



RFI Crisis Toolkit for Religious Institutions

Institutional Governance





A non-profit organization based in Washington, DC, RFI is committed to achieving broad acceptance of religious liberty as a fundamental human right, a source of individual and social flourishing, the cornerstone of a successful society, and a driver of national and international security. RFI seeks to advance religious freedom for everyone, everywhere.

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I. INTRODUCTION

Opportunity Amid Challenge

The *RFI Crisis Toolkit for Religious Institutions* (referred to as “Toolkit” throughout) offers practical guidance to help institutions like yours **prepare** for, **mitigate**, and **respond** to crises, while remaining faithful to your core convictions, identity, and mission.

The Toolkit is divided into three modules: *Institutional Governance*, *Communications*, and *Community Relationships*. Together they address threats from lawsuits, smear campaigns, hostile media coverage, adversarial legislation, hostile government legal or administrative action, and more. Even if your institution is a “religion-driven organization,” maintaining an abiding respect for religion and prioritizing the critical role of religious free exercise in society, but not identifying with a single religious faith tradition, this Toolkit is also for you.

The Religious Freedom Institute* (RFI) understands religious freedom as a fundamental human right. As an organization, we often use the phrase “free exercise equality” to convey the intent of the Founders in their guarantee of religious free exercise in the First Amendment. “Free exercise equality” means the inalienable, natural, God-given right of religious individuals, communities, and institutions to express religious, moral, and anthropological truths privately and to bring those truths into public life. Lamentably, American society has become increasingly resistant to pluralism and instead seeks to impose uniformity in ways that often run contrary to free exercise equality.

Morally orthodox institutions are particularly at-risk of being attacked for their convictions, words, and actions regarding human sexuality, marriage, family, the intrinsic dignity of human life, and the natural, God-given distinctions between females and males. These institutions adhere to principles of right conduct that enable human flourishing, and are consistent with the teachings of Judaism, Christianity, and Islam. Hostile media coverage, costly court cases, and punitive government

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actions may undermine, or deny altogether, the right of religious free exercise.

This Toolkit module provides a roadmap to identify and reduce your institution’s vulnerabilities to potential and current legal threats. While preparing for and navigating such legal threats may sometimes be challenging and even costly, doing so also presents an opportunity to strengthen your institution’s commitment to its religious convictions, identity, and mission.

Ultimately, the exercise of becoming more resilient to legal liabilities through improving your institutional governance can be a vital exercise of your institution’s religious freedom. It can help your institution resist the increasing cultural, political, and litigative intimidation intended to silence morally orthodox citizens and shutter their institutions.

Confessional Religious Institutions and Religion-Driven Organizations

For the purposes of this Toolkit, a confessional religious institution (or “religious institution”) is an entity that aims to embody the teachings of a particular religious faith. These institutions typically organize their identity and mission around a creedal statement, affiliation with a religious denomination or tradition, the teachings of a sacred text, and/or similar communal forms or expressions of a religious faith. Examples of religious institutions include Catholic parishes, Jewish schools, Muslim health clinics, and evangelical Christian universities, to name a few. Most of the elements of this Toolkit are tailored to this kind of institution.

At the Religious Freedom Institute, we use a different term, “religion-driven organization,” to distinguish confessional from non-confessional religious entities. Religion-driven organizations maintain an abiding respect for religion and prioritize the critical role of free exercise of religion in society. Members of these organizations may affiliate individually with different religious traditions. However, the organizations themselves are not based on a formal religious creed and do not affiliate with a particular religious community or tradition. These organizations can be more fully understood by exploring the nature of religion itself within the American tradition. There are many such religion-driv-

en organizations in the areas of humanitarian aid, charitable assistance, human rights advocacy, and interfaith cooperation.

Whether a religion-driven organization enjoys the legal protections for the free exercise of religion remains untested. What is true, nevertheless, is that some of these organizations seek to maintain a morally orthodox ethos and set of institutional standards. Consequently, religion-driven organizations determined to operate in accord with their morally orthodox commitments will find much of the guidance below to be enormously beneficial. Recommendations tailored to religion-driven organizations can be found in Section VII: “Special Considerations for Religion-Driven Organizations.”

