

HOUSES OF WORSHIP

FIRST  LIBERTY

RELIGIOUS LIBERTY PROTECTION KIT

**Guard Your Church
from Legal Attack**



FirstLiberty.org



DEAR FRIEND OF RELIGIOUS FREEDOM,

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

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

Kelly Shackelford, Esq.

President, CEO & Chief Counsel

FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR HOUSES OF WORSHIP

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First Liberty Institute's Religious Liberty Protection Kit for Houses of Worship provides general guidance to assist your house of worship in response to current legal threats to religious freedom. This document does not create an attorney-client relationship, and it is not to be used as a substitute for legal advice from a licensed attorney. Because the law is constantly changing and each organization's policies and documents are unique, First Liberty Institute and its attorneys do not warrant, either expressly or impliedly, that the law, cases, statutes, and rules discussed or cited in this guide have not been changed, amended, reversed, or revised. If you have a legal question or need legal advice, please contact an attorney. First Liberty Institute's attorneys may be contacted by requesting legal assistance at FirstLiberty.org.

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INTRODUCTION

How can my church or synagogue proactively protect its legal right to operate according to its religious beliefs? What steps can we take today?

First Liberty Institute has advised hundreds of houses of worship that ask these questions. Our guidance has helped churches, synagogues, and others implement policies and procedures designed to maximize their rights under the law and shield them from unforeseen legal threats and challenges. First Liberty Institute is a nationwide, nonprofit law firm dedicated to protecting religious freedom for all Americans, at no cost to our clients. Our President and CEO, Kelly Shackelford, has over 30 years of experience defending the constitutional rights of organizations like yours.

This Religious Liberty Protection Kit for Houses of Worship summarizes our recommendations to protect your ministry. In it, you will find guidance to help your house of worship review and, if necessary, revise its governing documents to maximize its freedom to operate according to its beliefs. It is organized into four general topics that represent some of the most frequent issues that arise for houses of worship today. Because we most often receive questions from churches belonging to Christian denominations, many of the examples in this Protection Kit will be most relevant for Christian churches. Nevertheless, our mission is to protect religious liberty for all Americans, and the legal principles given in this guide are applicable to religious communities of all faiths.

Thank you for the important work you do for your community and for your interest in protecting your house of worship's religious liberty – our First Amendment's First Liberty.

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MISSION STATEMENT & STATEMENT OF BELIEFS

Mission Statement

The vast majority of churches, synagogues, and other houses of worship are organized as religious nonprofit organizations with mission statements that make it clear that they are a house of worship with a religious purpose. Identifying as a religious nonprofit enables you to invoke religious liberty protections that may be available under local, state, or federal law. The U.S. Constitution and other laws provide protections that generally enable religious nonprofit organizations to operate according to their sincerely-held religious beliefs. [2]

Statement of Beliefs

The First Amendment and other federal laws generally protect the right of religious organizations to operate in communities that share a set of religious beliefs. [3] For this reason, houses of worship should formally adopt a Statement of Beliefs to clearly state their core religious beliefs. This is sometimes called a Statement of Faith or a Doctrinal Statement.

How to Implement Your Statement of Beliefs

Bylaws promulgate the organization's governance rules. We generally recommend that your Statement of Beliefs should be set out in full in the Bylaws, not incorporated by reference or as a stand-alone policy.

The decision for how to implement your Statement of Beliefs is unique to each organization and largely depends upon your goals. Houses of worship differ widely with respect to who is held accountable to faith-based standards, what those standards are, and how they are implemented. For instance, some outreach-oriented churches may wish to hold only its employees to its standards of faith. Conversely, other churches may seek to foster a close-knit community in which everyone personally adheres to the same set of beliefs as a condition of membership. If your church intends to practice church discipline, it is highly recommended that you do so only with respect to members who have agreed to abide by your policies and Statement of Beliefs.

The most important point is clarity and consistency. If you intend to hold members of community accountable for abiding by certain beliefs, be clear and upfront about what those beliefs are, what your expectations are with respect to standards regarding those beliefs, and apply those standards in a fair and consistent way.

