



LIBERTY INSTITUTE[®]

RELIGIOUS LIBERTY PROTECTION KIT

—for—

MINISTRIES

GUARD YOUR MINISTRY
FROM LEGAL ATTACK

FIRST



LIBERTY



Dear Ministry Leader,

Thank you for your desire to protect **your ministry'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, reading "Kelly Shackelford". The signature is fluid and cursive, with a large, stylized "K" and a prominent "S" at the end.

Kelly Shackelford, Esq.
President, CEO & Chief Counsel

LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR MINISTRIES

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The Liberty Institute® *Religious Liberty Protection Kit for Ministries* provides general guidance in aiding your ministry 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 religious institution's policies and documents are unique, First Liberty 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's attorneys may be contacted by going to 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 MINISTRY NEEDS LEGAL PROTECTION

In a world where hostility toward religion is on the rise, **it's not a matter of if, but when**, faith-based organizations 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 kit, to churches, ministries and other faith-based organizations.

We want to help protect churches, ministries and other faith-based organizations 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 churches, ministries and other faith-based organizations. **We created Religious Liberty Templates and Guides** for churches, and other faith-based ministries to use as a resource in drafting bylaws, articles of incorporation, employment manuals, discipline policies, and other corporate documents to assist them in minimizing 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 organizations 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 MINISTRY

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
- Organizational 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 ministry.** 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 MINISTRY

For an online version of these documents go to:
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 — [Organization Name] 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 – [Organization Name]

believes that sexual acts outside marriage are prohibited as sinful. Consequently, [Organization Name] 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 – [Organization Name] believes

that God created mankind in His image: male (man) and female (woman), sexually different but with equal personal dignity. Consequently, [Organization Name] 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 – [Organization Name] 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, [Organization Name] 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 – [Organization Name]

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, [Organization Name] 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 [Organization Name]'s Statement of Faith. (Matthew 11:28-30, Romans 3:23, Ephesians 2:1-10, 1 Corinthians 10:13, Hebrews 2:17-18, Hebrews 4:14-16)

Celibacy — [Organization Name] 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 [Organization Name]. (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 ministry. 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 he 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 organization 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

Psalms 22:9-10

Psalms 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' Statements on Sanctity of Human Life

“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*

MISSION STATEMENT

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

CALLING - We are called, by Holy Scripture and the Holy Spirit, to challenge all people to be fully devoted followers of Christ. Our calling includes both introduction to and encouragement to remain in a life of full devotion to Jesus Christ. (Colossians 3:17) We are charged with encouraging, equipping, serving and sustaining Christians.

We do this by directly instilling our Christian philosophies, values, missions and goals in church members and those whom our ministry serves.[1] Liturgical religious activities (e.g. preaching, worship services, Bible instruction, communion, baptism), as well as non-liturgical religious activities (e.g. mentorship, service opportunities, events, community involvement), all serve as methods that **[Organization Name]** utilizes to instill our religious values and beliefs, both expressly and by example.[2] Guided by Holy Scripture and the Holy Spirit, non-liturgical ministries are grounded in **[list any and all written organizational 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”), of **[Church Name]** and are therefore subject to all of its ministerial, membership, discipline, and excision policies.

COMMUNITY - We believe that our religious activity and religious worship derives meaning in large measure from participation in a larger religious community. For this reason, individual members of our body play a large role in furthering our mission and viewpoint as an organization.[3] We exist to foster a Christ-like environment of persons subscribing to our religious beliefs and faith.[4] **[Organization Name]** is dedicated to serving and providing for its community, not simply engaging in organized worship.[5] (Galatians 6:10)

Associating with like-minded Christians reinforces **[Organization Name]**’s Christian purpose and is vital to our faith’s perpetuation. [6] (2 Corinthians 6:14; 2 John 1:9-11; 1 Corinthians 15:33) We are committed to being and making disciples who understand what it means to follow Jesus Christ into a life of worship, fellowship, sacrifice, service and being led by the Holy Spirit. (Matthew 28:19; Acts 1:8; John 15:16; Mark 16:15) Therefore, we are also called to enable and equip the uncommitted and opposed to be fully devoted followers of Christ. (Colossians 4:5-6; Psalm 96:3) Our mission as 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) Membership in our organization requires a tangible commitment to our beliefs, purposes, and mission as outlined in **[Organization Name]** Membership Policies, teachings, doctrines, Bylaws, Constitution, Articles of Incorporation, Purpose Statement, Facility Use Policy and Statements of Faith of **[Organization Name]** – and are therefore subject to all of its ministerial, membership, discipline, and excision policies, which are incorporated herein by reference, as if fully set forth herein.