The Scope of Religious Freedom

Religious freedom, properly understood, secures the inalienable, natural right of all religious institutions to organize themselves in accord with their religious tenets. Religious freedom is not an individual right alone. It also includes the right of religious communities to found, to organize, and to gather in synagogues, churches, mosques, temples, and other places of worship. Religious freedom, moreover, encompasses the right of religious communities to found and to organize schools, hospitals, homeless shelters, universities, public policy institutes, drug rehabilitation centers, and other institutions that seek to embody and express the teachings of their respective religious traditions. Religious freedom includes the right of religious institutions to influence public policy and the shaping of laws.

Religious freedom protects this full range of congregational and institutional expressions as well as the exercising of religious faith. Though these principles are enshrined broadly in American law, much in the area of institutional religious freedom remains highly contested.

Exercising Religious Freedom in America

Your institution should not approach this legal landscape passively. Religious institutions—especially those with orthodox moral teachings and witness—are under assault in American law and culture. Despite the existence of important protections, the courts do not always interpret the law as safeguarding morally orthodox religious institutions. To protect and maintain

your identity, mission, and work, you should begin implementing practices concerning governance, human resources (HR), and other areas that put you in the strongest possible position to benefit from all applicable legal protections.

The First Amendment to the Constitution of the United States, and numerous federal and state laws and regulations, when rightly interpreted, broadly protect the religious freedom of individuals and institutions. Two especially important legal safeguards for religious institutions are the religious-employer exemption in Title VII of the Civil Rights Act of 1964 and the Religious Freedom Restoration Act of 1993 (RFRA). Most states have modeled their own employment non-discrimination laws after Title VII and include comparable protections for religious employers. Today, more than a third of states have enacted a version of RFRA, and more than half of states provide RFRA-like protections.

RFRA prohibits the federal government from burdening religious exercise unless doing so furthers a compelling government interest and is applied in the least restrictive way possible. State-level RFRA operate in a parallel manner.

These religious liberty protections are critically important, but religious institutions risk losing their full benefit unless they take steps before legal disputes arise. Governments and private parties are increasingly using legal mechanisms to compel religious institutions to choose between violating their religion and closing their doors. For example, laws and policies concerning “sexual orientation,” “gender identity,” and morally objectionable “healthcare” products or services regularly provide the legal ground for imposing this ultimatum.

Clearly explaining your institution’s religious convictions, identity, and mission is an important step toward securing religious liberty protections. Embedding your religious tenets into your institutional structures, policies, and practices is another. The more specific and intentional religious institutions are in this regard, the better off they may be when facing these types of challenges.



II. SCOPE OF REVIEW

You should regularly review your institution's structures, policies, and practices to amend them as needed to clarify ambiguities; to promote adherence to your religious convictions, identity, and mission; and to avoid unnecessary legal liabilities. This review should be comprehensive in scope, spanning creedal, internal, and external dimensions.¹ Each of these areas presents an opportunity for your religious institution to express and apply religious beliefs and tenets within the context of your institution's mission.

1. Creedal

- ◆ Core religious tenets and mission
- ◆ Moral and anthropological convictions

2. Internal

- ◆ Corporate structure and documentation
- ◆ Human Resources (HR) architecture
- ◆ Health benefits
- ◆ Institutional ethos

3. External

- ◆ Contracts, vendor relationships, and funding sources
- ◆ Affiliations, licensing, and accreditation
- ◆ Provision of services to beneficiaries, clients, patients, students, etc.





III. CREEDAL

Core Religious Tenets and Mission

Your institution should look to express its identity and purposes at all levels. A religious institution will have a difficult time securing religious freedom protections if it has not clearly articulated its religious identity and mission. Consider the following questions to aid your institution in determining whether it is articulating these well: Does religious faith deeply animate your institution? Has your institution adopted a statement of faith? Does it have a mission statement? If so, does that statement articulate the institution’s mission in ways that reflect its religious grounding?

