

Faith-Based Organizations Guidance for Same-Sex Issues

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Practical Legal Steps for Faith-Based Organizations In Light of Recent Same-Sex Legal Developments

A. Introduction¹

Faith-based organizations face rapidly increasing legal and social pressure to change their beliefs and practices concerning same-sex marriages and lesbian/gay/bisexual/transgender (LGBT) conduct and relationships. In particular, governments, the public, social service beneficiaries and even potential staff and volunteers are ever more sensitive to what is mischaracterized as wrongful discrimination based on sexual orientation and gender identity (SOGI). While convictions about human sexuality are changing in a few Christian denominations and organizations, many Christian faith-based organizations are, and by conviction intend to remain, in line with the historic Christian view about marriage and sexual conduct. This paper is intended to assist nonprofit organizations, under the advice of their own legal counsel, to discern how to maximize your legal defenses for implementation of such convictions.

Christian Legal Society has already provided guidance specific to churches and Christian schools and colleges through webinars, white papers, and FAQs. These materials are found at www.religiouslibertyguidance.org. This white paper focuses on other types of faith-based organizations, for which varied legal protections may apply under federal, state, and local laws. Overall, such faith-based organizations must remain attentive to still-evolving legal developments, promote and protect their religious nature, and learn more about steps that can be taken *now* with respect to their corporate structure, worker practices, and facility usage.

The following guidance begins with summary considerations for faith-based organizations. It then sets forth policy considerations for religious freedom. As additional background, the guidance next summarizes court and legislative developments. The paper concludes with practical steps for implementation. While legal and factual variations preclude any more than general guidance, these materials are intended to help in the following ways: (1) to educate religious nonprofit leaders on pressing legal issues; (2) to suggest trustworthy and practical action for

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¹ Christian Legal Society is indebted to Stanley Carlson-Thies of the Institutional Religious Freedom Alliance (IRFA) for his invaluable contributions to this guidance and for his extensive efforts to promote religious freedom. For additional information on legal trends, religious freedom protections, and actions that faith-based organizations can take, see the just-published book, *Free to Serve: Protecting the Religious Freedom of Faith-Based Organizations* (Brazos Press, 2015), by Stanley Carlson-Thies, founder and senior director of IRFA, and Stephen Monsma.

addressing these issues responsibly; (3) to do all things with integrity and faithfulness to the Good News; and (4) to equip leaders to identify and utilize the legal protections they possess.

B. Summary Guidance

Many Christian organizations can take steps to strengthen their ability to exercise their religious beliefs lawfully while advancing their missions. Laws protecting religious freedom apply more clearly to a ministry which self-identifies as a “religious” organization and which identifies its religious beliefs and associated practices in its corporate documents, staff and volunteer policies, program activities, facility usage, and related ministries. To the extent that an organization can show that it has clear and sincerely held religious beliefs, particularly regarding Biblical sexuality and marriage, it may be exempt from rapidly evolving legal requirements. These ministries need to proceed carefully, quickly, and proactively for optimal legal protection.

Ministry leadership will typically need to address some or all of the following considerations (as more fully developed below):

1. Add religious language to the ministry’s corporate purpose;
2. Consider how the ministry’s assets will be distributed upon dissolution, to better demonstrate its religious nature and otherwise strengthen ministry ties;
3. Upgrade the ministry’s bylaws to include the more religious corporate purpose (per above), statement of faith, Biblical sexuality provision (for both marriage and gender identity), mandatory Christian conflict resolution, identification of the spiritual authority within the organization to determine religious questions, and required agreement with the statement of faith as a condition of board service;
4. Strengthen the ministry’s employment practices through more developed Christian requirements for certain or all employees, accompanying protocols for job applicants, designation of “minister” positions for employees where appropriate, mandatory Christian conciliation procedures, and accompanying modifications in employee documentation;
5. Likewise strengthen the ministry’s volunteer practices through similar measures;
6. Strengthen the ministry’s internal Christian environment through religious activities and programming;
7. Strengthen the ministry’s Christian identity with respect to its external communications;
8. Adopt and consistently follow a facility use policy, which reinforces the ministry’s religious identity;

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9. Reflect religious aspects and other key contract terms in space-sharing agreements involving the ministry, both long-term and short-term;

10. If a ministry is connected with another religious organization such as a church, consider further developing the ministry's bylaws to provide for interlocking governance;

11. Again, if a ministry is connected with another religious organization such as a church, consider making the ministry an integrated auxiliary or internal ministry of the church (although either approach could be problematic in several ways); and

12. Remain attentive to government funding and other donor "strings," as well as opportunities to fall within available religious exemptions (especially through a strengthened religious identity overall and more stringent Christian requirements for certain or all jobs).

C. Current Religious Freedom Challenges and Opportunities

The U.S. Supreme Court's June 2015 *Obergefell* decision that state governments may not exclude same-sex couples from marriage has heightened the contrast between our society's sexual norms and the convictions of many Christian organizations. Yet this divergence is not new: statutes, regulations, and court decisions banning SOGI discrimination have been spreading. Another divergence is even further entrenched: between the practice of Christian service organizations to hire staff based on religious considerations and the uninformed conviction of many that this practice is wrongful discrimination. Significant tension also exists between the practice of many ministries to include religious observance and a spiritual dimension in the job description and the view of critics that overt religious observance is inappropriate in the workplace.

Fortunately, religious freedom is a foundational American principle protected by the Constitution and many laws. The very structure of our democratic system protects both individuals and organizations that have unpopular convictions and practices through cornerstone principles that include not only religious freedom, but also free speech, the freedom of association, and other civil rights. It restrains government and protects private organizations and a thriving marketplace, a diverse and pluralistic civil society, and respect for religion.

The U.S. Supreme Court has held that religious freedom protects not only worship and religious rituals but extends to public acts and services. Further, religious exercise is not only individual but corporate. Religious exercise is not just the domain of churches; it may be practiced by parachurch organizations of various faiths that offer faith-based services to the public and operate because of the convictions of their faith.

In addition, faith-based service organizations have a special set of religious freedom needs and challenges that are related to, but distinct from, the conscience claims of individuals and the religious freedom issues that may arise in business settings. At present, our laws and public sentiment broadly protect the freedom of religious nonprofits to operate in accordance with their religious convictions even though some of these may be out of step with popular attitudes about human sexuality.

However, it is not clear whether or to what extent these religious freedom protections will continue to apply to laws advancing society's sexual norms. Our fast-paced culture is flooded by views spread on social media, blogs, and cable shows. In this heated environment, the services provided by, and the religious freedom needs of, religious nonprofits must be brought to the foreground of the national conversation about religion and discrimination. Otherwise, that conversation will remain monopolized by the tense disputes about the conscience claims of government officials and businesses. Knowledge of the contributions made to society by religious people and organizations is declining and the principle of religious freedom is losing favor with many in society because it is wrongly regarded as a shield for SOGI discrimination.

