Code of Conduct, as if fully set forth herein.

[**Educational Institution**] incorporates its Statement of Faith on Marriage, Sexuality, and Gender Identity, as if fully set forth herein.

Use of any controlled substances, including alcohol, tobacco products, and marijuana, is strictly prohibited on church property.

Institution facilities are to be used with care and left in good, clear condition

Licensee(s) or Invitee(s) reserving [**Educational Institution**] facilities or property must confine said usage to pre-approved areas of the church property, as provided for in their Facility Usage Agreement.

Any events involving children and youth require adequate adult supervision, provided by the reserving licensee(s) or invitee(s).

[**Educational Institution**] reserves the right to coordinate and schedule alternative activities and events in other church facilities.

**[Educational Institution]** reserves the right to accept or deny any applicants who seek to utilize or reserve **[Educational Institution]** facilities. Permission that is granted to licensee(s) or invitee(s) to utilize **[Educational Institution]** facilities or property shall not be transferred or passed to any alternative individual, group, or school without the permission of **[Educational Institution]**.

### INSURANCE AND INDEMNITY

All facility users will be required to provide their own general liability insurance coverage with a combined single limit of not less than \$\_\_\_\_\_, naming **[Educational Institution]** as an additional insured.

Any and all damage occurring to **[Educational Institution]** facilities as a result of their use or reservation, shall be repaired and replaced by the licensee(s) or invitee(s), at a cost determined by **[Educational Institution Designated Authority]** or their designee.

All who reserve **[Educational Institution]** property or facilities for use agree to release, protect, defend, indemnify and hold harmless **[Educational Institution]** and its trustees, officers, employees, members and other representatives from and against any and all claims, liabilities, losses, damages, actions, costs and expenses (including, without limitation, reasonable attorney's fees and other legal costs) directly or indirectly arising out of their use of any **[Educational Institution]** facilities.

### APPLICATION

All of our members, employees, and volunteers must affirm and adhere to this Facility Use Policy and Written Statements of Faith referenced therein to qualify for involvement with the school. This is necessary to accomplish our religious mission, goals and purpose.

Any applicants who wish to utilize **[Educational Institution]**'s facilities must acknowledge receipt and review of this Facility Use Policy. Further, non-members must agree to conduct themselves and their event, as well as utilize school facilities, in a manner consistent with the **[Educational Institution]**'s purpose, ministry, Written Statements of Faith and policies, as set forth herein.

### FACILITY USAGE AGREEMENT

Name of Licensee(s) or Invitee(s): \_\_\_\_\_

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

Telephone Number(s): \_\_\_\_\_

Contact Person: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Website: \_\_\_\_\_

Licensee(s) or Invitee(s) Membership Status:

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Description of Licensee(s) or Invitee(s) Ministry:

Date(s) and time(s) of event: \_\_\_\_\_

Purpose of event: \_\_\_\_\_

Nature of event: \_\_\_\_\_

Facility/Room being reserved: \_\_\_\_\_

Facility Usage Fee: \_\_\_\_\_

I have received, reviewed and agree to adhere to all **[Educational Institution]**'s policies, including but not limited to the Statement of Faith on Marriage, Sexuality, and Gender Identity, Bylaws, Standards of Morals and Conduct, and Statement of Religious Authority. I have read and fully understand the Facility Use Policy and the Facility Use Agreement and hereby expressly agree to adhere to all guidelines, requirements, restrictions and other provisions set forth therein.

I request to use the school facilities for the express purpose indicated above, and will utilize said facilities in a manner consistent with these stated purposes. To the best of my knowledge, I am not aware that the reserving individual, group, or school holds, advances, or advocates beliefs that conflict with the school's faith or moral teachings.

It is agreed and understood that this contract shall remain in force only for the term in which I comply with **[Educational Institution]** policies, as set forth herein, and as long thereafter as I comply. I understand that all facilities privileges automatically terminate if I engage in any conduct or avocation of conduct that stands in contradiction to **[Educational Institution]**'s stated beliefs, policies, and mission as set forth herein. I agree to notify **[Educational Institution]** authority immediately upon the knowledge that school facilities or properties are being utilized in a manner inconsistent with school policies. I submit to the Designated Authority of **[Educational Institution]** to resolve any disputes relating to school property or facility use.

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Invitee(s)/Licensee Signature(s)

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Title

---

Date

---

Approved by [Educational Institution]:

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Signature(s)

---

Title

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Date

For an online version of these documents go to:  
**[FirstLiberty.org/kits](http://FirstLiberty.org/kits)**

# APPENDIX A: DRAFTING SCHOOL BYLAWS AND CONSTITUTION

## I. RELIGIOUS AUTHORITY

Societal and even Christian consensus is evaporating on elemental questions of theology, philosophy, and jurisprudence. In response, your school should identify the final human authority – person, board, committee – who will promulgate, interpret, and enforce religious policies for your school. Religious entities should incorporate language on qualifications, quorum rules, officers, executive committees, disqualification, removal and other procedural rules. Further, the Institution’s bylaws and/or constitution should include binding religious rules relevant to “internal school governance” and discipline.[1]

Because there are myriad constitutional and statutory protections for “religious organizations” arising under the First Amendment, Religious Freedom Restoration Act (“RFRA”), Religious Land Use and Institutionalized Persons Act (“RLUIPA”),[2] and various state statutes,[3] the final authority must be essentially religious and charged with promulgating and enforcing religious rules on at least the following:

- Scripture and Canonicity
- Statements of Faith and Doctrine
- Standards of Morals and Conduct
- Resolution of Theological Controversies
- Internal Dispute Resolution
- Interpretation and enforcement of conformity of belief/practice
- Discipline of Students
- Discipline of Teachers
- Discipline of Staff, Administrators, or other Employees
- Property and Facility Usage[4]

If your school is denominationally affiliated, its best line of defense will be to incorporate by

reference pre-existing denominational doctrinal, dogmatic or theological documents.[5] Typically, denominational doctrine will enhance and thoroughly explain the sincerely held religious beliefs of your school.