EXPRESSION OF FAITH - [Organization Name]

intends to transmit our system of religious beliefs, tradition, Christian morals, reverence, and values. [7] We do so by engaging in the community and individuals' lives, acts of worship, and through all activities in which we participate. [8] Likewise, we believe that all behavior of members and representatives of the organization is communicative in nature, exemplifying and expressing our faith, both publicly and privately. [9] (1 Peter 2:12) Any member or representative who propounds a point of view contrary to our beliefs as stated in our Purpose Statement, Bylaws, Articles of Incorporation, Code of Conduct, and Statements of Faith, which are incorporated herein by reference as if fully set forth herein, will impair [Organization Name]'s integrity and ability to disseminate its religious views and message.[10] (James 4:4; 1 Corinthians 5:11-12)

OUTREACH OF MINISTRIES - We take very seriously the Biblical charge to be a Christian presence in a secular world.[11] (Matthew 5:14-16) Therefore, all activities that [Organization Name] engages in are intended to further its religious purpose, as stated in our Purpose Statement. As such, all of our ministries are considered an outgrowth of the mission of [Organization Name] to preach, teach, evangelize and instill the Gospel message of Jesus Christ.[12]

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

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

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

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

[5] See *Amos*, 483 U.S. at 344 (Brennan, J., concurring).

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

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

[8] See *Boy Scouts of Am.*, 530 U.S. at 655-56.

[9] See *id.* at 648; *Spencer v. World Vision, Inc.*, 633 F.3d 723, 734 (9th Cir. 2011); *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 (1st Cir. 1985).

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

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

[12] See *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 622 (6th Cir. 2000); *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 **[Organization Name]** in a manner consistent with Biblical principles.[2] Every activity and speech that **[Organization Name]** or its employees, representatives, volunteers, or members engage in shall be consistent with, and in furtherance of, **[Organization Name]**'s religious purposes, both publicly and privately.[3]

All activities in which **[Organization Name]** engages are for the religious purpose of furthering its Christian mission, message, and viewpoint. Whether the activity has an overt liturgical religious purpose (preaching, worship, Bible instruction, communion, baptism) or a related non-liturgical religious purpose (social service activities, weddings, primary and secondary schools, or events), all activities of the Organization are intended to glorify God. (Colossians 3:17) **[Organization Name]** conducts all activities in a holistic manner in order to foster, repeat, advertise or express its Christian mission, message and viewpoint.[4] In this way, every organization activity itself is infused with a religious purpose, as an act of worship, intending to further **[Organization Name]**'s religious beliefs and commitment to the faith as outlined in **[list any and all written organizational 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.[5]

Conveying **[Organization Name]**’s Christian message is at the heart of all that we do, in life, deed, word and expression. [6] **[Organization Name]** is dedicated to serving and providing for its community, not simply to engage in organized worship.[7] 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, primary and secondary education, are means of fulfilling Christian duty and providing an example of the Christ-like way of life that **[Organization Name]** seeks to foster.[8] (James 1:27; Mark 16:15; Titus 1:7-9; Matthew 28:19-20) Therefore, all behavior of members, representatives, and volunteers of the organization is communicative in nature, exemplifying the faith. Associating with like-minded Christians reinforces **[Organization Name]**’s Christian purpose and is vital to the faith’s perpetuation. [9] (Hebrews 10:24-25)

Finally, the primary, exclusive, and only purposes for which **[Organization Name]** is organized are religious in nature, including but not limited to conducting missions and services. Likewise **[Organization Name]** 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.[10] The recital of these purposes is intended to be exclusive of any and all other purposes, this organization being formed for religious and charitable purposes only.[11]

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

[5] 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).

