



PROTECTING

FROM SEXUAL ORIENTATION

YOUR

GENDER IDENTITY

MINISTRY

L A W S U I T S

A Legal Guide for LCMS
Congregations, Schools, and Ministries



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

SUPREME COURT JUSTICE SAMUEL ALITO

Obergefell v. Hodges (Dissenting)

Dear Friends in Christ,

We're providing something for which you've been asking and waiting.

In recent months we have seen the Supreme Court make decisions that have changed our country and the future for generations to come. Despite seeing cultural changes that are contrary to God's Word, numerous legal challenges, and shocking Supreme Court decisions, we need not fear. We are people of hope and joy. Jesus said, "The Son of Man came to seek and to save the lost" (Luke 19:10). It is our joyous task to proclaim the Gospel of free forgiveness in Christ to all (Matt. 28:19). We are a people of joy (Eph. 4:4). We are not angry people. And we are people of hope (Rom. 5:3ff.). We know the end of the story. That's the bottom line as we deal with the intense challenges of our day. We will be compassionate (Luke 6:36). We uphold the basic human rights of all people (no matter their sexual orientation). All are God's creation. We are all sinners under the Law, and Christ invites all to repentance and faith (Matt. 9:13).

What shall we do? Continue to pray. Learn. Educate others. Speak up. Defend. Participate. Raise up our youth to speak out. Our Lutheran Confessions say public redress is a good work of God. St. Paul appealed to Caesar. We, too, will make our legal appeals for religious freedom, referring to the Bill of Rights. We must also act very wisely to protect the church from attack.

Over the past several years, we've forged a valued friendship with Alliance Defending Freedom and are proud to collaborate with them in the publication of this booklet. It provides detailed information on the legal issues impacting our churches, schools, universities, seminaries, and organizations. Read through this entire booklet carefully to understand the full scope of the issues and how you can protect various ministries.

Now is not a time for compromise. It's time once again for a Reformation "Here I stand." By holding to our core biblical convictions, fighting for our God-given rights of conscience, and fighting against government intrusion into the church and the lives of Christians, we stand firm not only for our church and those who shall follow us; we take a stand for the First Amendment religious liberty for all people.

Dr. Walther put it well:

The Lutheran church believes, teaches and confesses, in accordance with God's Word, that the secular government does not have the power to command its subjects to do anything that God has prohibited, nor does it have the power to prohibit anything that God has commanded, nor does the government have the power to force its subjects to do anything that violates their conscience (All Glory to God, CPH, p. 467).

Luther once said:

Therefore we, too, should learn to wait for the Lord if we have His promise no matter what else happens, whether persecution instead of the presence of God befalls us or we feel His wrath instead of His grace. In spite of all, we should say: "I believe. I have been baptized. I have been absolved. I have God's promise of grace and mercy. I have enough. Whether night, day, tribulation, or joy befalls me, I shall nevertheless not forfeit His mercy or lose courage" (Luther's Works, volume 5, on Genesis 26:16).

"Take courage! Do not let your hands be weak, for your work shall be rewarded" (2 Chron. 15:7).



Pastor Matthew C. Harrison
President, The Lutheran Church—Missouri Synod



WE ARE FREE TO BE FAITHFUL

"The free exercise of religion extends beyond the practice of our faith in houses of worship. We must be free to put our faith into action in the public square and, in response to Christ's call, demonstrate His mercy through our love and compassion for all people without government penalty."

REV. DR. MATTHEW C. HARRISON, PRESIDENT
THE LUTHERAN CHURCH—MISSOURI SYNOD



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ADF Has Won Nearly
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and Played a Role in
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ADF legally advocates for religious liberty, the sanctity of life, and marriage and family.

To learn more about ADF and our work, visit ADFLegal.org.

INTRODUCTION

In the culture, in the courts, even in casual conversation, it is increasingly obvious that we have lost sight of over 200 years of social and legal tradition that has secured our fundamental freedoms – namely, freedom of speech and religion.

A new concept – that “sexual liberty” trumps religious freedom – has begun to impact churches, ministries, and individual Christians across this nation.

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

Those promoting these ordinances use public sympathy – gained through misleading rhetoric about “discrimination” – to silence dissenting voices. And no ministry that remains true to Scripture’s teachings about sexuality and gender will be immune.

The Lutheran Church—Missouri Synod (LCMS), in collaboration with Alliance Defending Freedom (ADF), created this manual to help you prepare for the legal intrusions some of your fellow believers and Christian leaders around the country have already faced, as well as prepare for the issues that may arise in the future.

Alliance Defending Freedom exists to help you deal with a variety of legal challenges facing churches, religious nonprofits, and believers today, including issues not specifically addressed in this manual: civic engagement of churches and pastors, zoning, tax exemption, equal access to government facilities or programs, and the right to live out your faith in your business, workplace, or school. You can explore the basics on these issues at: ADFLegal.org.

But the scope and nature of the threat posed by SOGIs and related laws warrants special, focused attention. This guide provides that focus. In the following pages, you will find examples of what other Christians around the country are facing; how your church, school, or ministry may be vulnerable to similar threats; and what you can do to secure crucial legal protections to help enable you to weather the fast-approaching legal storms.

SOGIs have been invoked to attempt to force Christian photographers, bakers, and florists to participate in same-sex ceremonies, in violation of their religious beliefs about sexuality and marriage. They have been used to attempt to force a Christian printer to create advertisements celebrating a “gay pride” festival. SOGIs have been used to attempt to force Christian owners of wedding venues to host same-sex ceremonies, and Christian adoption agencies to choose between placing babies in motherless or fatherless same-sex homes or go out of business.

The ability of your ministry to remain a compassionate but faithful witness to God’s truth in our world today may depend on a thoughtful consideration of the information in this manual. Sparing yourself and your ministry some of what other brothers and sisters in Christ have already

suffered will help you continue to fulfill your vital Gospel mission.

As we fulfill Christ's command to proclaim the Gospel to all nations, the Lutheran Church confesses the doctrine of the two kingdoms, the two realms that describe the reign of God. This teaching, one of the jewels of Lutheran theology, honors God's rule of the public sphere through earthly, human authority (in home, economic life, and government), all the while preserving and prioritizing the proclamation of the Gospel by which God rules His redeemed people, the Church. The two kingdoms are often referred to as left-hand and right-hand kingdoms. God's left-hand kingdom (the kingdom of power) refers to His rule over all creation, where He works through worldly institutions to restrain evil and promote what is good for all humanity






(Rom. 13:1-7; 1 Peter 2:13-17). The kingdom of God's right hand (the kingdom of grace) refers to His rule over His redeemed people, the Church, where He reigns through His Word, His grace, and His forgiveness in Christ (Col. 1:13-14; 1 Peter 2:9). As people redeemed by Christ, we live as citizens of both realms, acknowledging the reign of God through His Word as well as the rule of secular authorities in the nation in which we live (Phil. 3:20; 1 Peter 2:13). As we do so, we honor and obey our Lord's command to "render to Caesar the things that are Caesar's, and to God the things that are God's" (Matt. 22:21). We also recognize, with Christians of every generation and under any form of government, that if and when there is a clear and direct conflict between what our Lord commands and what is demanded by earthly authorities, "we must obey God rather than man" (Acts 5:29).

PROTECTING YOUR MINISTRY

Make sure your ministry has the broadest religious liberty protections under the law. Use the checklist below, specific to your type of ministry, to verify your protection.









CHURCH CHECKLIST

-  Statement of Belief *Page 7*
-  Religious Employment Criteria *Page 15*
-  Facility Use Policy *Page 19*
-  Formal Membership Policy *Page 21*
-  Marriage Policy *Page 24*

This handbook is specifically developed for LCMS congregations, schools, agencies, auxiliaries, Recognized Service Organizations (RSO), or other ministries. Throughout this booklet, “LCMS ministries” is meant to include a broad spectrum of entities such as, but not limited to, those aforementioned.













CHRISTIAN MINISTRY CHECKLIST

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CHRISTIAN SCHOOL CHECKLIST

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Look for the colored shield icon throughout this guide for information that pertains to your ministry category.

PROACTIVE STEPS FOR LCMS CHURCHES, SCHOOLS, & MINISTRIES

The action items listed under this section are applicable to all churches, Christian schools, and Christian ministries² to ensure the broadest religious liberty protections available under the law.

1.0 Statement of Belief

A statement of belief should serve as the foundational document for LCMS churches, schools, and ministries. Such a statement not only expresses the organization's core religious beliefs, but also serves as clear evidence of those beliefs should they be questioned in a lawsuit. Generally, courts will not question an organization's self-proclaimed religious beliefs, particularly if they appear in a statement of belief or other governing documents.³ For the LCMS, such statements and

documents would include the Holy Scriptures, the Confessions of the Evangelical Lutheran Church as contained in the *Book of Concord* (1580), references in the constitutions and bylaws of the LCMS, districts, and congregations, and references to other essays and statements produced by various entities (such as the LCMS Commission on Theology and Church Relations) and adopted by the LCMS in Convention.

SAMPLE STATEMENT OF BELIEF

This congregation [name the ministry] is part of The Lutheran Church—Missouri Synod (LCMS or Synod). The LCMS is a mission-oriented and Bible-based denomination that confesses the historic, orthodox Christian faith in the Triune God, Father, Son, and Holy Spirit, a faith built on “the foundation of the apostles and prophets, Christ Jesus himself being the cornerstone” (Eph. 2:20). With the universal Christian Church, The Lutheran Church—Missouri Synod teaches and responds to the love of the Triune God, who created all that exists; became man to suffer, die, and rise again for the world's redemption; and brings people to faith and new life through His Word and Sacraments. The three persons of the Trinity – Father, Son, and Holy Spirit – are coequal and coeternal, one God.

LCMS congregations voluntarily choose to belong to the Synod, and, although diverse in many ways, all hold to a shared confession of Jesus Christ as taught in Holy Scripture. We believe without reservation that the Scriptures of the Old and the New Testament are the written Word of God and the only rule and norm of faith and of practice. In addition, the Synod accepts without reservation the writings contained in the *Book of Concord: The Confessions of the Evangelical Lutheran Church*.

Believing in the authority of Holy Scripture and that the Lutheran Confessions are a correct interpretation and presentation of biblical doctrine, our congregations agree to conform all their teaching and practice to the Scriptures and the Confessions.

The Synod “is not an ecclesiastical government, exercising legislative or coercive powers” (LCMS Constitution, Article VII) concerning its member congregations and ministers. However, the voluntary association of member congregations and ministers includes their agreement to respect and honor and uphold (Bylaw 1.7.2, 1.8.1) decisions (resolutions) made by the Synod in its national conventions regarding the understanding of the teachings of Scripture and the Lutheran Confessions and practices that are consistent with such teaching. The Synod in convention is the “principle legislative assembly” of the LCMS (Bylaw 3.1.1) and its resolutions and statements are the position of the Synod in matters of doctrine and life. The Constitution and Bylaws of the LCMS provide specific guidance for the implementation and supervision of the teaching and practice of its members (congregations and rostered church workers).

Congregations of the LCMS, while upholding teachings and practices that are consistent with Scripture and the Lutheran Confessions and while honoring Synod convention resolutions, are self-governed and establish policies based on local circumstance and expediency. An LCMS congregation or ministry operates according to its own constitution and bylaws – which are required by the Synod Bylaws to be reviewed by the District through which the congregation holds membership in the Synod – and therein establishes an orderly way of making decisions and determines which individuals or entities in the congregation (e.g., the pastor, church council, board of elders) will have authority to act on behalf of the congregation in specific circumstances. The Constitution and bylaws of this [name ministry] govern our decision-making and policies. A copy is available upon request.