Religious freedom may enable religious organizations to operate in accordance with their convictions even though the resulting practices differ from the requirements applied to secular organizations. But this is a freedom protected strongly only for organizations that are acknowledged to be religious. This is a time of heightened contrast between the views of human sexuality held by many Christian organizations and the view of human sexuality upheld in the law—and it is the time when Christian ministries must, for legal protection, pay special attention to articulating their religious convictions and to ensuring that their policies and practices are aligned with those convictions. Consider it a paradox: just when religious organizations are under heightened scrutiny because of their unpopular actions they must strengthen their religious identity to protect their freedom to maintain their distinctive practices.

This presents a positive opportunity for Christian organizations to offer an even stronger public witness to the Gospel. When a religious nonprofit aligns its policies and practices with its Christian convictions, this is not just a mission imperative and a legal necessity, but also a Gospel initiative. In other words, the ministry will embody- not just verbalize - its Biblical convictions about service and the Christian life.

D. Recent Court and Legislative Developments

1. *Obergefell*

Before the *Obergefell* decision, a growing number of states already had legislatively changed their definition of marriage to include same-sex couples. In its 2013 *Windsor* decision, the U.S. Supreme Court struck down the federal definition of marriage as between one man and one woman and asserted that the traditional definition was based upon malicious intent or bigotry. Using this rationale, lower federal courts struck down many of the remaining states' traditional definitions. In *Obergefell v. Hodges*, the U.S. Supreme Court narrowly (5-4) decided that it is unconstitutional for any state government to define marriage as existing only between opposite-sex couples.² The *Obergefell* decision declaring same-sex marriage constitutionally mandated across the nation thus completed the process of marriage redefinition in the law.

As Chief Justice John Roberts noted in his *Obergefell* dissent, when a court rather than the legislature redefines marriage, there is a serious consequence for religious freedom. "Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice. [This Court's] decision imposing same-sex marriage cannot, of course, create any such accommodations."³ Yet, though the Court could not create the accommodations, he indicated that accommodations are necessary. Indeed, all of the opinions, majority and dissenting, noted that some people would, for reasons of religion or conscience, not hatred, remain committed to the traditional view of marriage.

This points to an important reality: while *Obergefell*, as a Fourteenth Amendment decision, redefined what governments must count as legal marriages, that action does not of itself dictate what private persons (in distinction from government officials) and private organizations (in distinction from government agencies) must do with respect to same-sex marriages.⁴ Governments—federal, state, and local—must decide how private persons and private organizations are required to treat legal same-sex marriages, and they will decide whether the law can and should protect dissenting religious organizations and persons.

² 135 S. Ct. 2584 (2015).

³ *Id.* at 27.

⁴ Thomas Berg, "Responding to *Obergefell v. Hodges*: The Ruling and Its Implications for Religious Freedom," Cornerstone blog (Religious Freedom Project at the Berkley Center, Georgetown University), July 2, 2015. <http://berkeleycenter.georgetown.edu/cornerstone/obergefell-v-hodges-the-ruling-and-its-implications-for-religious-freedom/responses/protecting-same-sex-families-and-religious-dissenters-after-obergefell>

2. Legal Developments Apart from Same-sex Marriage

Many legislatures, administrative agencies, and courts have also addressed whether and how prohibitions on discrimination based on sexual orientation and gender identity (SOGI) should be expanded in areas of employment, housing, and public accommodations. Here, too, a vital question is whether and how such expanded SOGI nondiscrimination protections should accommodate religious organizations that maintain a traditional moral conviction about LGBT conduct and relationships.

a. Federal Legal Developments

Federal employment law currently does not recognize sexual orientation or gender identity as protected classes. However, the U.S. Equal Employment Opportunity Commission, which is the federal agency charged with enforcing Title VII, recently announced that sexual orientation and gender identity should be recognized as form of sex discrimination prohibited by Title VII.

A bill called the “Equality Act” (H.R. 3185) has been introduced in the current Congress that would add SOGI nondiscrimination requirements to the nation’s civil rights laws with only minimal religious freedom protections. There is no sign that this bill will advance in the foreseeable future, at least in this extreme form. Despite some two decades of effort, the proposed Employment Nondiscrimination Act to add SOGI job protections, has not made it to a president’s desk. However, there have been some administrative actions by the Executive branch prohibiting SOGI discrimination. These include an Executive Order providing SOGI protections in federal employment and federal contracting, a HUD regulation prohibiting SOGI discrimination in federally assisted housing, and a just-released draft regulation that would prohibit SOGI discrimination in HHS-administered health programs.

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With respect to public accommodations, Title II of the Civil Rights Act of 1964 contains discrimination prohibitions. This law makes it illegal to refuse access or services that are generally made available to the public.⁵ The federal law prohibits denial of access and services to establishments open to the public, such as hotels, restaurants, lunch counters, retail facilities, and movie theaters, but only on the basis of race, color, religion, or national origin – *not sex*.⁶

⁵ 42 U.S.C. 2000a.

⁶ However, housing that is assisted by the federal Department of Housing and Urban Development, including by FHA-insured loans, is subject to a regulation that prohibits SOGI discrimination. *See*

b. State and Local Legal Developments

SOGI protection is much more advanced at the state and local level. 22 states and many local jurisdictions have passed laws making sexual orientation and/or gender identity protected classifications. Generally speaking, such laws make SOGI discrimination illegal with respect to public accommodations,⁷ housing, and employment. Sometimes the SOGI protections are attached to government funding. Note that in the 28 states without SOGI nondiscrimination laws, cities and counties may nevertheless have such ordinances.

SOGI laws may include exemptions for religious organizations, but the protections are highly dependent on the specific language of the different laws. It is thus vital that religious organizations carefully determine whether SOGI nondiscrimination requirements apply to any of their operations and, if so, whether there are any exemptions that protect their religion-based practices.

Note too that many state and local laws exempt “religious organizations” without defining the term, which could mean only houses of worship (e.g., churches) or, more broadly, other faith-based organizations. This lack of clarity brings scant comfort for ministries seeking to be both faithful in exercising their religious tenets and obedient to applicable law. Further, even if a faith-based organization is in a state or local jurisdiction without any SOGI law, it is wise to address these issues proactively since the legal landscape is rapidly evolving.

Keep in mind that religious nonprofits are not, per se, public accommodations.⁸ However, because they serve the general public (unlike a school, for example, or a religious fraternal order), they may be subject to nondiscrimination rules, including SOGI nondiscrimination requirements, via a human rights code, a civil rights provision, a regulation, or a licensing requirement. For example, adoption and foster care agencies require a state license to operate, and in an increasing number of states, the license prohibits SOGI discrimination. However,

http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2012/HUDNo.12-014.

⁷ 45 states have a public accommodation statute. All prohibit discrimination on the grounds of gender, ancestry, and religion. In addition, 18 jurisdictions prohibit discrimination based on marital status, 22 prohibit discrimination based on sexual orientation, and 18 prohibit discrimination based on gender identity.