If your institution is founded on and operates from religious convictions, then answering “no” to any of these questions will make it difficult for your institution to secure religious exemptions or accommodations to laws that impinge on its religious exercise. More importantly, making changes that enable you to answer “yes” can enhance your institution’s faithfulness to its stated religious convictions, identity, and mission, and strengthen its capacity to contribute to debates over culture, law, and public policy.

Consider the meaning and value of a mission statement. A mission statement aims to connect your institution’s core convictions and identity with the institution’s purposes through an expression of strategic intent. Given the foundational character of a mission statement, it should use religious language to articulate the religious nature of your institution and the religious purposes to which its activities and services are directed. For example, two mission statements from Catholic universities are compared below to illustrate two different approaches.

Mission statement of DePaul University (Chicago, IL):

As an innovative Catholic, Vincentian university anchored in the global city of Chicago, DePaul supports the integral human development of its students. The university does so through its commitment to outstanding teaching, academic excellence, real world experience, community engagement, and systemic change. DePaul prepares graduates to be successful in their chosen fields and agents of transformation throughout their lives.

Guided by an ethic of Vincentian personalism and professionalism, DePaul compassionately upholds the dignity of all members of its diverse, multi-faith, and inclusive community. Through education and research, the university addresses the great questions of our day, promoting peaceful, just, and equitable solutions to social and environmental challenges. Since its founding in 1898, DePaul University has remained dedicated to making education accessible to all, with special attention to including underserved and underrepresented communities.

By contrast, The Catholic University of America (CUA) approaches its mission quite differently, as reflected below:

Mission statement of The Catholic University of America (Washington, DC):

As the national university of the Catholic Church in the United States, founded and sponsored by the bishops of the country with the approval of the Holy See, The Catholic University of America is committed to being a comprehensive Catholic and American institution of higher learning, faithful to the teachings of Jesus Christ as handed on by the Church.

Dedicated to advancing the dialogue between faith and reason, The Catholic University of America seeks to discover and impart the truth through excellence in teaching and research, all in service to the Church, the nation and the world.

DePaul University and The Catholic University of America both profess a connection to the Catholic tradition, but they do so in very different ways. The latter emphasizes its “comprehensive Catholic” identity which, unlike DePaul, ties that identity directly to “the teachings of Jesus Christ as handed on by the Church.” The CUA mission statement can therefore reasonably be understood as reinforcing its intent to operate in accord with Catholic teaching throughout all aspects of the university. Hence, CUA signals in its mission statement a desire to exercise its religion in a way that DePaul does not.

If your institution aims to organize itself comprehensively based on its religious tenets, then an approach similar to CUA’s would likely be both faithful and legally advantageous.

Moral and Anthropological Convictions

Institutional orthodoxy about morality and anthropology—the reality of human nature—includes all aspects of human existence. Proponents of ideologies regarding life, males and females, marriage, and sexuality typically target religious institutions that have orthodox convictions and practices in those areas. Government officials are also dropping the full weight of the state on institutions over this same orthodoxy. These officials take hostile administrative actions which force institutions to pursue litigation to defend themselves. You should therefore consider publicly articulating your institution’s religiously-based moral and anthropological convictions. This approach will help courts and investigators recognize that your institution’s contested religious beliefs are both sincere and consistent, and that the institution was forthright about these convictions before the conflict arose.

For example, many morally orthodox institutions hold that:

- ❖ Human life is sacred and worthy of protection at all stages of development.
- ❖ Humans are born male or female, based on immutable biological characteristics that are determined at conception, detectable by or before birth and, which determine whether a person is a male or female.
- ❖ The mutual sexual attraction between men and women is based in human nature, rooted in their maleness and femaleness, not on an individually perceived, arbitrary “orientation.”
- ❖ Marriage is intrinsically and immutably between a man and a woman.
- ❖ God has ordained what nature ratifies. These teachings are beautiful, loving, life-giving, and sustaining of human flourishing, not hateful or exclusive.

Often, these convictions are set forth as part of a statement of religious faith or in a separate statement of core values. They then inform other aspects of institutional policy and practice, including hiring standards, employee conduct codes, and employee benefits.