The statement of belief should cover a broad range of religious beliefs – and the more detailed, the better – but because of the current cultural climate, three topics deserve particular mention.



1.1 Statement on Marriage, Gender, and Sexuality

It should go without saying that marriage matters. God, in creating the world, created humanity in His image, as male and female, and gave marriage to be the lifelong union of one man and one woman (Gen. 2:24), a gift to be held in honor and kept

pure (Heb. 13:4; 1 Thess. 4:2-5). Marriage between one man and one woman for life uniquely reflects Christ's relationship with His Church. (Eph. 5:21-33.) The LCMS believes that God gave marriage as a picture of the relationship between Christ and His bride the Church (Eph. 5:32) and believes that, "on the basis of Scripture, marriage [is] the lifelong union of one man and one woman" (Gen. 2:2-24; Matt. 19:5-6) (2004 Res. 3-05A).

In creating humanity as male and female, God enables human sexual expression to serve His purposes. Sexual intercourse and all genital sexual activity, the most intimate gifts of human sexual expression, are intended by God to be enacted only within marriage, the lifelong union of man and woman, so that they may be "fruitful and multiply" (Gen. 1:28) as they "become one flesh" (Gen. 2:24). Marriage cannot be understood apart from the gift of children. The result of this marriage union, when it is God's will, is the conception and birth of a child. The optimal setting for the care of children is the loving marital unity of a man and woman; thus marriage also serves as the foundational unit of a stable society. It provides the best chance that children will grow up in the same home with both a mother and father. Among many other negative cultural developments over the last several decades, the general acceptance of sex outside of marriage and other sexual sins, including homosexual behavior, constitute direct attacks upon this divinely established, universal institution.

Gender likewise matters. God wonderfully and immutably creates each person as male or female, and these distinct, complementary genders together reflect the image and nature of God (Gen. 1:26-27). But some individuals reject their biological sex⁴ and often present as the opposite

sex. In so doing, these confused individuals reject God's design and the person He created them to be.

Because the LCMS believes that genital sexual activity is intended by God within the one-flesh union of the marriage of man and woman, it does not accept or condone marriages between people of the same sex and it believes that homosexual behavior is prohibited in the Old and New Testaments (Lev. 18:22, 24, 20:13; 1 Cor. 6:9-20; 1 Tim. 1:10) as contrary to the Creator's design (Rom. 1:26-27). The LCMS affirms that such behavior is intrinsically sinful and it has also urged its members "to give a public witness from Scripture against the social acceptance and legal recognition of homosexual 'marriage'" (2004 Res. 3-05A). At the same time, the Synod firmly believes "the redeeming love of Christ, which rescues humanity from sin, death, and the power of Satan, is offered to all through repentance and faith in Christ, regardless of the nature of their sinfulness" (1992 Res. 3-12A) and that sexual sin is only one of the countless ways that human beings turn away from God's will and design. The Synod developed a Law/Gospel ministry plan for use in ministry to those who are troubled by homosexual desires, Ministry to Homosexuals and Their Families.

Understandably, the current state of affairs is confusing and concerning. Issues of marriage and gender now regularly confront religious organizations. Churches are receiving requests to use their facilities for same-sex ceremonies, in direct violation of their beliefs. Christian schools are being asked to employ persons who identify as transgender. And Christian ministries are facing difficult decisions concerning employees in same-sex relationships and employees who are confused about their sex.

BARRONELLE STUTZMAN

Arlene's Flowers

Leonardo da Vinci had his paints, Michelangelo had his sculptures, Beethoven had his notes and chords. Barronelle Stutzman has flowers. Name the occasion – wedding, funeral, birthday, prom – and she can weave a bouquet or arrangement to fit. For decades, she's been delighting the people of rural Richland, Washington, with her floral creations. Give her an armful of delphiniums, daisies, or daffodils – and a challenge – and she can transform those blossoms into anything from a Disney cartoon character to a tractor, a choir of angels to a quilting bee.

Everybody enjoys that kind of creativity, but only a handful can really appreciate it ... bringing their own sixth sense of understanding to just how delicate or witty or carefully crafted the work of the artist really is. That's why Barronelle and her friend Rob Ingersoll hit it off so well. He wasn't just one of her best customers. He really understood how much of herself she pours into the floral arrangements she weaves so well.

Barronelle had put together all kinds of wonderful creations for the special events and occasions important to Rob, and so it nearly broke her heart the day he came in and asked her to come up with something original for the most important occasion of all – the one occasion she could not, in good conscience, help him celebrate. Rob said he was marrying another man, and Barronelle's Christian faith is grounded in Scripture that teaches marriage as the union of one man and one woman.

She broke it to him as gently as she could, and he said he understood, even hugging her as she told him. His partner, though, did not. The outrage he shared on Facebook drew attention from those attempting to push same-sex marriage on Americans ... including the state's new attorney general, Bob Ferguson.

Ferguson determined to make an example of Barronelle. He filed a consumer protection lawsuit against her, charging her with illegally discriminating against Rob on the basis of his sexual orientation. It was an unusual course of action, given that neither Rob nor his partner had filed a formal complaint. They got flowers for their ceremony, so that was hardly the problem. The state Human Rights Commission, charged with instigating action in such matters, hadn't pursued a claim. But Ferguson made it a personal priority, not only filing the lawsuit but denouncing Barronelle from political stumps all over the state. (Taking his

lead, Rob and his partner, with the ACLU, have since filed their own lawsuit, which is now combined with the state's.)

In the months following the lawsuit and a barrage of media coverage, Barronelle's shop was deluged by phone calls and buried in hate mail from people who knew very little about what really happened between Barronelle and Rob and who denounced her decision and mocked the faith that inspired it. But over time, those calls thinned out ... to be replaced, more and more, by

countless letters and cards and emails of support from people all over the world who'd read of her situation and admired her courage.

With her case still pending – in a legal system that has been increasingly hostile in recent years, to choices of conscience from people of faith – she is drawing a lot of encouragement from these fellow believers. The way ahead may be difficult, but she will stand by her beliefs and trust her Lord, no matter what the court rulings may be. Barronelle is a wonderful florist, but she'd be the first to tell you: no one promised her a rose garden.



As a result, it is important that LCMS churches, schools, and ministries develop a clear statement on marriage, gender, and sexuality within their statements of faith. It is likewise important that every employee, student, marriage applicant, and volunteer be aware of the organization's religious position on these (and other) issues prior to entering a formal relationship with the organization. Remember: this statement is not intended to limit the organization's ability to reach or serve a particular group, but rather to protect it from being forced to operate in a way that violates its religious beliefs.

A statement on marriage, gender, and sexuality helps protect religious organizations in at least two ways. First, it may discourage those looking for “easy” lawsuits from bringing claims. Once the organization clearly states its religious beliefs on these matters, it is more difficult to argue that

the organization acted with improper motives. Second, the statement will make it easier for the organization to defend itself if it is sued. Courts generally regard a clear statement of belief as an expression of the organization's doctrine, and defer to it as required by the First Amendment. Adopting a statement of belief makes it more likely a court will conclude the organization acted on its well-documented and sincere religious beliefs, rather than from an improper motive.

The organization's statement of belief concerning marriage, gender, and sexuality can take various forms. There is no magic language that must be copied verbatim, although it is important to cover all three topics: marriage, gender, and sexuality. Ideally, the statement (or statements) should be added to an already-existing statement of belief. A statement of belief on these matters might look something like the following:

SAMPLE STATEMENT OF BELIEF

We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complementary genders together reflect the image and nature of God (Gen. 1:26-27). Rejection of one's biological sex is a rejection of the image of God within that person.

We believe that the term marriage has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture (Gen. 2:18-25). We believe that God intends sexual intimacy to occur only between a man and a woman who are married to each other (1 Cor. 6:18; 7:2-5; Heb. 13:4). We believe that God has commanded that no intimate sexual activity be engaged in outside of a marriage between a man and a woman.

We believe that any form of sexual immorality (including adultery, fornication, homosexual behavior, bisexual conduct, bestiality, incest, and use of pornography) is sinful and offensive to God (Matt. 15:18-20; 1 Cor. 6:9-10).

We believe that in order to preserve the function and integrity of [the organization] as the local Body of Christ, and to provide a biblical role model to the [the organization] members and the community, it is imperative that all persons employed by [the organization] in any capacity, or who serve as volunteers, agree to and abide by this Statement on Marriage, Gender, and Sexuality (Matt. 5:16; Phil. 2:14-16; 1 Thess. 5:22).

We believe that God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ (Acts 3:19-21; Rom. 10:9-10; 1 Cor. 6:9-11).

We believe that every person must be afforded compassion, love, kindness, respect, and dignity (Mark 12:28-31; Luke 6:31). Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with Scripture nor the doctrines of [the organization].

Please see Appendix A on page 36 for a detailed explanation on these issues incorporating LCMS sources from which an organization can craft its own statement of belief on these issues.



1.2 Statement of Final Authority for Matters of Faith and Conduct

It is impossible to anticipate every doctrinal dispute that an LCMS church, school, or ministry might encounter. New disputes arise regularly, and it is important that Christian organizations be able to respond in a legally defensible way to these issues.

For example, decades or even centuries ago, when many of the existing Church creeds and statements of faith were written, no one contemplated marriage was anything but the union of a man and a woman. No one could

foresee that many would not only advocate for marriage redefinition, but also demand that churches host same-sex ceremonies. Consequently, few Christian organizations were prepared when the current cultural war about marriage broke out.

Each organization should have a statement that clearly identifies (1) the source of religious authority for matters of faith and conduct, and (2) the final human interpreter of that source for the organization. Such a statement should provide a catch-all to cover unforeseeable threats that might arise in the future.

A statement of authority for matters of faith and conduct clearly denotes that authority resides in a designated individual or group (e.g. minister, elder board, executive committee, or board of directors) who is authorized to state the organization's beliefs and practices on any disputed issue. Please refer to the portions of the Statement of Belief (pg. 7) that explain final authority of LCMS congregations.

BLAINE ADAMSON

Hands On Originals

Blaine Adamson's professional interests seem to suit people to a "tee" — or, more specifically, to a t-shirt. He has a gift and an enthusiasm for helping others convey messages on shirts of all kinds — as well as hats, bags, blankets, bottles, cups, and mugs. Working alongside other people who share that enthusiasm, he has invested many years making Hands On Originals, Inc. one of the most successful promotional printing companies in Lexington, Kentucky.

Yet — understandably — not every slogan someone comes up with is the kind Adamson wants to put on his merchandise. Periodically, he has to tell folks that the message they had in mind is not something his company will print or design. When he does that, Adamson always makes it a point to refer the potential customer to another local business.

When the Gay and Lesbian Services Organization (GLSO) called him, though, they wouldn't take "no, thank you" for an answer. The group wanted Hands On Originals to print shirts promoting its upcoming "Pride Festival." When Adamson respectfully declined the job, the organization filed a complaint with the city's Human Rights Commission, alleging that the company engaged in illegal discrimination based on sexual orientation.