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

[7] See *Amos*, 483 U.S. at 344 (Brennan, J., concurring)

[8] See *id.*

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

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

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

FACILITY USE POLICY

RELIGIOUS ACTIVITIES

All **[Organization Name]** 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)

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

All activities on the organization's property must cohere with the religious purpose of **[Organization Name]** 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, community service, mentorship, benevolence, charity, schools). **[Organization Name]** conducts all activities in order to advance or express its Christian mission, message and viewpoint. The organization's facility use shall be exclusively conditioned on whether the use promotes **[Organization Name]**'s mission, message and viewpoint, as all facility usage is an

opportunity to glorify God. In addition, the organization's property is exclusively reserved for persons and organizations who agree to abide by **[Organization Name]** [list any and all written organizational 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, **[Organization Name]** 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 **[Organization Name]**’s faith or moral teachings – including but not limited to **[Organization Name]**’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 **[Organization Name]**’s calling to minister to others, in the vein of charity and witnessing to our faith. For this reason, **[Organization Name]** property cannot be used for purposes that contradict the organization’s beliefs, which would constitute a grave violation of the organization’s faith and religious practice, as well as degrade **[Organization Name]**’s religious integrity. (2 Corinthians 6:3; and 14; 1 Thessalonians 5:22)

OWNERSHIP/CONTROL

[Organization Designated Authority] possesses the exclusive power to enforce conformity of belief. In regards to facility usage, **[Organization Name]** 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) Organization property issues or disputes are directly related to religious doctrine and practice, as all facilities are utilized in a manner to advance or express **[Organization Name]**’s Christian mission,

message, and viewpoint. (Colossians 3:17) In the event that organization facility use departs in any way from [Organization Name]’s doctrine, mission, Written Statements of Faith, teaching or policies, [Organization Name]’s designated religious authority shall exclusively resolve any disputes. The [Designated Authority] alone may make inquiry into the religious law and usage of [Organization Name] facilities and is therefore essential to the resolution of the controversy.

FACILITY USAGE FEE RATE

[Organization Name] 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 organization facilities.

GUIDELINES AND REQUIREMENTS

Each individual, group, or organization utilizing [Organization Name] facilities (including equipment and property) is required to abide by all organization guidelines, requirements and use restrictions at all times. Each individual, group, or organization is required to sign [Organization Name]’s Facilities Usage Agreement.

[Organization Name] incorporates by reference its Code of Conduct, as if fully set forth herein.

[Organization Name] 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 organization property.

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

Licensee(s) or Invitee(s) reserving [Organization Name] facilities or property must confine said

usage to pre-approved areas of the organization 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).

[Organization Name] reserves the right to coordinate and schedule alternative activities and events in other organization facilities.

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

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 **[Organization Name]** as an additional insured. Any and all damage occurring to **[Organization Name]** 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 **[Organization Designated Authority]** or their designee.

All who reserve **[Organization Name]** property or facilities for use agree to release, protect, defend, indemnify and hold harmless **[Organization Name]** 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 **[Organization Name]** 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 ministry. This is necessary to accomplish our religious mission, goals and purpose.

Any applicants who wish to utilize **[Organization Name]**'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 organization facilities, in a manner consistent with **[Organization Name]**'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: _____

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 **[Organization Name]**'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 organization 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 organization holds, advances, or advocates beliefs that conflict with the organization'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 [Organization Name] 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 [Organization Name]'s stated beliefs, policies, and mission as set forth herein. I agree to notify [Organization Name] authority immediately upon the knowledge that organization facilities or properties are being utilized in a manner inconsistent with organization policies. I submit to the Designated Authority of [Organization Name] to resolve any disputes relating to organization property or facility use.