It is important that your school explicitly charge its religious authority with oversight of all areas of your school governance, particularly issues of faith, practice, theology, moral and scriptural interpretation. If your school seeks to adopt any policy or doctrinal statement, submit it openly for corporate notice or consideration while the Designated Authority considers the ecclesiastical matter.[6]

In addition, your school should clearly define the person/board/committee's scope of authority over the above referenced matters. Express that the Designated Authority is the final authority on (1) scripture, faith, morals, and employee/student discipline; (2) formal employment or student enrollment requirements vis-à-vis eligibility, morals, discipline, termination, and expulsion; (3) Statements of Faith and Doctrine; (4) Standards of Morals and Conduct; (5) internal dispute resolution; and, (6) enforcement of conformity of belief and practice relating to religious teaching and practice. State that ecclesiastical government of all students, employees, and staff is unquestioned.[7] Create authority for the decision of controverted questions of faith within your school.[8] Conclusively state that decisions of the established authority are "binding in all cases of ecclesiastical cognizance, subject only to appeals" as your school itself provides for. [9]

Lastly, beyond defining the scope of authority over the above-referenced matters, it is important that your school delineate its religious purpose and motivation in exercising authority over each category, with scriptural references. The United States Supreme Court has held that "religious authority necessarily pervades the school system," or all aspects of governance and operations.[10] Therefore, explain how everything that occurs in your school affects its ministry and mission

and necessitates being held under its religious authority. Finally, express that the religious purpose in exercising said authority is for your school to practice its religion, foster, repeat, advertise, and disseminate your school's view, message, and statements.[11]

### **A. Leadership**

Your school has an interest, as a religious institution, in “autonomy in ordering its internal affairs, so that it may be free to: select [its] own leaders, define [its] own doctrines, resolve [its] own disputes, and run [its] own institutions.”[12] Therefore, your school should revise and amend its written organizational policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy (the “Written Statements of Faith”), to expressly state this autonomy.

### **B. Employment and Volunteers**

Second, clearly and explicitly define the formal requirements for employment and volunteering. Specify the authority that the designated person, board, or committee will have over establishing these requirements, which should be stated as “instituted for the purpose of ecclesiastical government.”[13]

### **C. Discipline**

As Christian consensus evaporates, your school will likely encounter more and more scenarios where it must discipline or remove counter-witnessing persons. Such actions are legally defensible only if your school clearly delineates its employment requirements and secures signed written consent from all volunteers, employees, administrators, ministers, officers, and board members. The employment policies should cover at least the following:

Standards of Morals and Conduct

Eligibility Requirements

Procedures for Discipline, Mediation,  
Termination (more than Matt. 18)

Agreement binding all volunteers, employees,  
administrators, ministers, officers, and board  
members to all **[Educational Institution]**  
policies

Written Statements of Faith

Procedures for Termination and Voluntary  
Withdrawal

School Bylaws should incorporate binding Standards of Morals and Conduct for all board members, employees, ministers, and volunteers. School Bylaws must state that assent and adherence to its Statements of Faith and Standards for Morals and Conduct is a qualification to serve your school in any employment or volunteer capacity. Your school should clearly establish that its Standards of Morals and Conduct as well as adherence to its Statements of Faith is expected at all times, publically and privately. Further, all employees and volunteers should sign these policies.

*For more information regarding suggested Statements of Faith policies, see our "Statement of Faith" Templates.*

*For more information regarding suggested policy requirements for Drafting School Employment and Administration, see our "Employment and Administrative Policies" Template.*

## II. STUDENTS AND PARENTS

Courts have stated that religious schools are “a repository for religious tradition and scripture, so intertwined with the church doctrine that separation is neither pragmatic nor possible.”[14] For this reason, the court in *Gaston* held that “intrusion into the bishop’s decision on matters concerning parochial school discipline and expulsion places th[e] court perilously close to trespassing on sacred ground.”[15] As a parochial entity, your school should clearly communicate

that it is charged with the instillation of dogma and discipline in its students as an integral part of its Christian mission.

### **A. Application and Enrollment Process**

Your school should have a well-defined admissions procedure that includes clear enrollment requirements and disqualifications. The procedures should also incorporate “circuit-breakers” in the admissions process. These circuit breakers are designed to interrupt or terminate the admissions process if the school receives an application evidencing a lifestyle or belief system inconsistent with the institution’s religious beliefs or mission. Institution admission should never be automatic.

Your school may directly set forth that it will “select those individuals with whom your school wishes to join in a common endeavor or mission because enrollment will play a critical role in the culture and traditions of your school by cultivating and transmitting shared ideals and beliefs.”[16] Further, if applicable, your school should state its belief that “individuals draw much of their emotional [and spiritual] enrichment from close ties with others.”[17]

While your school does not have to employ stringent inquiry into family backgrounds, it is important that criteria for eligibility, admission, morals, discipline, suspension and expulsion are clearly designated and communicated, and grounded in scriptural references. Further, express that enrollment is made up of “coreligionists,”[18] as commitment to your school’s mission, goals or vision is required.

Likewise, it is advisable for your school’s application to incorporate specific elements. Include spiritual questions in the student and parent application as well as define the spiritual and behavioral criteria used to evaluate applicants for admission. In addition, openly describe your school’s view on the Biblical model of a family. Explaining how these criteria will “assist in the expression and dissemination of religious doctrine” or instill religious values in students is of equal importance.

Potential qualifications for enrollment may include: written profession or statement of faith in the Holy Bible and Jesus Christ; a written statement of faith in Jesus Christ and student's intent to pursue a life that will glorify God, with His help; assent and adherence to your school's Written Statements of Faith.

Alternatively, applicant disqualifications should be set forth. They may state that enrollment is contingent on whether or not the student and their parents are actively pursuing relationships with Christ, as well as abiding by convictions and commitments of your school regarding Standards of Morals and Conduct. As discussed in more detail below, students should be advised of potential consequences of or discipline for not abiding by their commitments as students.

Lastly, request that potential students and their families review your school policies and Statements of Faith and proceed with enrollment only if they are in agreement with, and willing to abide by, said policies. In order to do so, have potential students and their parents sign an agreement that they have received, read and understand your school policies. For example, \_\_\_\_\_, is a student of your school and agrees to adhere to established and traditional tenets or teachings of your school which has historically held to the beliefs set forth herein.[19] This section should contain a statement of agreement that students may be expelled for failing to adhere to your school's Written Statements of Faith. Additionally, renew these agreements on an annual basis.

