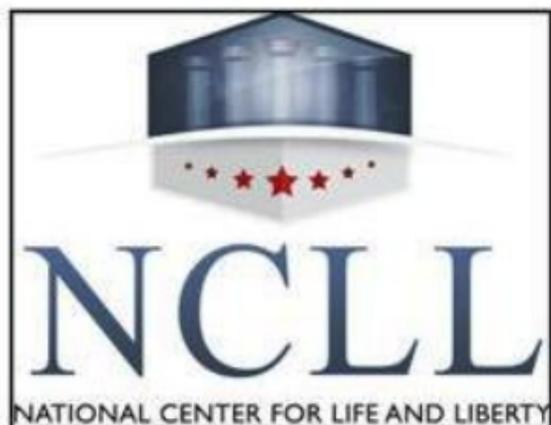


Workshop Participant Offer

As a participant in the **LEGAL ISSUES FACING TODAY'S CHURCH** overview workshop, you are entitled to request a **FREE** copy of the **NCLL Sample Bylaws** document from the **National Center for Life and Liberty**. To request your **FREE** copy, contact **NCLL** at info@NCLL.org or 888-233-NCLL (6255). Please mention this workshop conducted by Bobby Gilstrap.

The **NCLL** also offers a review of an individual church's bylaws for those churches that partner with the **NCLL**. For information about becoming an **NCLL** partner church, check the website (www.NCLL.org) or contact Mrs. Kelley or Mrs. Gresens at 727-362-3700 or 888-233-NCLL (6255).



Presenter's Notes
Legal Issues Facing Today's Church

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DISCLAIMER: This workshop has been prepared in consultation with attorneys for the
National Center for Life and Liberty (or NCLL).

This informational workshop should not be misconstrued as legal counsel.
Workshop participants are encouraged to consult directly with **NCLL** or another attorney with specific legal questions.
This brief workshop is only addressing a limited number of issues in an overview format.

Why should you even care if your bylaws are up to date?

If your bylaws are inadequate, the court will impose state statutory provisions on your church / association.

The **Ecclesiastical Abstention Doctrine** prevents civil courts from determining the correctness of an interpretation of a Biblical text or some decisions related to the government of the religious group. Whenever a dispute involves questions of religious doctrine or the organization or government of the religious organization, the court loses jurisdiction.

Because of this doctrine, courts will not entangle themselves or unduly interfere with the affairs of religious organizations except to determine whether they have adhered to their own provisions in their bylaws. Religious organizations therefore have extensive legal leeway and must use this autonomy wisely by drafting clear and unambiguous bylaw provisions that will adequately protect the Ecclesiastical interests and its "**sincerely held**" religious beliefs as protected under the U.S. Constitution's provisions regarding First Amendment Freedom of Religion rights and privileges.

Proper and careful drafting of your bylaws is imperative to protect you from legal liability.

The **National Center for Life and Liberty** (NCLL) recommends effective language that will protect your organization as much as possible from potential legal liability.

When your organization is taken to court, the court will look to the organization's bylaws to determine whether the organization and it's leaders acted within the scope of their duties.

For legal purposes

- Bylaws - the organization's most important document
- It sets out the internal workings of the organization

It is vital that this document be prepared properly and that it include all the protections available for the organization to safeguard it against many of the lawsuits that are being filed against religious organizations today.

Courts generally hold that a member who joins a church with knowledge of the bylaws has agreed to be bound by the bylaws - even to those with which they may disagree.

Each state has enacted laws establishing rules by which ministries will be governed if it has no bylaws or if the bylaws do not speak to a specific issue.