Invitee(s)/Licensee Signature(s)

Title

Date

Approved by [Organization Name]:

Signature(s)

Title

Date

For an online version of these documents go to:
FirstLiberty.org/kits

APPENDIX A: DRAFTING MINISTRY BYLAWS AND CONSTITUTION

I. RELIGIOUS AUTHORITY

Societal consensus is evaporating on elemental questions of theology, philosophy, and jurisprudence. In response, your organization should identify the final human authority – person, board, committee – who will promulgate, interpret, and enforce religious policies for your organization. Religious entities should incorporate language on qualifications, quorum rules, officers, executive committees, disqualification, removal and other procedural rules. Further, the organization’s bylaws and/or constitution should include binding religious rules relevant to “internal organization 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 Members
- Discipline of Ministers
- Discipline of Executives
- Property and Facility Usage[4]

If your organization is denominationally affiliated, its most advantageous line of defense

for religious beliefs will be to incorporate already existing denominational doctrinal or theological documents by reference.[5] Typically, denominational doctrine will enhance and thoroughly explain the sincerely held religious beliefs of your organization.

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

In addition, your organization 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/member discipline; (2) formal employment or membership requirements vis-à-vis eligibility, morals, discipline, removal, and rescission; (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 members, congregations, and officers within the general association is unquestioned.[7] Create authority for the decision of controverted questions of faith within your organization.[8] Conclusively state that decisions of the established authority are "binding in all cases of ecclesiastical cognizance, subject only to appeals" as your organization itself provides for. [9]

Lastly, beyond defining the scope of authority over the above-referenced matters, it is important that your organization delineate its religious purpose and motivation in exercising authority over each category, with scriptural references. Emphasize that the "religious authority necessarily pervades" all aspects of your organization governance and operations.[10]

Explain how everything that occurs in your organization affects its ministry and mission and is therefore under its religious authority. Further, express that the religious purpose in exercising said authority is for your organization to practice its religion, foster, repeat, advertise, and disseminate [Organization's] view, message, and statements.[11]

A. Leadership

Your organization 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 organization should revise and amend its **any and all written organizational 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”), 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 on controversial issues like marriage, sexuality, and gender identity, your organization will likely encounter more and more scenarios where it must discipline or remove counter-witnessing persons. Such actions are legally

defensible only if your organization 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 your organization policies

Procedures for Rescission and Voluntary Withdrawal

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

For more information regarding suggested Statement of Faith policies, see our “Statement of Faith” Templates.

For more information regarding suggested policy requirements for Employment and Administration, see our “Drafting Ministry Employment and Administrative Policies.”

II. 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.[14] 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.[15] Similar legislation is pending in Florida.[16] And it is possible that similar legislation may soon be contemplated or pending in other states.

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 organization counselors should: (1) expressly state that all counseling services are based on the written and sincerely held religious beliefs of your organization; (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. In short, the organization must clearly distinguish religious organization from psychiatric, psychological, or medical care.

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 organization’s counseling standards. The objective is two-fold: (1) provide advance notice that your organization counseling is rooted in sincerely held religious teachings, and (2) document the client’s assent to religious counseling. An equivalent disclaimer should be included in each published work of your organization.

[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; 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.

[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. Marumsco 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] See, e.g., “LGBT-Sexual Orientation,” psychiatry.org, *available at* 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-advisory-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.”).

[15] National Center for Lesbian Rights, “48 States Allow Gay Conversion ‘Therapy’ For Minors,” *available at* <http://big.assets.huffingtonpost.com/ReparativeTherapy.png>.

[16] National Center for Lesbian rights, “Protecting LGBT Youth From Conversion Therapy,” *available at* <http://www.nclrights.org/bornperfect-laws-legislation-by-state/>.

APPENDIX B: DRAFTING MINISTRY EMPLOYMENT AND ADMINISTRATIVE POLICIES

I. LEGAL EMPLOYMENT CONCERNS

Your organization may not safely assume that visitors, volunteers, employees, or even members share its sincerely held religious beliefs on the contentious issues of marriage, sexuality, and gender identity. Though still a minority population, an increasing number of 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 sincerely held religious belief that "humans were created 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 like your organization 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 organization should expressly state the religious mission of every ministry and minister – 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 organization’s employment practices may be further secured by ensuring that its employees fit within the “ministerial exception” to governmental regulation.

Three recent cases confirm that religious organizations expressly state the religious mission of every ministry and minister: (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); and (3) *Conlon v. InterVarsity Christian Fellowship*, No. 14-1549, 2015 U.S. App. LEXIS 1871, (6th Cir. February 5, 2015).