It is imperative for your school to thoroughly explain the connection between its enrollment requirements and disqualifications and your school's religious mission, integrity, and purpose. State how its enrollment requirements or disqualifications will "assist in the expression and dissemination of religious doctrine" or instill religious values in existing students.

### III. DISCIPLINE, MEDIATION, AND REMOVAL

Because families, faculty, staff, volunteers, and board members have consented to abide by and adhere to your school authority, school discipline may occur when necessary. Your school should establish clear disciplinary and removal procedures for students, faculty, staff, volunteers, and board members, grounded in scripture, and apply these procedures consistently. Timing, means, and administrative involvement should be established. Further, it is your school's prerogative to include policies relating to grace and reconciliation.

Your school should identify any controversial issues deemed terminable for students, faculty, staff, volunteers, and/or board members. Simply put, your school must define what it intends to defend. If your school intends to discipline, terminate, expel, or refuse enrollment based on an issue, its written policies must expressly state a sincerely held religious belief on that issue. Explain further why student, faculties, staff, volunteer, and/or board member is not allowed to counter-witness on said issue, particularly because it will damage the testimony and mission of the school. Your school should define behavior that it will deem to qualify as counter-witnessing, heresy, or apostasy.

Similar to Employment and Volunteer standards, apply your school's Standards of Morals and Conduct to enrollment procedures. Delineate clear standards of conduct regarding sexual morality, identity and orientation, and other non-sexual behaviors (e.g. cheating, stealing, lying, etc.). In addition, incorporate your school's Written Statements of Faith by reference.

### IV. BIBLICAL COUNSELING SERVICES

The American Psychiatric Association ("APA"), American Psychological Association ("A-Psych"), and the American Medical Association ("AMA") – and many of their state affiliates – have adopted public policy statements affirming same-sex attraction, same-sex sexual acts, same-sex marriage, and additional legal protections for LGBT persons.

[20] To varying degrees, all three organizations have condemned as harmful “conversion” or “reparative” therapy for same-sex attracted persons. In response, the states of New Jersey and California have banned “conversion” or “reparative” therapy for minors. The Third and Ninth Circuit Courts of Appeal recently affirmed the New Jersey and California bans, respectively.[21] Similar legislation is pending in Florida and Oregon.[22]

Because leading psychiatric, psychological, and medical organizations are enlisted in legal and legislative campaigns to ban treatment regimens that fail to affirm same-sex conduct, your school counselors should: (1) expressly state that all counseling services are based on the written and sincerely held religious beliefs of your school; (2) expressly disclaim any affiliation with APA, A-Psych, AMA, or similar organizations or compliance with their standards; and (3) recommend that patients seeking psychiatric, psychological, or medical care refer to a medical professional.

If possible, this notice and disclaimer language should appear on the written materials provided prospective clients, followed by a signature block acknowledging receipt, review, and assent to your school’s counseling standards. The objective is two-fold: (1) provide advance notice that your school counseling is rooted in religious teachings, and (2) document the client’s assent to religious counseling. An equivalent disclaimer should be included in each published work of your school.

[1] *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 706 (2012).

[2] U.S. CONST., amend I; 42 U.S.C. §§ 2000e, et seq.; 42 U.S.C. § 2000bb, et seq.; 42 U.S.C. §§ 2000cc, et seq.; 42 U.S.C. §§ 9858, et seq., Executive Order 13279, 67 F.R. 77141.

[3] See, e.g., Cal. Gov’t Code § 12926(d); Col. Rev. St. § 24-34-401; Conn. Gen. Stat. § 46a-81p; D.C. Code § 2-1401.03; Hi. Rev. Stat. § 378-3(5); 775 Ill. Comp. Stat. 5/2-101(B)(2); Iowa Code § 216.6(6)(d); 5 Me Rev. Stat. §§ 4553(4) & 4573-A; 49-B Md. Code § 18; 1 51B Mass. Gen. Laws § 4; Minn. Stat. § 363A.20; Nev. Rev. Stat. § 613.320 & 613.350; N.J. Stat § 10:5-12; N.H. Rev. Stat. § 354A:7; N.M. Stat. § 28-1-9(B); N.Y. Exec. Law 296(11); Or. Rev. Stat. § 659A.006; R.I. Gen. Laws § 28-5-6(7)(ii); 21 Vt. Stat. § 495; W ash. Code § 49.60.040(3); Wis. Stat. § 111.337.

[4] See, e.g., *Gunn v. Mariners Church*, 2005 WL 1253953, at \*2 (Cal. App. 4 Dist. 2005); *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-10 (1976); *Maryland & Va. Churches of God v. Church at Sharpsburg*, 396 U.S. 367, 368 (1970); *Gonzales v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929); *Holy Trinity Church v. United States*,

143 U.S. 457, 472 (1892); *Bryce v. Episcopal Church in the Diocese of Colorado*, 121 F.Supp. 1327, 1328 (D.Col. 2000).

[5] *Spencer v. World Vision, Inc.*, 633 F.3d 723, 727 (9th Cir. Wash. 2011) (citing *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n*, 503 F.3d 217, 226 (3d Cir. Pa. 2007) (citing *Samford v. Killinger*, 113 F.3d 196 (11th Cir. 1997); *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458 (9th Cir. 1993); *Townley*, 859 F.2d at 618-19; *EEOC v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980).

[6] See *Fiedler v. Marumsc Christian Sch.*, 631 F.2d 1144, 1152 (4th Cir. Va. 1980).

[7] *Connor v. Archdiocese of Phila.*, 601 Pa. 577, 588-591 (Pa. 2009) (quoting *Watson v. Jones*, 80 U.S. 679, 728-29 (1871)).

[8] See *id.*

[9] *Id.*

[10] See *Lemon v. Kurtzman*, 403 U.S. 602, 617 (1971).

[11] *HEB Ministries, Inc. v. Tex. Higher Educ. Coordinating Bd.*, 235 S.W.3d 627, 644, 800 (Tex. 2007); see *Hurley v. Irish-American Gay*, 515 U.S. 557 (1995)

[12] See also *Serbian Eastern Orthodox Diocese*, 426 U.S. at 696 (church has interest in effecting binding resolution of internal governance disputes); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952) (state statute purporting to transfer administrative control from one church authority to another violates Free Exercise Clause); *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 341-342 (1987).

