



June 16, 2020

LEGAL UPDATE

LGBTQ SUPREME COURT OF THE UNITED STATES RULING

To my valued church clients:

As I am sure you are aware, the Supreme Court of the United States passed landmark legislation yesterday protecting LGBTQ workers from discrimination.

"An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids," Gorsuch wrote.

<https://www.cnn.com/2020/06/15/politics/supreme-court-lgbtq-employment-case/index.html>

Regardless of the US Supreme Court ruling yesterday regarding elevating LGBTQ orientation to a protected class under the US Constitution, the 1st Amendment to the Constitution still guarantees Religious Freedom in our country!

However, there has never been a more important time for churches and ministries to be intentional and exact in their sincerely held religious beliefs than at this moment in history!

I want to take a moment to communicate the legal impact of this ruling as it relates to my valued church clients. There are three distinct categories of churches that are immediately impacted by this decision:

1. CHURCHES AND MINISTRIES THAT HAVE UPDATED THEIR BYLAWS AND STATEMENT OF FAITH:

If your church has updated your Bylaws under our suggested protocols and have expanded your Statement of Faith to include the recommended scriptural references regarding Marriage and Sexual Orientation, the importance of **CONSISTENCY OF USE AND APPLICATION** of your beliefs in this area has never been more important.

- Statement of Faith which references to your stand on marriage, sexual orientation and gender must be included in all orientation procedures in the church.
- Volunteer Agreements should include a copy of your Statement of Faith and require the applicant to affirm that he/she has read the Statement of Faith and agree to abide by it as an authorized church volunteer.
- Employment Agreements should include a copy of your Statement of Faith and require the applicant to affirm that he/she has read the Statement of Faith and agrees to abide by it as an employee of the church.
- Facilities Use Agreements should be used when allowing the church facilities to be used by any third party. The Facilities Use Agreements should include a copy of your Statement of Faith and require the applicant to affirm that he/she/they have read the Statement of Faith and agree to abide by it during the use of your facility.

THESE AGREEMENTS ARE AVAILABLE THROUGH OUR OFFICE IF YOUR CHURCH NEEDS UPDATED FORMS. BE CONSISTENT IN THEIR USE. PROTECT YOUR RIGHTS!

2. CHURCHES THAT ARE *NOT INCORPORATED* AND/OR HAVE NOT UPDATED THEIR BYLAWS AND STATEMENT OF FAITH:

There has never been a more urgent time for unincorporated churches to file for incorporation. Unincorporated churches are sitting in the most vulnerable legal framework, exposing the Pastor, Elders, Trustees and in some extreme cases the congregants to personal liability for legal liability!

Incorporation of the church places the church in a legal framework that not only protects the leaders and the pastor(s) from personal liability, but also allows a vital updating of the Bylaws and legal documents to include new language in your Statement of Faith to address the LGBTQ issues that are now a protected class under the US Constitution. Every unincorporated church in America should immediately take the following steps to ensure their freedom of religion under the Constitution:

- Incorporate the church.
- Draft new bylaws that specifically and intentionally reflect the polity of the church.
- Draft an updated Statement of Faith with references to your scriptural beliefs on marriage and sexual orientation.
- Volunteer Agreements should be used throughout the church and should include a copy of your Statement of Faith and require the applicant to affirm that he/she has read the Statement of Faith and agree to abide by it as an authorized church volunteer.
- Employment Agreements should be used and should include a copy of your Statement of Faith and require the applicant to affirm that he/she has read the Statement of Faith and agree to abide by it as an employee of the church.
- Facilities Use Agreements should be used when allowing the church facilities to be used by any third party. The Facilities Use Agreements should include a copy of your Statement of Faith and require the applicant to affirm that he/she/they have read the Statement of Faith and agree to abide by it during the use of your facility.

IF YOUR CHURCH HAS NOT BEEN INCORPORATED, PLEASE CONTACT OUR OFFICE TO IMPLEMENT THE URGENT STRATEGY OUTLINED ABOVE TO PROTECT YOUR RELIGIOUS FREEDOM UNDER THE NEW LAWS.

3. VIRGINIA CHURCHES AND VIRGINIA LGBTQ STATE LEGISLATION

In addition, my Virginia church clients have been asking about the effect of the “Virginia Values Act” signed into law by Governor Ralph Northam on April 11, 2020 on churches.

On February 6, 2020, the Virginia General Assembly passed the “Virginia Values Act,” which would provide nondiscrimination protections for LGBTQ people in employment, housing, credit, and public accommodations. The bill was signed into law by Governor Ralph Northam on April 11, 2020, making it the first in the South — and the 21st across the United States — to pass anti-discrimination protections for the lesbian, gay, bisexual, transgender and queer community.

The measure, which goes into effect July 1, prohibits discrimination on the basis of sexual orientation and gender identity, specifically when it comes to housing, employment, public places and credit applications.

“This legislation sends a strong, clear message — Virginia is a place where all people are welcome to live, work, visit, and raise a family,” Northam, a Democrat, said in a statement. “We are building an inclusive Commonwealth where there is opportunity for everyone, and everyone is treated fairly. No longer will LGBTQ Virginians have to fear being fired, evicted, or denied service in public places because of who they are.”

Does the religious exemption provided in the Virginia Values Act protect churches in hiring and firing in the Commonwealth of Virginia?

To date, we believe churches are still exempt in their hiring/firing decisions, but this is emerging law. The Virginia “religious exemption” is weak, possibly by intention. We believe it most likely will apply to churches. And beyond the exemption, churches have (more importantly) constitutional rights, which clearly trump state anti-discrimination laws. There is excellent authority on our side, like the ministerial exception SCOTUS (Supreme Court of the United States) decision in *EEOC v. Hosanna Tabor Lutheran School*.

But die-hards on the Left still argue that churches and other religious organizations don’t get a full pass. They begrudgingly admit (as they must) that churches are free to hire and fire ministerial type positions according to their beliefs. *But they would say that in a non-ministerial position – say, a custodian – the church may prefer someone of its own faith, but can’t fire or refuse to hire based on other protected classes.* Their argument has not gotten anywhere against churches but they keep raising it, I suspect in the hope that they may someday get a more receptive Supreme Court. But they don’t bring those cases against churches, because they have been dead-bang losers.

They are more likely to go after marginally-Christian schools, or religious ministries with a less religious “feel.”

Our current position is that *while there is no absolute certainty*, that based on current Supreme Court authority and the religious exemption in the law, there is a high probability that churches are protected. But

even with those protections, it is always wise for churches to adopt our recommended updated Statement of Faith, as these protected beliefs have to be established in case there is ever a challenge.

It is unquestionable. It is in a church's and a ministry's best interests to adopt and formalize those beliefs and provide consistent application throughout the organization.

OUR OFFICE STANDS READY TO HELP, CLARIFY, COUNSEL OR PROVIDE ANY NECESSARY INFORMATION OR DOCUMENTATION TO ENSURE THE MAXIMUM 1ST AMENDMENT RELIGIOUS FREEDOM PROTECTIONS IN TODAY'S CHANGING LEGAL ENVIRONMENT!

With deep respect in Christ,

Steve Lentz

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