Consider all the issues:

While an organization may omit provisions that do not apply to it, the organization will need to include the majority of provisions we are discussing

Otherwise, a court may subject the organization to the state's nonprofit corporation rules

Why must a church take steps now to apply legal protections? Because the threats to the church are real. Here are just a few:

- The impact on churches of the Supreme Court's ruling on same-sex marriage and the inclusion of sexual orientation and gender identity as protected classifications in anti-discrimination laws
- Physical threats of violence during church services
- Sexual and physical child abuse within the ministry
- Lawsuits against the church for accidents on church property or during church activities, or for copyright infringement
- Increasing IRS scrutiny on churches for financial issues
- Breaches of private ministry data and electronic accounts

EIGHT Critical Areas That Require Legal Protection

1. Adopt child safety policies, train staff on the policies and requirements, and then consistently enforce the policies

The protection of children must be top priority for churches. Not only are children very vulnerable, but churches are a prime target for child predators because of the relatively easy access they have to children. Most church children's programs include a multitude of situations that could place the children at risk of injury, abuse, or other threats, as well as the workers at risk for false accusations, thus putting the ministry at risk of litigation. The church should ensure that their child protection polices address, at a minimum, the following issues:

- Thorough screening of children/youth ministry workers, including mandatory reference and background checks

- Age-specific supervision requirements and procedures in classrooms, hallways, restrooms, and during special events including traveling, off-site events, counseling, etc. At a minimum, there should always be at least 2 approved workers with children/youth at all times for church-related functions, classrooms should be fully visible from the hallways, and only approved workers should be permitted inside classrooms and nurseries
- Nursery/preschool sign-in/release of children-- whatever method the church chooses to use for this, it needs to be one whereby the workers can reach parents if necessary and where parents and workers will know that the person picking up the child is authorized to do so
- Reporting reasonable suspicions of child abuse to pastor/designated church authority and appropriate legal authorities
- Appropriate disciplinary procedures, including a ban on corporal punishment by ministry workers during church activities
- Maintaining attendance records of both workers and children/youth for all church-related activities
- Process/requirements for documenting incidents that could potentially be litigious, including disciplinary actions taken, injuries sustained, suspicious activity or behavior of students or other workers, suspicions of or discussions by a child of neglect or abuse

2. Statement of Faith (*Wheel of Protection*)

Adopt provisions/policies to protect your church on the issue of Biblical marriage

With the Supreme Court's decision effectively legalizing same-sex marriage coupled with the addition of gender identity and sexual orientation becoming protected classifications in anti-discrimination laws in more and more jurisdictions around our country, churches that take a biblical stand on marriage and sexuality must take proactive steps to protect themselves from anti-discrimination lawsuits. At this time, the NCLL recommends adopting the following:

- **Statement of Faith position on biblical marriage:** including your church's position on biblical marriage within your bylaws' statement of faith. Here's the NCLL sample provision:

MARRIAGE AND SEXUALITY

1. We believe that the term "marriage" has only one, legitimate meaning, and that is marriage sanctioned by God, which joins one man and one woman in a single, covenantal union, as delineated by Scripture. Marriage ceremonies performed in any facility owned, leased or rented by this church will be only those ceremonies sanctioned by God, joining one man with one woman as their genders were determined at birth. Whenever there is a conflict between the church's position and any new legal standard for marriage, the church's statement of faith, doctrines and biblical positions will govern. (Gen. 2:24; Eph. 5:22-23; Mark 10:6-9; 1 Cor. 7:1-9)

2. We believe that God has commanded that no intimate sexual activity be engaged in outside of marriage as defined in section 1 above. We believe that any other type

of sexual activity, identity, or expression that lies outside of this definition of marriage, including those that are becoming more accepted in the culture and the courts, are contradictory to God's natural design and purpose for sexual activity. (Gen. 2:24; Gen. 19:5; Lev. 18:1–30; Rom. 1: 26–29; 1 Cor. 5:1; 6:9–10; 1 Thess. 4:1–8; Heb. 13:4)

- **Authority of the Statement of Faith:** Include within your church bylaws a provision stating that the church's Statement of Faith governs all activities and decisions by the administration and staff. Here's the example from the *NCLL's Sample Bylaws*:

All literature, whether print or electronic, used in the church shall be in complete agreement with the Statement of Faith. All activities permitted or performed in any facilities owned, rented or leased by this church, or engaged in by any member of the church staff (volunteer or paid), and all decisions of the administration of this church may not conflict with the Statement of Faith. In all conflicts regarding interpretation of the Statement of Faith, the pastor and Board, on behalf of the church, have the final authority.