Take for example a religious institution that understands abortion to be the intentional taking of innocent human life. Refusing to cover abortion or abortifacients in its healthcare plan would flow naturally from the institution’s abiding convictions about the wrongness of abortion. It might also, on the same grounds, promote the good of adoption and support employees who choose to adopt, e.g., through tax-free reimbursement of adoption expenses. Emphasize what your institution promotes alongside what it forbids as it applies core convictions.

It is vital that every religious institution with morally orthodox teachings make them public, in confident, positive, loving language. It is also crucial that their policies guiding what they teach, whom they hire, and from whom they accept financial support reflect those teachings to the greatest extent possible. For example, a morally orthodox institution such as a school that forbids same-sex couples from attending school dances should ensure that its teachers and staff support and commit to living out its moral policies. In lawsuits against such a school, the discovery of inconsistencies in hiring or accepted behavior can undermine the school’s claim of religious freedom. Aside from legal hazards, it may feed public perceptions that an institution is acting hypocritically, applying double-standards, or misleadingly associating itself with a religion while knowingly rejecting the moral teachings of that religion.

TOPIC RECAP: CREEDAL



Core Religious Tenets and Mission



Moral and Anthropological Convictions



IV. INTERNAL ORGANIZATION

Corporate Structure and Documentation

Articles of incorporation and bylaws are foundational corporate documents for any non-profit institution and are opportunities to articulate your institution's religious convictions, identity, and mission. If the institution has a statement of religious faith, incorporate it and your other religious tenets into your articles and bylaws.

These documents should also include religious, moral, and anthropological criteria for selecting board members, officers, employees, and others. Your institution may determine that your mission is best served by maintaining a board of directors, executive leadership team, and employee base that fully share your faith convictions. Such an approach may be integral to maintaining your institution's religious identity and fulfilling its religious mission.

Human Resources Architecture

Your institution's HR architecture encompasses its hiring practices, employment handbook, employee benefits, leave policies, and other guidelines that govern the relationship between employees, managers, executive leadership, and the institution itself. Your institution's HR architecture is a critical platform to express and exercise its religious convictions.

HR offices are also responsible for tracking the requirements of employment law, which has been amended in recent years in ways that present challenges for many religious institutions. Federal, state, and local employment laws that prohibit "discrimination" based on "sexual orientation" and "gender identity" (or "SOGI") are a major source of legal risk for morally orthodox institutions. The Supreme Court's 2020 decision in *Bostock v. Clayton County* redefined illegal sex discrimination under Title VII to include SOGI "discrimination," exacerbating the legal risks for institutions that affirm marriage as a union of one man and one woman or that insist on the immutable biological distinctiveness of males and females.

In the face of expanding SOGI non-"discrimination" laws and other emerging challenges, your institution's HR architecture is more important than ever. While it is impossible to capture within this Toolkit all the ways to embed your institution's religious convictions within the

HR architecture, below are some general guidelines:

❖ **Employee Handbook:** An employee handbook is a primary means of conveying to employees the identity, standards, ethos, and mission of the institution. If your institution is taken before a court or administrative tribunal and needs to demonstrate its religious identity and mission, the employee handbook is something your institution can rely upon. Your institution can use the handbook to describe the religious founding and history of your institution, if relevant.

The handbook is also an ideal place to feature your institution's statement of faith, mission statement, and similar content (e.g., institutional vision, core values, moral and anthropological views, etc.). Placing these items near the beginning of the handbook shows that they are a priority. Consider the fact that, for many religious ministries, employees are not there simply to "do a job." Rather, they are part of a community of religious believers working to advance a religious mission.

An important element of your employee handbook is an "Equal Employment Opportunity" (EEO) statement. Be prudent and precise in crafting your EEO statement. Lack of due care can unnecessarily undermine your institution's lawful ability to make employment decisions based on an applicant's or employee's beliefs, conduct, and lifestyle in accord with your institution's religious tenets.²

Prudence dictates that you underscore your religious faith-based standards and expectations for employee behavior in the employee handbook. Religious employers should be able to show that employees were on notice as to what the institution's conduct standards are and the consequences for violating them. Use every opportunity, where relevant and reasonable, to explain your policies in religious terms.