[13] *Watson*, 13 U.S. at 679.

[14] *Gaston v. Diocese of Allentown*, 712 A.2d 757, 761 (Pa. Super. Ct. 1998).

[15] *Id.*

[16] See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 383-386 (1978); *Moore v. East Cleveland*, 431 U.S. 494, 503-504 (1977) (plurality opinion); see also *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 482-485 (1965); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (U.S. 1925); *Poe v. Ullman*, 367 U.S. 497, 542-545 (1961) (Harlan, J., dissenting); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-462 (1958).

[17] *Roberts v. United States Jaycees*, 468 U.S. 609, 621 (1984).

[18] *World Vision, Inc.*, 633 F.3d at 727; *Kamehameha Schools/Bishop Estate*, 990 F.2d at 458; *Townley*, 859 F.2d at 618-19; *Mississippi College*, 626 F.2d at 477.

[19] NLRB, 440 U.S. at 506.

[20] See, e.g., "LGBT-Sexual Orientation," psychiatry.org, available at [www.psychiatry.org/lgbt-sexual-orientation/](http://www.psychiatry.org/lgbt-sexual-orientation/) ("All major professional mental health organizations have gone on record to affirm that homosexuality is not a mental disorder. In 1973 the American Psychiatric Association's Board of Trustees removed homosexuality from its official diagnostic manual, The Diagnostic and Statistical Manual of Mental Disorders, Second Edition (DSM II)."); "American Psychological Association Reiterates Support for Same-Sex Marriage," apa.org, available at <http://apa.org/news/press/releases/2010/08/support-same-sex-marriage.aspx>; "AMA Policies on LGBT Issues," ama-assn.org, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-advocacy-committee/ama-policy-regarding-sexual-orientation/> ("Our American Medical Association: (1) recognizes that denying civil marriage based on sexual orientation is discriminatory and imposes harmful stigma on gay and lesbian individuals and couples and their families.").

[21] National Center for Lesbian Rights, "48 States Allow Gay Conversion 'Therapy' For Minors," available at <http://big.assets.huffingtonpost.com/ReparativeTherapy.png>

[22] National Center for Lesbian rights, "Protecting LGBT Youth From Conversion Therapy," available at <http://www.nclrights.org/bornperfect-laws-legislation-by-state/>; 2015 Bill Text OR H.B. 2307.

## APPENDIX B: DRAFTING SCHOOL EMPLOYMENT AND ADMINISTRATIVE POLICIES

### I. LEGAL EMPLOYMENT CONCERNS

Your school may not safely assume that visitors, volunteers, employees, or even students share its sincerely held religious beliefs on the contentious issues of marriage, sexuality, and gender identity. Though still a minority population, more and more self-identified Christians believe that (1) same-sex marriage is morally equivalent to man-woman marriage, and (2) gender is a malleable social construct, subject to individualized definition and practice.[1] For example, a salaried social worker filed a wrongful termination lawsuit against the Catholic Diocese of Kansas City after she was fired for publicly announcing her same-sex marriage to a female Lutheran Minister - notwithstanding the Roman Catholic Church's longstanding and well-publicized opposition to same-sex marriage. At the time of her employment application, the social worker advised that she was a single mother of two sons. She subsequently traveled to Iowa to obtain a same-sex marriage license.[2]

Similarly, Azusa Pacific University ("APU"), an evangelical Christian college, ratified and published its sincere religious belief that "humans were treated as gendered beings." Pursuant to this written statement of faith, APU terminated the employment contract of Professor Heather Clements after she transitioned to a "transgender man." Surprisingly, Professor Clements argued that she was fully compliant with APU policy because she admittedly "was assigned the female gender at birth, "but could find no written APU policy prohibiting gender change.[3]

As more Americans assimilate to sexually revolutionized definitions of marriage and family, faith-based organizations need to become much more explicit in the presuppositions that underlie their Statements of Faith and belief. And as can be seen, particularly in the Catholic Diocese of Kansas City and APU examples, even professing Christians

are - whether feigned or sincere - complaining that sexual standards that lack specificity are unfair and potentially illegal.

Because “religious organizations” are exempt from certain anti-discrimination laws under the First Amendment, Title VII, RFRA, RLUIPA, Charitable Choice regulations, the “ministerial exception” summarized in *Hosanna-Tabor*,[4] and SOGI (Sexual Orientation & Gender Identity) exemptions,[5] the school should expressly state the religious mission of every ministry/program and employee – using supporting scriptures, doctrines, and Statements of Faith.

### **A. Ministerial Protections**

In addition to clearly stating its religious viewpoints on controversial subject matters (see Statements of Faith), your school’s employment practices may be further secured by ensuring that its employees fit within the “ministerial exception” to governmental regulation.

Four recent cases confirm that religious organizations such as your school should expressly state the religious mission of every ministry/program and employee: (1) *Spencer v. World Vision*, 619 F.3d 1109 (9th Cir. 2010); (2) *Hosanna-Tabor Evangelical Lutheran Church School v. EEOC*, 132 S. Ct. 694 (2012); (3) *Conlon v. InterVarsity Christian Fellowship*, No. 14-1549, 2015 U.S. App. LEXIS 1871, (6th Cir. February 5, 2015); and, (4) *EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. Unit A 1981).

In *Spencer*, the United States Court of Appeals for the Ninth Circuit ruled that the non-profit ministry, World Vision, is a “religious organization” and therefore exempt from Title VII of the Civil Rights Act of 1964, which bars religious discrimination in hiring. Important here, the Ninth Circuit held that the Free Exercise Clause protects faith-based ministries that are “less pervasively religious than churches . . . [and] are organized for a religious purpose and have sincerely held religious tenets, but are not houses of worship.”[6]

In *Hosanna-Tabor*, the United States Supreme Court held religious organizations are free to hire or terminate their “ministers” without being subject to Title VII anti-discrimination laws. Important here, Justices Alito and Kagan noted that the “ministerial exception” should apply to “any employee who leads a religious organization . . . or serves as a messenger or teacher of its faith.” The Court did not adopt a “rigid formula for deciding when an employee qualifies as a minister,” but did identify several factors: (1) religious training and credentialing, (2) formal title, (3) substance of title, (4) employee’s use of title, and (5) important religious functions performed.[7]