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.” 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.[8]

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 organization employees. With that said,

it would benefit your organization 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” or rabbi”);[9]
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 organization, give a distinct role from that of most organization members.

To clarify, 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 organization to the larger community.

Your organization 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.”[10] Duties should reflect the employee’s “role in conveying the **[Organization’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.”[11]

Further, define “skills of ministry” and “ministerial responsibilities” as it pertains to the religious function the employee will be performing.[12] For example, include “biblical

interpretation, church doctrine, and the ministry of religious _____,” or “performs important religious function for ministry” in the employee’s job description if it applies. Include that the employee is “tasked with performing [office] according to the Word of God and Biblical standards as drawn from the Holy Scripture.”[13] Review skills and responsibilities periodically to provide “continuing education as a professional person in the ministry of the Gospel.”[14]

B. Employment and Volunteer Policies

In light of the language in *Spencer, Hosanna-Tabor*, and *Conlon*, your organization 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 organization’s mission includes instruction, supervising, and providing a moral example for members and non-members alike, particularly as its staff and volunteers convey **[Organization’s]** religious message and carries out its mission. State that “[**Organization Name**] and its members draw much of their emotional enrichment from close ties with others.”[15] Therefore, all volunteers, staff members, and leadership play a critical role in the culture and traditions of your organization by cultivating and transmitting shared ideals and beliefs, thereby fostering a religious environment that propagates your organization beliefs by joining in a common religious endeavor.[16]

It is imperative that your organization delineate how it “places its faith in the hands of its ministers, administrators, officers, employees, and volunteers. For this reason your organization exercises complete control over the selection of those who will personify its beliefs.”[17] Your organization effectively shapes its own faith and mission through said appointments.[18]

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”[19] in accordance with your organization's stated policies and beliefs. Characterize employees and volunteers as possessing the “obligation to be a visible witness to the Church’s philosophy and principles.”[20]

Additionally, cite to and incorporate **any and all written organizational 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”), by reference in employment and volunteer policies. In this manner, emphasize that your organization “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.” [21]

Formal Training, Eligibility, and Ordination Requirements

Employee and Volunteer training and ordination requirements should be definitively articulated. Your organization’s Staff Manual should incorporate the formal employee and non-employee volunteer eligibility requirements, from its Bylaws, constitution, and 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.[22] Training someone to lead a congregation is an essentially religious endeavor.[23] Therefore, your organization should set forth the interdependence its employment requisites and religious mission have. State that employment is akin to a religious calling.[24]

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.”[25] Also, state your organization’s intent to “employ only persons whose beliefs and conduct are consistent with your organization’s religious precepts[26] and who agree to accept and adhere to its Written Statements of Faith.”[27]

Expound upon the eligibility or standards to become a minister, 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 an organization, and requirement to have or receive religious instruction or training. Your organization should require potential employee and volunteer applicants to submit personal statements describing their relationship with Jesus Christ.[28]

Your organization’s Staff Manual should incorporate, explicitly or by reference, a Standard of Morals and Conduct. All of your organization’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 organization principles. Specify that your organization requires “faithful practice,” extending to standards of conduct, morals 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 organization's Statement of Faith by reference.

Your organization should also outline employment and volunteer "disqualifiers," including but not limited to conduct or views that offend the precepts of the faith.[29] Your organization 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. [30] Therefore, explicitly reserve the "right to reject [employees or volunteers] whose opinions conflict with [Organization's] declared mission and beliefs, as [Organization] maintains its autonomy to choose the content of its own message." [31] If your organization 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 organization from liability pertaining to employment determinations, your organization 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." [32]

Not only does your organization 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.[33] Therefore, your organization

should establish specific disciplinary and removal procedures for employees and volunteers, grounded in scripture, and apply these procedures consistently. Timing, means, and employee involvement should be established. Further, it is your organization'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 organization must have written procedures explaining why a repentant employee receives leniency while an unrepentant employee is immediately terminated.