- **Statement of Faith Acceptance and Acknowledgment:** As part of your church membership process, require any prospective members to acknowledge that they have read and agree to be bound by the church's Statement of Faith. Also, include a similar acceptance and acknowledgment in documents for prospective students and parents (if the church has a Christian school) and any ministry staff, whether paid or volunteer. Here's the example from the *NCLL's sample Statement of Faith Acceptance and Acknowledgement*:

I have received a copy of (Ministry Name)'s Statement of Faith. I understand it is my responsibility to become familiar with and adhere to the information contained herein. I agree to be bound by the Statement of Faith and the biblical positions taken by this ministry on all the issues of doctrine and lifestyle contained therein, both at and away from church.

- **Standards of Conduct Policy:** In your church staff handbook (and school staff and student handbooks, if applicable), include a Standard of Conduct policy that clearly states that behavior inconsistent with the Statement of Faith will result in termination of employment or enrollment. Include with the Standard of Conduct an acknowledgement that those subject to the policy(ies) have read it and agree to be bound by its terms. Here's the example from the *NCLL Sample Staff Handbook*:

I agree to abide by the Standard of Conduct contained therein and understand that if, at any time during or away from school/work, I violate any provisions of the Standard of Conduct or engage in any of the behaviors listed in the Discipline section of the Handbook, that I am subject to the discipline listed therein, up to and including [termination of employment/expulsion or suspension from school].

- **Facility Use Policy:** adopt a facility use policy that prohibits the use of any church facilities for any purpose that would be inconsistent with the Statement of Faith, and require any persons wishing to use the facility to acknowledge that they have read the Statement of Faith and that they agree to abide by the policy.
- **Ministry Job Descriptions:** Any time ministry jobs or volunteer positions become available, the job description should clearly state that candidates for the position must live, on- and off-duty, according to the ministry's Statement of Faith and within the Standards of Conduct Policy, and that violations of either will result in immediate discipline, up to and including termination of employment. Also, all job descriptions should include some ministerial functions—such as leading devotions or being available to share the Gospel with visitors. This is important because positions that are closely linked with the religious mission of the organization qualify for the “ministerial exception” which allows the organization to discriminate in hiring for those positions in favor of those who align themselves with the religious beliefs of the organization.

3. Develop an Emergency Response Policy

Developing a comprehensive emergency response policy with the input of those within and outside of the church who have experience in security, safety and emergency response, as well as those within the church who would be responsible for carrying out the plans and protocols is crucial to protecting church attendees and church property during a crisis, and for protecting the church from liability.

The policy should cover, at a minimum, the following issues:

- Development of a safety team—who will comprise, their responsibilities, whether it will include armed security¹, and if so, what are the qualifications and the process for determining who will be armed—whether lay members, staff, security team, law enforcement or hired security guards
- Policy on use of restraint/force/armed security
- Response to suspicious, disruptive or dangerous person on property
- Evacuation reasons/procedures
- Medical emergency response, including personnel availability
- Lockdown procedures/drills
- Fire, tornado, earthquake, bomb threat response/drills
- Gas leak, electrical outage procedures
- Lost/missing persons response
- Accident/injury/health crisis procedure/response
- Severe weather response

¹The NCLL no longer recommends that churches have “security teams.” This is due to the fact that in many states, any person called “security” or acting in the capacity of a security guard, whether volunteer or paid, and in some cases, regardless of whether or not they are armed, becomes subject to the laws, regulations and permit requirements of the security guard industry. To avoid this potential problem, churches should develop “safety teams” (rather than “security teams”) that are responsible for the overall safety of the church property and those attending services and activities in any type of emergency response situation—not just a security breach.