For example, employee conduct standards may be rooted in your religious tradition's commitment to intrinsic human dignity, respect for each person as a child of God, and vision of the common good. You could explain time off in terms of the work and rest rhythms built into creation, or in other terms similarly relevant to your faith, rather than simply as federal holidays or the paid time-off policy. You may also recognize additional holidays for religiously significant events.

❖ **Recruiting and Hiring:** Title VII’s religious exemption permits religious institutions to take religion into account in hiring decisions, in order to build a community that shares the employer’s religious faith convictions. In job postings and in the recruitment and hiring process, make candidates aware of the religious nature of your institution, its religious mission, and its moral and anthropological convictions. Candidates who are not committed to these tenets will be mismatched for the institution.

❖ **Job Descriptions:** Job descriptions represent an important opportunity to communicate your convictions, identity, and mission to job candidates, other institutions in your field, and to the broader community. They also serve key HR and legal functions by connecting your institution’s religious convictions to the duties and qualifications of specific positions.

Some religious institutions require job applicants to affirm the institution’s statement of religious faith, moral commitments, and anthropological convictions as a condition of completing the application. A religious institution can also make such affirmation a condition of a final job offer.

Consider annual or some other periodic reaffirmation for employees. It is advisable that you include religious convictions as essential qualifications in your institution’s position descriptions. If you frame those qualifications entirely in secular terms, it will be difficult for a court to understand how filling the position with someone who does not share your religious convictions harms your institution. Consult an attorney, if possible, in these efforts. Associations can also be good resources.

❖ **Employee Contracts:** An employment agreement is an opportunity to express your institution’s religiously-based conduct standards for employees. Religious institutions often establish this type of contractual arrangement with employees in what is sometimes called a “morals clause.”

For example, in *Our Lady of Guadalupe School v. Morrissey-Berru* (2020), the U.S. Supreme Court found that the First Amendment protected a religious school from a teacher’s discrimination claim based in part on her employment agreement, which required her to adhere to, model, and promote the school’s religious beliefs and standards.

With the assistance of legal counsel, your institution can enter into such an agreement with employees without altering their at-will status. Done well, employee contracts and job descriptions can also ensure that the right candidate is matched to the position. If your institution expects its employees to affirm and live out its religious, moral, and anthropological principles in their own lives, then integrating those expectations into their contracts is an important consideration.

Even if your institution incorporates clear and robust employment agreement practices, establishing accompanying methods for handling possible disputes is also beneficial. For example, some employment documents may require alternative dispute resolution (ADR) in the form of mediation, binding arbitration, or some other process. This will help ensure a process between the parties that is just. Areas covered may include notice, negotiations, mediation, and arbitration. You should employ or retain a qualified attorney to help your institution choose its preferred ADR mechanisms and develop the relevant documents to ensure that they fully comply with state and federal law.

Healthcare Benefits

A major, ongoing challenge to religious institutions comes from burdensome statutory and regulatory healthcare mandates that require employers to cover morally objectionable products or services in their group healthcare plans. For many religious institutions, these include contraceptives, abortion-inducing drugs and devices, surgical abortion, and “gender-transition” services, among others.

The most prominent example is the “contraceptive and abortifacient mandate,” which was promulgated in federal regulations intended to implement the Affordable Care Act. There are many similar examples, and these mandates will continue to proliferate, creating moral and legal risks for religious institutions.

Other areas of concern include euthanasia and assisted suicide, as well as drugs that induce chemical abortions. You should audit your healthcare plan for compatibility with your institution’s religious beliefs. If you seek to integrate your religion consistently across your institutional practices, strive to exclude services that conflict with them.

Your institution should similarly include insurance coverages that align with your convictions. For example, if your institution's religious beliefs lead you to exclude coverage for certain fertility treatments, consider providing coverage for morally acceptable fertility treatments.

Institutional Ethos and Culture

A religious institution is a community of persons—e.g., board members, executives, employees, contractors to some degree, and volunteers—fulfilling different roles while working to advance a common mission. Consider ways to form those people affiliated with your institution in light of your mission. Your institution's convictions should not just be top-down directives. They should flow organically from the ethos of the institution.