What to Include in Your Statement of Beliefs

It is essential to include the core religious beliefs of your church or synagogue in your Statement of Beliefs.

We highly recommend that your Statement of Beliefs also clarify your beliefs with respect to the most contested and controversial issues of today, if your house of worship takes a position on these issues. Religious beliefs related to the sanctity of life, marriage, gender, and sexual conduct are most likely to come into conflict with prevailing cultural norms and therefore are most susceptible to threats of litigation. Example language on these topics is included below to illustrate one way in which these ideas can be expressed.

If your church is denominationally affiliated, you could adopt the pre-existing doctrinal or theological statements of your denomination to explain the sincerely-held religious beliefs of your house of worship. If you take this approach, it is preferable to repeat such statements in full, rather than adopting them by reference, for clarity. By contrast, non-denominational, multi-denominational, or ecumenical houses of worship often will be best served by promulgating their own Statement of Beliefs to avoid ambiguity about their core beliefs.

We also recommend that your Statement of Beliefs also include three key clauses: a residual clause, a final-authority clause, and a voluntary-termination clause.

Residual Clause

Because your Statement of Beliefs may not be able to anticipate all potential religious issues that may arise, we recommend including a residual clause providing for unexpressed, material religious beliefs of your organization.

Example Language for Christian Churches: This Statement



What to Include in Your Statement of Beliefs

of Beliefs does not exhaust the extent of our religious beliefs. The Bible, as the inspired and infallible Word of God, speaks with final authority concerning truth, morality, and the proper conduct of human affairs.

Statement of Final Authority

We recommend that your Bylaws identify the final human authority who will promulgate, interpret, and enforce religious policies for your house of worship. Often, a Board of Elders will act as this authority. Having a final authority specified will help resolve issues should any ambiguity arise regarding your Statement of Beliefs or Faith-based Code of Conduct.

Example Language for Christian Churches: For purposes of the organization's faith, doctrine, practice, discipline, and policy, the Board of Elders is the organization's final interpretive authority on the Bible's meaning and application.

Contractual Voluntary-Termination Clause

If you require employees to affirm that they personally adhere to your Statement of Beliefs, including a voluntary-termination clause provides an agreed-upon procedure in the event an employee's beliefs change.

Example Language for Christian Churches: I sincerely adopt this Statement of Beliefs as containing the system of doctrine taught in the Bible and agree that if at any time I find myself out of accord with this Statement of Beliefs, that I will, on my own initiative, make known to the organization's executive leadership the change that has taken place in my views since my last written affirmation of this statement of faith and, if requested, quietly and voluntarily remove myself from employment of the organization. I understand and affirm that this requirement is a material term and a condition precedent to my continued employment with the organization. [4]

Example Christian Statement of Beliefs on the Sanctity of Life

We believe that all matters of faith and conduct must

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

We believe that every human life is sacred because God has created mankind in His image and that human life begins at fertilization. We believe every human life must be recognized, respected, and protected as having the rights of a person and the inviolable right to life.

God created each person's inmost being, knitting each person together in his mother's womb. (Psalm 139:13) As God's individualized and personal creation, each person is fearfully and wonderfully made. (Psalm 139:14) God has ordained all the days of each person's life before they came to be. (Psalm 139:16)

We are strongly committed to the preservation and defense of unborn human life, which compels our religious, moral, and ethical duty to defend unborn human life.

Example Christian Statement of Beliefs on Marriage, Gender, and Sexuality

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

We believe that God created mankind in His image: male and female, sexually different but with equal personal dignity. We believe that individuals should affirm their biological sex and refrain from any attempts to physically change, alter, or disagree with their biological sex. (Genesis 1:26-28, Romans 1:26-32, 1 Corinthians 6:9-11)

We are committed to the home and family as set forth in Holy Scripture. We believe God has ordained and created marriage to exist between one man and one woman, with absolute marital fidelity. Consequently, we believe that

individuals should refrain from any sexual conduct or acts outside of this marital relationship. (Genesis 1:27, Genesis 2:24, Matthew 19:4-6, Mark 10:5-9, Romans 1:26-27, 1 Corinthians 6:9-11, Ephesians 5:25-27, Revelation 19:7-9, Revelation 21:2)

It is our firm conviction that we uphold the dignity of each individual as we embrace the unchanging and longstanding principles of scriptural truth.