There's nothing in Adamson's life to support this charge. He has regularly printed, and will continue to print, materials for customers who identify as gay or lesbian. And over the years, he has hired — and developed great relationships with — a number

of employees who identify as gay or lesbian. They'd be among the many in Lexington willing to tell you how honest, fair, and compassionate Adamson is.

Sadly, Adamson hasn't received that same kind of tolerance and understanding from certain activist groups. After the GLSO filed its complaint, its members widely publicized their version of the situation, and a campaign began encouraging people to

boycott Adamson's business. That smear campaign resulted in his losing a number of long-time clients.

In 2014, the commission ruled that Adamson had to print messages that violate his conscience. But Alliance Defending Freedom attorneys representing Adamson appealed that ruling to the Fayette Circuit Court, which in April 2015 reversed the commission's decision.

"Hands On Originals and its owners have a constitutional right to refrain from speaking, just as much as they enjoy the constitutional right to speak freely," the court said. "It is their constitutional right to ... not be compelled to be part of the advocacy

of messages opposed to their sincerely held Christian beliefs."

It was a crucial legal victory. But even better — even amid all the turmoil — Adamson says he has truly experienced what the fellowship of Christ is all about, as members of his church have come around him to pray and encourage him in his stand. Theirs is a very hands-on message of love and support, but more than that ... he knows they would give him the shirt off their backs.





1.3 Statement on the Sanctity of Human Life

LCMS churches, schools, and ministries should also consider adopting a statement of religious belief concerning the sanctity of human life.

Certain pro-abortion organizations continue to advocate for requiring all organizations – including faith-based ministries – to pay for contraception and certain abortion-inducing drugs and devices for their employees. The federal government has attempted to force some religious organizations, including for-profits like Tyndale House Publishers and even nonprofit Christian

colleges, to provide abortifacients to their employees and students. Some Christian ministries are facing difficult employment decisions concerning employees who either choose or publicly advocate for abortion in a manner contrary to the ministry's religious beliefs. In addition, advocates of euthanasia and physician-assisted suicide continue to press for the right to terminate life they no longer consider to be of value.

Adopting a statement on the sanctity of human life will help the religious organization when it encounters these situations.

SAMPLE STATEMENT ON THE SANCTITY OF HUMAN LIFE

We believe that all human life is sacred and created by God in His image. Human life is of inestimable worth in all its dimensions, including pre-born babies, the aged, the physically or mentally challenged, and every other stage or condition from conception through natural death. We are therefore called to defend, protect, and value all human life (Ps. 139).

1.0 SUMMARY:

- Adopt a comprehensive statement of belief
- Adopt a statement on marriage, gender, and sexuality (see examples at Appendix A)
- Adopt a statement on final authority concerning matters of faith and conduct
- Adopt a statement on the sanctity of human life

2.0 Religious Employment Criteria

Every LCMS church, school, and ministry should consider establishing religious criteria for its employees and volunteers. Federal law prohibits employment discrimination based on race, color, religion, sex, national origin, or age.⁵ However, religious organizations may consider an applicant or employee's religious beliefs in hiring and firing.⁶ And under a First Amendment doctrine known as the ministerial exception, churches, Christian schools, and other qualifying organizations are exempt from employment non-discrimination laws for hiring and firing their ministerial employees – individuals who are tasked with performing the organization's rituals or teaching and explaining its beliefs.⁷

State and municipal employment non-discrimination laws often mirror federal law, prohibiting discrimination based on religion and unchangeable characteristics such as race, color, and national origin. But an increasing number of states and municipalities also prohibit discrimination in employment based on unbiblical behavior related to sexual orientation and gender identity. Most state laws and municipal ordinances also provide some level of exemptions for religious organizations, but these exemptions vary widely. Regardless, the First Amendment, which trumps state and local law to the contrary, arguably should provide great protection for employment decisions made by religious entities.

Should an employment dispute arise, Christian organizations can best avail themselves of the First Amendment's protection if they create and faithfully enforce religious employment criteria for every employee.



2.1 Signed Statement of Belief

First, and at a minimum, the organization should require all employees and volunteers to sign a statement affirming that they will not act contrary to the organization's statement of belief and are willing to comply with the organization's standards of conduct as determined by the organization (if any) (See Statement of Belief, pg. 7; Code of Christian Conduct, pg. 27). Retain these signed statements as part of the individual's permanent record.

It is also good practice to note either on the signed statement, or in the employee/volunteer handbook, that acting contrary to the organization's statement of belief or violation of the organization's standards of conduct (if any) constitutes good cause to terminate employment or volunteer services.



2.2 Religious Job Descriptions

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

HOUSTON PASTORS



Hernan Castaño



Magda Hermida



Khanh Huynh



Steve Riggle



Dave Welch

It's not something many are willing to believe.

Europe may encroach on its churches, and Christians have long been persecuted in Asia, but this — *this* is the land of the free. We put "In God We Trust" on our money. We say "under God" in the Pledge. We sing "God Bless America" at ballgames. How bad can it really get?

Ask "the Houston Five."

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

The citizens of Houston supplied more than three times the required number of signatures to place the law on the ballot. The city secretary legally certified the petitions — meaning that the City Council either had to repeal the law or it had to be put to a vote of the people. Yet the mayor and the city attorney unlawfully refused the certification.

In response, a group of citizens filed a lawsuit, pressing the city to comply with the law and honor the petitions. Instead, in the course of preparing for trial, the city's attorneys served subpoenas against five local pastors, demanding 17 categories of information — including copies of their sermons "related to . . . the Petition,

Mayor Annise Parker, homosexuality, or gender identity prepared by, delivered by, revised by, or approved by you or in your possession," as well as any personal communications they might have had with church members or others about the bathroom law, homosexuality, or gender identity.

ADF attorneys filed a motion in a Texas court to block that subpoena — along with an accompanying brief pointing out that neither the pastors nor their churches were even involved in the lawsuit, and that the information being subpoenaed had nothing to do with the lawsuit. City officials apparently wanted to see if the pastors had ever opposed or criticized them . . . and to intimidate them, other pastors, and any other citizens from ever doing so again. Mayor Parker even took to Twitter and wrote, "if the 5 pastors used pulpits for politics, their sermons are fair game." In effect, it was an aggressive bid to control — through explicit legal action or implicit political pressure — what preachers preach, and what Christians believe about social issues.

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

Although every position within a church or ministry furthers the organization's religious mission, the link between an employment or volunteer position and the organization's mission cannot be assumed.

Clearly articulate this link in writing.

When feasible, a religious organization should assign its employees and/or volunteers duties that involve ministerial, teaching, or other spiritual qualifications – duties that directly further the religious mission. For example, if a church receptionist answers the phone, the job description might detail how the receptionist is required to answer basic questions about the church's faith, provide religious resources, or pray with callers. Consider putting forth a statement of expectations that all employees and volunteers participate in devotional or prayer time when offered, or even lead these on occasion on an as-requested basis.

Employees and/or volunteers with some duties usually performed by (or associated with) clergy are more likely to be viewed as minister-like by the courts.⁸ Consequently, courts are more likely to apply the ministerial exception to employment law claims based on alleged discrimination.

As noted above, it is important to bear in mind that the term “minister” applies not only to the head of a religious congregation, such as a pastor or priest, but also to any employee charged with ministering, teaching, or communicating beliefs. In a recent case, the United States Supreme Court held that an LCMS rostered teacher (commissioned minister) met the definition of a minister.⁹

A church, Christian school, or Christian ministry that employs an individual regarded as a minister should make that distinction clear in the job title.¹⁰ Any religious educational qualifications, duties, responsibilities, or activities should be clear in the position description. Finally,

remember that one need not have the title minister for the ministry to claim the ministerial exception: the exception applies to those charged with ministering, teaching, or communicating beliefs. Employee job descriptions should also include the religious grounds for limiting employment opportunities, especially if the limitations involve any categories protected by law (such as religion or sex). For example, if a church or Christian school believes that only men may hold certain positions, this criteria should be clearly stated in the job description with scriptural or ecclesiastical support.¹¹

Finally, Christian ministries must consistently apply their employment standards and handle similar cases alike. For example, organizations might be legally vulnerable if they terminate an unmarried, pregnant female employee on religious grounds, but do not terminate a male employee known to have engaged in extramarital sexual relations. Consistency in employment decisions will make it more likely courts will find the organization acted properly and did not commit employment discrimination should a disgruntled former employee file suit.

2.0 SUMMARY:

- Require all employees to sign a statement affirming that they will not act contrary to the organization's statement of belief
- Require all employees to sign a statement affirming that they are willing to abide by your organization's standards of conduct
- List religious job descriptions for every employment position, taking special note of any ministerial positions
- List religious grounds for limiting employment opportunities
- Consistently apply all employment standards

DONALD AND EVELYN KNAPP

Hitching Post Wedding Chapel

It's hard for ministers who've spent their lives helping others say "I do" to come to the point where they have to say, "I don't."

But the way Donald and Evelyn Knapp of Coeur d'Alene, Idaho see it, city officials really haven't left them any choice.

In June 2013, those officials instituted a sexual orientation non-discrimination ordinance. When the courts opted to override Idaho's voter-approved constitutional amendment affirming marriage as the union of one man and one woman shortly thereafter, that put the Knapps, who are unwilling to divorce themselves from the biblical meaning of marriage, on the wrong side of the law.

The Knapps have been operating the Hitching Post Wedding Chapel in Coeur d'Alene for 25 years. Both ordained ministers, and married for 47 years themselves, the chapel is their ministry. They perform religious wedding ceremonies that include references to God, invoke His blessing on the union, and share brief remarks drawn from the Bible to encourage the couple and point them toward a successful marriage. They also provide each couple they marry with a CD that includes two sermons about marriage, and recommend Christian books on the subject. They charge a small fee for their services.

City officials told the Knapps – privately and publicly – that unless they agreed to perform same-sex ceremonies at their chapel, they'd be in violation of city law. The penalty, they were told, was up to 180 days in jail and up to \$1,000 in fines for the

initial violation and each day it continued.

On October 15, 2014, Idaho county officials began issuing same-sex marriage licenses. Two days later, the Knapps received a request to perform a same-sex wedding ceremony at The Hitching Post. The Knapps respectfully declined because of their religious beliefs and ministerial vows. Knowing the city viewed

this denial as a violation of the ordinance and put them at risk of being prosecuted and sent to jail, the Knapps asked ADF attorneys to immediately file a federal lawsuit and a motion for a temporary restraining order to stop the city from following through on its threats.

The city initially responded to the lawsuit by confirming that the Knapps were subject to the ordinance because they ran a for-profit business. But intense public scrutiny and criticism quickly changed its mind, and the

city has now told the Knapps that they will not be prosecuted. However, the lawsuit is moving forward because the city has refused to amend the ordinance to make it clear that it does not cover for-profits operated according to religious beliefs, leaving other religious business owners who object to participating in same-sex ceremonies subject to prosecution.

How the Knapps' case will ultimately be resolved is yet to be determined. But what it underscores is how the very government invested with protecting our personal religious freedom is itself trying to force us to forfeit that freedom.



That put the Knapps, who are unwilling to divorce themselves from the biblical meaning of marriage, on the wrong side of the law.



