



## FIVE THINGS ALL CHURCHES SHOULD HAVE IN THEIR BYLAWS

*Proactively Protecting the Church's Right to Be the Church*

In the wake of battles in several states over the issue of same-sex “marriage” and the adoption by states and local governments of special rights for those engaging in homosexual behavior, many churches are unsure of their legal rights. Churches have broad constitutional protections designed to ensure the free exercise of religion and to prevent intrusion by the state into matters of doctrine and church independence. While these broad constitutional provisions protect the church’s ability to minister freely according to its own dictates, there are proactive steps that churches can and should take to further protect and insulate themselves from attacks that threaten the church’s independence.

The following items are suggestions to strengthen the bylaws of a church to ensure the broadest possible protections of church autonomy. There is no “magic language” in any of these areas and churches should incorporate their own language and traditions. The point is not to create specific language to be copied, but merely to ensure that these areas are covered by the church’s bylaws.

### **#1: STATEMENT OF RELIGIOUS BELIEF REGARDING MARRIAGE, GENDER, AND HUMAN SEXUALITY**

With the rise of same-sex “marriage,” domestic partnerships, and civil unions, churches are regularly being confronted with these marriage counterfeits and asked to recognize these relationships. This can arise in the area of employment, use of church facilities, or whenever churches offer classes, retreats, or other events designed for married couples. Churches should include in their bylaws a Biblical definition of marriage and a statement that marriage is the only legitimate and accepted sexual relationship. This will help protect the church if it is forced to terminate/punish an employee for engaging in unbiblical sexual relationships,<sup>1</sup> or if the church declines to allow an unmarried couple to participate in events designed for married couples.

Below is a sample statement of religious belief on marriage and sexuality. Churches should utilize this sample to craft their own unique statement of religious beliefs. Including scriptural references is always helpful, although not legally required.

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<sup>1</sup> See, e.g., *Bryce v. Episcopal Church in the Diocese of Colorado*, 121 F. Supp.2d 1327 (D. Col. 2000) (Holding that a lesbian youth minister that was terminated as a result of her “commitment ceremony” could not bring a claim against the church for her termination because such a claim as barred by the First Amendment); see also *Gunn v. Mariners Church*, 2005 WL 1253953 at \*2 (Cal.App. 4 Dist. 2005). *Gunn* involved the termination of a worship pastor who was engaging in homosexual conduct. The pastor tried to argue that the church’s doctrine did not prohibit homosexuality. But because the church was able to demonstrate otherwise, the court refused to second-guess the church’s employment decision. *Id.*



### **Sample Statement on Marriage, Gender, and Sexuality**

We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complementary genders together reflect the image and nature of God. Rejection of one's biological gender is a rejection of the image of God within that person.

We believe that term "marriage" has only one meaning and that is marriage sanctioned by God which joins one man and one woman in a single, exclusive union, as delineated in Scripture. We believe that God intends sexual intimacy to only occur between a man and a woman who are married to each other. We believe that God has commanded that no intimate sexual activity be engaged in outside of a marriage between a man and a woman.

We believe that any form of sexual immorality (including adultery, fornication, homosexuality, lesbianism, bisexual conduct, bestiality, incest, pornography, and attempting to change one's biological sex or otherwise acting upon any disagreement with one's biological sex) is sinful and offensive to God.

We believe that in order to preserve the function and integrity of the church as the local Body of Christ, and to provide a biblical role model to the church members and the community, it is imperative that all persons employed by the church in any capacity, or who serve as volunteers, should abide by and agree to this Statement on Marriage, Gender, and Sexuality and conduct themselves accordingly.

We believe that God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ.

We believe that every person must be afforded compassion, love, kindness, respect, and dignity. Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with scripture nor the doctrines of the church.

