



# Church Guidance for Same-Sex Issues

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## CHRISTIAN LEGAL SOCIETY

### *Practical legal steps to address same-sex issues and related nondiscrimination laws*

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#### **A. Introduction**

Churches, faith-based nonprofits, and individual Christians are under tremendous societal pressure these days to acquiesce to changing cultural standards regarding sexuality, including same-sex marriage, claims of lesbian/gay/bisexual/transgender (LGBT) discrimination, and other sexual orientation/gender identity (SOGI) issues. As believers, we are called to live under God's authority and with a consistent understanding of Biblical truths about human sexuality. But such truths seem to be increasingly colliding with so-called "social equality" rights pushed by vocal proponents.

Most recently, by a narrow majority, the United States Supreme Court ruled in late June 2015 that same-sex couples have a "fundamental right" to marry. As a result, religious institutions and individuals are likely to face various conflicts between this newly created constitutional right and their religious freedom and free speech. Churches, pastors, Christian schools, and all Christians need to educate their congregations and fellow citizens on the Biblical and practical reasons for upholding marriage between one man and one woman. In addition, they will need to be prepared for new laws that do not necessarily provide adequate protections for religious persons and for "test" cases seeking to push the limits of existing laws. CLS's guidance shows the importance of learning about current critical legal issues, planning now for church board attention to address these issues, checking current governance documents and practices, and adjusting them as necessary. In short, the message to church leaders is: "Get ready!"

The following materials are thus intended to help churches navigate through these legal minefields of sexuality-related issues, particularly in light of rapidly shifting cultural norms and accompanying legal changes. Separate guidance materials will be available soon for other faith-based organizations, including Christian schools, nonprofits and related religious organizations, for which related but distinctly different legal considerations may apply.

**This guidance is not intended to substitute for legal counsel specific to a church’s own circumstances and geographic location, particularly since applicable federal, state, and local laws vary widely. Consequently, it is highly recommended that knowledgeable nonprofit legal counsel be sought for such specific questions and particular issues. CLS can provide referrals at [www.christianlawyer.org](http://www.christianlawyer.org).**

Our aim for these materials is to help organizations to achieve the following goals: (1) to protect their organizational and personal constitutional freedoms; (2) to fully live out their religious beliefs regarding human sexuality, while taking reasonable steps to minimize legal risk; and (3) to do so with integrity for Christ. (See, e.g., Colossians 3:12: “Put on then, as God’s chosen ones, holy and beloved, compassionate hearts, kindness, humility, meekness, and patience . . . .”)

## **B. What Could Go Wrong?**

What legal problems exist for churches due to same-sex marriage and other LGBT and SOGI issues? Picture the following scenarios:

1. The church phone rings, and the administrative pastor answers. “Does your church perform same-sex weddings?” What happens next? Is the church required to open its doors to all?
2. A regular attender who professes to be a Christian wants to join the church as a member but the church has a statement of faith that “loves the sinner but hates the sin” with regard to same-sex marriage and sex outside of marriage between one man and one woman. If the church denies membership, will that be legally permitted?
3. A church hires a new communications director, who later discloses that she is living with a lesbian partner. May the church legally discharge her?
4. A church pastor admonishes congregants to refrain from homosexual activities, preaching from I Corinthians 6:19-20 and Romans 1 (“You are not your own, for you were bought at a price.”) Could the pastor be accused of “hate speech”?

As illustrated by the above examples, churches face potential legal issues when they address matters of facility usage, employment, membership (freedom of association), and even free speech.

In the first example, if a church allows non-members to get married without any evaluation of whether the engaged man and woman agree with the church’s doctrine, some would argue that same-sex couples should equally have a right to get married at that church. Such right of access has already been judicially recognized within the private sector (at least at the initial trial court level), with floral, photography, and bakery businesses held liable as “public accommodations” for refusing service to same-sex couples notwithstanding their religious objections. Thus far, no U.S. church has been legally required to open its facility for same-sex weddings, but churches definitely should take steps to make that outcome more legally assured.

In the scenario where the practicing homosexual wants to join the church, the church has a strong legal right as private religious membership organization to exercise such discretion.