In *Conlon*, which was decided on February 5, 2015, the United States Court of Appeals for the Sixth Circuit held that an InterVarsity employee who served as a “spiritual formation specialist” and “spiritual director” qualified as a “minister.” Examining her formal title, the Sixth Circuit explained, “courts need only determine whether the wording of the title conveys a religious – as opposed to secular – meaning. The word ‘spiritual’ is such an identifying term.” Examining the religious functions performed, the Sixth Circuit looked to the employee’s job description: “to cultivate intimacy with God and growth in Christ-like character through personal and corporate spiritual disciplines.” [8] Finally, the Sixth Circuit held that the “ministerial exception” applied when at least two *Hosanna-Tabor* factors are present: (1) formal title, and (2) religious function.[9]

Finally, in *EEOC v. Southwestern Baptist Theological Seminary*,[10] the United States Court of Appeals for the Fifth Circuit looked at the following factors in determining whether seminary faculty members are “ministers:” (1) whether employment decisions are made largely on religious criteria; (2) whether the faculty are ordained; (3) whether the faculty are expected to teach by example as well as by other means; and (4) whether the faculty model the ministerial role for the students. While *Hosanna-Tabor* indicates that the ministerial exception applies

much more broadly than these points would indicate, they are good factors to look at in writing position descriptions.

Employment decisions with respect to employees who are "ministerial" are outside the scope of government regulation - a very strong protection for the religious employer. As Justices Kagan and Alito noted in *Hosanna-Tabor*, the ministerial exception does not apply merely to persons that are traditionally thought of as "ministers."

This definition potentially covers most if not all your school employees. The Supreme Court has noted "nearly everything that goes on in the schools affects teachers and is therefore arguably a condition of employment."<sup>[11]</sup> With that said, it would benefit your school to establish clear employment documentation for each of these factors:

1. Religious training and credentialing requirements for employment positions (see "Formal Training, Eligibility, and Ordination Requirements" below);
2. Formal religious titles that convey a religious – as opposed to secular – meaning (e.g., "pastor," "reverend," "priest," "bishop," "spiritual," "religious," or divine");<sup>[12]</sup>
3. The substance reflected in that title;
4. Employee's own use of that title; and,
5. The important religious function employee performs for the school, as distinct from non-employee, non-volunteer members of the school.

To expand, each employee's job description and responsibilities should be drafted to emphasize the religious nature of the employee's role as a messenger or teacher of its faith. For leadership positions, this role is easily established. But other job descriptions – counselor, manager, receptionist – may also outline how the employee is called to represent Christ and the beliefs of your school to the larger community.

Your school may state that the employee will “have a duty to assist others to cultivate intimacy with God and growth in Christ-like character through personal and corporate spiritual disciplines” or “interact with community as an ambassador of the faith.”[13] Duties should reflect the employee’s “role in conveying your school’s message and carrying out its mission and leading others toward Christian maturity,” as well as “teaching faithfully the Word of God, the Sacred Scriptures, in its truth and purity as set forth in all the Holy Scripture.”[14]

Further, define “skills of ministry” and “ministerial responsibilities” as it pertains to the religious function the employee will be performing.[15] This can be accomplished by emphasizing that employees will be “using the unique gifts and [t]alents God has given [them] to help children and families.”[16] For example, state the responsibility of the employee in regards to “biblical interpretation, church doctrine, and the ministry of religious [teaching/role].”[17] Explain whether the employee performs important religious functions for your school, conveys the school’s message and carries out its mission, teaches religion, leads students and faculty in prayer, attends or takes students to chapel service, leads service, leads students in devotional exercises, or delivers messages and verses from the Bible.[18] Include that the employee is “tasked with performing [office] according to the Word of God and Biblical standards as drawn from the Holy Scripture.”[19] Review skills and responsibilities periodically to provide “continuing education as a professional person in the ministry of the Gospel.”[20]

## **B. Employment and Volunteer Policies**

In light of the language in *Spencer*, *Hosanna-Tabor*, and *Conlon*, your school should expressly state the “ministerial” title, substance, and religious function of every volunteer, staff member, administrator, officer, board member and employee – using supporting scriptures, doctrines, and Statements of Faith, where possible.

Explain that your school's mission includes instruction, supervising, and providing a moral example for students and non-students alike, particularly as its staff and volunteers convey your school's religious message and carries out its mission.[21] State that “[**Educational Institution**] and its students draw much of their emotional enrichment from close ties with others.”[22] Therefore, all volunteers, staff members, and leadership play a critical role in the culture and traditions of your school by cultivating and transmitting shared ideals and beliefs, thereby fostering a religious environment that propagates your school's beliefs by joining in a common religious endeavor.[23]

It is imperative that your school delineate how it “places its faith in the hands of its ministers, administrators, board members, employees, and volunteers. For this reason your school exercises complete control over the selection of those who will personify its beliefs.”[24] Your school effectively shapes its own faith and mission through said appointments.[25]

Go on to specify the necessity to exclusively employ or associate with Christians “who demonstrate a commitment to Christian living, are endowed with and espouse a Christian philosophy of life, and belief in the Christian Church and her teachings”[26] in accordance with your school's stated policies and beliefs. Your school may state, “Christian character, as well as professional ability, is the basis for hiring teachers at your school. Each teacher at your school is expected in all actions to be a Christian example for the students.”[27] Characterize employees and volunteers as possessing the “obligation to be a visible witness to the organization's philosophy and principles.”[28]

Additionally, cite to and incorporate all your school written organizational policies, governing documents, handbooks, or procedures, including things like employment policies, Standards of Morals and Conduct, discipline, Statements

of Faith, religious beliefs, Purpose Statement, Mission Statement, polity, and internal dispute resolution policy (the “Written Statements of Faith”), by reference in employment and volunteer policies. In this manner, emphasize that your school “remains committed to living out its faith through its work, because we demonstrate our faith through life, deed, word, and sign; our Christian witness is integrated into and communicated through all that we do.”[29]