### **#2: IDENTIFY **GOVERNING BODY** THAT IS THE SOLE AUTHORITATIVE INTERPRETER OF SCRIPTURE**

It is impossible to anticipate every doctrinal dispute that a church could encounter. Thus, churches should include a statement in the bylaws that its governing body (e.g. elder board, executive committee, etc.) is the church's sole authoritative interpreter of Scripture. This will allow the governing body to issue an interpretation of Scripture whenever a dispute arises that cannot be questioned by courts.<sup>2</sup>

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<sup>2</sup> *Gunn*, 2005 WL 1253953 at \*2. (courts "cannot undertake...a mission" of finding what is and is not "moral" or "sinful" within the beliefs of a particular church).



Below is a sample statement of Biblical authority that your church can adopt in whole, or can use as a template to create its own unique statement.

### **Statement of Biblical Authority**

The statement of faith does not exhaust the extent of our faith. The Bible itself, as the inspired and infallible Word of God that speaks with final authority concerning truth, morality, and the proper conduct of mankind, is the sole and final source of all that we believe. For purposes of church doctrine, practice, policy, and discipline, our [governing board][pastor][elders][Doctrinal Committee] is the church's final interpretive authority on the Bible's meaning and application.

## **#3: FORMAL MEMBERSHIP POLICY**

Some churches do not have formal members.<sup>3</sup> However, those churches that do should always have a formal process by which congregants become members. Churches enjoy substantial freedom under the U.S. Constitution to govern themselves as they see fit without fear of legal consequences. Courts “do not exercise jurisdiction over the internal affairs of religious organizations.”<sup>4</sup> The Supreme Court has recognized “a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine,” and has recognized that this freedom is rooted in the Free Exercise Clause of the U.S. Constitution.<sup>5</sup> Thus, the Constitution protects church conduct, even where that conduct causes personal injury that would otherwise be actionable in court: “When the imposition of liability would result in the abridgment of the right to free exercise of religious beliefs, recovery in tort is barred.”<sup>6</sup>

But this freedom has limitations. “Only those ‘who unite themselves’ in a religious association impliedly consent to its authority over them and are ‘bound to submit to it.’”<sup>7</sup> So, in order for a church to claim immunity against a possible tortious act,<sup>8</sup> the alleged victim must be (or have been) a member of the church. This is very difficult to determine if the church does not have a formal membership policy.

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<sup>3</sup> Churches that choose not to have formal membership should be aware that their ability to impose church discipline is severely limited, especially when it comes to public disclosure of unrepentant sin in an individual's life. Churches without formal membership should read #4 and #5 in this Memo carefully to gain an understanding of how church discipline can result in legal liability to a church that attempts to discipline someone who is not a member of the church.

<sup>4</sup> *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1037 (7<sup>th</sup> Cir. 2006).

<sup>5</sup> *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

<sup>6</sup> *Paul v. Watchtower Bible and Tract Society of New York, Inc.*, 819 F.2d 875, 880 (9<sup>th</sup> Cir. 1987).

<sup>7</sup> *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 779 (Okla. 1989); accord *Owen v. Bd. of Directors of Rosicrucian Fellowship*, 342 P.2d 424, 426 (Cal. App. 1959) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs”).

<sup>8</sup> A tort is any wrongful act that results in injury to another's person, property, or reputation. Examples include breach of contract, assault, defamation, invasion of privacy, intentional infliction of emotional distress, etc.



#### **#4: PROCEDURE FOR MEMBER DISCIPLINE/MEMBERSHIP REVOCATION**

Generally speaking, a church cannot be held liable for disciplining a church member or terminating his or her membership. “Courts generally do not scrutinize closely the relationship among members (or former members) of a church. Churches are afforded great latitude when they impose discipline on members or former members.”<sup>9</sup> There are exceptions, however. The most common is when a church disciplines a member or terminates a person’s membership because that person refuses to stop engaging in sinful behavior, and the church leaders reveal the sinful behavior to the congregation. This can lead to claims against the church for invasion of privacy, intentional infliction of emotional distress, defamation, etc.<sup>10</sup>

There are some simple steps a church can take to help avoid such claims. First, a church should have each step of its procedure for discipline and membership termination explained in its bylaws. If the church believes that it may be necessary to reveal to the congregation the reason for the discipline/termination, it is essential that this be a part of that procedure. Second, as part of the process for becoming a member, a church should provide all prospective members a copy of the bylaws and have them sign a statement that they have read them. And, of course, the church should *always* follow the procedures in the bylaws.<sup>11</sup>

As part of the church discipline process, the church should also consider including a provision in its bylaws that a member cannot voluntarily withdraw or resign membership once the discipline process has begun. See the explanation in #5 below for more details on this provision.