4. Require Permission and Liability Release Forms

Signed permission and release of liability forms that include mandatory arbitration clauses are an important means of protecting the ministry. Examples of activities for which forms should be required are the following:

- Any events on church property that involve potentially dangerous activities, including sporting events
- Overnight activities
- Activities off the church property
- Any activities where the church is providing transportation, including riding the church bus
- Mission trips
- Baptism
- Vacation Bible School
- Use of church/ministry food or clothing pantry
- Providing of volunteer services for church members or others in the community (ex.: a church group building a ramp for an elderly couple in the church)
- Administration of medications or necessity for emergency medical attention
- Use of photos for church website/social media

5. Make sure your church is not violating copyright laws

Particularly in recent years with the advent of recording and broadcasting church sermons and music online, countless churches have found themselves the subject of copyright violation notices. Many churches have been violating copyright for years, oftentimes unknowingly. Penalties for doing so can run into the tens of thousands of dollars for each offense, regardless of any ill-intent or even knowledge on the part of the ministry that it is violating copyright. Churches should purchase licenses for music and video use and should be sure to verify that use of all other copyrighted materials, including pictures and other materials for websites, is done so within legal guidelines. The most frequent copyright violations by churches are the following:

- Photocopying music for orchestra, choir, accompanist or congregational use
- Failure to purchase copyright license and then display license number when projecting music lyrics onto screen
- Showing DVDs or videos for church or youth activities without a copyright video license
- Recording worship service music and then posting recordings to the internet without the appropriate license
- Photocopying Sunday school classroom materials unless materials specifically authorize photocopying for classroom use
- Printing lyrics and/or music of a new song onto a "song page" which is then handed out to the congregation or placed in the church bulletin without the appropriate license
- Use of copyrighted pictures on church website or social media pages without license or copyright owner's permission

- Copying DVDs and CDs owned by church and allowing church members to check out the copies from the church library
- Recording church/school programs and then selling the recordings without permission from program/music copyright owner(s)

6. Maintain Good Records of Church Meetings

Whether it's a private church administration meeting or a congregational meeting, it's imperative to have an accurate record of the events, votes, and conversations that took place. In the event of a lawsuit that involves actions taken at a meeting, the minutes provide the best evidence for what actually occurred and are more persuasive than eyewitness testimony or someone's past recollection of events. In some cases, meeting minutes have been used as evidence years after they were taken, so accuracy is imperative. Keep the following points in mind for your meeting minutes:

- Have a designated person to take notes and then transcribe the notes into minutes of all meetings as soon as possible after the meeting
- Keep minutes in a clear, concise form
- Properly verify all minutes
- Keep minutes together in a book
- Back up minutes in the cloud or on an external hard drive
- Make changes or corrections to the minutes of a meeting only with the approval of the members when minutes are read and approved at the next meeting.
- Do not "re-write history" when considering changes or corrections to the minutes
- The secretary and presiding officer should initial any changes to the minutes
- Include the essential information of the meeting each time
- Be careful what is said in the minutes since minutes are legally binding
- Attach all important or referenced documents to the minutes
- Never discard or delete minutes or minute books
- Minutes should be objective—not expressing the personal views of the secretary recording the minutes

7. Reduce Risk of IRS-related issues and maintain financial integrity

In order for churches to minimize IRS-related tax issues, including the loss of their 501(c)(3) tax-exempt status, and ensure their financial integrity, there are certain considerations the church should address. These include:

- Ensuring that pastors and church leaders are not endorsing political candidates on behalf of the church (although they may do so as individuals)
- Keeping track of donations and providing donors with properly-prepared giving statements
- Maintaining financial integrity with respect to the handling of donations and expenditures within and outside of the church

- Establishing benevolence policies and staff compensation policies that do not run afoul of the IRS prohibition on private inurement or money laundering
- Evaluating the impact of church unrelated business income on the church's tax status
- Where possible and legally permissible, always using designated funds for their specified purpose
- Ensuring that church functions and ministries operate within the 501(c)(3) purposes of being educational, charitable or religious
- Make sure the articles of incorporation include the following tax-exempt provisions: (for unincorporated churches, these provisions are essential, and for incorporated churches, they are recommended since many members will never read the articles of incorporation)
 - ✓ No private inurement
 - ✓ Limitation on political involvement
 - ✓ Dissolution clause
 - ✓ Racial non-discrimination
 - ✓ Limitation of activities