Incorporating devotional practices, ongoing education and formation, and employee gatherings can forge interpersonal bonds, instill key understandings and beliefs, and reinforce your institution's convictions, identity, and mission. If your institution seeks to integrate its religion across all aspects of its structures, policies, and practices, then set an expectation among your employees that they: model your institution's religious commitments; encourage one another in carrying out the mission on which

those commitments are based; and otherwise contribute to building an institutional culture that promotes its religious faith.

TOPIC RECAP: INTERNAL ORGANIZATION



Corporate Structure and Documentation



HR Architecture



Healthcare Benefits



Institutional Ethos and Culture





V. EXTERNAL ACTIVITIES

Contracts and Other Funding Sources

Institutions should avoid entering into contracts or grant agreements that require them to compromise their convictions, identity, and mission, or that impose commitments that the institution cannot fulfill. For example, contracts and grant agreements often include boilerplate language as a condition of participation or receipt that forbids “discrimination” on the basis of “sexual orientation,” “gender identity,” or “reproductive health” decisions.

This anti-“discrimination” commitment, as it is typically interpreted and enforced, may not be one that a morally orthodox institution can make in good conscience; and it can create legal problems for the institution in the future, opening it to accusations of hypocrisy, inconsistency, or even animus. Sometimes your institution can remove or

sufficiently modify these clauses to allow it to sign the contract. An attorney with religious liberty experience can help your institution in these circumstances. If the contracting entity will not agree to remove or modify the language in question, your institution might have a legal claim that the entity must accommodate its religious exercise.

For example, your institution might be exempt from complying with broad anti-“discrimination” laws that would require you to violate your religious, moral, and anthropological convictions. If such an exemption is not possible, your institution may need to decline participation.

Affiliations

Alignment with like-minded entities can publicly signal your institution’s religious beliefs and priorities. It is also a way to join forces, share resources, and set up a



common legal strategy for protecting religious freedom with those institutions. Before sharing sensitive information outside of your institution—even with a like-minded institution—it is a best practice to consult with legal counsel about whether and when to put in place a common-interest agreement to preserve privilege when sharing protected information.

Licensing, Accreditation, and Certification

Closely related to affiliation are the issues of licensing, accreditation, and certification. Where your institution has a choice in the matter, it should seek accreditations that enhance public trust and signal its religious commitments. Evangelical Protestant ministries seeking accreditation with the Evangelical Council for Financial Accountability is an illustrative example.

On occasion, your institution may have little choice because continued operation in your field depends on the licensing, accreditation, or certification of particular bodies. This is an area of enhanced risk for religious educational and healthcare institutions. Your institution should consider allocating resources that enable you to monitor and actively oppose efforts to condition licensing, accreditation, and certification on the abandonment of core religious convictions.

Providing Services

Many religious institutions directly serve clients, patients, students, and others. But in offering food, shelter, healthcare, education, and more, these institutions are not simply doing secular work. Instead, they are delivering services in a distinctive manner that is shaped by their religious, moral, and anthropological convictions.

For example, poverty alleviation is part of a broader religious vision of life transformation and, for some religious institutions, serving God by loving those in need. In a similar way, healthcare is intrinsically connected to healing human beings because of the love of God. Education is a vital means of shaping and encouraging the exercise of religion, building virtue, transmitting morals, and committing students to a particular understanding of the common good. Your institution should think carefully about what makes its services and activities distinctive, including who provides them and how.

Why is a Gospel-centered homeless ministry different from secular social services? What values and religious practices make a nursing home uniquely Jewish? What distinguishes a Muslim health clinic from other facilities? Articulate your distinctiveness and be open about your achievements, successes, and the ways that they (very often) surpass your institution's secular counterparts. Most importantly, be intentional and transparent about delivering your services in accord with your religious commitments, to the extent that it aligns with your institution's convictions, identity, and mission to do so.