⁸ However, a bookstore, counseling center, coffeehouse, or homeless shelter operated by the religious nonprofit may be a public accommodation, as may an event hosted by the nonprofit that is open to the public—e.g., a 5K fundraising run, an event offered to the students during a public school day, an event at a public park.

three states (Virginia, Michigan, and North Dakota) have adopted laws specifically protecting the freedom of faith-based agencies to follow their religious convictions when deciding where to place children. In addition, a municipal SOGI nondiscrimination ordinance may apply to public-serving organizations, such as emergency shelters, including rescue missions, with no religious exemption. And to the extent that a state or local SOGI anti-discrimination law makes a place a “public accommodation,” the owner may not exclude LGBT persons absent specific exemptions.⁹

3. Key Employment-Related Considerations

“Personnel is policy,” as the saying goes: what an organization does is highly dependent on who its employees are. Fortunately, employment laws in the United States, for the most part, provide that religious organizations can consider religion when deciding who to hire and fire. However, this freedom is increasingly being contested, especially when government funding is involved, as efforts to combat SOGI discrimination intensify (see the discussion of government grants and contracts, below). Religious staffing may be legally protected in multiple ways.

a. Generally “Religious”

Most important is the protection incorporated into the basic federal employment nondiscrimination law: Title VII of the 1964 Civil Rights Act, which prohibits discrimination on the basis of race, color, religion, sex, and national origin. Title VII includes an exemption that permits organizations – if they are sufficiently “religious” - to require all employees to conform to the organization’s religious doctrine, i.e., to adhere to the organization’s religious beliefs and its religion-based employee conduct code.¹⁰ “All employees” means not only those involved in “religious” work but everyone, from chaplains and the executive director to janitors and case workers.

These protections apply against religious discrimination claims under federal law. They do not automatically protect against claims brought under state or local employment discrimination laws. State and local laws, however, may track federal law in some or all aspects.

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⁹ Courts have ruled that state RFRA do not protect persons claiming a religious justification for violating SOGI nondiscrimination laws.

¹⁰ 42 U.S.C. §§2000e-1(a). For a discussion of religious staffing freedom, see Carl H. Esbeck, Stanley W. Carlson-Thies, and Ronald J. Sider, *The Freedom of Faith-Based Organizations to Staff on a Religious Basis* (Center for Public Justice, 2004). The pdf is available here: <http://www.irfalliance.org/resources/religiousstaffing.pdf>

Notably, Title VII applies only to employers with at least 15 employees, while state and local laws often have much lower employee thresholds.

b. The Ministerial Exception

Religious organizations are immune from discrimination claims on the bases of sex, disability, age, etc., in the case of employees who are “ministerial.” In the important 2012 decision, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*,¹¹ the US Supreme Court ruled that a church-related school had the right to decide as it wished about the employment of a teacher with a religious commission and some religious duties, because the First Amendment protects religious organizations in choosing their religious leaders. The Supreme Court did not specify precisely how extensive this court-defined “ministerial exception” is, but clearly indicated that it goes beyond the selection of clergy for church positions.

The Title VII religious exemption applies to all job positions, but only protects employment decisions concerning religion. The ministerial exception protects broadly against claims of discrimination but only when the position is “ministerial.”

The Supreme Court in *Hosanna-Tabor* found important the fact that the teacher played a formative role in the spiritual lives of the students by leading class devotions and at times chapel. It was also important that she had undergone specialized religious training and was specially “commissioned” by the church as a teacher with religious as well as nonreligious responsibilities. Therefore, nonprofit leaders should ask whether any of its staff fit such a profile, or if the job description can validly be modified to enhance such qualifications and responsibilities.

Merely declaring a position as ministerial is not enough. Religious nonprofits should consult with a knowledgeable lawyer when considering whether some of their employees perform ministerial duties and can validly be designated as “ministers,” such that the organization has enhanced protection against discrimination claims with respect to these employees and their job positions.

4. Religious Freedom Restoration Acts – Federal and State

Religious freedom—protection for religious exercise, protection against government-imposed secularism or religion—is a fundamental American principle and heritage, and it protects not only persons but also organizations. However, because the Supreme Court, in *Employment Division v. Smith* (1990), greatly weakened the First Amendment’s

¹¹ 132 S. Ct. 694 (2012).

protection for religious exercise, the primary protection for religious freedom at the federal level is the Religious Freedom Restoration Act (RFRA). Supported by a very wide coalition of religious and civil rights groups, adopted almost unanimously by Congress, and proudly signed into law by President Bill Clinton in 1993, RFRA has come under increasing fire from advocacy groups and legislators committed to expanded LGBT and reproductive rights.

Twenty-one states have adopted their own state RFRA, and these provide vital religious freedom protections with respect to state and local governments. Note that, irresponsible commentary to the contrary, RFRA does not provide religious organizations with an automatic trump card against laws that restrict religious exercise; instead, RFRA provides organizations and persons that believe their religious exercise has been wrongly suppressed an opportunity in court to challenge government laws and actions.

RFRA provides vital—but back-up—protections for the religious freedom of religious nonprofits. The primary protection consists of accommodations that are commonly incorporated into laws and regulations themselves. A vital protection for the faith-shaped operations of religious organizations, for example, is the religious exemption built into the foundational federal law prohibiting job discrimination (discussed above). A recent survey by a progressive organization of state and local SOGI protections records, albeit only in passing, that SOGI laws that apply to private organizations all include some sort of religious-organization exemption.¹²

Religious exemptions, unlike RFRA protections, protect the religious organization from being required to act contrary to its religious convictions, without the need for a court victory. However, their breadth and strength depend, of course, on their wording. Religious nonprofits and their lawyers must be sure to read the details of all applicable laws, implementing regulations, and subsequent judicial interpretations to know not only the general requirements but also whether there is some religious accommodation and, if there is, how extensive its protections are and what characteristics or practices are required for an organization to qualify for such protection.

Moreover, whether with particular religious exemptions, general protections offered by RFRA, or the basic constitutional protection for

¹² Jerome Hunt, “A State-by-State Examination of Nondiscrimination Laws and Policies” (June, 2012, Center for American Progress Action Fund).
https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/state_nondiscrimination.pdf

religious freedom, it is specifically *religious* exercise that is protected. Thus organizations seeking religious freedom protections must clearly demonstrate both that they hold sincere religious beliefs and that these beliefs are reflected in the actions they take. Accordingly, as described below, Christian service ministries that seek religious freedom protection for what they sincerely believe and practice must seriously consider making their doctrine on human sexuality and relationships more express in their governing documents, as well as taking steps to ensure that their policies and practices reflect such doctrine in such critical areas as employment, service to the public, and receipt of government funding.