Citations:

2. Such as the First Amendment to the U.S. Constitution, the federal Religious Freedom Restoration Act, and some states' Religious Freedom and Restoration Acts.

3. See, e.g., *Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991) (“Congress intended the explicit exemptions to Title VII to enable religious organizations to create and maintain communities composed solely of individuals faithful to their doctrinal practices”).

4. See Office of the Stated Clerk, General Assembly of the Presbyterian Church in America, *The Book of Church Order of the Presbyterian Church in America*, 24–6 (2019).

Employment Policies

Many lawsuits challenging a house of worship's right to operate in accordance with its religious beliefs occur in the employment context. Consequently, it is of the utmost importance to review and revise your employment policies, found in employee contracts, handbooks, job descriptions, and codes of conduct.

Many houses of worship seek to operate in communities that share a common faith. Consequently, many churches and synagogues hold their employees to standards of conduct based upon their sincere religious beliefs. For these organizations, we recommend that the Statement of Beliefs and Faith-based Code of Conduct should be set out in full in employee contracts. They should be on or near the first page of the employee handbook. Employees should be required to sign agreement with the Statement of Beliefs before filling out applications for employment.

We will first briefly summarize the current legal landscape with respect to federal employment non-discrimination



Employment Policies

law, and then we will provide our top employment law recommendations for houses of worship.

Summary of the Legal Landscape

Title VII of the Civil Rights Act of 1964, as amended, is a federal law that prohibits employment discrimination on the basis of sex, race, color, national origin, and religion. By a congressional amendment, the prohibition on sex discrimination also forbids pregnancy discrimination. [5] In an opinion issued on June 15, 2020, the United States Supreme Court held that the prohibition on sexual discrimination also includes a prohibition on sexual orientation and transgender status discrimination. [6] Title VII presumptively applies to organizations that employ 15 or more employees. [7]

With respect to Title VII, there are three main protections available specifically for religious employers: (1) the ministerial exception derived from the First Amendment to the U.S. Constitution; (2) the statutory religious employer exemption given in the text of Title VII itself; and (3) the Religious Freedom Restoration Act. [8] There may be other available protections, such as religious organizations' general right to autonomy, their right to be free from excessive government entanglement in their affairs, and the bona fide occupational qualification statutory exception. We focus here on the three main lines of defense and how a house of worship may amend its documents, policies, or procedures to shield itself with existing protections.

First, the ministerial exception should provide a complete defense to most federal employment discrimination lawsuits involving a religious organization's "ministers." In 2012, the U.S. Supreme Court unanimously held that the First Amendment's ministerial exception protects the right of religious organizations to choose their "ministers." [9] The term "minister" includes more than just the head pastor of a church. It includes any position that performs "vital religious duties," [10] such as worship leaders and Sunday school teachers. Job descriptions at your house of worship should accurately explain the ministerial nature of all positions that perform vital religious duties, including a list of all religious duties and job requirements for each position.

Second, the statutory religious employer exemption in Title VII provides that religious organizations may consider religion while making employment decisions to ensure that they employ only people who can carry out their religious missions. [11] It is widely recognized that this provision provides a complete bar to any lawsuits claiming discrimination on the basis of religion for any position in the religious nonprofit organization – whether or not the position is considered ministerial. [12] That means that Christian churches are free to hire only Christians, or to prefer Christians in hiring, and these churches cannot be sued for religious discrimination.

There is debate over whether this statutory provision also provides a defense to claims of sex discrimination where the religious organization's employment decision is based on the employee's failure to live up to the organization's Statement of Beliefs or Faith-based Code of Conduct on issues of sexual morality. In 2017, the U.S. Department of Justice [13] took the position that because Title VII defines "religion" broadly to include "all aspects of religious observance and practice, as well as belief," [14] religious organizations may choose to "employ only persons whose beliefs and conduct are consistent with the employer's religious precepts." [15] Thus, the statutory exemption may provide a defense to some claims of sex discrimination. Because this is a potential line of defense, if your house of worship maintains a Faith-based Code of Conduct, it should include clear standards regarding moral transgressions that could lead to adverse employment actions, applying them consistently and equally.