3.0 Facility Use Policy

A facility use policy is critical for any LCMS church, school, or ministry that owns a building and permits its facilities to be used outside of normal business operations.¹²

Many churches fear that the government will force them to violate their religious beliefs and allow same-sex ceremonies in their buildings. Some of these churches have even prohibited all outside groups from using church facilities – possibly an unwarranted reaction that limits the church's ability to serve its community. Despite attempts to require churches to host same-sex ceremonies, church buildings are private property and used primarily for the exercise of religion throughout the week.¹³ As such, the use of church buildings is clearly subject to First Amendment protection and churches have the right to ensure that any use of their facilities is consistent with their religious beliefs. Under current law, no church is forced to open its buildings for uses that conflict with its religious teachings. (However, care must be taken not to jeopardize this right by allowing your property to be used in such a way that might be construed under your local laws to make the church property a place of public accommodation.)

But some advocating for marriage redefinition hope to change the current law that protects churches. And it is not clear, even under the current law, how much protection other Christian organizations have from being compelled to open their facilities for uses that conflict with their doctrine. Churches, Christian schools, and Christian ministries can strengthen their religious liberty protections by adopting

a facility use policy that outlines the religious nature of the building and restricts its use to those acting in a manner consistent with the organization's biblical beliefs. A policy is clear evidence of the organization's beliefs and practice regarding use of its property and why certain practices or activities are never permitted. A facility usage policy should appear either in the congregation's governing documents or policy manual. LCMS churches, schools, or ministries that rent their facilities to outside organizations should consider doing so at less than market rates. When evaluating whether an organization is religious enough to merit certain legal protections, courts often consider whether the organization looks more like ministry, or more like a for-profit business engaged in commerce. Facilities that are rented out at less than market rates are more indicative of a ministry.¹⁴

There is no one-size-fits-all policy for all religious groups. The important point is to create a policy that covers situations unique to your organization's ministry and mission, buildings or facilities, and religious beliefs. Take the time to craft a specific policy addressing each of these areas for your organization. *A sample facility use policy is available at Appendix B on page 41.*

3.0 SUMMARY:

- Create a facility use policy (see example at Appendix B)
- Identify the religious purpose of the building
- Restrict facility use to those acting consistent with your organization's beliefs

ROBERT AND CYNTHIA GIFFORD

Liberty Ridge Farms

Same-sex couples all over America are trampling a lot of innocent people in their rush to redefine marriage.

The latest family to be plowed over is the Giffords, whose beautiful farm in upstate New York is first and foremost their home and private property – property they cheerfully open from time to time to the general public for pumpkin picking, pig racing, corn mazes, and even occasionally a wedding on the ground floor of the barn that contains their home.

When the Giffords host weddings, they go whole hog: greeting guests at the gate, ferrying them to the barn in their farm trolley, decorating the premises, arranging for flowers and fireworks, and providing cake and refreshments. They even make available a bridal suite in their living quarters above the ground floor.

There's just one hitch for people thinking of marrying at the Giffords'. They only host weddings between a man and a woman, since the Giffords are Christians who believe this union represents God's design for marriage. They gently explained this a while back to two lesbians who asked to reserve their barn for their upcoming same-sex ceremony. But the women didn't care for the message, didn't respect the family's convictions, and didn't take kindly to "no" for an answer. When Mrs. Gifford invited them to visit the farm, to discuss holding a reception there, the women refused. Interestingly, they did not tell her they were recording the conversation.

The women then filed a complaint with the New York State Division of Human Rights. The judge who heard their case disregarded the fact that the Giffords have hired homosexuals; that they've hosted birthday parties for homosexuals on their property; that they were happy to have the women take part in any of the farm's other special public events; or that the family's

God-given right to live out their religious beliefs is ensured, supported, and spelled out in the Constitution. The judge just found the Giffords guilty of discrimination and fined them \$13,000, with the promise to keep on fining them if they ever say "no" to a same-sex ceremony again.

That's not all. If the Giffords didn't pay the fines within 60 days, the judge ordered they pay 9 percent interest. In addition to the money, he ordered the Giffords to prominently display

a poster on their property addressing anti-discrimination laws. He further ordered the family and employees to undergo "anti-discrimination" training, perhaps to enlighten them on the errors of their religious convictions.

The Giffords are weighing their options for what to do next. For now, they are standing by their convictions to challenge this unjust law and follow their moral beliefs against yet another tyrannical consequence of marriage redefinition.



[The judge] ordered the family and employees to undergo “anti-discrimination” training, perhaps to enlighten them on the errors of their religious convictions.

PROACTIVE STEPS FOR SPECIFIC ORGANIZATIONS

4.0 Churches



4.1 Churches – Formal Membership Policy

Sadly, church members sometimes engage in behavior that necessitates church discipline. Such discipline is biblical and consistent with nearly every church tradition, though some specific approaches vary (See, e.g., Matt. 18:15-20). And, on occasion, those who have been disciplined by their church (or removed as members) have then sued.¹⁵

Thankfully, churches enjoy considerable freedom under the United States Constitution to govern themselves as they see fit,¹⁶ even when doing so causes injuries that would otherwise be actionable in court.¹⁷ But this freedom has limitations. Only those individuals who unite with a church have consented to the church's authority over them.¹⁸ In order for a church to have the best claim to immunity against an alleged injury that resulted from church

discipline,¹⁹ the alleged victim must have been a church member when the discipline occurred. This is very difficult to determine if the church does not have a formal membership policy.

Churches that are not incorporated and not LCMS member congregations, like some mission starts without formal members, must be aware that they potentially enjoy less protection from legal liability when they impose church discipline on those who merely attend church.²⁰ This does not mean that a church should adopt a form of government to which it does not subscribe. For example, members are not necessarily voting members in the congregational model, but may be designated as members through some other model in which they affirm they are committed to and part of a church body, even if there is no voting or say in church practices.

Churches with formal members have greater legal protection when they find it necessary to impose church discipline on their members.

The LCMS Commission on Constitutional

Matters (CCM) offers guidelines for *Constitutions and Bylaws of Lutheran Congregations* including membership. That document, available on the LCMS website under CCM, Helpful Documents tab, offers the following:

5.0 MEMBERSHIP

Synod congregations often distinguish between three types of congregational membership¹: baptized, communicant, and voting.² Voting membership may be open to all communicant members but may also be limited to males only.³ Care should be taken that the age at which individuals may hold voting membership conforms to any requirements of state law. Many congregations restrict voting membership to persons who have reached the age of legal majority. This is especially important when decisions involving contracts and other legal matters are made. Again, membership in organizations whose principles and conduct conflict with the Word of God shall be prohibited (Bylaw 3.9.6.3.1 [a]).⁴ Also, congregations are not to deny membership or other congregational privileges to any Christian because of race or ethnic origin (Bylaw 2.3.1 [a]).⁵

Example:

“This congregation distinguishes between three types of congregational membership.

5.1 The membership of this congregation includes the following:

5.1.1 Baptized members are all who have been baptized in the name of the Triune God and who are under the spiritual care of the pastor of this congregation, including the children who have not yet been confirmed into communicant membership.

5.1.2 Communicant members are those baptized members who have been instructed and are familiar with the contents of Luther’s Small Catechism, have been confirmed in the Lutheran faith, and accept the confessional standard of Section _____ of this Constitution.

5.1.3. Voting members are communicant members who have reached the age of _____ years.

5.2 The members of this congregation are received in the following manner:

5.2.1 Baptized members are received through the Sacrament of Holy Baptism or through the consent of one or both parents in the case of children who have been baptized in another Christian congregation.

5.2.2 Adult members are received through the rite of confirmation and Sacrament of Holy Baptism as appropriate, through transfer from a sister congregation, or through

profession of faith or reaffirmation of faith.

5.2.3 Eligible communicant members may be received as voting members upon application for such privilege upon approval of the voter's assembly.

5.2.3 (Alternate) All communicant members who have reached the age of _____ are voting members.

5.3 Members of this congregation shall conform their entire lives to the authority of God's Word and to that end shall make diligent use of the means of grace, exercise faithful stewardship of God's many gifts and talents, impart and accept fraternal admonition as the need of such admonition becomes apparent, and be readily available for service in the kingdom of Christ within and beyond the congregation. Membership in organizations whose principles and conduct conflict with the Word of God is prohibited.

5.4 Membership in this congregation shall be terminated as follows:

5.4.1 Membership shall be terminated by transfer to a sister congregation, by joining a congregation outside the fellowship of this congregation, by excommunication or self-exclusion, or by death.

5.4.2 Communicant members who conduct themselves in an un-Christian manner shall be admonished according to Matt. 18:15-20 and the congregation's stated and adopted guidelines.⁶ If they remain impenitent after proper admonition, they shall be excommunicated. Each case of excommunication or self-exclusion shall be presented to the voter's assembly for a decision. A two-thirds majority vote of the voter's assembly shall be required."

¹Some congregations include a fourth category: "Guest Members." 1989 Res. 5-19 encouraged such a category for congregations with many seasonal members, "which could include such basic rights and privileges as reception of the sacraments, pastoral care, congregational concern, use of their time, talents, and treasures in the service of the Lord, and attendance and participation in voters' assemblies as advisory or associate members" (1989 Convention Proceedings, p. 140).

²Variations often occur in the last two categories. Some congregations distinguish between communicant and confirmed members due to the practice of early communion, in which case further definitions will be necessary.

³1969 Res. 2-17 concluded that "Scripture does not prohibit women from exercising the franchise in congregational and synodical assemblies," at the same time concluding that "the Synod itself and the congregations of the Synod are at liberty to alter their policies and practices in regard to women's involvement in the work of the church" (1969 Convention Proceedings, p. 88).

⁴"(a) Pastors and congregations alike must avoid membership or participation in any organization that in its objectives, ceremonies, or practices is inimical to the Gospel of Jesus Christ or the faith and life of the Christian church" (Bylaw 3.9.5.3.1).

⁵"(a) It shall be the policy of the Synod to decline membership to congregations whose constitutions deny membership or other congregational privileges to any Christian because of race or ethnic origin" (Bylaw 2.3.1 [a]).

⁶The matter of termination of membership is of great importance since it involves the larger subject of church discipline. It is therefore advisable that congregations prepare and adopt separate guidelines to address this topic, especially keeping in mind the following:

1. Be consistent in applying discipline.
2. Carefully follow disciplinary guidelines.
3. Do not allow unsubstantiated charges to be circulated by the church.
4. Base decisions on clearly stated biblical grounds.
5. Guidelines should state the desired outcome of church discipline, to call a fellow Christian to repentance.



4.1.2 Formal Membership Policy: Procedures for Member Discipline

Generally, churches cannot be held legally liable because they discipline church members or terminate their membership.²¹

But courts have found exceptions to this rule. The most common exception occurs when church leaders reveal to the congregation the behavior that led to discipline, without having in place church policies that allow them to do so. This can lead to lawsuits against the church for invasion of privacy, intentional infliction of emotional distress, defamation, and so forth.²² A church can avoid these types of lawsuits by implementing clear procedures for member discipline and membership termination as suggested above in the CCM guidelines. If the church believes it may be necessary to reveal to the congregation the reason for church discipline or membership termination, the timing and means by which this can take place should be clearly set forth in the procedure for member discipline. The church should also consult legal counsel before discussing any details related to the discipline and termination.



4.1.3 Formal Membership Policy: Disassociating Membership

Just as the church should have a written policy for becoming a member, it should also have written procedures in its bylaws for how and when members can disassociate from the church as suggested above in the CCM guidelines. Courts

have held that church members have a First Amendment right to terminate their membership.²³ But courts have also held that a member's right to terminate his or her membership can be waived as long as the waiver is knowing, voluntary, and intelligent.²⁴ Therefore, the circumstances and timing of when church members may terminate their memberships must be clearly set forth and agreed to by both the church and the member.