E. Practical Steps for Implementation

A Christian organization is generally best positioned to claim protection under available religious exemptions if it can establish that its actions and policies are an exercise and expression by the organization of its sincerely held religious beliefs. An organization may establish this position through the following: (a) corporate documentation; (b) internal practices within the ministry organization; and (c) external representations (e.g., website, other public relations). In other words, a faith-based organization's religious convictions matter, as reflected in both its words (what is contained in the organization's charter documents and its policies) and deeds (what the organization actually *does*).

1. Overview

To optimize religious freedom protections as well as for mission integrity, faith-based organizations should take the following five basic actions.

a. Adopt thoughtful, detailed theological statements (heavily annotated with Biblical references) regarding the following basic religious doctrines:

- i. **Theological beliefs** – what the nonprofit genuinely and demonstrably believes (including definitions) regarding marriage, human sexuality (sexual conduct outside of marriage, including but certainly not limited to homosexual conduct), and gender identity;
- ii. **Where spiritual authority resides** -- the person or entity within the nonprofit (or the church with which it is affiliated) who has the ultimate say as to what the nonprofit's doctrine is on these issues and how the doctrine is applied in specific contexts (employment, student conduct, housing, etc.);

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- iii. **Christian dispute resolution** -- the nonprofit's belief that Christians should not take one another to court and what alternative dispute resolution mechanism is to be used; and
- iv. **Explaining grace** -- the concepts of sin, grace, repentance, and restoration are essential Christian doctrines and practices, but they are increasingly foreign concepts to judges, political leaders, and reporters who may mistake the extension of grace in one instance as evidence of inconsistency in applying doctrine or even of discrimination among employees or students;

b. State the religious nature of the nonprofit clearly in organizational documents and policies, including concise statements of its Biblical philosophy of Christian service that emphasize how the organization exercises and expresses its Biblical beliefs through every major policy and service decision;

c. Train staff and volunteers, so that those who apply the policies are trained in the nonprofit's theological understanding of its governing documents, its policies, and its philosophy of Christian service, and in the proper application of those policies, including who makes the final decisions to determine how the policies apply in particular contexts;

d. Apply the policies consistently, because even solid policies will appear weak if they are not applied consistently, with their specific applications documented in writing, particularly if an application involves the extension of grace or acknowledgement of repentance; and

e. Get legal advice from a lawyer who is familiar with the applicable laws in the state and local jurisdiction in which the nonprofit operates. State and local laws vary widely, which is why the guidance offered here is necessarily very general and not sufficiently specific to an individual religious nonprofit's situation. Good legal counsel is a wise investment.

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The five basic actions listed above correlate with the following measures for upgrading a nonprofit's documentation, policies, and practices. A religious organization needs not only to have appropriate board-approved documents and policies but also to put those policies into consistent practice. No lip service.

2. Corporate Governance

a. *Articles/Charter.* The organization's articles of incorporation are foundational (if the organization is incorporated). Religious language

needs to be included if the ministry's leadership wishes to gain optimal religious freedom protections. Accordingly, review the corporate purpose statement as set forth in the organization's articles of incorporation and any amendments thereto. Does it adequately convey the degree to which religion is important to the organization? Are there other legal or practical considerations at stake, such as qualification for other government exemptions, government funding, or donor relations? Should the purpose statement be otherwise updated or improved? Also review the corporate dissolution statement. Does it reference a specific parent or other ministry, or is it generic? What should it be, and is any updating appropriate?

b. *Bylaws – Statement of Faith.* The bylaws need to contain a statement of faith that addresses Biblical sexuality matters, or at least incorporates such statement by reference. This step would be very helpful to demonstrate the ministry's sincerely held religious beliefs. The doctrinal statement should cover Biblical marriage, Biblical sexual expression, and gender identity considerations. *See* sample CLS doctrinal statement.

c. *Bylaws – Other.* Check for additional elements in the bylaws as follows: (a) corporate purpose statement language that is identical to the articles' language; (b) likewise, identical dissolution language; (c) a requirement that board members agree with the statement of faith; (d) other theological areas as described above; (e) references to a parent corporation's control or other governance involvement (as appropriate), such as through *ex officio* leadership provisions, power to appoint and remove directors, and approval of annual budget; and (f) mandatory Christian conflict resolution language, which reflects the ministry's religious nature. The bylaws should also be reviewed for governance consistency, legal compliance, and appropriate "best practices" upgrades. Include Biblical references in the bylaws to bolster evidence of their religious underpinnings.

d. *Policies.* Review the ministry's other policy documents, including its articulation of the mission, values, statement of faith, other scriptural references throughout its documents, staff handbook, code of conduct (if any), other Christian standards, related volunteer materials, parent/participant handbook and other materials, and acknowledgment/agreement requirements for employees, volunteers, and parents/participants. Make sure these policy documents are followed in actual practice. *See* sample CLS employee handbook language.

3. Employment

a. Update employment policies and practices to clearly reflect the Christian nonprofit’s religious identity, especially on marriage and sexual issues.

For legal protection—and for mission integrity—a religious nonprofit’s employment policies and practices should be transparently aligned with its stated religious convictions. If it is important that all staff should be fully committed to the organization’s beliefs and conduct expectations, the board-approved employment policy should explain why this is so, giving scriptural and other religious reasons and explanations. If the nonprofit has a different policy—e.g., the beliefs and/or conduct standard only applies to some—this, too, should be explained in religious terms.

The employment policy should translate the organization’s basic Biblical commitments and religion-shaped mission into religion-shaped principles to guide the employment process: how jobs are defined and employee qualifications set, how applicants are evaluated, how employee performance will be evaluated, what the termination process is, and which Christian conciliation process is used.

What are the religious expectations for the staff as to beliefs and conduct? The policy should be clear, explaining why these religious convictions about the mission, service, and collaboration as a team are important, and straightforward about conduct requirements, both positive and negative. The policy should also state any religious duties expected of staff (sharing the Gospel with clients? occasionally leading staff prayer time and devotions?), describe how grace and forgiveness operate with respect to employee lapses, and state where the final authority for determining acceptable conduct and beliefs resides whether with the Board, the Executive Director, or another person. Clarity about conduct expectations related to sexuality and sexual relationships is particularly important.

Employment policy must be congruent with, and clearly shaped by, the religious convictions and mission of the organization, and employment practice has to be consistent with the employment policy, with exceptions explained and documented.

b. Hiring

The religious expectations and beliefs need to be apparent to employees, of course, but should also be obvious to prospective employees from the very start of the hiring process. Job descriptions and

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job announcements should stress and outline religious expectations as well as “secular” duties and qualifications. Anyone who visits the organization’s website and wonders about applying for a job should know without a doubt that this is an organization shaped by faith, that it takes specific religious convictions seriously, and that it expects employees to be committed to its faith-shaped mission and faith-based standards. Public evidence of the organization’s religious character helps establish it as the kind of organization covered by religious freedom protections. That same public evidence enables prospective employees to decide at the start whether or not they would fit with the organization, avoiding their potentially bitter resentment after applying and later learning of an incompatibility with a conduct requirement.