8. Protect Private Ministry Data and Electronic Accounts

Churches collect a large amount of personal and private data from employees, members and donors that, if breached or stolen, can create major problems for the church. The problems resulting from such a breach or theft can range from identity theft, compromised financial accounts, public disclosure, massive data loss, and lawsuits, including those for violations of privacy. The following are practical guidelines for protecting private information:

- Don't throw away documents containing personally identifying information without first shredding them
- Train church staff on protecting privacy and confidentiality of personal information
- Maintain sensitive information in locked filing cabinets and limit access to that information to those who are properly vetted and approved for use or access
- Secure buildings, offices and filing cabinets
- Limit access to sensitive information by requiring password log-ins for computers and ministry-provided mobile devices or tablets
- Regularly change passwords for all log-ins, including for the church employee Wi-Fi network, particularly when employees or volunteers leave the ministry or no longer work for the church
- If offering Wi-Fi for guests and visitors, ensure that this is set up as a separate network from the main church network
- Update software regularly to help secure networks
- Put a strict technology use policy in place for anyone who has access to the church network and enforce it
- Keep anti-virus, anti-malware and firewalls up-to-date, and be aware of the various types of phishing schemes that are in use.
- Adopt a policy that if staff members didn't request a file, they shouldn't open it

- Talk to your insurance agent to see if data breach coverage is included in your policy as most general liability policies will not pay data breach-related claims
- The following types of records are the most vulnerable to breach and should be carefully protected:
 - ✓ Donor records—including credit card and bank account information as well as donation amounts
 - ✓ Membership rolls
 - ✓ Employment records
 - ✓ Background check information
 - ✓ Payroll information
 - ✓ HIPPPAA-protected medical information
 - ✓ Counseling notes protected by confidentiality laws

It is highly recommended that churches, associations and conventions partner with a reliable legal organization like the **National Center for Life and Liberty** before the need for legal counsel arises.



The **National Center for Life and Liberty** provides churches and ministries with resources and legal counsel to help them protect themselves before legal problems arise, and assists them with responding properly to legal issues that do arise. Having a legal ministry backing your organization provides a measure of comfort to your leadership because they know that they have someone to call for advice and practical legal help.

For partnership information or legal counsel, contact:

National Center for Life and Liberty

PO Box 270548
 Flower Mound, TX 75027-0548
 Phone: 888.233.NCLL (6255)
 Email: info@NCLL.org
www.NCLL.org

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FAITH UNDER FIRE

COURT: CATHOLIC SCHOOL MUST HIRE 'GAY' MAN

'The floodgates are open'

Published: 12/18/2015 at 8:31 PM

image: http://www.wnd.com/files/2015/09/dernstwnd_avatar.jpg

DOUGLAS ERNST

A Boston state court issued a “first of its kind” ruling in an attempt to force a Catholic school to hire a homosexual man.

Superior Court Associate Justice Douglas Wilkins’ decision on Wednesday orders Fontbonne Academy, a Catholic girl’s school, to hire a “gay” man. The judge said Fontbonne discriminated against plaintiff Matthew Barrett when officials rescinded a food service director position in 2013. Barrett was denied the job after school administrators realized he was in a same-sex union.

“On the undisputed facts, Barrett has shown he is a protected class, that he was qualified (and even received an offer) for the position of Food Service Director, that he suffered denial of employment, that the reason for the denial was his sexual orientation and that he suffered harm as a result,” the judge wrote. “This proves sexual-orientation discrimination as a matter of law on the undisputed facts.”

Barrett’s lawyers from Gay & Lesbian Advocates & Defenders cheered Wilkins’ ruling as the “first of its kind in the country,” [Buzzfeed](#) reported Thursday.

Wilkins’ said Fontbonne’s expressive association argument was invalid because administrators were free to publicly denounce the court’s decision. “The widespread public awareness of the civil laws allowing same-sex marriage and prohibiting employment discrimination, coupled with Fontbonne’s ability to explain its position without interference in the form of advocacy from Barrett, leaves little risk that Fontbonne’s involuntary compliance with civil law will be mistaken for endorsement of same-sex marriage,” Wilkins wrote.