Your organization should identify any controversial issues deemed terminable for employees and volunteers. Simply put, your organization must define what it intends to defend. If your organization 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 organization. Your organization 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 organization's Written Statements of Faith, which are incorporated herein by reference as if fully set forth herein." [34] Identify "the support of activities which espouse beliefs contrary to your organization's teaching and Statements of Faith" as sufficient cause for termination. [35]

In regards to termination, your organization's officials should state its policies as well as reasons for terminating employees in ostensibly ecclesiastical terms. [36] 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 organization's own. [37] Finally, employees and volunteers should understand the requirements and procedures for rescission and voluntary withdrawal, as previously discussed.

Employment and Volunteer Contract Forms

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

In order to prevent counter-witnessing, your organization should revise the Employment and Volunteer Contract Forms to include language stating that counter-witnessing employees immediately forfeit their privileges at your organization. Incorporate your organization'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 organization's stated beliefs. It is necessary to distinguish between what your organization 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 organization employees and non-employee volunteers to Standards of Morals and Conduct;

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

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

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

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

Your organization'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 **any and all written organizational 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."

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 [Organization's] policies, including the Written Statements of Faith. I have read and fully understand [Organization's] policies and subscribe, whole-heartedly, to the principles inherent therein. Further, I agree to adhere to all guidelines, requirements, restrictions and other provisions set forth herein. I will work diligently to maintain and strengthen the Organization and its members and will reflect the values of the Organization in word and example. [39]"

Counter-witnessing Clause:

“We, [Organization Name], 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 [Organization Name] endorse views contrary to these teachings, such counter witnessing creates a toxic confusion about our fundamental values among both employees and society at large. [Organization Name] requires all [employees/volunteers] to conduct themselves in a manner that is compatible with the statements of faith and mission of [Organization Name]. We, [Organization Name], 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 [Organization Name]. 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 [Organization Name] 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 [Organization Name], moreover, must refrain from participation in activities that support or advocate issues or causes contrary to the beliefs of [Organization Name]. We, [Organization Name], 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 [Organization Name], 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 [Organization Name]. Recognizing as we do that no person can give perfect witness to these truths, [Organization Name] professionals are nevertheless called to strive for assent and fidelity.[40]”

Counter-witnessing Acknowledgement and Automatic Termination Clause:

“I recognize the religious nature of [Organization Name] and agree that [Organization Name] has the right to dismiss me for public immorality, scandal, or rejection of the official teachings, doctrine or policies of [Organization Name], thereby terminating any and all rights that I may have hereunder, subject, however, to the personal due process rights promulgated by [Organization Name].[41] I understand that I automatically forfeit all [employee/volunteer] privileges for any conduct or avocation of conduct that stands in contradiction to [Organization's] stated beliefs, policies, and mission as set forth herein.[42] I understand that such beliefs or practices would make me unfit to advance [Organization's] mission[43] as it would impede and burden the integrity and religious mission of [Organization Name]. I submit to the Designated Authority of [Organization Name] to resolve any

disputes relating to [employee/volunteer] policies and practices.[44]” “This contract may be automatically terminated prior to its expiration, or not renewed, for reasons relating to improprieties regarding [Organization Name] teachings or laws, unsatisfactory performance, inattention to duties, incompetency, irregular attendance, insubordination, failure to follow church 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 [Organization’s] purpose and mission, the undersigned agrees to conduct herself or himself at all times, professionally and personally, in accordance with [Organization’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 [Organization Name] Bylaws/Constitution.[45]”

[Signature block]

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 organization's policies.

For an online version of these documents go to
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[1] Freedom to Marry, Inc., "Polling Tracks Growing and Increasingly Diverse Support for the Freedom to Marry," *available at* 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.

[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/2013/09/20/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] *See id.* at 11-12.

[10] *Id.* at 13.

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

[12] *Id.* at 707.

[13] *Id.*

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

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

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

[18] See *id.*

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

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

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

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

[23] See *id.*

[24] See *id.*

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

[26] See *id.*

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

[28] See *id.* at 1111.

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

[30] See *id.*

[31] See *id.* at 557.

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

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

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

[35] See *id.*

[36] 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).

[37] See *Hurley*, 515 U.S. at 581; State ex rel. *Gaydos v. Blaeuer*, 81 S.W.3d 186, 195, 2002 Mo. App. LEXIS 1065, 24-25 (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).

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

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

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

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

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

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

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

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

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