However, the lack of specific religious language in its statement of faith about one man and one woman marriage (with supporting Biblical citations) could put the church in jeopardy in a legal challenge and undoubtedly lead to unwanted confusion, embarrassment, and conflict between the applicant and the church. With the necessary corrections to governing documents and membership agreements, the church should be able to survive such a legal challenge and any confusion would be reduced.

With respect to the communications director example, the question likely will boil down to whether a resulting employment termination (a) amounts to illegal sexual orientation discrimination or (b) is protected by a religious exemption. The more clearly the church can show that its employees are required to follow a Biblical code of conduct or other religious doctrine prohibiting sexual activity outside of marriage between a man and a woman, the more likely it will be that a religious exemption will apply. It also may be critical, if not at least helpful, to develop this position as a bona fide “ministerial” job, as explained below.

As for the sermon example, speech-related freedoms may be challenged as well, as exemplified by the 2014 Houston mayoral subpoena issued for pastors’ sermons that related to homosexuality or gender identity, ostensibly in connection with political activity issues. Thankfully, the subpoena was withdrawn. Some pastors even reportedly responded with the Gospel full-force, by sending a plethora of sermons to the mayor’s office. While this case may be troubling, keep in mind that under the First Amendment’s free speech clause, there is no legitimate claim of “hate speech.”

### **C. What Do Organizational Leaders Need to Know?**

Our country’s historical and legal heritage highly values religious liberty and free speech - particularly so when individuals’ beliefs are sincerely held, reflected in their creeds, and lived out consistently. But if a church’s religious doctrine does not seem to matter to the church itself, why should it be allowed to invoke religion (and accompanying constitutional religious liberty protections) as a shield or legal exemption against laws that require it to act differently? One critical answer is that religious doctrine most definitely should matter, as reflected in both words (what is contained in the organization’s charter documents and policies) and deeds (what they actually *do*). Here’s why words and actions do matter, from a legal standpoint.

#### ***1. Changing Legal Protections for Same-Sex Marriage: Windsor, then Obergefell***

Twice in two years, the United States Supreme Court has addressed whether American governments must recognize marriage between persons of the same sex. In 2013, in *United States v. Windsor*,<sup>1</sup> the Supreme Court narrowly ruled (5-4) that it was unconstitutional for the *federal* government to define marriage as only existing between a man and a woman. While the definition of marriage had normally been left to the States, the federal government had passed a law defining marriage as existing only between a man and a woman for purposes of over 1000

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<sup>1</sup> 133 S. Ct. 2675 (2013).

federal laws that allocated benefits and responsibilities based on marital status. Writing for the majority in *Windsor*, Justice Kennedy emphasized that marriage had always been a matter of definition by the States. He also claimed that no rational basis existed for the federal government to define marriage as between only a man and a woman. Instead, he asserted that Congress's only reason for the law had been to demean persons who engaged in same-sex conduct. Essentially, the traditional definition of marriage was based on animus toward homosexual persons.

The *Windsor* decision did not address whether the *States* could define marriage as only between a man and a woman. But in the wake of the *Windsor* decision, many lower federal courts applied *Windsor*'s "animus" rationale to strike down about half of the States' laws that defined marriage as between only a man and a woman.

On June 26, 2015, in *Obergefell v. Hodges*,<sup>2</sup> the Supreme Court narrowly ruled (5-4) that it was unconstitutional for any *state* government to define marriage as only between a man and a woman. Writing for the majority, Justice Kennedy relied on two provisions of the Constitution, the Fourteenth Amendment's Due Process Clause and its Equal Protection Clause, to find that the States cannot have laws that define marriage as only between a man and a woman. Justice Kennedy claimed that the right to marry is a fundamental right that cannot be denied to same-sex couples for four reasons:

- 1) personal choice regarding marriage is inherent in the concept of individual autonomy;
- 2) marriage is a two-person union unlike any other in its importance to the committed individuals;
- 3) marriage safeguards children and families; and
- 4) marriage is a keystone of our social order.

Of course, even if accurate, these four descriptions of marriage beg the question of whether the United States Constitution prohibits all fifty States from defining marriage as only between a man and a woman, as marriage has been defined in most, if not all, societies for millennia. Emphasizing this historical understanding of marriage, the four dissenting justices issued powerful dissents. Their many potent arguments centered on the fact that the federal Constitution left the definition of marriage to the States and to the People, and should not be dictated by five unelected judges. Instead, the democratic process should have been allowed to play out, as it had been doing for the past twenty years in the state legislatures, state courts, and public debate.