Finally, the Religious Freedom Restoration Act ("RFRA") may provide some protections for houses of worship. RFRA prohibits the federal government from imposing a substantial burden on religious exercise unless it can demonstrate a compelling reason for its action that is narrowly tailored to be the least restrictive means of achieving its goals. [16]

In addition to federal law, it is important to also consider any applicable state and local employment discrimination laws, as these may be more restrictive. Some states may also have additional protections for houses of worship, such as state RFRA's.

Recommended Employment Non-Discrimination Policy Statement

When choosing an employment non-discrimination statement to include in your employee handbook, many generic examples you will find have not been formatted for religious employers. Although you should not be able to waive your First Amendment rights, it is preferable to state your employment non-discrimination policy in a way that does not purport to waive any religious liberty rights. The employment non-discrimination statement should be consistent wherever it appears.

Some example language is below. You may need to adjust the language depending upon any applicable state or local employment non-discrimination laws. Some states may require each protected classes to be listed.

All employment decisions of [Church] are made to further [Church's] mission to [Mission Statement]. [Church] is an equal opportunity employer and does not discriminate on any basis covered by applicable law. As a nonprofit faith-based employer, [Church] reserves the right to carefully and fully explore the religious values, faith, personal conduct, and convictions of applicants and employees in order to employ only those individuals who support, advance, and live in a manner consistent with our Statement of Beliefs and Faith-based Code of Conduct.

Recommended Ministerial Job Descriptions

The First Amendment protects the right of religious organizations to make employment decisions with respect to who leads the ministry and who conveys the faith.

Constitutional religious liberty protections are at their strongest with respect to "ministerial" positions. Essentially, because "ministers" are responsible for conveying the tenets of the faith, religious organizations are free to choose whoever they want to be a minister and that decision cannot be scrutinized by courts. Therefore, the First Amendment protects the employment relationship between a church and its minister from government intrusion and bars many employment related lawsuits.

The protection applies to more than just a minister or pastor at a church. Courts have held that it can also apply to teachers at Christian schools, [17] the music director at a church, [18] an organist at a church, [19] a minister at a faith-based hospital, [20] and a spiritual director at an InterVarsity campus ministry. [21] Other church leaders who perform vital religious duties also should be considered ministers.

The leading ministerial exemption cases are *Hosanna-Tabor* and *Our Lady of Guadalupe*. [22] To decide who qualifies as a "minister," courts may consider several factors, such as an employee's title, religious training, and credentials, but the most important factor is "what an employee does" — whether they are responsible for performing "vital religious duties." [23]

Your organization should carefully review your job descriptions and employment criteria to ensure that ministerial positions accurately and sincerely reflect as many ministerial factors as possible. When a position has religious duties or responsibilities, those should be included and explained in the job description. The more specificity with respect to religious duties, training, credentials, and other religious job requirements (including faith-based character requirements), the stronger the argument that the position is ministerial.

One final note of caution. It is unlikely that courts would consider all employees of a religious organization to be ministers. If an organization claims that every position is ministerial, including janitorial positions, such claims could undermine its credibility.

Recommended Faith-based Code of Conduct for Employees

Houses of worship differ in how to approach moral issues. If an organization intends to hold its employees to a Faith-based Code of Conduct, it is recommended that these requirements are clearly specified in advance.

Requiring employees to agree to abide by a Faith-based Code of Conduct each year has several advantages:

- Fair and clear expectations up front
- Dissuades ill-suited applicants from applying
- Helps ensure that a consistent procedure is followed in case of violations
- Provides proof of the faith-based tenets of the organization

Because federal law often allows faith-based organizations to make employment decisions consistent with their religious tenets, having these standards clearly stated and consistently applied provides a strong defense. Moral standards, such as a prohibition on non-marital sexual conduct, should be applied equally to male and female employees. The Faith-based Code of Conduct should be enforced consistently to avoid even the appearance of a double standard.