Wilkins said the school failed to show how hiring Barrett would constitute a “serious” burden to the institution before adding that certain freedoms of expression can be overridden when there are “compelling state interests.” The conservative website [National Review](#) excoriated the judge for his

ruling.

“By that standard, expressive association becomes meaningless. After all, if a court can jam Christian employers with employees who don’t share their values – and then contend that the employers’ rights are protected if they’re still free to complain about it – then the floodgates are open,” the magazine wrote Friday.

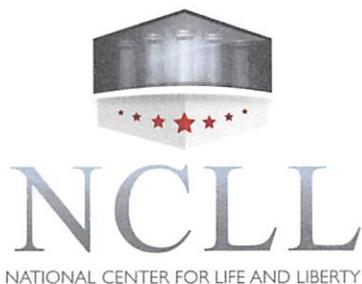
Fontbonne’s other defenses – a statutory exemption and a ministerial exception – were also denied.

Wilkins said a statutory exemption would only apply to the school if all employees and students had to be Catholic. He said the ministerial exception did not apply since Barrett was not a teacher or in a position to engage in public advocacy on behalf of the school.

National Review called the ruling “ominous” before quoting Reason magazine’s November issue: “Now that government discrimination is largely tamed, ‘gay’ activists are going after private behavior, using the government as a bludgeon.”

Fontbonne has not said whether or not it will appeal the ruling.

Read more at <http://www.wnd.com/2015/12/court-catholic-school-must-hire-gay-man/#8du4HZkcGDBwMb62.99>



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January 2016

Dear Church Leader,

As a non-profit legal organization devoted to helping ministries and protecting religious liberty in America, the NCLL regularly provides legal guidance to ministries like yours. In order to provide the highest level of service to our clients and ministry partners, however, our legal resources and manuals are reserved for the churches and ministry partners that are financially supporting the NCLL.

We would love for you to join with us and when you do, we would be happy to send you the information you have requested. If you would like to learn more about the NCLL and about becoming a financial partner, please read the summary below. You can also find more information on our website at www.ncll.org or by looking at the attached PDF document that lists the different options for financial partnership and the benefits associated with each option.

When you join the NCLL as a Premier Partner, you have access to the following benefits:

- The NCLL provides attorneys to assist your church with legal questions and concerns. At your request, we will review your current legal documents to address current concerns.
- You will have access to legal ministry reference tools and templates along with the free resource of the month emailed directly to your inbox.
- You have a church legal emergency number available to reach one of our attorneys to help you address any challenge that arises.
- All members of supporting ministries may use the NCLL contact number for serious motor vehicle accidents. One of our attorneys will explain how to protect their rights after the accident and will refer them, if needed, to one of our trusted attorney affiliates.
- Our attorneys will provide free legal advice if any ministry member has been subject to religious discrimination at work.

It is our hope that you will prayerfully and seriously consider supporting the NCLL. For more information or to support the NCLL, please find us online at ncll.org or call us at 888-233-6255 (NCLL).

Sincerely,

David C. Gibbs III

Admitted in Florida, North Dakota, Minnesota, Colorado, Texas, Ohio, Tennessee, Michigan, and the District of Columbia



WAYS TO PARTNER WITH THE NCLL

| | Friend of Liberty Premier Partner (\$1000/yr or \$100/mo) | Supporting Ministry Partner (Under \$100 / mo) | Non-Supporting Ministry Partner (No Donation) |
|--|--|---|--|
| Benefits | | | |
| Your voice in Washington, D.C. | X | X | X |
| Litigation of cases that advance church liberty | X | X | X |
| Accident advice and counsel | X | X | X |
| Attorney counsel for legal questions and concerns regarding your ministry | X | X (One (1) Call/Quarter) | X (One (1) Call/year) |
| Access to legal ministry templates | X | X | |
| Access to legal ministry reference tools | X | | |
| Free legal resource of the month | X | | |
| Review of bylaws and corporate documents | X | | |



— HOW TO BEGIN YOUR PARTNERSHIP:

Visit www.NCLL.org and go to the "Church Liberty" page and click "Join Now."