The dissenting justices all expressed concern for the religious freedom of persons holding the traditional Christian understanding of marriage. The majority opinion acknowledged that "[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths, and to their own deep aspirations to continue the family structure they have long revered." But none of the dissenting justices thought the majority had gone far enough to assuage religious believers' legitimate concerns about practicing their faith under a constitutional regime that requires all States to recognize same-sex marriage.

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<sup>2</sup> 2015 WL 2473451 (June 26, 2015).

The dissenters’ religious liberty concerns were fueled by answers given to their questions at the *Obergefell* oral argument by the United States’ top attorney, Solicitor General Verrilli. In response to Justice Alito’s question, General Verrilli had agreed that religious colleges’ tax-exempt status would likely become an issue for colleges that prohibited same-sex conduct by their students. In response to Chief Justice Roberts’ question, General Verrilli avoided answering whether religious colleges would be allowed to prohibit same-sex couples in their married housing facilities. As Justice Thomas observed in his dissent, it is “all but inevitable” that the new definition of marriage and the religious definition of marriage “will come into conflict, particularly as individuals and churches are confronted with demands to participate in and endorse civil marriages between same-sex couples.”

## 2. *RFRA Legislation to Protect Religious Liberty*

As a result of the Court’s decision, federal and state laws that protect religious liberty are crucial. Because twenty-five years ago, in *Employment Division v. Smith*,<sup>3</sup> the Supreme Court greatly diminished the *First Amendment*’s protections for religious liberty, the primary protection for religious liberty at the federal level is the Religious Freedom Restoration Act (RFRA), enacted in 1993 by overwhelmingly bipartisan margins but recently attacked by organizations that support same-sex marriage. Keeping the federal RFRA strong is crucial to preserving religious liberty in this country.

Similarly, state RFRAs provide critical protection for religious liberty at the state and local levels. To date, 21 States have enacted their own RFRAs, but each State should have one. Also, state nondiscrimination laws should contain explicit and expansive protections for religious liberty. Nondiscrimination laws traditionally protect religious liberty, too. Unfortunately, organizations that support amending nondiscrimination laws to include sexual orientation and gender identity increasingly are hostile to religious liberty protections.

The federal RFRA and state RFRAs, as well as other laws aimed at protecting religious liberty, have never been more necessary, or more under attack. Churches thus need to be ready for further attacks on their religious liberties. At least thus far, a key element of legal protection has been for religious organizations to clearly demonstrate both the existence of sincerely held beliefs and how such beliefs are central to their activities. **Accordingly, as described below, churches seeking such protections must seriously consider making their doctrinal position on sexuality more express in their governing documents, addressing wedding and special event practices, and developing or upgrading facility usage and employment policies.**

## 3. *Increasing SOGI Protection in Public Accommodations, Housing, and Employment*

While sexual orientation and gender identity (SOGI) are not yet protected classes under most federal laws, over 20 states and many local jurisdictions have passed laws making sexual orientation and/or gender identity protected classifications. Generally speaking, such laws make

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<sup>3</sup> 494 U.S. 872 (1990).

discrimination on the basis of sexual orientation illegal with respect to three legal issues: 1) public accommodations; 2) housing; and 3) employment. Narrow exceptions may exist for churches (as well as for smaller-sized employers) and other religious institutions, but the protections are highly dependent on the specific laws at issue.

On the other hand, many states and many local jurisdictions do not have laws that recognize sexual orientation or gender identity as protected classifications. Whether such laws exist in a church's state or local jurisdiction is very important in determining churches' legal exposure. Even so, it is wise for churches in such locations to take the steps mentioned below, particularly in light of current general trends favoring such new laws.

The term "public accommodation" generally means property that is made open to the public, such as stores, restaurants, and hotels. To date, a U.S. church has not been deemed to be a "public accommodation." By contrast, educational facilities may be considered to be places of public accommodation, and community centers, camps, museums, and parks may be as well.<sup>4</sup> Accordingly, serious concern may be justified for churches and church-related facilities, particularly if they liberally open their doors to others or meet in public schools or other public places for worship. Therefore, it may only be a matter of time before a litigant seeks to include churches within the definition of "public accommodation."