Your Faith-based Code of Conduct should be grounded in your Statement of Beliefs and should establish parameters for acceptable behavior. Such a code should include a preamble addressing the religious motivation for behavior addressed in the code using supporting scriptures, doctrines, and statements of faith.

Alternative Dispute Resolution

Employment agreements should set forth a procedure for resolving disputes, such as requiring alternative dispute resolution (ADR) in the form of mediation and binding arbitration rather than litigating in civil courts. Example Christian forums for this kind of dispute resolution include the Institute for Christian Conciliation, Peacemaker Ministries, and Christian Legal Society—Christian Conciliation.

Example ADR Language

The Parties must resolve any dispute, controversy, or claim arising out of or relating to this Agreement (the "Dispute") under the procedures and provisions set out in this Agreement. Those procedures and provisions are the exclusive mechanism for resolving any Dispute between the Parties.

Notice. A party must send written notice of any Dispute to the other party. The Parties must then consult and negotiate in good faith in an attempt to resolve the Dispute set out in the Dispute Notice. If the Dispute is not resolved promptly, the Parties must then consult and negotiate in good faith in an attempt to resolve the Dispute set out in the Dispute Notice at an in-person meeting at a mutually agreeable place and time.

Mediation and Arbitration. If the Parties do not resolve the Dispute within 7 business days after the in-person meeting, the Parties must proceed to mediation and, if necessary, to legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation (complete text of the Rules is available at www.iccpeace.com). Judgment upon an arbitration decision may be entered in any court of competent jurisdiction.

Waiver and Attorney's Fees. The Parties waive their right to a jury trial and to file a lawsuit in any civil court against each another for any Dispute, except to enforce an arbitration decision. If a party files a civil lawsuit except to enforce an arbitration decision, and the other party successfully compels arbitration regarding the Dispute, the compelling party is entitled to recover its reasonable and necessary attorney's fees and court costs for having had to compel arbitration.

Survival. The obligations of this section survive the expiration or termination of this Agreement.

Recommendations for Non-Employee Volunteers

Your house of worship should strongly consider requiring volunteers to sign an agreement to adhere to your written conduct policies and Statements of Beliefs.

Citations:

5. 42 U.S.C. § 2000e(k).
6. *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1753 (2020) (holding “employers are prohibited from firing employees on the basis of homosexuality or transgender status”).
7. 42 U.S.C. § 2000e(b).
8. *Bostock*, 140 S. Ct. at 1754 (listing these three religious liberty protections).
9. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).
10. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020).
11. 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000e-2(e)(2).
12. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327 (1987).
13. For a helpful elaboration on this argument by the Department of Justice, please see the DOJ’s Religious Liberty Memorandum, available at <https://www.justice.gov/opa/press-release/file/1001891/download>.
14. 42 U.S.C. § 2000e(j).
15. *Little*, 929 F.2d at 951; see also *Killinger v. Samford Univ.*, 113 F.3d 196, 198–200 (11th Cir. 1997).
16. 42 U.S.C. § 2000bb-1.
17. *Hosanna-Tabor*, 565 U.S. 171.
18. *Cannata v. Cath. Diocese of Austin*, 700 F.3d 169, 170 (5th Cir. 2012).
19. *Sterlinski v. Cath. Bishop of Chi.*, 934 F.3d 568 (7th Cir. 2019).
20. *Penn v. N.Y. Methodist Hosp.*, 884 F.3d 416 (2d Cir. 2018).
21. *Conlon v. InterVarsity Christian Fellowship/USA*, 777 F.3d 829, 834–35 (6th Cir. 2015).
22. *Hosanna-Tabor*, 565 U.S. at 193; *Our Lady of Guadalupe*, 140 S. Ct. at 2066.
23. *Our Lady of Guadalupe*, 140 S. Ct. at 2064, 2066.



Membership & Discipline

Membership & Discipline

Your house of worship should consider whether to require members to abide by your Statement of Beliefs or be held to your Faith-based Code of Conduct as a condition of membership. Many non-denominational and non-hierarchical churches lack written policies and procedures for the admission, discipline, or removal of members. If your church intends to exercise church discipline, you should promulgate written policies and procedures that are clear and consistently applied.