Note that the Title VII religious exemption protects religion-based employment decisions for every job position—but only for organizations acknowledged to be religious.¹³ That religious character should be clear to prospective employees and the public, and, if necessary, to a judge. One way of demonstrating religious character is by maintaining an employment process that is specifically and clearly shaped by the stated religious commitments of the organization.

c. “Ministers”

Where appropriate, staff positions should be identified as “ministers” to claim the greater protection of the ministerial exception. For such positions, employment documents should detail the substantial religious dimensions of the job duties (e.g., leading staff devotions, interacting with beneficiaries in an evangelistic or ministerial way, providing spiritual guidance in staff decision-making, holding a sacerdotal or ecclesiastical title, etc.) and should provide the Biblical basis for understanding these jobs as ministerial. The specific religious training required should be described, should be met by employees in these positions, and should be evaluated by the employer.

Further lessons from the Supreme Court’s *Hosanna-Tabor* decision for qualifying a position as “ministerial” are as follows: (1) include an objective rationale (e.g., citing Scripture and/or church history) in written job descriptions; (2) use job titles that incorporate “ministerial” aspects; (3) use job descriptions and performance criteria that support a “ministerial” designation; (4) reflect ministerial criteria in job evaluations

¹³ Carl H. Esbeck, Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis? *Oxford Journal of Law and Religion*, 2015, 0, 1–30 (<http://ojlr.oxfordjournals.org/content/early/2015/09/21/ojlr.rwv046.full.pdf?keytype=ref&ijkey=zx3jLN9Dlc2n1kq>)

and disciplinary standards; (5) require a school employee to affirm in writing (e.g., in contract, annually) his or her agreement with the school's religious doctrine and willingness to abide by the school's standards of conduct as a condition of employment; (6) require such employee (as well as all other employees), to affirm in writing his or her agreement to abide by the alternative dispute resolution mechanism that the school requires and the Biblical basis for the requirement; and (7) consider requiring such employee to complete some theological training.

d. Handbook and disciplinary procedures

Even a small religious nonprofit should have an employee handbook, and this handbook should emphasize and explain the organization's religious mission, its statement of faith, and its philosophy of Christian service. The handbook should also detail all prohibited conduct, the disciplinary measures for prohibited conduct, and the Christian dispute resolution process, all supported by scriptural references. The handbook should state who has final authority to determine whether conduct is or is not prohibited, and that all employees agree to abide by that authority's determination as to whether an employee's conduct is or is not permissible. All employees should annually acknowledge in writing that they have read and agreed to the employee handbook. *See sample employee handbook language.*

e. Employee and volunteer interaction with the public

What are the nonprofit's faith-shaped convictions about how to serve the public with excellence and in a way that honors God? How should a person of a different religion than the nonprofit be treated? What about a person who follows a different sexual ethic than the nonprofit? What does it mean to serve all those who arrive for assistance with respect? These are not narrow professional questions, although professional standards may be key. They are not narrow legal or civil rights issues, although the law may state certain requirements. How does your faith-based nonprofit, committed to Jesus' standards, intend to serve your "neighbors" in grace and truth through its helpful services? Any Christian organization that serves the public should prayerfully and carefully think through these matters and then train both staff and volunteers on what to do and say.

4. Public Accommodations and Serving the Public

Religious nonprofits that serve the public and not only those affiliated with the organization or its religious denomination need to be alert to a range of public laws that may regulate how they offer their

services, including whether or not they can restrict their services on the basis of religion, sexual orientation, or other criteria. Consult with a knowledgeable lawyer. Additional information may be available from web sites (e.g., Frequently Asked Questions) of those federal, state and local agencies that cover discrimination in employment, public accommodation and government funding. Seek the guidance of the faith-based association that serves organizations in your area of service (e.g., the Association of Gospel Rescue Missions, the Christian Alliance For Orphans, the National Religious Broadcasters, The Accord Network (evangelical relief and development organizations), the Christian Camp and Conference Association). Additional issues may need to be addressed such as property tax exemption protection, other areas for improvement, and practical stewardship areas.

In light of the foregoing, organizational leadership should review the ministry's facility use policy (if any) and practices, along with related sample space-sharing agreements. An organization's facility use policy should contain substantial provisions, including the requirement of usage consistent with the organization's doctrinal beliefs, decision-maker identification, fee standards, usage guidelines, insurance requirements, a sample usage application, and a sample agreement. *See* sample CLS facility use policy.

5. Government "Strings"

Receipt of government financial aid may subject a religious nonprofit to nondiscrimination requirements that would otherwise not apply, although a religious exemption may be available.

The nondiscrimination "strings" that may accompany government funds are stated in grant as well as procurement law, which is generally distinct from civil rights laws, licensing, and other regulations. Religious nonprofits contemplating government support such as grants, cooperative agreements, contracts, vouchers, or loans should carefully examine the fine print – the distinct rules that arrive with the financial support. These restrictions may differ depending on the federal, state or local government body involved (and a state may add conditions not required by the federal government), the type of service offered, or the population to be served. Generally, federal restrictions and guarantees "flow-down" wherever federal dollars are disseminated to grantees and subgrantees, even if distributed by state and local agencies (community and block grants).

If in any doubt, nonprofit leaders should consult with a knowledgeable lawyer and/or with the government agency that is administering the funding. Note that major federal agencies include a

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Center for Faith-Based and Neighborhood Partnerships that should be able to answer questions.

Consider another step, too. Under the Executive Branch’s “faith-based initiative” as described below, religious organizations should be neither disfavored nor favored for grants and contracts, and they can participate in government programs without abandoning their religious identity and voluntary, privately funded, religious practices. But grant and contract officials and announcements sometimes depart from this “level playing field” approach, adding restrictions that have the effect of excluding religious organizations—e.g., a ban on religious staffing or an overly broad SOGI nondiscrimination requirement. An organization that encounters such suspect restrictions should ask the government agency and the appropriate faith-based center to explain why the restriction exists—and also bring the suspect requirement to the attention of CLS and the appropriate faith-based association: advocacy action may be necessary to remove the obstructive language or faith-based organizations will have to count on RFRA against the restriction.¹⁴ Silently backing away does not clear up such problems!

6. Major Donor “Strings”

Keep in mind that faith-based organizations may also face pressure from major donors to keep in step with culture instead of Biblical truth. Some tensions may develop among board leadership, between those who feel the strong pull of such financial strings and those who want to hew to the mission. Solid Christian conciliation mechanisms in nonprofit bylaws will be more important than ever, along with continued and unified dedication to the organization’s religious grounding. Selection of Board members and management becomes all the more critical.