Once a member has rescinded her membership, she no longer consents to the church's doctrine and authority, potentially limiting the church's legal authority to discipline her. At least one state court has allowed a suit to proceed against the elders of a church who attempted to discipline an individual after she formally withdrew her membership.²⁵ A formal revocation policy clarifies for all parties involved, including the court, when the membership terminated.



4.2 Churches – Marriage Policy

In addition to a statement of religious belief concerning marriage, gender, and sexuality (pg. 8), and a facility use policy (pg. 19), churches should also adopt a comprehensive policy concerning the marriages their pastors or ministers may solemnize or otherwise participate in.

SAMPLE MARRIAGE POLICY

The marriage policy of _____, a member congregation of The Lutheran Church—Missouri Synod, is and always has been consistent with the Synod’s beliefs on marriage. We believe that marriage is a sacred union of one man and one woman (Gen. 2:24-25), and that God gave marriage as a picture of the relationship between Christ and His bride the Church (Eph. 5:32). The official position of The Lutheran Church— Missouri Synod, as set forth in 1998 Res. 3-21 (“To Affirm the Sanctity of Marriage and to Reject Same-Sex Unions”), is that homosexual unions come under categorical prohibition in the Old and New Testaments (Lev. 18:22, 24; 20:13; 1 Cor. 6:9-10; 1 Tim. 1:9-10) as contrary to the Creator’s design (Rom. 1:26-27). These positions and beliefs can be found on the LCMS website, along with other statements, papers and reports on the subject of homosexuality and same-sex civil unions and marriage. Our pastors will not officiate over any marriages inconsistent with these beliefs, and our church property may not be used for any marriage ceremony, reception or other activity that would be inconsistent with our beliefs and this policy.

The suggested policy statement provided above will provide a measure of legal protection for our congregations to be able to maintain the LCMS’s firm biblical convictions about marriage. We should realize, however, that given the speed of change in opinions about marriage, other legal threats may well arise.

Pastors may be concerned that they will be forced to perform weddings for homosexual couples, and some pastors even question whether they can be considered an agent of the state²⁶ by signing a marriage certificate. While these are understandable concerns, it is helpful to know that there is no case, in the history of our country, where a pastor has ever been forced to perform a wedding or solemnize a marriage. Pastors can continue to choose the weddings they will or will not perform. In fact, there is a legal precedent that supports a pastor’s right to refuse to perform a wedding that conflicts with his religious beliefs.²⁷

We encourage our congregations to be prudent in decision-making and to share any questions or concerns with District and Synod officials. It would be foolhardy to ignore the grim threats to biblical teaching and practice

that we are facing. Yet, it would be far more foolhardy to be overcome by fear because of these challenges, “for he who is in you is greater than he who is in the world” (1 John 4:4). “For I am sure that neither death nor life, nor angels nor rulers, nor things present nor things to come, nor powers, nor height nor depth, nor anything else in all creation, will be able to separate us from the love of God in Christ Jesus our Lord” (Rom. 8:38-39). We urge all our congregations not to live in fear, but to engage our communities winsomely, lovingly, and faithfully with the glorious truths of God’s Word and, above all, with the saving Gospel of our Lord Jesus Christ.

4.0 SUMMARY:

- Create written procedures for becoming a church member
- Create written procedures for church member discipline
- Create written procedures for disassociating from church membership
- Create a church marriage policy

SCOTT AND NANCY HOFFMAN

Ocean Grove Camp Meeting Association

To Scott and Nancy Hoffman, being asked to assume leadership at the Ocean Grove Camp Meeting Association presented an extraordinary opportunity. The beachfront religious retreat is one of the jewels of the Eastern Seaboard – tucked away on a New Jersey peninsula between two lakes and the beautiful Atlantic, it's within a 50-mile radius of one-sixth of the county's population.

The place was founded after the Civil War by Methodists who bought the land from the state and obtained a charter from the legislature setting Ocean Grove apart as "a place on the shore for the perpetual worship of Jesus Christ."

Today, the wooden auditorium, built in 1869, is a national historical landmark. A boardwalk runs the half-mile length of the beach, and alongside it is a beautiful open-air pavilion: a picturesque setting for many of

Ocean Grove's church activities: morning Bible studies, weekly worship services, and Gospel music concerts. Seaside Sunday

The Hoffmans tried to head off the legal hurricane by announcing that, henceforth, no more weddings of any kind would be hosted in the pavilion. It didn't help.

services at the pavilion often draw in passing tourists, Hoffman says, with the result that "many people come to Jesus Christ [who] didn't even know they were going to church that day."

The Hoffmans barely began working at Ocean Grove when controversy engulfed them. In February 2007, the New Jersey

legislature legalized civil unions for same-sex couples. Soon, couples began asking to use the Ocean Grove pavilion for their same-sex ceremonies. When they were refused, based on the organization's religious beliefs, some couples filed discrimination complaints with the New Jersey Division on Civil Rights, asserting that Ocean Grove's pavilion – one of its places of worship – was a place of public accommodation subject to the state's

nondiscrimination law. They claimed that a structure owned by a religious group and used for religious services wasn't a worship facility ... and urged the state to enshrine this nonsense in legal stone.

The Hoffmans tried to head off the legal hurricane by announcing that, henceforth, no more weddings of any kind would be hosted in the pavilion. It didn't help. Neither, in the end, did an effort to go on the offensive: Ocean Grove, with the assistance of Alliance Defending Freedom, filed a federal lawsuit charging the

state with violating the religious group's rights protected by the First Amendment. A federal court dismissed the lawsuit, clearing the way for a five-year legal battle before the New Jersey Division on Civil Rights, which eventually declared that the pavilion was not a religious facility and that Ocean Grove was guilty of discrimination. To end the legal battle and appease state officials, Ocean Grove stopped hosting weddings of any kind in its seaside pavilion – a policy it continues today.

Soon after the Division on Civil Rights' decision, Hurricane Sandy swept the New Jersey coast, shattering homes and towns for miles above and below Ocean Grove. Miraculously, the epic storm left the little seaside pavilion virtually unscathed. Regrettably, the state officials didn't follow a similar course.



5.0 LCMS Schools and Ministries



5.1 Mission Statement

LCMS schools and ministries should articulate the distinctly religious purpose for their existence through a mission statement. This mission statement should be grounded on the organization's religious beliefs and statement of belief. For example, a school's purpose might be, in part, to "train the next generation of Christian leaders and equip them for a life of service to their Savior, homes, churches, vocations, and communities."

When possible, include within the mission statement a speech component – some message the organization wants to communicate to the outside world through its speech and conduct. For example, a ministry operating a wedding chapel might see its purpose, in part, as communicating the theological belief that marriage is only the union of one man and one woman, which reflects Christ's relationship with His Church. Also include an associational component within the mission statement – that is, a desire to associate with likeminded people who will further the organization's religious purpose and beliefs.

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



5.2 Code of Christian Conduct

LCMS schools and ministries should adopt a code of Christian conduct, grounded in the statement of belief, which establishes parameters for acceptable behavior.

In light of current issues with sexual orientation and gender identity, this code of conduct should address: (1) dressing in conformance with one's biological sex; (2) using the restrooms, locker rooms, and changing facilities conforming with one's biological sex; and (3) abstaining from all intimate sexual conduct outside the marital union of one man and one woman. Cite the organization's statement on marriage, gender, and sexuality to highlight why this conduct is biblically required. Wherever possible, tie these requirements to scriptural or ecclesiastical teaching.

The code should also address non-sexual behaviors such as cheating, stealing, respect for authority, and so forth. Include a warning that the school has the right to discipline or ask a student to withdraw for any reason, but that failure to comply with expected standards of conduct will subject the student or employee to potential disciplinary action, up to and including expulsion or dismissal.



5.3 Emphasize Religious Character

Organizations that highlight their religious character have far greater religious liberty protections than those organizations that omit or conceal their religious character. Courts tend to evaluate whether an organization is religious, in part, based on its activities and presentation to the community. A Christian ministry can highlight its religious character through activities such as the following:

- Regularly including prayer, Bible studies, and worship in its activities, including those activities that occur off campus or away from the organization's main facility.
- Emphasizing any affiliation with a church or religious denomination.
- Utilizing religious artwork within the building.
- Noting the organization's religious character through its website, brochures, logo, and tagline.²⁸

5.0 SUMMARY:

- Create a distinctly religious mission statement
- Create a code of Christian conduct
- Emphasize your organization's religious character

JON AND ELAINE HUGUENIN

Elane Photography

For Elaine Huguenin, the nightmare began with a seemingly innocuous e-mail.

Newlywed and newly arrived in Albuquerque, she and her husband, Jon, were just starting to make a go of their fledgling wedding photography business.

The Huguenins have suffered great criticism for their stand, and have been forced to discontinue wedding photography.

Elaine found she had a rare gift for capturing those quiet moments that wedding couples want preserved for a lifetime. Her portfolio was growing, and so was her reputation in New Mexico bridal circles. Then came the e-mail:

"We are researching potential photographers for our commitment

ceremony... This is a same-gender ceremony. If you are open to helping us celebrate our day we'd like to receive pricing information. Thanks."

Carefully, prayerfully, politely, Elaine crafted her reply:

"As a company, we photograph traditional weddings, engagements, seniors, and several other things such as political photographs and singers' portfolios. Thank you for your interest"

Two months passed before the same woman wrote back with a more probing question: *"Are you saying that your company does not offer your photography services to same-sex couples?"*

Elaine tried again to explain: *"Yes, you are correct in saying we do not photograph same-sex weddings, but again, thanks for checking out our site!"*

Months later, the New Mexico Department of Human Rights

contacted her. A complaint had been filed alleging Elaine had violated the state antidiscrimination laws by discriminating on the basis of sexual orientation.

Alliance Defending Freedom then stepped in and pointed out to the courts that:

- a) the Constitution protects Elaine's right to tailor the expression that she creates to the convictions of her conscience;
- b) the First Amendment protects for-profit businesses, like Elane Photography; and
- c) the same-sex couple themselves admit they had no trouble finding another photographer – so their suit is essentially about punishing Elaine for not supporting same-sex unions.

The state of New Mexico showed itself deaf to all of those considerations. The Human Rights Commission ordered the

Huguenins to pay almost \$7,000 in attorneys' fees, a decision the state's supreme court upheld. One judge – in a concurring opinion – wrote the Huguenins "now are compelled by law to *compromise* the very religious beliefs that inspire their lives," as "the price of citizenship." ADF appealed to the U.S. Supreme Court, which declined to hear the Huguenins' case.

The Huguenins have suffered great criticism for their stand, and have been forced to discontinue wedding photography. It remains

for other Christian photographers to continue the ongoing fight to preserve their legal right, as artists, to exercise their God-given creativity without violating their religious convictions.



6.0 LCMS Schools Only



6.1 Admissions Procedures

Each LCMS school should have a well-defined admissions procedure that includes clear statements that the school is a Christian ministry. The procedure should also incorporate circuit breakers in the admissions process. These circuit breakers are designed to interrupt or terminate the admissions process if the school receives an application evidencing a lifestyle or belief system inconsistent with the school's religious beliefs or mission. School admission should never be automatic.