Membership Requirements

As a preliminary matter, a house of worship should explain the connection between its membership policies and its religious beliefs. The First Amendment to the United States Constitution protects the independence of houses of worship, protecting their freedom to decide matters of faith, doctrine, and internal governance without government interference. [24] This principle is called “church autonomy” or “religious autonomy.” Sometimes courts use the term “ecclesiastical abstention” to describe their practice of abstaining from cases involving ecclesiastical or religious issues. Because of this principle, courts are more likely to defer to the membership decisions of houses of worship when they are expressly rooted in the religious faith of the organization.

Example Language for Christian Churches: [Church] membership signifies a commitment to follow Christ together in community. [Church] has a special responsibility to guide and care for its members, which may include correction. (Acts 20:28; Matthew 18:15-17).

It is important for your house of worship to clearly communicate its membership requirements. For Christian churches, potential qualifications for membership may include: written profession of faith, signed agreement with the Statement of Beliefs and Faith-Based Code of Conduct, and agreement to be bound by all church policies. Disqualifications could state that membership is contingent on whether or not the member is actively pursuing his or her relationship with Christ, as well as abiding by the Statement of Beliefs and Faith-based

Code of Conduct. As discussed in more detail below, members should be advised of potential consequences of or discipline for not abiding by their commitments as members.

Request that members review your house of worship's policies and Statement of Faith and proceed with membership only if they are in agreement with, and willing to abide by, your policies. Have potential members sign an agreement that they have received, read and understand your policies. Additionally, all members should sign a written consent to all written policies. An additional precaution would be to have members sign to renew their consent on an annual basis.

Discipline & Correction

The legal risk surrounding church discipline is the potential for the person who has been disciplined, or accused of violating church doctrine, to bring a lawsuit alleging defamation, invasion of privacy, or related claims. Often in these situations, the First Amendment principle of religious autonomy can be asserted as a defense to claims brought against the church itself or against its leadership. [25] Membership decisions of houses of worship are protected by the religious autonomy doctrine, and consequently courts routinely defer to the decisions of houses of worship involving matters of church discipline. [26]

There are several measures a house of worship should take to minimize the risk.

First, it is the best practice to require members to sign that they agree to be bound by all membership policies, including policies on church discipline. Federal and state courts are generally deferential to church discipline when the matter is "internal" and "ecclesiastical," but some may require an express waiver (a signed agreement) from members when the underlying legal issues are arguably external and resolvable under "neutral principles of law." [27]

Your policies should be clear. They should lay out the disciplinary procedure, including timing, means, and administrative involvement. They should identify the kinds of issues deemed terminable for members. If your house of worship intends to discipline, terminate, or refuse

membership based on an issue, your written policies should expressly say so. Simply put, you must define what you intend to defend.

There should be policies regarding how and when members can voluntarily withdraw membership. In particular, your house of worship should address the question of whether members can withdraw membership after the church disciplinary process has begun. Courts generally agree that houses of worship can disassociate with individuals, expelling them from membership or active association with the church. Courts have reached different conclusions on the question of whether churches can engage in other forms of discipline over former members. [28]

Finally, all procedures should be applied consistently. Include procedures relating to grace and reconciliation in the policy itself. Limit discussion of the alleged wrongdoing to within the disciplinary process as described in your policies.

Citations:

24. *Our Lady of Guadalupe*, 140 S. Ct. at 2060; *Hosanna-Tabor*, 565 U.S. at 186; *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

25. *Williams v. Gleason*, 26 S.W.3d 54, 59 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) ("Ecclesiastical immunity would be an empty protection if a disgruntled member, denied the chance to sue the religious body, sued instead the members of the religious body who disciplined him. If disciplined members were able to sue the members of the church, as opposed to the church itself, there would be an inappropriate chilling effect on the ability of churches to discipline their members.").

26. *Serbian E. Orthodox Diocese for U.S. of Am. & Can. v. Milivojevic*, 426 U.S. 696, 724--25 (1976) (requiring deference to church tribunals on matters of "internal discipline and government"); *Jones v. Wolf*, 443 U.S. 595, 602--03 (1979) (requiring deference to hierarchical church organization on "issues of religious doctrine or polity"); *Watson v. Jones*, 80 U.S. 679, 727 (1871) (deciding "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them").