TOPIC RECAP: EXTERNAL ACTIVITIES



**Contracts and Other
Funding Sources**



Affiliations



**Licensing, Accreditation,
and Certification**



Providing Services



VI. PREPARING FOR AND RESPONDING TO A CRISIS

Consult Legal Counsel

In utilizing this Toolkit, religious institutions should consult with legal counsel to ensure they are well-positioned to avail themselves of religious freedom protections. When a dispute does arise, prompt consultation with qualified religious freedom counsel is critical. Institutions should strongly consider retaining an attorney or law firm with experience in representing religious entities and litigating religious freedom cases. **You may contact RFI for referrals to qualified religious liberty attorneys by email at: RFICrisisToolkit@rfi.org.**

Identify a Qualified Public Relations (PR) or Communications Consultant

Institutions should also consider identifying in advance a public relations firm or communications professional to assist with crisis communications, should the moment arise that such services become necessary. PR crises can unfold quickly so mobilizing a proper response may require decisions with little or no lead time. See Toolkit *Communications* module for additional guidance.

Maintain Proper Record-Keeping Practices

Thorough, contemporaneous record-keeping is one of the best ways your institution can set itself up to defend your actions if you face future legal challenges. It can be especially important to document the ways that a disputed institutional decision does not stand in isolation, but rather is part of a broader, coherent set of religion-shaped commitments and decisions. Always tell the truth.

TOPIC RECAP: PREPARING FOR AND RESPONDING TO A CRISIS



Consult Legal Counsel



**Identify a Qualified
Public Relations or
Communications
Consultant**





VII. SPECIAL CONSIDERATIONS FOR RELIGION-DRIVEN ORGANIZATIONS

Religion-driven organizations are distinct from confessional religious institutions (as described and defined in Section I.), so whether they enjoy the same free exercise legal protections as the latter is untested. Nevertheless, the freedom of religion-driven institutions to align their structures, policies, and practices with their core principles, identity, and mission warrants respect and legal protection. The foundation for that legal protection is grounded in the constitutional rights of freedom of religion and freedom of association. The right of association, including religious association, is the right of like-minded persons to associate with one another, often for expressive purposes, and at their discretion, for that association to take institutional form. Religion-driven organizations are an example of this institutional form.

Moreover, freely associating individuals that form an organization should also have the accompanying legal rights of free speech, private property, publishing

(press), and the like: to communicate, to own or rent a building, to share their views through curricula and publicity, and to influence public policy. Consequently, religion-driven organizations will benefit from following much of the practical guidance in the previous sections of the Toolkit, while particularly keeping in mind the importance of being specific, transparent, and consistent in how they connect their decisions and practices with their basic commitments.

Specificity

Be specific in how you articulate your organization's core principles, identity, and mission. While not rooted in a particular religious tradition, they constitute the foundation for your organization's work and reason for being. When applicable, consider including your organization's moral convictions and view of reality—especially on matters for which morally orthodox institutions are regularly targeted for lawsuits—in consultation with an attorney. Contemplating these potentially contentious edges of your organization's most basic commitments will aid you in anticipating future pitfalls. It will also help you to operate with greater integrity in a complex, pluralistic society.



Transparency

Because free exercise legal protections for religion-driven organizations are largely untested, consult with an attorney regarding guidelines for the public disclosure of your core principles, identity, and mission. When permissible, there remains a presumption in favor of making these elements, including morally orthodox principles, accessible to the public. However, religion-driven organizations should always retain legal counsel who will help shape the wording and formation of all corporate documents.

Consistency

Whether your organization decides to make public your core principles, identity, and mission in full or in part, your organization should act in accord with its basic commitments in an integrated and consistent manner. In that respect, the Toolkit's guidance for religion-driven organizations is indistinguishable from that given to religious institutions: Ensure that your decision-making practices are rooted without exception in the core principles your organization espouses. This will help you avoid or defend yourself against claims that your organization has acted with invidious intent or on an arbitrary basis regarding programming, hiring, or other decisions.

If you have questions or would like referrals to qualified religious liberty attorneys who can help you implement the Toolkit, please contact RFI by email at: RFICrisisToolkit@rfi.org.