Circuit breakers can take a number of different forms, but we suggest:

Information Packet

Provide each potential applicant family with an information packet describing the school. Include a clear explanation of the school's religious mission and beliefs. Also include a list of admissions criteria, particularly spiritual and behavioral criteria, which the school uses in evaluating prospective students (*Sample provided in Appendix C, pg. 44*). Finally, request that parents and students read the student handbook, and proceed with the application only if they are in agreement with, and willing to abide by, the policies in the handbook.

Application

In the application, include a section for "biological father" and "biological mother," and the status of the parents' relationship (i.e. married, divorced, deceased, never married), as well as an "alternative family information" section for step-

or adoptive parents, or guardians. Inquire whether the child lives with both biological parents, and if not, ask that the family explain the circumstances.

Also include an agreement section for parents (and students in grades 7-12) to sign indicating that they have read the student handbook and discussed it with their student. The agreement should make clear that, by signing, both parents and students certify their consent and submission to all policies in the handbook. Ensure that the school retains any signed statements of agreement as part of the permanent record of the student and family.

It is also good practice to require a copy of each student's birth certificate. This can be used to verify birth sex, age, and citizenship (if applicable).

Interview

If practicable, conduct personal interviews of all new student applicants and their parents, and use the time to gain insight into family dynamics, faith background, behavior, and so forth.

Notice of Admission or Denial

Communicate a notice of admission or denial of admission in writing. Ensure that records of admission and/or denial are retained for an appropriate period of time.

Schools are not legally required to explain why they denied an applicant admission, but there may be instances where it is appropriate to communicate this information. If a school determines that it must deny admission due to a student's or parent's lifestyle that is inconsistent with the school's religious beliefs, it is always best to seek legal advice prior to issuing the written denial.



6.2 Religious Instruction

To ensure the greatest religious liberty protection for your school, it is important that students are not only taught from a biblical worldview (as understood by the church or ecclesiastical authority), but also receive actual religious instruction. A least one Christian school lost its religious protections because it slipped into teaching more general ethical and moral principles, and no longer engaged in religious instruction.²⁹

LCMS schools should consider requiring teachers, as a condition of employment, to incorporate biblical teaching into their curriculum. Requiring teachers to sign a statement that they understand and agree it is their duty to incorporate religious instruction into their courses is helpful.



6.3 Parent, Student, and Teacher Handbooks

All LCMS school handbooks should include the school's mission statement, statement of belief, and code of Christian conduct.

LCMS schools should also require all employees, parents, and students (especially those in grades 7-12) to sign a written agreement statement affirming that they have read, are in agreement with, and are willing to abide by the established standards of the school as outlined in the handbook. *(Sample provided in Appendix C on page 45.)*

Ensure that signed statements of agreement are retained as part of the permanent records of students and faculty.

Two disclaimers should appear in all handbooks. First, make clear that no handbook serves to contractually bind the school in any way. Second, note that the handbooks are subject to change without notice by the school's governing body.



6.4 Disciplinary and Dismissal Procedures

LCMS schools should also establish clear disciplinary and dismissal procedures, and apply these procedures consistently.

6.0 SUMMARY:

- Establish clear school admissions, disciplinary, and dismissal procedures
- Infuse the curriculum and teacher instruction with religious teaching
- Include your school's mission statement and statement of belief in all handbooks
- Include two disclaimers in all handbooks, noting that the handbooks do not create a contract and are subject to change at any time
- Require all employees, parents, and students to sign a statement affirming that they have read, are in agreement with, and are willing to abide by the school's standards

CHRISTIAN SCHOOLS

A brief glance at five recent cases gives a glimpse of what's coming for Christian school administrators in the years ahead, as those promoting the same-sex and transgender agendas set their sights on infiltrating schools, both public and private. Their goal is not so much to assert their own preferences as to acclimate the culture by breaking down moral boundaries, undermining opposition from the church, and influencing children to embrace and emulate their behavior.

- In Queens, New York, St. Francis Catholic Preparatory School was sued by a former employee claiming gender-identity discrimination. After 32 years of working with the Catholic institution, when asked to conform his appearance to the dress code, the male teacher suddenly announced that he was transgender. At the time of the lawsuit, the former teacher was presenting as a female, including adopting a feminine name, wearing women's clothing, and taking hormone therapy. The school argued that he was terminated for insubordination.
- At another New York City Catholic school, Preston High, administrators expelled two girls for fighting on campus. One of those students filed a lawsuit saying the real reason for her expulsion was because she identifies as lesbian. (A judge issued a temporary restraining order, forcing the school to readmit her.)
- Officials at Hope Christian School – an Albuquerque, New Mexico Christian preschool – were sued by two men in a homosexual relationship after their child was refused admission



to the institution. Because the men's home environment and beliefs regarding homosexuality and the family were inconsistent with the school's beliefs, administrators felt that the educational relationship would be next to impossible.

- Catholic Fontbonne Academy in Massachusetts extended an offer of employment to a food services director. When filling out hiring paperwork the new employee listed a man as his emergency contact, indicating that the man was his "husband." Recognizing the conflict with the school's mission and values, school officials rescinded the offer of employment two days later. The man sued the school, claiming discrimination on the basis of sexual orientation.

- California Lutheran High School Association, which operates a private Christian school, was sued for sexual-orientation discrimination after school officials dismissed two female students who were in an unrepentant homosexual relationship. The former students argued that because the school sold items to the public at sporting events – football tickets, concessions, T-shirts, etc. – it might be liable as a

public accommodation. The Court disagreed given the specific facts of the case, but left open the legal question of whether business transactions in other contexts might be enough to make a Christian school vulnerable to similar lawsuits.

Yes, so far these are somewhat isolated cases – but change is in the air. And those pressing their same-sex and transgender political agendas are proving much more vigilant in looking for opportunities to sue private Christian schools than school officials have been in preparing for such a legal onslaught.

VOCATION OF CITIZENS

According to Lutheran doctrine of vocation, Christians – in addition to their callings in the family, the church and workplace – have a calling to be citizens.³⁰ All of us are blessed individually as citizens of this great country and as Christians are called to the vocation of citizenship. What do these callings mean for us?

1. Prepare – Become educated. Be aware of legislation that may threaten your religious liberties. Learn what is happening in your community. Identify areas and issues that challenge religious liberty or the doctrine and confession of the LCMS regarding marriage. Talk to others in the district or to partners in the community.

2. Protect – Consider putting policies in place that help to protect your church or school. Before making public statements, be sure that you are protected in the right ways should someone choose to challenge you.

3. Defend – An awareness of current controversies and issues will prepare you to speak boldly and winsomely to defend your beliefs with family or friends or in the public square. Make sure that your defense is rightly spoken with generosity, kindness, and understanding so that relationships continue and opportunities to engage are sustained. Preparing in advance about the way to say something is just as important as knowing the facts.

CONCLUSION

Even in – perhaps *especially* in – a changing moral climate, God’s people can continue to make a profound impact as faithful witnesses to His love and truth. Given the freedom to live out and exercise our faith, we can engage a hostile social and political culture in ways that offer clear light and enduring hope amid the gathering spiritual darkness.

That’s what this guidebook is all about. Adopting the action steps recommended in the previous pages cannot insulate your church, school, or ministry from all attacks by marriage counterfeits and those advocating for complete sexual license. But acting upon these suggestions will place your

organization in a more defensible legal position should it face a lawsuit for discrimination. You have the assurance that the LCMS and Alliance Defending Freedom will continue to provide resources for the challenges ahead. Check us out at LCMS.org and ADFLegal.org.

More than that, preparing yourselves legally will give your group or institution greater freedom to continue presenting the Gospel clearly and effectively to your community – and that freedom may well make an eternal difference for lost and hurting souls all around you.



Disclaimer: *The information provided in this document should not be construed, directly or indirectly, as providing legal advice and this document is not a substitute for obtaining professional legal counsel from a qualified attorney in your jurisdiction. The matters contained in this document are for purposes of general information and should not be construed as legal advice to be applied to any specific factual situation. If you are unsure whether your particular situation requires that a document be changed, you should consult a lawyer. As the law differs in each legal jurisdiction and may be interpreted or applied differently depending on your location or situation, the use of this information is not a substitute for the advice of legal counsel.*



These samples are demonstrative only; there is no magic language that must be copied verbatim. Each organization should tailor the statement to suit the needs of its particular group and faith tradition. Including scriptural references is encouraged, although not legally required.

LCMS — Statement on Marriage, Gender, and Sexuality

Information on Marriage Policies for Member Congregations

The Holy Scriptures teach that God, in creating the world, gave marriage to be the lifelong union of one man and one woman (Gen. 2:24), a gift to be held in honor and kept pure (Heb. 13:4; 1Thess. 4:2-5). As a man and woman freely commit themselves to one another, God himself joins them as one. Marriage is far more than a social contract or a mere interpersonal bond. It is an act of God the Creator. So our Lord Jesus says in Matt. 19:4-6: “Haven’t you read that at the beginning the Creator made them male and female and said, ‘For this reason a man shall leave his father and his mother and be united to his wife and the two shall become one flesh?’”

Marriage cannot be rightly understood apart from another gift: the gift of children. As he creates man and woman, God says, “Be fruitful and multiply” (Gen. 1:28). As the two become one flesh, the highest possible result of this marriage union, when it is God’s will, is the conception and birth of a child. The child is in every sense the one flesh of the mother and father and the living sign of their union. The optimal setting for the care of children is the loving marital unity of a man and woman. In such marriage children are nurtured within the distinctive uniqueness and created differences of male and female serving together in the family.

This biblical understanding of the marriage union of man and woman is both purposeful and beautiful. Its purposes include the procreation and nurture of children, the mutual joy and the support and encouragement given to one another by husband and wife, and the restraint of selfishness and sin as each seeks to serve the other’s needs. Such purposes reveal a beauty so great that Eph. 5:21-33 connects marriage to the holy union of Christ and His bride, the church. The apostle Paul writes that even as Christ, the bridegroom, pours forth sacrificial love for his church, the bride, and she trustingly commits her life to him, so also husbands are called to sacrificial love toward their wives and wives to a willing respect for their husbands.

This, in brief, is the Bible’s teaching on marriage – and so it is also the doctrine of The Lutheran Church—Missouri Synod (LCMS). Every congregation and called worker of the LCMS accepts the Scriptures of the Old and New Testaments as the written Word of God and the only rule and norm of faith and of practice. Congregations and church workers also gladly declare their unswerving conviction that the confessions of the Lutheran church, as found in *The Book of Concord* (1580), are in full agreement with the Scriptures. LCMS congregations, pastors, and other called servants thus agree to abide by the doctrine of the Synod. To believe that marriage is a sacred union of one man and one

woman is not a political opinion or a cultural bias, it is the clear teaching of Holy Scripture, something that the members of the Synod believe, teach, and confess as the very truth of God.

This understanding of marriage is not, however, the view of many people in North America and Western Europe (the West). Recent legislative and judicial actions throughout the West reveal an undeniable fact: marriage is no longer understood to be the lifelong bond of one man and one woman. Countless millions now believe that marriage is a loving, legal commitment between any two individual adults. According to the Pew Research Center, a significant shift of opinion, largely generational in nature, has taken place in the United States. In 2001 only 35 percent of U.S. adults supported same-sex marriage and 57 percent opposed it, believing that marriage was only between a man and a woman. In 2013 the numbers are radically different with 50 percent favoring same-sex marriage and only 43 percent opposing it. The 2013 United States Supreme Court decisions striking down California's same-sex marriage ban and the federal Defense of Marriage Act reflect this changed view of marriage.