27. *See Orr v. Fourth Episcopal Dist. Afr. Methodist Episcopal Church*, 111 N.E.3d 181, 192 (Ill. App. 4th Dist. 2018).

28. *Smith v. Calvary Christian Church*, 614 N.W.2d 590, 594 (Mich. 2000); *Gunn v. Church of Christ of Collinsville*, 775 P.2d 766 (Okla. 1989).



Facilities Use Policies

Facilities Use Policies

It is recommended that your facilities use policy explain that everything that your organization does, including the use of its facilities, is a part of its broader religious mission and all uses of facilities must be in accordance with your religious purpose.

In some jurisdictions, when private houses of worship open their facilities to use for the general public, such as using it as a polling place or renting out facilities during the week, that activity may be considered a public accommodation subject to state or local regulation. The analysis will vary widely by state. If the house of worship rents its facilities for a fee, it may be advisable to rent at cost or at below market rates. This is because, in some jurisdictions, the more a rental is seen as a profit-seeking enterprise rather than a faith-based endeavor, the more likely a court may consider the activity to be subject to regulation. [29]

In light of these possibilities, we recommend that houses of worship consider adopting facility use policies that limit the use of their facilities only to uses that accord with the organization's religious tenets. A house of worship may specify that its facilities are not open to the general public and that its facilities may not be used in ways that conflict with its religious or moral teachings. We recommend including a signature block in facility use rental agreements acknowledging receipt, review, and assent to all policies, including the Statements of Beliefs.

For additional protection, a house of worship could specify that its facilities are only available to members, rather than to the general public. For instance, a policy could state that only members may use facilities for wedding ceremonies or receptions. Alternatively or additionally, a house of worship may wish to limit its facilities to particular specified uses, such as renting its basketball court only for sporting events.

Example Facilities Use Policy for Christian Churches

All [Church Name] property and facilities (including furniture, fixtures, and equipment) are holy and set apart

to worship God. (Colossians 3:17) [Church Name] facilities are consecrated to our religious ministry and mission because they are a provision from God. Use of [Church Name] property shall be for the propagation of the Christian faith, for fellowship, witnessing, religious teaching, and charity. Therefore, all use and occupancy of [Church Name] property shall be limited to persons of our particular religion, the propagation of religion, or related religious purposes.

All activities on church property must cohere with the religious purpose of [Church Name] and further its Christian mission, whether the activity has an overt liturgical religious purpose (preaching, worship services, Bible instruction, communion, baptism) or a non-liturgical religious purpose (social service, mentorship, community service, benevolence, charity, schools). [Church Name] conducts all activities in order to advance or express its Christian mission, message and viewpoint. Church facility use shall be exclusively conditioned on whether the use promotes [Church Name]’s mission, message and viewpoint, as all facility usage is an opportunity to glorify God. In addition, church property is exclusively reserved for persons and organizations who agree to abide by [Church Name]’s policies [List specific policies]. Likewise, [Church Name] facilities are not generally open to the public and may not be used by persons or groups holding, advancing, or advocating beliefs that conflict with [Church Name]’s faith or moral teachings – including but not limited to [Church Name]’s Statement of Beliefs.

Any facilities that are made available to approved non-members for usage are meant to further [Church Name]’s calling to minister to others, for charity and witnessing to our faith. For this reason, [Church Name] property cannot be used for purposes that contradict the church’s beliefs. (2 Corinthians 6:3; and 14; 1 Thessalonians 5:22)

Church property issues or disputes are directly related to religious doctrine and practice, as all facilities are utilized in a manner to advance or express [Church Name]’s Christian mission, message, and viewpoint. (Colossians 3:17) In the event that church facility use departs in any

way from [Church Name]’s policies, [Church Name]’s [Designated Authority] shall exclusively resolve any disputes. The [Designated Authority] alone may make inquiry into the religious law and usage of [Church Name] facilities. [Church Name] reserves the right to accept or deny any applicants who seek to utilize or reserve [Church Name] facilities.