### **Formal Training, Eligibility, and Ordination Requirements**

Employee and Volunteer training and ordination requirements should be definitively articulated. Your school’s Staff Manual should incorporate the formal employee and non-employee volunteer eligibility requirements, from its Written Statements of Faith by reference. As the United States Supreme Court has observed, training for religious professions and training for secular professions are not fungible.[30] Training someone to lead a congregation is an essentially religious endeavor.[31] Further, the Supreme Court has held that “[Parochial] schools involve substantial religious activity and purpose...The substantial religious character of these church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid.”[32] Therefore, your school should set forth the interdependence its employment requisites and religious mission have. State that employment is akin to a religious calling.[33]

For instance, include as a condition of employment or volunteering, “the knowledge of and respect for the Christian faith. Commitment to abide by the tenets of the Christian Church, to exhibit a commitment to the ideals of Christian living, and to be supportive of the Christian faith.”[34] Also, state your school’s intent to “employ only persons whose beliefs and conduct are consistent with the your school’s religious precepts[35] and who agree to accept and adhere to its Written Statements of Faith.”[36]

Expound upon the eligibility or standards to becoming involved in the school, including formal spiritual training, endorsement from a religious leader, academic transcripts, letters of recommendation, personal statement, written answers to various ministry-related questions, passing oral examination by a faculty committee, membership in a church, and requirement to have or receive religious instruction or training. Your school should require potential employee and volunteer applicants to submit personal statements describing their relationship with Jesus Christ.[37]

Your school's Staff Manual should incorporate, explicitly or by reference, a Standard of Morals and Conduct. All of your school's Employment and Volunteer Applications should be revised to incorporate the same language pertaining to formal employment and volunteer eligibility requirements and Standards of Morals and Conduct. Emphasize that at all times and locations, employees and volunteers are expected to conduct themselves in a manner consistent with your school principles. Specify that your school requires "faithful practice," extending to standards of conduct, moral requirements, and marriage and sexuality. Delineate clear standards of conduct regarding sexual morality, identity and orientation, and other non-sexual behaviors (e.g., cheating, stealing, lying, etc.). In addition, incorporate your school's Statements of Faith by reference.

Your school should also outline employment and volunteer "disqualifiers," including but not limited to conduct or views that offend the precepts of the faith.[38] Your school is guaranteed freedom and protection of its private right to refuse to foster, repeat, advertise, or disseminate views, messages, or statements divergent from its own.[39] Therefore, explicitly reserve the "right to reject **[employees/ volunteers]** whose opinions conflict with your school's declared mission and beliefs, as **[Educational Institution]** maintains its autonomy to choose the content of its own message." [40]

If your school intends to exclude anyone from an opportunity based on religion or sex, this criteria should be clearly defined in employment descriptions.

### **Internal Dispute Resolution, Dismissal and Removal**

In order to further insulate your school from liability pertaining to employment determinations, your school should clearly identify requirements and procedures for internal dispute resolution, dismissal, and removal. “[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.”[41]

Not only does your school have the right to control the selection of those who will personify its beliefs, it also has a right to shape its own faith and mission through its appointments.[42] Therefore, your school should establish specific disciplinary and removal procedures for employees and volunteers, grounded in scripture, and apply these procedures consistently. Timing, means, and school involvement should be established. Further, it is your school’s prerogative to include policies relating to grace and reconciliation, including express procedures for employee and volunteer repentance, where applicable. The latter is particularly important in a post-Christian society: your school must have written procedures explaining why a repentant employee receives leniency while an unrepentant employee is immediately terminated.

Your school should identify any controversial issues deemed terminable for employees and volunteers. Simply put, your school must define what it intends to defend. If your school intends to discipline, terminate, or refuse employment based on an issue, its written policies must expressly state a sincerely held religious belief on that issue. Explain further why an employee or volunteer is not allowed to counter-witness on said issue, particularly because it will damage the testimony and mission of the school. Your school should define behavior that it will deem to qualify as counter-witnessing, heresy, or apostasy.

Finally, define cause for employment termination to include “failure to perform in accordance with the terms and conditions of this contract as stated herein and in your school Written Statements of Faith, which are incorporated herein by reference as if fully set forth herein.”[43] Identify “the support of activities which espouse beliefs contrary to [Educational Institution] teaching and Statements of Faith” as sufficient cause for termination.[44]

In regards to termination, your school officials should state its policies as well as reasons for terminating employees in ostensibly ecclesiastical terms.[45] Language should indicate termination due to an employee or volunteer’s “refusal to foster, repeat, advertise, or disseminate views, messages, or statements” in accordance with your school’s own.[46] Finally, employees and volunteers should understand the requirements and procedures for termination and voluntary withdrawal, as previously discussed.

### **Employment and Volunteer Contract Forms**

Your school should implement a signed Employment Contract Form and Volunteer Contract Form, binding your school employees, staff, administrators, board members and non-employee volunteers to organizational Written Statements of Faith.

In order to prevent counter-witnessing, your school should revise the Employment and Volunteer Contract Forms to include language stating that counter-witnessing employees immediately forfeit their privileges at your school. Incorporate your school's definition of heresy, apostasy, or counter-witness as well as a provision explaining why the employee or volunteer may be terminated for any conduct that contradicts your school's stated beliefs. It is necessary to distinguish between what your school will consider to be informative or open discussions or debate and counter-witnessing.

In summary, the Employment Contract Form and Volunteer Contract Form should incorporate the following elements:

- Formal employment/volunteer eligibility requirements;

- Bind your school employees and non-employee volunteers to Standards of Morals and Conduct;

- Bind your school employees and non-employee volunteers to Scripture and Canonicity;

- Bind your school employees and non-employee volunteers to Statements of Faith and Doctrine;

- Bind your school employees and non-employee volunteers to Discipline, Mediation, and Termination;

- Bind your school employees and non-employee volunteers to Property and Facility Use Policy;

- Your school's religious motivation for implementing the Employment and Volunteer Contract Forms;

- A statement informing the applicant that employment or volunteering "is contingent upon agreement and compliance with your school's Written Statements of Faith, which are incorporated herein by reference as if fully set forth herein."