For the LCMS and its congregations these societal and legal trends present great challenges. Pressure on churches to accommodate their teachings and practices to the changing societal view of marriage is increasing. Some church bodies have endorsed same-sex marriage in contradiction to clear biblical teaching. Will cultural attitudes or biblical truth guide our teaching and practice?

We cannot concede to Caesar what belongs only to God (Matt. 22:21). His Word and His alone must guide the church, not human opinions. "We destroy arguments and every lofty opinion raised against the knowledge of God, and take every thought captive to Christ" (2 Cor. 10:5). To do anything less is to sacrifice the beauty and purposes of marriage as it has been given by God.

LCMS beliefs, practices and policies regarding marriage are firmly established and have long been documented. They are set forth in any number of documents. As examples, please refer to the following materials concerning the Synod's beliefs on marriage:

Human Sexuality: A Theological Perspective (English | Spanish) (1981) – A report by the LCMS Commission on Theology and Church Relations.

Plan for Ministry to Homosexuals and their Families (1999) – A compassionate discussion of the spiritual needs of individuals who experience same-sex attraction and their families, together with suggestions for ministering to them. Our Lord deals with sin in one way, calling each of us to repentance that we might receive His forgiveness.

FAQ on Same-Sex Marriage and FAQ on the LCMS Response to Homosexuality – In other words, while we reject same-sex marriage, we do not reject individuals who struggle with same-sex attraction, but we seek to love them and call them to repentance and faith in Christ's forgiveness, just as we do for all sinners. We cannot bless same-sex marriage (just as we cannot bless sexual intercourse outside of the marriage of one man and one woman) because we cannot bless what God calls sin. To do so would be to place those who engage in such behavior outside the need for repentance and forgiveness, and thus

outside the need for redemption in Christ. Our concerns are always ultimately pastoral, focused on the care of souls in Christ. We seek to be faithful to the Word of God because we care about people.

Response to Human Sexuality: Gift and Trust (2012) – A Commission on Theology and Church Relations response opposing the Evangelical Lutheran Church in America’s decision to affirm same-sex relationships.

Statement: An Affirmation of Marriage (2013) – Joint statement by the Anglican Church in North America, Lutheran Church—Canada, the LCMS, and the North American Lutheran Church

Open letter – Marriage and Religious Freedom: Fundamental Goods That Stand or Fall Together – An Open Letter from Religious Leaders in the United States to All Americans.

It is our understanding, based on information from LCMS legal counsel, that currently there is no federal or state law which prohibits ministers from refusing to officiate over same-sex marriages or requires churches to allow their sanctuaries or church facilities to be used for same-sex marriage ceremonies, same-sex civil unions, or same-sex marriage receptions. Indeed, it is our understanding that most, if not all, state laws that recognize same-sex unions and/or same-sex marriages have express exceptions providing that such statutes do not require ministers to participate in such ceremonies or require churches to allow them to take place on their property. However, because laws relating to marriage, same-sex unions and anti-discrimination vary from state to state, as do laws governing certain tax exemptions, each congregation should consult its local legal counsel regarding the applicable state and local laws to confirm this.

Governing documents of member congregations, such as Articles of Incorporation, Constitution, and Bylaws, usually include a statement of adherence to the confessions and beliefs of the Synod as set forth in the Synod Constitution. Such a statement is of particular importance at the present time in light of today’s evolving laws on same-sex marriage and antidiscrimination. For these reasons, it is recommended that congregations affirm their beliefs, practices and policies on marriage in a written statement. Such policies could be included as part of your congregation’s handbook or policy manual or simply be prepared as a separate document.

Further, due to some concern over at least one reported case of a nonprofit organization losing a partial real-estate tax exemption for refusing to rent a seaside pavilion on its property that was open to the public to a same-sex couple for a civil union, it would be prudent to include a provision in your marriage policy limiting the use of the congregation’s property for marriages that are consistent with your beliefs and policies on marriage.

Sample Church Facility Use Policy

The pastor or his official designee must approve all uses of church property and facilities [including the church school and early childhood center]. Generally, priority shall be given to church members, their immediate families, and organized groups that are part of the ministry, organization, or sponsored activities of the church.

The church believes that its property and facilities are to be used for the fellowship of the Body of Christ and to bring glory to God. Although the facilities are not generally open to the public, we sometimes make our facilities available to approved non-members as a witness to our faith, in a spirit of Christian service that is consistent with the Gospel of Jesus Christ. But facility use will not be permitted to persons or groups holding, advancing, or advocating beliefs or practices that conflict with the church's faith or moral teachings, which are summarized in, among other places, the church's constitution and bylaws, and in various places on its website [insert congregational website] and on the website of The Lutheran Church—Missouri Synod, *lcms.org*.

This facility use policy is consistent with our belief that allowing our property and facilities to be used for purposes that we determine are contrary to this church's beliefs would be an endorsement of those purposes and a contradiction and grave violation of the church's faith and religious practice (2 Cor. 6:14; 1 Thess. 5:22). Further, it is important that the church present a consistent message to the community and that the church staff and members conscientiously maintain that message as part of their Christian life and as a witness to others that is consistent with the Gospel of Jesus Christ. Therefore, in no event shall persons or groups who hold, advance, or advocate beliefs, or advance, advocate, or engage in practices that contradict the church's faith use any church facility. Nor may church facilities be used in any way that contradicts the church's faith. This policy applies to all church facilities, regardless of whether the facilities are connected to the church's sanctuary, because the church understands all of its property as a gift from God to be received with thanksgiving and to be set apart and used to the honor of Jesus' name in ways that are consistent with our faith in Him (Col. 3:17).

Consistent with this policy, church property, facilities and equipment [including the school and early childhood center] will be made available to non-members or outside groups which affirm that their beliefs and practices and planned uses of the facilities are consistent with the church's faith and practice.

[Note on fees for use of property and facilities: Whether a church charges a fee for facility use is up to its discretion. But charging below-market rates, or no fee at all, should help churches avoid being considered a public accommodation under local or state law. Public accommodations are generally subject to a variety of laws, including laws regarding nondiscrimination. Because there may be a greater risk of being subject to these laws when a church charges market rates for facility use, we advise either charging no fee (except for perhaps a cleaning or other incidental fee) or charging a below-market fee.]

Facility Use Hours

Facilities are available between the hours of ____ a.m. and ____ p.m. Use outside these hours may be approved by the pastor or official designee.

Scheduling Events

Facility use requests shall be made to _____ [e.g., pastor, secretary, events coordinator] by submitting the “Church Facility Reservation Request and Agreement” form. The event will be reserved and placed on the church calendar only when the pastor or official designee approves the use.

Fees

Use of church facilities is subject to a use and maintenance fee of \$_____ to pay for the upkeep of church facilities. Church members are not required to pay a fee for usage because maintenance of the facilities are derived from member tithes and offerings. *[Note: Whether a church charges a fee for facility use is up to its discretion. But charging below-market rates, or no fee at all, helps churches avoid being considered a public accommodation under local or state law. Public accommodations are generally subject to a variety of laws, including laws regarding nondiscrimination. Because there is greater risk of being subject to these laws when a church charges market rates for facility use, we advise either charging no fee (except for perhaps a cleaning or other incidental fee) or charging a below-market fee. In any event, the church may also wish to require a refundable security deposit to pay for any damages to the facilities].*

Facility Use Guidelines [OPTIONAL]

1. Alcohol Policy: No alcohol may be served in church facilities. *[Note: If a church allows alcohol, it should be aware that it is exposing itself to additional liability, especially involving claims that could arise on the premises or from intoxicated drivers afterward. Banning alcohol is also more consistent with the limited-use policy of the church. But if alcohol is allowed in a banquet hall or other facilities, the church should note that serving alcohol to minors is prohibited, and that the group using the facilities must not allow open and unsupervised serving of alcohol at events in which minors are present.]*
2. Smoking Policy: [e.g., smoking in any indoor church facilities is prohibited.]
3. Groups are restricted to only those areas of the facility that the group has reserved.
4. Food and beverages in classrooms, worship space ... [e.g., not allowed, not allowed without lid, restricted to certain areas, etc.]
5. Church equipment, such as tables and chairs, must be returned to original placement, unless arranged otherwise prior to the event.
6. All lights must be turned off and doors locked upon departure.

7. Clean-up [address whether it is the responsibility of the group using the facility, and if so, what constitutes satisfactory clean-up. The church may also wish to include a clean-up fee].
8. Abusive or foul language, violent behavior, and drug or alcohol abuse are strictly prohibited on church premises. Any person exhibiting such behavior will be required to leave the premises.
9. Any person or group must sign the “Church Facility Reservation Request and Agreement” form prior to reservation of church facilities.
10. Facility usage requires the presence of adult supervision at all times.
11. Note that certain unanticipated events may require your event to be relocated (i.e. funerals).
12. The congregation is not responsible for theft or damage to personal property brought into the building.
13. Group acknowledges that they will not bring or allow dangerous items to be brought into the facility.
14. This document constitutes the entire agreement between the parties and is not assignable.

Insurance

For all non-church-sponsored events, the group or person using the facilities must obtain liability insurance coverage in the amount of at least \$_____. The user must also sign a “Facility Use and an Indemnity and Hold Harmless Agreement.”

Church Facility Reservation Request and Agreement

Name of person or organization requesting use of facilities: _____

Please state whether you are a:

☐ Church Member ☐ Church-Sponsored Ministry ☐ Non-Member ☐ Non-Member Group/Organization

Contact Information:

Address: _____

Phone Number: _____

Email Address: _____

If the requested use is by an organization not affiliated with the church, please briefly state the organization’s purpose and mission: _____

Please list the organization’s website, if any: _____

Please list the names of the organization's officeholders and leaders: _____

Regardless of type of user, please describe which church facilities you are requesting use of and the purpose for which you intend to use the facilities: _____

What date(s) and time(s) are you requesting to use the facilities: _____

If you are requesting use of the church's facilities for a wedding and/or wedding reception, please list the names and contact information of the bride and groom:

Bride:

Groom:

_____	_____
_____	_____
_____	_____
_____	_____

Please list the name, contact information, and religious affiliation of the person officiating the wedding:

Please describe the marriage preparation counseling or training undertaken by the bride and groom:

I affirm that:

1. I understand that the church does not allow its facilities to be used in a way that contradicts its faith or by persons or groups holding beliefs that contradict the church's faith.
2. To the best of my knowledge, the purpose for which I am requesting use of church facilities will not contradict the church's faith, and I commit to promptly disclose any potential conflict of which I am aware or become aware to church staff.
3. I am not aware of any beliefs that are professed by me or the organization I represent and which is requesting use of the church's facilities that contradict the beliefs of the church. I agree to promptly disclose any potential conflicts in belief to church staff.
4. I understand that upon approval of my facilities use request, I will need to provide a security deposit in the amount of \$_____, a certificate of insurance for at least \$_____ of coverage, and any other fees required by the church.
5. I understand that the church does not allow its facilities to be generally available to the public, and that my use of these facilities is subject to the pastor's approval, which is conditioned in part on my agreement to the requirements in the "Church Facility Use Policy," a copy of which I have read and understood.
6. I understand that I will be responsible for any damages to the church facilities resulting from this proposed use of facilities.
7. The church believes disputes are to be worked out between parties without recourse to the courts. See, generally, Matt. 18 and 1 Cor. 6. Accordingly, users of the facility agree to attempt resolution of any disputes through Christian mediation.