If these steps are followed, then courts are much less likely to consider a tort claim against a church for its internal discipline process, unless the church’s conduct was so “extreme and outrageous” as to justify intruding on the church’s religious liberty.<sup>12</sup>

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<sup>9</sup> *Paul*, 819 F.2d at 883.

<sup>10</sup> See, e.g., *Snyder v. Evangelical Orthodox Church*, 216 Cal.App.3d 297, 307 (1989) (allowing case against church to go forward because the church’s bylaws were silent about whether confessions could be revealed to the congregation).

<sup>11</sup> The Supreme Court has repeatedly affirmed that churches have the right to decide purely religious and ecclesiastical matters for themselves, but has recognized that if “fraud, collusion, or arbitrariness” is present, the civil courts may be empowered to intervene to decide such a case. See *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929). Some state courts have reviewed cases brought to challenge membership decisions if the church did not comply with its procedures and bylaws. See, e.g., *Konkel v. Metropolitan Baptist Church, Inc.*, 572 P.2d 99 (Ariz. 1977) (finding that the court had jurisdiction to determine if removal of church members complied with the procedures in the church bylaws); *LeBlanc v. Davis*, 432 So. 2d 239 (La. 1983) (same); *First Baptist Church v. State of Ohio*, 591 F. Supp. 676 (S.D. Ohio 1983) (finding jurisdiction to adjudicate claim that expulsion of members was a result of fraud or collusion); *Hatcher v. South Carolina Dist. Council of the Assemblies of God*, 552 S.W.2d 865 (Tex. 1977) (same).

<sup>12</sup> *Snyder*, 216 Cal.App.3d at 309.



## #5: PROCEDURE FOR RESCINDING MEMBERSHIP

Just as the church should have a written policy for terminating membership, it should also have a written policy for how members can disassociate from the church. Courts have held that church members have a First Amendment right to terminate their membership.<sup>13</sup> Once a member has rescinded her membership, she is no longer consenting to the church's doctrine. This could limit a church's legal protection if it is sued for disciplining someone *after* they have revoked their membership. At least one state court has allowed a suit to proceed against the elders of a church who attempted to discipline an individual after she had formally withdrawn her membership.<sup>14</sup> But that court also held that an individual can waive their constitutional right to withdraw from church membership in the midst of a discipline process as long as the waiver is "voluntary and intentional."<sup>15</sup> With a formal revocation policy, it is easy for all parties involved, including the court, to identify when the membership was terminated – otherwise a court will decide on its own.

The church should place a provision in its bylaws for formally terminating membership and this provision should prohibit the voluntary resignation or withdrawal of membership of a member once the discipline process has begun. Because the waiver of a church member's right to resign his membership must be voluntary and intentional, it is a good idea to have church members sign an explicit statement that they have read and agree to this provision of the bylaws.

Some churches do not want to limit their members' ability to resign from the church and want to allow their members to resign voluntarily from church membership at any time, even in the midst of a disciplinary policy. However, should churches choose not to place an explicit procedure for rescinding membership in their bylaws, they should be aware that their ability to discipline a member *after* the member has resigned is strictly limited and a court may intervene to halt discipline directed against a member that has already resigned their membership.

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<sup>13</sup> See, e.g., *Guinn*, 775 P.2d at 776 ("Just as freedom to worship is protected by the First Amendment, so also is the liberty to recede from one's religious allegiance").

<sup>14</sup> See *Guinn*, 775 P.2d at 766 (permitting lawsuit against church and elders to proceed when the elders disclosed the details of the conduct of the individual to the church after the individual had explicitly resigned her membership).

<sup>15</sup> *Guinn*, 775 P.2d at 779.