Employment issues are more developed for religious organizations including churches. Churches have at least two basic federal protections for their employment decisions. First, the federal law known as Title VII allows churches to require all employees to conform to their religious doctrine. In other words, churches may "discriminate" on the basis of religion in their employment practices as to all employees. But notably such federal protection applies only for federal discrimination claims; it does not protect against claims brought under state or local discrimination laws, for which similar protections may or may not exist.

Second, with respect to any discrimination claim, churches have much broader leeway in making employment decisions regarding employees who are "ministers" in the church. The U.S. Supreme Court affirmed churches' religious freedom protections under the "ministerial exception," in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*.<sup>5</sup> In that 2012 decision, the Court barred a disability discrimination claim by a teacher at a church school, thereby recognizing that churches must be left alone with respect to their own "minister" employment matters.<sup>6</sup> Consequently, defining staff members (such as the youth or children's

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<sup>4</sup> Such considerations for religious schools and other faith-based organizations are addressed in much greater detail in separate written guidance, to be issued by Christian Legal Society later in 2015.

<sup>5</sup> 132 S. Ct. 694 (2012).

<sup>6</sup> This "ministerial exception" religious protection extends to the state level and sometimes beyond the church context to include faith-based organizations. See, e.g., *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829 (6<sup>th</sup> Cir. 2015).

director in the above example) as “ministers,” along with accompanying Biblical standards requirements, may significantly promote religious freedom and protect against legal liability.

#### **D. Practical Applications**

Most importantly for religious liberty protections, churches need to show that they have a sincerely held religious doctrine that includes Biblical standards for sexuality to which they adhere. As noted above, this advice translates into the following checklist for upgrading a church’s documentation and ministry practices. Churches need to not only have these board-approved policies, but they need to make sure that they are actively following them in actual practice. No lip service.

##### ***1. Check the corporate charter and bylaws, and modify as needed.***

A key starting place is a church’s governing documents: its articles of incorporation, constitution, bylaws, and written policies. A church’s articles of incorporation should contain a religious purpose statement, such as to promote the gospel of Jesus Christ through worship, evangelism, and discipleship. A church’s bylaws and/or constitution should contain such purpose statement as well as a detailed statement of faith that contains doctrinal language reflecting Biblical standards for sexuality in all of its dimensions, not just regarding homosexuality, and preferably with specific Scripture references. If a church does nothing else to guard itself against religious liberty encroachment, this fundamental measure may provide significant legal protection. Churches should check to see whether their denominations have pertinent doctrinal statements that should be explicitly quoted in their own documents. *See sample doctrinal language on marriage and sexuality at the end of this document.*

In addition, churches should have strong membership provisions in their bylaws, including mandatory Christian dispute resolution outside of the court process. Churches should make membership requirements consistent with their religious doctrines to help members understand what they believe about sexuality, and why. Such governing document changes and educational efforts will strengthen the organization overall and help members grow in their faith and understanding. In addition, they may help avoid potentially awkward or embarrassing situations, such as a membership applicant who is unwilling to renounce homosexual activities. Churches should also consider including in their members covenant and/or member application, which are signed by the prospective member, a phrase that has the member agree to abide by the governing documents, including but not limited to the statement of faith, Christian dispute resolution, and discipline provisions. *See sample bylaw language at the end of this document.*

The governing documents should also be clear as to where the spiritual authority to make decisions on different issues resides. As a general rule, courts are not supposed to second-guess churches’ spiritual decision-making, so it is important to make clear who has the spiritual authority on an issue. For example, the minister or the governing board may be the spiritual authority in deciding whether a person may become, or remain, a member of the church. The minister or the governing board may be the spiritual authority for deciding whether a particular use of church property (for example, a particular wedding or reception) comports with church doctrine. The spiritual authority for making decisions may vary within the same church

depending on the particular issue. But the policies should be clear as to where the final spiritual authority on a particular issue is within the church.