7. Integrated Auxiliary/Internal Ministry Considerations

In addition to the above organization-specific areas discussed above, consider an integrated auxiliary or in-house ministry structure in order to strengthen a ministry’s religious nature and ministry connection with a supporting church. In IRS parlance, the term “integrated auxiliary” means that the ministry would essentially be church-controlled. To be classified as an integrated auxiliary, the ministry would need to show that it is operated, supervised, or controlled by or in connection with a church, or that relevant facts and circumstances demonstrate a strong affiliation

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¹⁴ Department of Justice, Office of Legal Counsel, Opinion: Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act (June 29, 2007) (<http://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/01/op-olc-v031-p0162.pdf>)

with the church.¹⁵ Key benefits of such designation include exemption from IRS Form 990 annual filing requirements, potential exemption from state Attorney General annual filing requirements, and improved religious freedom protections.

One important caveat: organizations seeking this designation must satisfy an “internal support” test to show that they are mainly supported by their churches and not from outside means such as independently solicited contributions, government grants, or revenues from fees for goods and services. To the extent a ministry is largely supported financially by a church, it thus may qualify as an integrated auxiliary – provided that the above-referenced governance changes are made. On the other hand, an organization would not so qualify if it is largely supported by fees, government funding, and outside contributions.

Another approach may be to bring a ministry under a church corporate ministry structure as an internal program. Numerous opposing considerations favoring separate incorporation are implicated, however, such as better risk management through separate incorporation, wider fundraising opportunities, government funding eligibility, and better opportunity for exclusion from Affordable Care Act coverage (since the ACA does not apply to employers of less than 50 employees).

Key reasons for bringing a ministry in-house to a church ministry may include the following factors: (1) potentially increased religious freedom protections by virtue of a church’s status; (2) exemption from otherwise applicable unemployment insurance requirements (because churches are exempt from unemployment insurance requirements); and (3) increased church oversight of the outreach ministry. Whether any or all of them are sufficient to outweigh the above-listed significant countervailing considerations is a judgment call for the ministry leaders.

¹⁵ To be classified as an integrated auxiliary under the latter “facts and circumstances” test, the following factors are relevant: (a) the organizational documents show that the organization shares common religious doctrines, principles, disciplines, or practices with a church or association of churches; (b) a church or association of churches has the authority to control the appointment or removal of at least one of the organization’s officers or directors; (c) the organization’s name indicates an institutional relationship with a church or association of churches; (d) the organization reports at least annually on its financial and general operations to a church or association of churches; (e) an institutional relationship between the organization and a church or association of churches is affirmed by the church or association of churches; and (f) in the event of dissolution, the organization’s assets are required to be distributed to a church or association of churches. None of these factors is controlling, and the absence of any one does not necessarily defeat classification as an integrated auxiliary. Nevertheless, the more completely an organization satisfies these parameters, the more likely it will qualify as an integrated auxiliary.

One final caution regarding ACA coverage: “aggregation” rules apply for closely related organizations. Consequently, to the extent a church and another ministry’s leadership want to avoid combining employee totals for ACA purposes, some closely related governance approaches could be problematic, and the integrated auxiliary approach doubly so (given the internal support requirement for such status).

8. Seek Legal Counsel

This legal guidance provides only generalized advice. Accordingly, Christian service ministries are encouraged to seek out knowledgeable and experienced attorneys for specific application within their own jurisdictions and suited to their own organizational structure, programs, and concerns. The Christian Legal Society maintains a list of attorney members, with specified areas of legal practice in specific jurisdictions, including those who practice in the areas of nonprofit organizations, constitutional law (religious freedom and free speech), and employment. *See www.christianlawyer.com for further information.*

F. Further Policy Considerations

1. Continued Tax-Exempt Status

At the *Obergefell* oral argument, Justice Alito asked Solicitor General Verrilli whether religious schools might lose their tax-exempt status if they prohibit same-sex conduct among their students. General Verrilli responded that might well be an issue. Since then, the IRS Commissioner has stated that religious schools’ tax-exempt status will not likely be questioned for at least two years.

The focus on religious schools is due to a 1983 decision where a religious university lost its tax-exempt status because of its policy forbidding interracial dating, and the IRS revocation was upheld by the U.S. Supreme Court, although the university set forth a religious reason for its policy.¹⁶ The Court agreed with the IRS that the college should lose its tax-exempt status because its policy was against “public policy” relating to education and race. So far the IRS has not applied this doctrine beyond racial discrimination in educational institutions and other very limited areas, such as illegal activity. Rather, to date, the IRS has officially treated churches with “benevolent neutrality.”¹⁷

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¹⁶ *Bob Jones University v. United States*, 461 U.S. 574 (1983).

¹⁷ *But see* IRS Private Letter Ruling 2013-25-015 (March 28, 2013) (rejecting 501(c)(3) tax-exempt status for religious society that affirms polygamy, as criminally illegal and contrary to public policy as per *Bob Jones* and charitable trust law).

Critics of religious institutions, including some legislators, have proposed that every allegedly discriminatory religious organization, not just religious schools, should lose their tax exemption and ability to receive tax-deductible contributions. Note that even if the federal IRS does not revoke tax exempt status, state and local tax agencies and legislatures could attempt to do so. This dispute is yet another reason why religious nonprofits must continue monitoring the changing legislative and regulatory scenes at the federal, state, and local levels, such as through organizations like Christian Legal Society and the Institutional Religious Freedom Alliance.

2. Government Grants and Contracts.

The federal initiative commonly called the faith-based initiative¹⁸ has acted, under three successive administrations, to clarify and strengthen the religious freedoms of religious organizations that receive federal funds,¹⁹ including cases when those funds first pass through state or local government agencies. Nonprofit personnel must carefully read the details of grant and contract announcements and awards for potential conditions that could be problematic for religious freedom interests.

Two federal examples show the need for attention to detail:

(1) The rules for federal contracting include an exemption that permits religious organizations to become federal contractors or subcontractors even if they consider religion when hiring, although federal contractors are otherwise forbidden to engage in religious job discrimination. However, since April 8, 2015, all new or modified federal contracts include a new prohibition on SOGI job discrimination. May a religious contractor continue to require employees and potential employees to follow its religion-based conduct standard that limits sex to man-woman marriage, as an exercise of its religious staffing right, or must it give up that standard because it might be considered sexual-orientation discrimination? The federal government is inclined to the latter interpretation²⁰ and yet a persuasive case for the former interpretation has

¹⁸ Federal departments that award grants for social services have faith-based centers and operate with Equal Treatment regulations. As an example, see the HHS Center for Faith-Based and Neighborhood Partnerships (<http://www.hhs.gov/partnerships/index.html>) and the links to the HHS Equal Treatment (and Charitable Choice) regulations: <http://www.hhs.gov/partnerships/about/regulations/index.html>

¹⁹ For Example: USAID's Mandatory Standard Provision For Nongovernmental Organizations, M11 Equal Participation By Faith-Based Organizations (June 2012), see www.usaid.gov/sites/default/files/documents/1868/303maa.pdf

²⁰ http://www.dol.gov/ofccp/LGBT/LGBT_FAQs.html#Q13

been made (if the grantee is willing to litigate against the Justice Department).²¹