Name

Date

Sample Introductory Letter to Prospective Parent

Dear Parents:

Thank you for your interest in our school. We have adopted an admissions policy that opens the school to families who are like-minded spiritually, who are supportive of our philosophy, objectives, and standards of education, and whose children meet our enrollment standards. Our purpose is to serve families who desire not simply a private education, but a distinctively Christian education for their children.

Before applying for admission to our school, please read the Student Handbook provided in this introductory packet. The Student Handbook will introduce you to many of the school's policies, procedures, and expectations for both parents and students.

The first several pages of the Handbook explain our religious purpose, mission, and beliefs. This school unashamedly believes, teaches, and practices the lordship of Jesus Christ and acknowledges the authority of God's Word, the Holy Scriptures, *without reservation*. For example, if a question regarding biblical lifestyles arises in chapel or your child's classroom, the teacher will answer from a biblical viewpoint consistent with our mission and belief statement. If your beliefs and lifestyle choices are not in agreement with our beliefs, the teacher's answer may create conflict in your child's heart and mind.

Biblical principles are integrated into every subject taught at our school. Our staff is committed not only to academic excellence, but also to teaching students how to apply the truths of God's Word to every aspect of life. If you are in agreement with the teachings of God's Word, this school will complement the beliefs and ideals your child is taught at home. We look forward to partnering with you to educate your child in God's truth.

Sample Standards for Evaluating Prospective Students

A. Spiritual Considerations

1. Personal Christian commitment of parents and student.
2. Willingness of parents and student to be supportive of the school's Christian philosophy of education.
3. Willingness of parents and student to support the administration and faculty in carrying out the goals and programs of the school.

B. Behavioral Considerations

1. History of acceptable citizenship in previous school experience.
2. Agreement of parents and student to abide by the behavior standards established by the school.

C. Academic Considerations

1. Documented record of acceptable grades in previous school experience.
2. Acceptable scores on achievement tests.

D. Personal Considerations

1. Student's special interests, talents, and skills.
2. School makes no distinction in its admission policy on the basis of race, color, or national and ethnic origin.

Sample Handbook Agreements for Parents and Students

Parents: Please read the following statements carefully and sign below to indicate your agreement.

I hereby affirm that I have read the Student Handbook and discussed its policies with my student. I certify that I consent to and will submit to all governing policies of the school, including all applicable policies in the Student Handbook.

I understand that the standards of the school do not tolerate profanity, obscenity in word or action, dishonor to the Holy Trinity and the Word of God, disrespect to the personnel of the school, or continued disobedience to the established policies of the school.

I understand that the services of the school are engaged by mutual consent, and that either the school or I reserve the right to terminate any or all services at any time. I understand that this Handbook does not contractually bind [School] and is subject to change without notice by decision of [School]'s governing body. Admission to the school is a privilege, not a right, and admission for one school year does not guarantee automatic admission for future school years.

Signature of Mother

Date

Signature of Father

Date

Students in Grades 7-12: Please read the following statement carefully and sign below to indicate your agreement.

I hereby affirm that I have read the Student Handbook. I certify that I consent to, and will submit to all governing policies of the school, including all applicable policies in the Student Handbook.

I understand that this Handbook does not contractually bind [School] and is subject to change without notice by decision of [School]'s governing body.

I understand that admission to the school is a privilege, not a right, and that any behavior, either on or off campus, which is not consistent with the school's standards could result in the loss of that privilege.

Signature of Student

Date

END NOTES

- 1 *Obergefell v. Hodges*, No. 14-556, 2015 WL 2473451, at *57 (U.S. June 26, 2015) (Alito, J., dissenting).
- 2 What is an LCMS ministry? LCMS ministries include a broad spectrum of ministries such as, but not limited to, LCMS congregations, schools, agencies, auxiliaries, Recognized Service Organizations (RSO).
- 3 Even if your LCMS church, school, or ministry has adopted an official statement of belief or positional statement, it is still important that the church, school, or ministry at least adopt this statement in its entirety or by reference. Although the denominational statement could provide some legal covering, courts may be hesitant to hold that it applies to your church, school or ministry unless your organization has specifically adopted the LCMS statement of belief.
- 4 “Biological sex” means the condition of being male or female, which is determined by a person’s chromosomes, and is identified at birth by a person’s anatomy. Those who reject their biological sex are sometimes referred to as “transgender.”
- 5 See 42 U.S.C. § 2000e-2; 29 U.S.C. § 621 et seq.
- 6 See 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2); see also *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 710 (2012); *McClure v. Salvation Army*, 460 F.2d 553, 558 (5th Cir. 1972). The Supreme Court’s ruling in the *Hosanna-Tabor* case affirmed the right of churches/schools to hire and fire clergy and other workers who perform religious duties. The court said that the federal workplace discrimination laws do not apply to churches and schools (religious organizations) when they select/hire/call “ministers.” A minister is not limited to the traditional meaning of that term, but includes any employee who (1) is held out as a minister of the church; (2) whose title reflects religious training; (3) where the employee holds themselves out as a minister; and (4) whose job duties reflect a role in conveying the church’s message and carrying out its mission. The *Hosanna-Tabor* ruling by the Supreme Court allows churches/schools to not hire employees whose beliefs are inconsistent with the church in positions where they will be conducting religious duties. It is up to the school or church to define what are religious duties or positions. However, the *Hosanna-Tabor* decision does not apply to the hiring/firing of other employees who are not considered ministers as the Court defined that term. Questions about hiring/firing outside of the minister context should be directed to an attorney who can evaluate the circumstances as there may be other exemptions available to religious organizations.
- 7 *Hosanna-Tabor*, 132 S.Ct. 694; *McClure*, 460 F.2d at 558-61; *Scharon v. St. Luke’s Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991).
- 8 See, e.g., *Hosanna-Tabor*, 132 S.Ct. 694.
- 9 See *id.*
- 10 See footnote 8.
- 11 Employers should also consult with in-state legal counsel regarding whether employment contracts should be specifically designated year-to-year or at-will. There could be strategic benefit to one or the other depending on the organization’s specific situation.
- 12 If a church rents out its property for weddings and wedding receptions (or other activities), without limiting usage through policy, it could be accused of discrimination if the church subsequently declines to rent its facilities to a particular couple. If challenged, a court may review whether or not facility usage is a for-profit business operation or ministry activity of the church.
- 13 Other considerations may apply to a church that engages in commercial rental of its property.
- 14 A ministry activity of the church is usually carried out with no fee or below market-rate fee for facility usage. This helps avoid being considered a public accommodation. In general, a place of public accommodation refers to a wide range of businesses, entities, and organizations that provide sales, services, facilities, privileges, etc. to the general public. However, state, local and federal laws define what is considered a place of public accommodation in your community and may offer exemptions. Sometimes these definitions can be rather broad, but sometimes those definitions will exempt facilities of religious organizations. The main way to avoid being labeled a place of public accommodation is to adopt a facility usage policy that ties use of the facility to the church’s statement of belief and charges less than market rates.
- 15 See, e.g., *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla.1989).

- 16 See *Kedroff*, 344 U.S. at 116.
- 17 *Paul v. Watchtower Bible & Tract Society of New York, Inc.*, 819 F.2d 875, 880 (9th Cir. 1987) (“When the imposition of liability would result in the abridgment of the right to free exercise of religious beliefs, recovery in tort is barred.”).
- 18 See, e.g., *Guinn*, 775 P.2d at 776 (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs.”).
- 19 Examples of potentially actionable injuries include breach of contract, assault, defamation, invasion of privacy, and intentional infliction of emotional distress.
- 20 We are not suggesting that such churches should not conduct church discipline when necessary. Nor are we suggesting that those churches who are opposed to church membership because of their understanding of the Bible should violate their consciences and adopt membership policies. Rather, we are highlighting a legal concern. Such churches might want to consider exploring with competent legal counsel whether there would be actions they could take with their parishioners that would be (1) consistent with their doctrinal understanding and (2) provide some measure of legal protection from lawsuits when they apply church discipline.
- 21 See *Paul*, 819 F.2d at 883.
- 22 See, e.g., *Snyder v. Evangelical Orthodox Church*, 216 Cal. App.3d 297, 307 (1989) (allowing case against church to go forward because the church’s bylaws were silent about whether confessions could be revealed to the congregation).
- 23 See, e.g., *Guinn*, 775 P.2d at 776 (“Just as freedom to worship is protected by the First Amendment, so also is the liberty to recede from one’s religious allegiance”).
- 24 *Id.* at 775-77 (“The right to withdraw one’s implied consent to submit to the disciplinary decisions of a church is constitutionally unqualified; its relinquishment requires a knowing and intelligent waiver.”).
- 25 See *id.* at 766 (permitting lawsuit against church and elders to proceed when the elders disclosed the details of the conduct of the individual to the church after the individual had explicitly resigned her membership).
- 26 Being an agent of the state is a legal term and is subject to interpretation. For example, a judge or government employee is an agent of the state because the state delegates certain of its functions to the judge or employee to perform. However, the judge or employee still maintains their first amendment rights that allow them to not participate in certain actions. To call a member of the clergy an agent of the state simply because they sign a marriage license to solemnize a wedding is not a helpful way to describe the minister’s relationship to the state. A state merely authorizes a minister to sign a marriage license and solemnize a wedding. This authorization does not transform a minister into an agent of the state that the state can then compel to act as the state wishes. The minister retains his first amendment right to act in accordance with his faith and to only perform weddings and sign marriage licenses that he chooses.
- 27 *State v. Barclay*, 238 Kan. 148 (1985).
- 28 See, e.g., *Spencer v. World Vision, Inc.*, 633 F.3d 723, 738-740 (9th Cir. 2011) (discussing various factors demonstrating that World Vision held itself out to the community as a religious organization, including its logo, religious artwork, Christian messaging guidelines, and religious employment criteria).
- 29 *EEOC v. Kamehameha Schools/Bishop Estate*, 990 F.2d 458 (9th Cir. 1993).
- 30 Veith, Gene E., *Called to Be Citizens*. The Lutheran Witness (November, 2001).

As Lutherans privileged to be living in America, we have thrived generation to generation because of our unprecedented religious liberty. Our constitutionally-protected right of conscience is our most important birthright which comes to us from God not government. But we are in a new era where vigilance and protection of these rights must be sacrosanct because they are under unprecedented assault. This excellent and definitive road map is a must-read and must-implement tool – matchless in its scope and timeliness.

TIM GOEGLEIN

*Vice President of External Relations
Focus on the Family, Washington, DC*

Our Lutheran education system, elementary schools, high schools, colleges and universities from their inceptions have combined rigorous academic learning with a call to live and embody the teaching of Jesus and the Apostles. It is vital that our Lutheran institutions not only teach the faith but also live it by exercising our historic religious liberty. This resource will help us along the way during these times of testing.

REV. DR. DEAN WENTHE

*President
Concordia University System*

Faithful Lutheran parishes are facing ever greater threats to their free exercise of religion. The law and its contemporary application to churches are changing so fast that it is hard for faithful congregations focused on sharing Christ and his love for the world to keep up with those changes. This resource will help you protect your ministry so that you will be freed to carry out the mission Christ gives His church to preach the Gospel and administer the sacraments while preparing to defend your ministry from external legal and governmental threats.

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