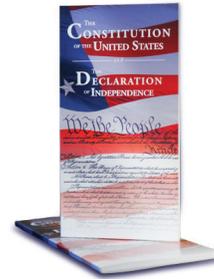
Conclusion

We hope this guide is a helpful resource for your house of worship. If you have any questions about this guide or other religious liberty issues, please seek legal assistance. First Liberty attorneys are standing by at Firstliberty.org to help protect your house of worship’s religious freedom.

Citations:

29. See *Doe v. Cal. Lutheran High Sch. Assn.*, 88 Cal. Rptr. 3d 475, 483 (Cal. App. 4th Dist. 2009) (concluding that faith-based school was not a place of public accommodation, but some nonprofit organizations could be subject to the state’s law).

Additional FREE Resources



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Perfect for those new to First Liberty, this resource will help you discover all the "must-know" essentials about us. Get an inside look at our mission, president and leadership team, clients, the key cases we've won at the U.S. Supreme Court, our unique national volunteer attorney network, and the many ways you can become a force multiplier for religious freedom.

Visit:
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On Fire Christian Church

The COVID-19 pandemic created a wave of unconstitutional shutdowns of religious services. First Liberty secured a major victory for On Fire Christian Church in Louisville, KY after local officials attempted to stop the church from safely meeting on Easter Sunday. This critical win was the “lawsuit heard across the nation” that set the seminal precedent protecting religious freedom moving forward and affirmed that our constitutional rights are not suspended during a crisis or emergency.



Congregation Toras Chaim

Religious freedom won the day for Congregation Toras Chaim (CTC), a small Orthodox Jewish congregation located in Dallas, TX. After an arduous legal battle that lasted nearly six years, First Liberty secured the right of CTC’s members and its families to meet and worship in a private, North Dallas home, as well as to continue serving the needs of its surrounding community.



Canaan Baptist Church

First Liberty recently secured an important victory for Pastor Jarvis Baker and Canaan Baptist Church, a small congregation located just outside Dallas. Duncanville officials attempted to seize the church’s property through eminent domain. First Liberty stepped in to stop this assault, and the City announced they would no longer seek to strip away the church’s property.



Capitol Hill Baptist Church

First Liberty secured an important triumph for Capitol Hill Baptist Church (CHBC) in Washington D.C., a congregation that’d been prevented by city officials from safely gathering for in-person services due to pandemic restrictions. First Liberty reached an important settlement on behalf of CHBC, in which the District of Columbia agreed that it would not enforce any current or future restrictions on gatherings, as well as agreeing to cover the church’s legal fees.



Churches in Houston’s Fifth Ward

The Houston Housing Authority (HHA) sought to take the property of two historic churches located in the Fifth Ward, even threatening to bulldoze the historic Christian Fellowship Missionary Baptist Church and condemn the property of the Latter Day Deliverance Revival Center. First Liberty filed a lawsuit against the HHA, as its action violated the Texas religious liberty law. The HHA voluntarily dismissed all eminent domain proceedings against both churches.



Heimish of Houston

Because their religious beliefs prevent them from driving on the Sabbath, members of Heimish of Houston meet in a neighborhood home that congregants can easily walk to—as do many other similar Jewish communities around the nation. Local officials sought to enforce restrictive city ordinances against members of the congregation that prevented them from gathering. First Liberty defended and successfully restored the right of the congregants to freely gather for worship.



Learn More on First Liberty's Website

Visit our website, where you'll find information on our cases, clients and breaking updates on religious liberty in America. Whether you want to learn more about our attorneys, leadership and staff, or if you need to request legal assistance, our website is a one-stop shop for everything you need to know about religious freedom.

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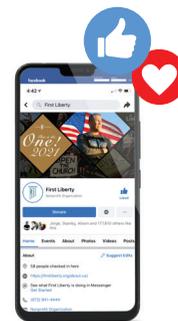
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If you believe your religious liberty has been threatened or violated, please contact us at:

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 (972) 941-4444



Stephanie Taub

Senior Counsel

First Liberty's Houses of Worship Expert

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a nucleus of top-ranked staff attorneys who coordinate a national network of top litigators from firms that include 24 of the largest 50 in the world.



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