## **2. *Develop a facility use policy, along with written use agreements.***

To protect against a “public accommodation” legal challenge, churches should have a written facility use policy, including a requirement that their facilities may be used only for purposes and in ways consistent with their doctrinal beliefs, as found in the Bible and the church’s governing documents, particularly with respect to sexuality and other conduct. A church’s permitted uses need not necessarily all be worship or Bible study, but they should at least be in furtherance of the church’s religious mission (e.g., outreach to the homeless or to teens needing a safe refuge, etc.). A statement that the facility uses will be in accordance with the Bible is better than no statement, but it is wise to be more specific about how the church understands the Bible’s teachings on specific issues that might arise with references to the Bible and specific church governing documents. *See sample facility use policy at the end of this document.*

In addition, a church should have written agreements with each user of its facility (whether long-term or short-term, whether paid or unpaid). Such agreements should include language reflecting how such facility use ties into the church’s mission and understanding of Biblical teachings. The agreement should require Biblical dispute resolution of any disagreement that arises. In addition, the agreement may include other key considerations such as allocation of responsibilities, fees charged (if any) and other typical provisions for any space usage agreement (as may be developed by qualified legal counsel). In particular, a practice of charging fees may have resulting implications regarding “public accommodation” and property tax exemption issues, both of which warrant careful evaluation by experienced legal counsel.

## **3. *Develop a wedding/special event policy.***

Churches need to have religious standards for *all* weddings – not just events for their members (as well as for other special events like funerals and baptisms). By comparison, if a church allows couples to get married at its facility without any inquiry as to their religious beliefs, then the proverbial door may be open to the legal argument (albeit not yet successfully asserted) that the church is instead a “public accommodation” and therefore subject to sexual orientation discrimination prohibitions. But if a church believes that its ministry should include marrying couples that do not share its religious beliefs, then it is important that its policy explain the church’s religious beliefs as to why it is better for non-church couples to marry than not to marry, and why those religious beliefs apply to heterosexual couples but not homosexual couples.

To reduce the risk of getting caught up in such potential claims, a church should develop a wedding policy (and/or bylaw amendment) that includes religious elements reflective of Biblical teachings. It may be helpful as well not to charge money for weddings, except for janitorial or related facility usage expenses. Any additional cost for pastoral services may be better absorbed into the pastor’s overall salary. Counseling requirements may be helpful as well,

again to reflect a church's religious standards and beliefs surrounding marriage. *See sample wedding policy at the end of this document.*

**4. *Update employment policies and practices to clearly reflect the church's religious identity, especially on marriage and sexual issues.***

Churches should reflect their religious nature in their employment documents and practice. Potential options include identifying religious aspects in written job descriptions, inserting statements of faith or other doctrinal language into employee handbooks, and implementing written codes of conduct, regular prayer time at staff meetings, and other religious practices on a daily basis. *See sample employee handbook language at the end of this document.* Specifically, written explanations of each position's religious significance, the religious requirements of the job, and the religious standards of conduct for the employee should be written into job notices, applications, job descriptions, employee contracts, employee handbooks, employee reviews, and termination documents. Employees should be required to sign documents on an annual basis indicating that they agree with the church's beliefs, standards of conduct, and all religious requirements of their position, and understand that violation of such standards constitutes cause for termination of their employment.

Biblical standards regarding sexual behavior (not just related to SOGI) should be expected and followed for all employees, with appropriate accompanying staff training regarding the expectation that employees will live according to these Biblical standards of conduct. In addition, employees should be required to submit to the church's disciplinary protocols as a condition of employment, such as using Christian mediation and arbitration for all disputes. *See sample bylaw membership and Christian dispute resolution language (citing Matthew 18 and I Corinthians 6) at the end of this document.*

Ministry staff should be identified as "ministers" to the degree appropriate.<sup>7</sup> Employment documents and other church documents should describe in detail the substantial religious dimensions of employees' job duties (e.g., children's teachers, music directors in charge of worship) and should provide the Biblical basis for the church's understanding of the ministerial role the employee performs. The training required to be a minister should be described and met by employees.