(2) The Violence Against Women Act, when reauthorized by Congress in 2013, was amended to include a sweeping nondiscrimination clause that prohibits SOGI discrimination (and more) in serving those eligible for help. However, while the sweeping clause also prohibits religious (and other) job discrimination, the administering agency has specifically stated that, because of the federal RFRA, a religious organization that considers religion in staffing can receive VAWA funding despite the new nondiscrimination clause.²²

3. Public Perception

Conservative religious beliefs and conduct standards are seen as harmful, even bigoted, by an increasing proportion of the public, even through these beliefs and standards are legally protected. At the same time, the service that is rendered to hurting communities, individuals, and families, because of Christ-committed staff and often only because of sacrificial contributions, is, when known, generally admired in our society. Too often, though, the remarkable works of service by faith-based organizations are not acknowledged by the public, the media, or lawmakers *as the fruit* of the religious commitments and practices of those organizations, but rather are treated as just further examples of humanitarian service. When the public does not see that connection between the religious root and the service fruit, an important opportunity has been lost to help the public see why religious freedom is so important, practically, to our society. Religious nonprofits should consider carefully, especially in our current environment, how they can help the public, the media, and lawmakers develop a clear understanding of the good they do and how that good is inextricably rooted in their religion-based convictions and practices. Of course, religious freedom and protection of conscience are important in themselves, but they also have great social value.

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4. Time for Political Involvement?

Advocates for the religious freedom of religious service organizations hear it all the time from friendly legislative and administrative staff: if this proposed bill or regulation will actually be that

²¹ Carl H. Esbeck, “Federal Contractors, Title VII, and LGBT Employment Discrimination: Can Religious Organizations Continue to Staff on a Religious Basis?” *Oxford J. of Law and Religion*, 2015, 0, 1-30.

<http://ojlr.oxfordjournals.org/content/early/2015/09/21/ojlr.rwv046.full.pdf?keytype=ref&ijkey=zx3jLN9Dlc2n1kq>

²² <http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>

harmful to the groups you work with, why aren't they speaking up? What exact difference will this change really make?

Your voice, your story about what you do and why and what good outcomes you see, your assessment of how a proposed law or regulation will harm or help service: this is information that legislators and regulators need so that they do not act blindly. At the least, invest time in introducing your organization and its mission and services to your federal, state, and local government officials (and the media, too!) before any crisis arises. And then consider speaking up when your voice is needed in a legislative hearing, on a letter or as part of a phone or email campaign to reach key legislators, or when an advocacy organization or a reporter wants to discuss the potential consequences of a proposed change on the wellbeing of the community.

Speaking up can be costly, to be sure. But silence incurs an even higher cost when governments rewrite the rules that determine your organization's ability to serve as God has called it to serve.

Often you do not need to speak alone: Look to CLS, IFRA, and other organizations that will help you keep informed and that will help give you a voice in the legislative and regulatory processes.

And consider, but with care, how you—not your nonprofit speaking officially—might wisely participate in the election process. Nonprofits may, within limits, advocate for and against legislation. But electioneering—speaking and working for and against candidates—is prohibited for the organization or its staff acting officially. However, you and your staff are citizens and not only staff. How will your knowledge about religious freedom and the vital services provided by religious nonprofits inform your citizen involvement in the process of choosing our elected leaders?

G. Concluding Remarks

In these times of changing public sentiment, faith-based organizations need to continue monitoring new legal developments. In addition, the extent to which laws and regulations prohibiting SOGI discrimination should accommodate religious organizations with traditional religious convictions is under constant debate. Accordingly, religious organizations and their supporters should carefully consider how to promote to legislatures and regulators the religious freedom they need. In the meantime, leadership must take care to operate their ministries consistently as religious organizations, both inwardly and outwardly. We must both vigorously guard our religious freedom and promote the gospel

of Jesus Christ – through *all* that we say and do. May God grant us wisdom and favor throughout, and to Him be the glory!

Sample Doctrinal Language

The following language provides a sample doctrinal statement for addressing marriage and related sexuality issues, to be approved by the organization's governing body and used in its key governance documents, such as its constitution or bylaws. The language may be further tailored as an organization's leadership may wish, in accordance with Biblical standards and accompanying Biblical references. Denominationally-related organizations should also communicate with their headquarters to obtain sample doctrinal statements that may have been prepared specifically by their denomination. Some statements regarding sexuality issues may also be found on the CLS website at www.christianlawyer.org.

“We believe that God has established marriage as a lifelong, exclusive relationship between one man and one woman and that all intimate sexual activity outside the marriage relationship, whether heterosexual, homosexual, or otherwise, is immoral and therefore sin (Gen. 2:24-25; Ex. 20:14, 17, 22:19; Lev. 18:22-23, 20:13, 15-16; Matt. 19:4-6, 9; Rom. 1:18-31; I Cor. 6:9-10, 15-20; I Tim. 1:8-11; Jude 7). We believe that God created the human race male and female and that all conduct with the intent to adopt a gender other than one's birth gender is immoral and therefore sin (Gen. 1:27; Deut. 22:5).”

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Sample Bylaw Language

The following language provides sample Christian bylaw language for addressing marriage and related sexuality issues, to be approved by the organization's governing body. The language may be further tailored as an organization's leadership may wish. Such additional considerations are noted below in bracketed italics.

- A. *Statement of Faith* [See sample doctrinal language, above.]
- B. *Director Qualifications* [Include requirement of agreement with statement of faith.]
- C. *Dispute resolution.*

We believe differences or conflicts should bring receptivity to change and growth, not litigation. Therefore, in the highly unlikely event that we are ever unable to resolve a dispute between us, we are asking you to join us in agreeing to attempt to resolve the dispute without litigation. By signing, you are agreeing with us that we believe that the Bible commands us to make every effort to live at peace and to resolve disputes with each other in private or within the Christian church (see Matthew 18:15-20; I Corinthians 6:1-8). Therefore, it is agreed that any claim or dispute arising from or related to this agreement shall be settled by biblically-based mediation and, if necessary, legally binding arbitration in accordance with the *Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation™*, a division of Peacemaker® Ministries (complete text of *Rules* is available at www.HisPeace.org). **Venue will be _____ and jurisdiction will be under _____ law. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction, in conformity with the laws of the _____.** We understand and agree that these methods shall be the

sole remedy for any controversy or claim arising out of this agreement and expressly waive the right to file a lawsuit in any civil court against one another for such disputes, except to enforce an arbitration decision. Notwithstanding this provision, to protect our church, we maintain liability insurance. Therefore, this conflict provision is conditioned upon agreement by our insurers that, in light of the particular facts and circumstances surrounding the disputed matter, this provision, and the process it establishes, will not diminish any insurance coverage maintained by the church.