- An acknowledgment that the applicant has received, read, and discussed these documents, as well as subscribes wholeheartedly to the principles inherent therein:

*“I have received, reviewed, and agree to adhere to all of [Educational Institution]’s policies, including the Written Statements of Faith. I have read and fully understand [Educational Institution]’s policies and subscribe, wholeheartedly, to the principles inherent therein. Further, I agree to adhere to all guidelines, requirements, restrictions and other provisions set forth herein.[47] I will work diligently to maintain and strengthen the school and its students and will reflect the values of the School in word and example.[48]”*

### **Counter-witnessing Clause:**

*“We, [Educational Institution], affirm that we are a ministry of the Christian church, and as such strive to present our doctrine in its fullness. We further affirm that we hold, believe and practice all that the Christian church teaches, believes and proclaims to be true, as set forth in our Written Statements of Faith, whether from the natural moral law or revelation from God through Scripture and traditional teachings of the Christian church. When [employees/volunteers] of [Educational Institution] endorse views contrary to these teachings, such counter witnessing creates a toxic confusion about our fundamental values among both employees and society at large. [Educational Institution] requires all [employees/volunteers] to conduct themselves in a manner that is compatible with the Statements of Faith and mission of [Educational Institution].*

*We, [Educational Institution], acknowledge that some of our administrators, staff, volunteers, and employees may struggle to achieve fidelity to some of our teachings, but we are all nevertheless called and required to stand as effective and visible professional participants and proponents of [Educational Institution]. As effective professionals in our ministry setting, all [employees/volunteers] are required and expected to avoid fostering confusion among the faithful and any dilution of our Christian mission and Statements of Faith. Therefore, administrators, staff, employees and volunteers are expected*

*to arrange and conduct their lives so as not to visibly contradict, undermine, or deny these truths. To that end, further, we all must refrain from public support of any cause or issue that is explicitly or implicitly contrary to that which [Educational Institution] holds to be true, as set forth in our Written Statements of Faith. Those [employees/volunteers] who consider themselves to be Christians but who are not in a state of full assent to the beliefs of [Educational Institution], moreover, must refrain from participation in activities that support or advocate issues or causes contrary to the beliefs of [Educational Institution].*

*We, [Educational Institution], acknowledge that all administrators, staff, employees and volunteers who engage in this ministry have a higher calling, according to which they must not only avoid public contradiction of their status as professional agents in the mission of [Educational Institution], but are also called to conform their hearts, minds and consciences, as well as their public and private behavior, ever more closely to the truths taught by [Educational Institution]. Recognizing as we do that no person can give perfect witness to these truths, [Educational Institution] professionals are nevertheless called to strive for assent and fidelity.”[49]*

#### **Counter-witnessing Acknowledgement and Automatic Termination Clause:**

*“I recognize the religious nature of [Educational Institution] and agree that [Educational Institution] has the right to dismiss me for public immorality, scandal, or rejection of the official teachings, doctrine or policies of [Educational Institution], thereby terminating any and all rights that I may have hereunder, subject, however, to the personal due process rights promulgated by [Educational Institution]. [50] I understand that I automatically forfeit all [employee/volunteer] privileges for any conduct or avocation of conduct that stands in contradiction to [Educational Institution]'s stated beliefs, policies, and mission as set forth herein. [51] I understand that*

*such beliefs or practices would make me unfit to advance [Educational Institution]'s mission[52] as it would impede and burden the integrity and religious mission of [Educational Institution]. I submit to the Designated Authority of [Educational Institution] to resolve any disputes relating to [employee/volunteer] policies and practices.”[53]*

*“This contract may be automatically terminated prior to its expiration, or not renewed, for reasons relating to improprieties regarding [Educational Institution] teachings or laws, unsatisfactory performance, inattention to duties, incompetency, irregular attendance, insubordination, failure to follow school policies and procedures, or for any other justifiable reason, provided that, if the contract is terminated or not renewed, the [employee/volunteer] shall have, as the sole means of recourse, an opportunity to be heard in accordance with appropriate [Designated Authority]. An [employee/volunteer] will not be discharged on account of disability if able to perform, with or without reasonable accommodations, the essential functions of the position. Acknowledging and accepting the religious and moral nature of [Educational Institution]'s purpose and mission, the undersigned agrees to conduct herself or himself at all times, professionally and personally, in accordance with [Educational Institution]'s teaching authority, law and internal governance. Charges of immoral behavior, or of conduct violative of the Statements of Faith or Standards of Moral Conduct or other written policies incorporated herein shall ultimately be resolved exclusively by \_\_\_\_\_ [Designated Authority], or his/her designee, as provided in the [Educational Institution] Bylaws/Constitution.”[54]*

Finally, renew these Contracts annually by resubmitting them to all employees and volunteers for signature. This will effectively ensure compliance with as well as notice of your school's policies.

[1] FreedomtoMarry, Inc., "PollingTracksGrowingandIncreasinglyDiverseSupportfortheFreedomtoMarry," available at [www.freedomtomarry.org/resources/entry/marriage-polling](http://www.freedomtomarry.org/resources/entry/marriage-polling).

[2] Michael Gryboski, The Christian Post, "Lesbian Files Suit Against Missouri Catholic Diocese, Says She Was Fired for Marrying a Woman," available at [www.christianpost.com/news/lesbian-files-suit-against-missouri-catholic-diocese-says-she-was-fired-for-marrying-a-woman-1236881](http://www.christianpost.com/news/lesbian-files-suit-against-missouri-catholic-diocese-says-she-was-fired-for-marrying-a-woman-1236881).

[3] Sarah Pulliam Bailey, Religion News Service, "H. Adam Ackley, Transgender Theology Professor, Asked to Leave California's Azusa Pacific University," available at [www.religionnews.com/2013/10/9/20/transgender-theology-professor-asked-leave-california-christian-college-coming](http://www.religionnews.com/2013/10/9/20/transgender-theology-professor-asked-leave-california-christian-college-coming)

[4] U.S. CONST., amend I; 42 U.S.C. §§ 2000e, et seq.; 42 U.S.C. § 2000bb, et seq.; 42 U.S.C. §§ 2000cc, et seq.; 42 U.S.C. §§ 9858, et seq., Executive Order 13279, 67 F.R. 77141; *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 702-16 (2012); compare *Spencer v. World Vision, Inc.*, 619 F.3d 1109, 1117-118 (9th Cir. 2010), *EEOC v. Catholic Univ. of Am.*, 856 F. Supp. 1, 11 (D.D.C. 1994), *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 501-02 (1979), *McClure v. Salvation Army*, 460 F.2d 553, 558-61 (5th Cir. 1972), *Combs v. Central Texas Annual Conference of the United Methodist Church*, 173 F.3d 343, 347-51 (5th Cir. 1999), with *EEOC v. Townley Engineering & Manufacturing Co.*, 859 F.2d 610, 617-22 (9th Cir. 1988), *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458, 459 (9th Cir. 1993).