The above safeguards may be particularly helpful because a "ministerial" position is generally exempt from federal and state anti-discrimination prohibitions. Further lessons from the Supreme Court's *Hosanna-Tabor* decision for qualifying a position as "ministerial" (but again subject to other potential state law restrictions) are as follows: (1) include an objective rationale (e.g., per Scripture and/or church history) in written job descriptions; (2) use job titles that incorporate "ministerial" aspects; (3) use job descriptions and performance criteria that

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<sup>7</sup> Some church leaders may be reluctant to identify other staff positions as "ministers," but the term has an important legal meaning that should not be lightly forfeited. All positions that fit the legal definition of "minister" should be identified as such.

support a “ministerial” designation (e.g., a choir director is to consider specific sermon topics in deciding on worship anthems); (4) reflect ministerial criteria in job evaluations and disciplinary standards; (5) require a ministerial employee to affirm in writing (e.g., in contract, annually) his or her agreement with the church’s religious doctrine and willingness to abide by the church’s standards of conduct as a condition of employment; and 6) require such employee (as well as all other employees) to affirm in writing his or her agreement to abide by the alternative dispute resolution mechanism that the church requires and the Biblical basis for the requirement.

#### **5. *Consider the impact of church ministry programs.***

Does your church operate a community center or other program, perhaps open to all community families as an outreach ministry? If so, developing it into a separately formed organization may be a good idea not only for risk management purposes but also to guard the church against “public accommodation” arguments. On the other hand, per the above considerations for “ministerial exceptions,” it may be better for the ministry as a whole to maintain the program in-house. Careful attention to both current applicable laws and potential future legal issues is thus particularly critical, with guidance from experienced legal counsel.

The legal argument goes something like this: (1) Johnny has two dads, and they want him to attend a church’s community center programming; (2) the term “public accommodation” may include community centers; (3) the church-run community center generally allows all families who can pay to send their children; (4) so the church-run community center must be a “public accommodation” and therefore required to admit Johnny. Furthermore, now that Johnny is enrolled (which a church may desire, as part of its outreach), Johnny’s two dads now want to get married – at the church. Now what? Would the church facility be a public accommodation, too? Not under current law, but a legal challenge could well be on the horizon.

Alternatively, the ministry program’s admission policy could be stricter and limited to those agreeing to the church’s statement of faith. But that could render the program more of a “covenantal,” insider model, instead of an outreach. Such a constrained approach thus may be challenging, when contrasted with a church’s overall ministry to be welcoming, especially to the unchurched, seekers, and unbelievers.

A balanced approach on separately incorporating the ministry, or not, thus must be considered to maximize risk management protection as well as to enjoy greater religious liberty protection. Such complex legal and theological considerations should be evaluated carefully under applicable state law and the specific church’s needs and goals.

#### **6. *Consider housing laws too.***

Some churches engage in ministry-based housing programs, which may or may not fall within religious exemptions. For example, in Illinois a rental housing ministry is subject to SOGI discrimination laws, unless the housing is provided only to people sharing the same faith. That is helpful to some extent, but it ignores the outreach ministry aspects of many such programs. A church may thus need to carefully develop its housing program to meet both legal requirements and its own ministry goals.

**7. *Train paid staff and volunteers on the proper implementation of policies.***

A church may have good written policies, but their usefulness may be diminished if all staff and volunteers have not been thoroughly trained in implementing those policies. The person who answers the phone and answers the general public's questions often is a volunteer unfamiliar with the church's written policies and untrained in talking about sensitive issues. Volunteers should be trained to immediately refer to a trained staff member any question about reserving the church for weddings, reserving facilities for various uses, membership, or church doctrine on matters of sexuality. The staff member also needs to be trained in all the church's policies and know who the proper spiritual authorities are on various matters. Both volunteers and staff need to be trained not to guess at answers but to err on the side of telling the person that someone else will have to return the call at a later time.

**8. *Preach and teach on Biblical sexuality.***

The Bible is full of teachings about sexuality, including the creation story, Old Testament stories about consequences of sexual sin, the Church as the bride of Christ, divorce, admonitions against sexual immorality, and the joys and disciplines of Biblically-ordained marriage. Through such teachings, believers have much to learn about our loving God, His plans for our lives, and our role in serving Him with our whole bodies, minds, and hearts. Such teachings also should help protect a pastor from accusations of insensitivity to LGBT individuals and instead demonstrate his or her sincerely held and far broader *religious* beliefs. Of course, it is critical that such teachings be done with thoughtfulness, compassion, humility (with due regard for our fallen human condition), hopefulness, love, and above all – the Gospel message of salvation through faith in Jesus Christ.