- D. *Dissolution.* Upon dissolution of the Corporation in accordance these bylaws, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation to the

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&OTHER ORGANIZATION&, of _____
being qualified as a tax-exempt organization under Section 501(c)(3) of
the Code, or if such organization has dissolved or is unwilling or unable to
accept said assets under the conditions of Section 501(c)(3) of the Code, to
another such organization or organizations organized and operated
exclusively for religious, charitable, or educational purposes as shall at the
time qualify as an exempt organization or organizations under Section
501(c)(3) of the Code and be engaged in activities substantially similar to
those of the dissolving corporation.

Sample Facility Use Policy

The following language provides sample language for use of an organization's facility, to be approved by the governing body and in light of marriage and sexuality-related issues. The policy should be tailored in accordance with an organization's governing practices, its own governing documents, and specific facility and operational considerations. Best practices considerations warrant using accompanying agreements between a Christian organization and other parties, to describe short-term or long-term usage and other key aspects including the mission-related purposes for such shared usage, payment (if any, and cost-related basis therefor), insurance, other allocation of respective responsibilities, and alternative dispute resolution requirements. Such considerations are noted below in bracketed italics.

&ORGANIZATION& (“the &ORG&”) owns certain real estate, including *[describe additional rooms or areas as needed: _____]* all of which is used to promote its religious purposes. The &ORG& seeks to exercise wise stewardship over all aspects of the Property. Such stewardship may include occasional guest use *[and/or other description of anticipated use]* from time to time for purposes consistent with the &ORG&'s religious purposes and doctrinal beliefs. Based on these considerations, the &ORG& shall allow use of its Real Estate by others in accordance with the following requirements and guidelines.

1. Decision-making authority. The &ORG&'s Board of _____ (“Board”) shall make decisions as needed regarding the use of the Church's Real Estate, all in the &ORG&'s best interests. *[Optional: Such decision-making authority may be delegated to a committee of persons appointed by and responsible to the Board, subject to the following doctrinal restrictions.]*

2. Doctrinal Restrictions. The &ORG&'s Real Estate may be used only for purposes and in ways consistent with the &ORG&'s doctrinal beliefs as reflected in the Bible, the &ORG&'s Covenant as stated in _____ of its Bylaws, and otherwise, particularly with respect to sexual activity standards and other conduct. *[Include other restrictions, if appropriate – e.g., no alcohol.]* The &ORG& Board shall be the final decision-maker regarding whether any use is in conformity with, or contrary to, the &ORG&'s religious doctrine.

3. The &ORG& may request donations or charge for cost-sharing contributions (“fees”) in order to defray the estimated cost of facility use. No such fees shall be charged with any impermissible view to profit, and any and all fees are subject to waiver or reduction based on the

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prospective user's financial need. *[This language is generally in keeping with a nonprofit's federal and state tax exemption privilege. Specific legal guidance should be sought regarding such matters, particularly with respect to state-specific property tax exemption considerations.]*

4. The &ORG&'s Board (or a committee delegated thereby) shall be responsible for memorializing guest facility use. Such written agreements shall include identification of the religious purposes served by a guest's facility usage, with appropriate Scripture references. *[See above comment regarding importance of using agreements with facility users, both for short-term and long-term usage and with appropriate details regarding such usage. A statement that all uses not specifically described must be done in accordance with the &ORG&'s beliefs, as reflected in the Bible and other church documents, would be helpful as well.]*

5. Insurance coverage shall be maintained for all uses of the &ORG&'s Real Estate, including certificates of coverage from other users as appropriate. *[This language is per best practices and may be modified as deemed appropriate.]*

6. The &ORG&'s Board (or a committee delegated thereby) shall be responsible for communicating these requirements and other guidelines to all prospective guests of the Real Estate. *[This policy must be carried out in actual practice, in order for it to be meaningful and effective.]*

[Additional organization-specific provisions may be added as appropriate.]

Sample Employee Handbook Language

The following alternative provides sample language for an organization’s employment handbook, to be approved by the governing body and in light of marriage and sexuality-related issues. The language should be tailored in accordance with an organization’s governing practices, its own governing documents, and specific operational considerations. Best practices considerations may warrant using accompanying agreements between an organization and its employees and volunteers, as well as further developing an organization’s employment and volunteer policies for other reasons such as risk management, legal compliance, and clarity.

Welcome

We welcome you to &ORGANIZATION& (“&ORGANIZATION&”) and thank you for your service. We appreciate the vital role of &ORGANIZATION& employees in accomplishing the mission of &ORGANIZATION& to the people we serve and to the broader Christian community. *[Additional language may include provision for employee review of the Handbook, general applicability to the Church’s employees, disclaimers regarding “at-will” employment and implications thereof, and potential unilateral modification of the Handbook by the Church.]*

Compliance with Biblical Standards

Christianity is central to the purpose and mission of &ORGANIZATION&. For this reason, all &ORGANIZATION& affairs are conducted in full accordance with the Bible, the &ORGANIZATION&’s Mission, its Statement of Faith as contained in the &ORGANIZATION& bylaws, as well as related policies reflecting the &ORGANIZATION&’s religious nature. Likewise, it is the &ORGANIZATION&’s policy to employ only committed disciples of Jesus Christ. Consequently, each employee is expected to review and affirm his or her agreement with such standards as a condition for continued employment with &ORGANIZATION&, both in terms of doctrinal belief and practical application. For example, all employees are expected to reflect Christian values in their interaction with persons we serve, fellow employees, and others. In addition, employees are required to refrain from behavior that reflects negatively on the &ORGANIZATION&’s Christian standards. Violation of these requirements shall constitute cause for

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discipline up to and including employment termination. *[This language may be modified as the Church leadership deems appropriate, to reflect the Church's religious nature and expectations for its employees.]*

Mission Statement

The mission of the &ORGANIZATION& is to _____.

Affirmation of Statement of Faith

All officers, directors, and staff of &ORGANIZATION& shall, as a condition of their employment in &ORGANIZATION&, acknowledge in writing their acceptance of, and agreement with the following Statement of Faith, as set forth in _____ of &ORGANIZATION&' corporate by-laws:

[Insert statement of faith, including provision regarding Biblical standards for sexuality and marriage.]

Receipt

[Include written acknowledgement to be signed by employee, such as the following.]

I have received a copy of &ORGANIZATION&'s Employee Handbook (dated _____) and have read it carefully. I understand all of its rules, policies, terms and conditions and agree to abide by them. I realize that failure to do so may result in disciplinary action or termination of employment. I understand and agree that my employment may be terminated at will, so that both &ORGANIZATION& and I remain free to choose to end our work relationship at any time. I also understand that &ORGANIZATION& remains free to change, revise, or eliminate any or all of the employment benefits provided in the Handbook at any time.

I understand that nothing in this Handbook in any way creates an express or implied contract of employment between &ORGANIZATION& and me. I also understand that this Handbook is only intended to provide a better and more understandable working atmosphere so long as the employee/employer relationship exists.

Date: _____

Employee's Signature: _____

Employee's Name (Printed): _____