[5] See, e.g., Cal. Gov't Code § 12926(d); Col. Rev. St. § 24-34-401; Conn. Gen. Stat. § 46a-81p; D.C. Code § 2-1401.03; Hi. Rev. Stat. § 378-3(5); 775 Ill. Comp. Stat. 5/2-101(B)(2); Iowa Code § 216.6(6)(d); 5 Me Rev. Stat. §§ 4553(4) & 4573-A; 49-B Md. Code § 18; 151B Mass. Gen. Laws § 4; Minn. Stat. § 363A.20; Nev. Rev. Stat. § 613.320 & 613.350; N.J. Stat § 10:5-12; N.H. Rev. Stat. § 354A:7; N.M. Stat. § 28-1-9(B); N.Y. Exec. Law 296(11); Or. Rev. Stat. § 659A.006; R.I. Gen. Laws § 28-5-6(7)(ii); 21 Vt. Stat. § 495; Wash. Code § 49.60.040(3); Wis. Stat. § 111.337.

[6] *World Vision*, 619 F.3d at 1114-15 (internal marks omitted).

[7] *Hosanna-Tabor*, 132 S. Ct. at 707-16 (internal marks omitted).

[8] *Conlon v. Intervarsity Christian Fellowship/USA*, 2015 U.S. App. LEXIS 1871, 10-11 (6th Cir. 2015) (internal marks omitted).

[9] *Id.*

[10] *EEOC v. Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. Unit A 1981); see also *Klouda v. Southwestern Baptist Theological Seminary*, 543 F. Supp. 2d 594 (N.D. Tex. Mar. 19, 2008).

[11] See *NLRB*, 440 U.S. at 503.

[12] See *id.* at 11-12.

[13] *Id.* at 13.

[14] See *Hosanna-Tabor*, 132 S. Ct. at 708.

[15] *Id.* at 707.

[16] *World Vision, Inc.*, 633 F.3d at 735.

[17] *Hosanna-Tabor*, 132 S. Ct. at 707.

[18] See *Id.*; see *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 622 (6th Cir. 2000).

[19] See *Hosanna-Tabor*, 132 S. Ct. at 707.

[20] *Id.*

[21] See *Hosanna-Tabor*, 132 S. Ct. at 708; see *Boyd v. Harding Acad.*, 88 F.3d 410, 411 (6th Cir. 1996).

[22] See *Roberts v. United States Jaycees*, 468 U.S. 609, 621 (1984).

[23] See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 383-386 (1978); *Moore v. East Cleveland*, 431 U.S. 494, 503-504 (1977) (plurality opinion); see also *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 482-485 (1965); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (U.S. 1925);

*Poe v. Ullman*, 367 U.S. 497, 542-545 (1961) (Harlan, J., dissenting);  
*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-462 (1958).

[24] See *Hosanna-Tabor*, 132 S. Ct. at 706.

[25] See *id.*

[26] See *Herx v. Diocese of Fort Wayne-South Bend Inc.*, 2014 U.S. Dist. LEXIS 122456, 5 (N.D. Ind. Sept. 3, 2014).

[27] See *Boyd*, 88 F.3d at 411.

[28] See *Geary v. Visitation of the Blessed Virgin Mary Parish Sch.*, 7 F.3d 324, 331 (3d Cir. 1993).

[29] See *World Vision*, 619 F.3d at 736.

[30] *Locke v. Davey*, 540 U.S. 712, 721 (2004).

[31] *Id.*

[32] NLRB, 440 U.S. at 501.

[33] See *id.*

[34] See *Herx*, 2014 U.S. Dist. LEXIS at 5.

[35] See *id.*

[36] See *World Vision*, 619 F.3d at 736.

[37] See *id.* at 1111.

[38] See *Hurley v. Irish-American Gay*, 515 U.S. 557, 581 (1995).

[39] See *id.*

[40] See *id.* at 557.

[41] See *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 724-25 (1976).

[42] See *Hosanna-Tabor*, 132 S. Ct. at 706.

[43] See *Little v. Wuerl*, 929 F.2d 944, 945-46 (3d Cir. 1991).

[44] See *id.*

[45] See *Serbian*, 426 U.S. at 724-25; *Brazauskas v. Fort Wayne-S. Bend Diocese, Inc.*, 714 N.E.2d 253, 262 (Ind. Ct. App. 1999); *Black v. Snyder*, 471 N.W.2d 715, 719-21 (Minn. Ct. App. 1991).

[46] See *Hurley*, 515 U.S. at 581; *State ex rel. Gaydos v. Blaeuer*, 81 S.W.3d 186, 195 (Mo. Ct. App. 2002); *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F. Supp. 2d 732, 741 (D. N.J. 1999); *Yaggie v. Ind. Ky. Synod Lutheran Church*, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994), *aff'd* 64 F.3d 664 (5th Cir. 1995); *Schoenhals v. Mains*, 504 N.W.2d 233, 236 (Minn. Ct. App. 1993); *Farley v. Wis. Evangelical Lutheran Synod*, 821 F. Supp. 1286, 1290 (D. Minn. 1993).

[47] See *World Vision*, 619 F.3d at 736.

[48] See *Cline v. Catholic Diocese*, 206 F.3d 651, 658 (6th Cir. 1999).

[49] See Catholic San Francisco Online Edition, "Archdiocese Releases Statement on Church Teaching, Practice in High Schools," available at [http://catholicWsf.org/printer\\_friendly.php?id=63175](http://catholicWsf.org/printer_friendly.php?id=63175).

[50] See *Little*, 929 F.2d at 945-46.

[51] See *Herx v. Diocese of Fort Wayne-South Bend Inc.*, 2014 U.S. Dist. LEXIS 122456, 5 (N.D. Ind. Sept. 3, 2014).

[52] See *Little*, 929 F.2d at 949.

[53] See *Herx*, 2014 U.S. Dist. LEXIS at 5.

[54] See *id.*

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