**9. *Consider political involvement.***

Our elected leaders are people too, and they need to hear from their constituents. Consequently, church members should consider contacting their legislators about moral aspects of pending laws or other legislative matters. In addition, believers should consider Biblical standards when voting for political candidates. One important caveat for churches and other nonprofits: be careful with political campaign prohibitions and lobbying restrictions for nonprofits. Political campaign activity may be done personally but is absolutely prohibited for churches and other nonprofits. Lobbying may be done corporately but only to a limited extent.

**10. *Seek legal counsel.***

Legal guidance can only be provided on a general level. Accordingly, churches are encouraged to seek out attorneys who are knowledgeable and experienced in these legal areas, for specific application within their own jurisdictions and suited to their own organizational structure, programs, and concerns. The Christian Legal Society maintains a list of attorney members, with specified areas of legal practice in specific jurisdictions, including those who

practice in the areas of nonprofit organizations, constitutional law (religious liberty, free speech), and employment. See [www.christianlawyer.org](http://www.christianlawyer.org) for further information.

#### **E. Concluding Remarks**

The legal landscape continues to evolve, but God is unchanging. So stay tuned to the news, and keep living out your faith. Remember that nothing is too hard for the Lord. (Gen. 18:14). Regardless of what a church may or may not do to protect its religious liberty interests, God can provide a hedge of protection for believers. Correspondingly, however, as Christians we are to expect persecution for our beliefs and actions. So we need to remain prayerful, act prudently, and continue seeking Godly guidance.

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# *Marriage/Sexuality Issues Sample Doctrinal Language for Churches*

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

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

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This memorandum is provided for general information purposes only and is not a substitute for legal advice particular to your situation. No recipients of this memo should act or refrain from acting solely on the basis of this memorandum without seeking professional legal counsel. The Christian Legal Society and any of its partners expressly disclaim all liability relating to actions taken or not taken based solely on the content of this memorandum.

For specific legal advice, which will be needed, please see attorney referrals at [www.christianlawyer.org](http://www.christianlawyer.org).

# Sample Church Bylaw Language

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

**A. Doctrine** [*See sample doctrinal language, at left.*]

## **B. Church membership.**

The Church shall have members who affirm its Statement of Faith [*or other expression of doctrinal beliefs*] through a written membership covenant or otherwise, as the Church's governing body may direct. [*Need to have a written membership covenant or other prescribed mechanism for members' affirmation of faith. Bylaws typically also provide for membership qualifications, voting rights, procedures for membership admission and removal, and decision-making authority regarding such matters—e.g., within the governing board's authority, pastoral authority, or a combination thereof.*]

## **C. Church discipline of members.**

[*The following is a sample disciplinary provision, which should be adapted as appropriate for church-specific goals and usage.*]

The Church is a body of Christian believers who hold certain beliefs and standards in common. On occasion, members of the Church may conduct themselves in a manner contrary to Biblical standards and the Church's corresponding Statement of Faith. It shall be a high priority for the Church to restore such persons into conformity with the fellowship as outlined in Matthew 18:15-17. The discipline of the Church shall be entrusted to the Board of Directors. If Biblical discipline is necessary, the Pastor and the Board of Directors have the authority to place individual(s) under church discipline (including termination of membership).

## **D. Dispute resolution**

[*The following is a sample dispute resolution policy, which may be adapted for church-specific usage.*]

We believe differences or conflicts should bring receptivity to change and growth, not litigation. Therefore, in the highly unlikely event that we are ever unable to resolve a dispute between us, we are asking you to join us in agreeing to attempt to resolve the dispute without litigation. By signing, you are agreeing with us that we believe that the Bible commands us to make every effort to live at peace and to resolve disputes with each other in private or within the Christian church (see Matthew 18:15-20; I Corinthians 6:1-8). Therefore, it is agreed that any claim or dispute arising from or related to this agreement shall be settled by biblically-based mediation and, if necessary, legally binding arbitration in accordance with the *Rules of Procedure for Christian Conciliation of the Institute for*

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*Christian Conciliation*<sup>™</sup>, a division of Peacemaker<sup>®</sup> Ministries (complete text of *Rules* is available at [www.HisPeace.org](http://www.HisPeace.org)). **Venue will be \_\_\_\_\_ and jurisdiction will be under \_\_\_\_\_ law. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction, in conformity with the laws of the \_\_\_\_\_.** We understand and agree that these methods shall be the sole remedy for any controversy or claim arising out of this agreement and expressly waive the right to file a lawsuit in any civil court against one another for such disputes, except to enforce an arbitration decision. Notwithstanding this provision, to protect our church, we maintain liability insurance. Therefore, this conflict provision is conditioned upon agreement by our insurers that, in light of the particular facts and circumstances surrounding the disputed matter, this provision, and the process it establishes, will not diminish any insurance coverage maintained by the church.

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# Sample Wedding Policy

The following sample wedding policy language is to be approved by a church's governing body and provided to prospective wedding couples, for their completion and signatures. The policy should be tailored in accordance with a church's governing practices, its own governing documents, and specific operational considerations.

## Welcome!

There are few things in life more exciting than a wedding! We want to do everything we can to help make your day a joyous celebration of God's grace. In the following pages you'll find everything you need to know about hosting your wedding at &CHURCH&. If you have any questions, please contact \_\_\_\_\_, our [*Wedding Coordinator*].

## Basic Requirements

&CHURCH& has the following basic requirements for weddings:

- The Bride, Groom, or their parents must be a member or regular attender at &CHURCH&.
- Both the Bride and Groom must have a personal relationship with Jesus Christ.
- The engaged couple must live in separate residences until the wedding day.
- The couple will make a commitment not to engage in sexual activity prior to marriage.
- The couple will successfully complete premarital counseling.
- The wedding must be in accordance with &CHURCH&'s Statement of Faith and related doctrinal teachings on Biblical marriage (including considerations for divorce and remarriage). [*Include church's doctrinal statement within policy or by specific reference.*]

Any questions regarding fulfillment of these requirements shall be determined by the Church's leadership, in accordance with its governance structure. Any disputes regarding the Church's wedding policy shall be resolved in accordance with the Church's alternative dispute resolution policy, as set forth in \_\_\_\_\_. Fees are charged solely to help cover the Church's actual wedding-related ministry and facility costs.

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MAKING YOUR RESERVATION: \_\_\_\_\_  
PREMARITAL COUNSELING: \_\_\_\_\_  
WEDDING COORDINATOR: \_\_\_\_\_  
WEDDING MUSIC: \_\_\_\_\_  
WEDDING RECEPTION: \_\_\_\_\_  
KITCHEN USE: \_\_\_\_\_ ACCEPTED BY: \_\_\_\_\_  
DECORATIONS: \_\_\_\_\_ BRIDE: \_\_\_\_\_  
CUSTODIAL HELP: \_\_\_\_\_ GROOM: \_\_\_\_\_  
CONTACT INFORMATION: \_\_\_\_\_ CHURCH: \_\_\_\_\_  
WEDDING & RECEPTION FEES: \_\_\_\_\_ DATE: \_\_\_\_\_

# Sample Facility Use Policy

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

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

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

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

3. The Church may request donations or charge for cost-sharing contributions ("fees") in order to defray the estimated cost of facility use. No such fees shall be charged with any impermissible view to profit, and any and all fees are subject to waiver or reduction based on the prospective user's financial need. [*This language is generally in keeping with a church's federal and state tax exemption privilege. Specific legal guidance should be sought regarding such matters, particularly with respect to state-specific property tax exemption considerations.*]

4. The Church's Board (or a committee delegated thereby) shall be responsible for memorializing guest facility use. Such written agreements shall include identification of the religious purposes served by a guest's facility usage, with appropriate Scripture references (e.g., worship, strengthening

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families, outreach to the lost). [*See above comment regarding importance of using agreements with facility users, both for short-term and long-term usage and with appropriate details regarding such usage. A statement that all uses not specifically described must be done in accordance with the Church's beliefs, as reflected in the Bible and other church documents, would be helpful as well.*]

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

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

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

# Sample Employee Handbook Language

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

## Welcome

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

## Compliance with Biblical Standards

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

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## Mission Statement

The mission of the &CHURCH& is to \_\_\_\_\_.

## Affirmation of Statement of Faith

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

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

**Receipt**

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

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

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

Date: \_\_\_\_\_

Employee's Signature: \_\_\_\_\_

Employee's Name (Printed): \_\_\_\_\_

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