TOPIC RECAP: SPECIAL CONSIDERATIONS FOR RELIGION-DRIVEN ORGANIZATIONS

 **Specificity**

 **Transparency**

 **Consistency**

Endnotes

- 1 Recommended reading: Eric Kniffin, "Protecting Your Right to Serve: How Religious Ministries Can Meet New Challenges without Changing Their Witness", November 9, 2015, <https://www.heritage.org/civil-society/report/protecting-your-right-serve-how-religious-ministries-can-meet-new-challenges>.

Eric Kniffin, "Protecting Your Right to Educate: How Catholic Education Can Defend Against Emerging Legal Threats," April 7, 2021 <https://newmansociety.org/protecting-right-to-educate-how-catholic-education-can-defend-against-emerging-legal-threats>.

- 2 There are numerous cases in which plaintiffs have tried to use poorly worded nondiscrimination policies against their religious employer. They have argued that religious institutions waive their exemptions when they promise, in a handbook for example, to comply with applicable laws. Courts have generally denied that religious institutions can inadvertently waive religious liberty protections in this manner. See, e.g., *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 625 (6th Cir. 2000) ("Hall contends that [religious employer] waived the Title VII exemption . . . because it represented itself as being an equal opportunity employer. However, the statutory exemptions from religious discrimination claims under Title VII cannot be waived by either party. The exemptions reflect a decision by Congress that religious organizations have a constitutional right to be free from government intervention.") Still, such cases can be embarrassing and lead to confusion. Confusion may create an opening for disgruntled employees by making it easier for them to claim that they relied on the school's nondiscrimination policy and did not believe they could be fired or disciplined for the behavior in question.

Institutional Governance: Strengthening Legal Resilience

CHECKLIST

Mitigating Legal Vulnerability

- Clearly articulate your institution's creedal religious convictions as to:
 - Core religious tenets and mission: For example, in a statement of religious faith, mission statement, etc.
 - Moral and anthropological convictions: For example, in a statement of religious faith, mission statement, etc.
- Reflect your institution's religious convictions, identity, and mission in its internal structures, policies, and practices. For example, integrate these elements into your:
 - Corporate structure and documentation: For example, articles of incorporation and bylaws; criteria for selecting board members, officers, employees, etc.
 - Human resources architecture: For example, hiring practices, employee handbook, employee benefits, leave policies, etc.
 - Healthcare benefits.
 - Institutional ethos and culture: For example, religiously infused devotional practices, ongoing education and formation, institutional gatherings, etc.
- Reflect your institution's religious convictions, identity, and mission in your approach to external relationships and partnerships, including:
 - Contracts, vendor relationships, and funding sources: For example, implement policies to avoid entering into contracts or grant agreements that require your institution to compromise its convictions, identity, and mission.
 - Affiliations: Proactively seek to align with like-minded organizations when you have a business or other institutional need for such external partnerships.
 - Licensing, accreditation, and certification: For example, where choice is possible, seek licensing, accreditation, or certification from agencies that enhance public trust and signal your religious commitments.
 - Monitoring and opposing faulty licensing, accreditation, and certification criteria: Devote resources to monitoring and opposing efforts to condition your institution's authorization to operate in conformity with criteria that run contrary to your core convictions.
 - Provision of services: For example, to the extent that religion motivates the services your institution provides, be intentional and transparent about delivering them in accord with its religious commitments.

Preparing for and Responding to a Crisis

- Consult qualified legal counsel with experience in religious freedom cases, including to confirm whether your entity is a legally recognized religious institution.
- Identify a qualified public relations firm or communications professional to assist with crisis communications should a public relations crisis arise.
- Maintain thorough, contemporaneous records that provide documentation substantiating that:
 - A disputed institutional decision is part of a broader, coherent set of religion-shaped commitments and decisions.
 - Your religious institution could not accommodate an applicant, student, employee, customer, etc. on account of your core convictions.

GLOSSARY

Anthropological: pertaining to the reality of human beings, human nature, and human goods.

Common Good: the social conditions that together objectively enable individuals and groups to more completely and easily flourish and reach their fulfillment.

Ideology: any system of thought or set of claims in which truth is subordinate to, or determined with regard to its usefulness for, advancing a particular social or political agenda. Ideologies are made up of claims that are effectively immune from genuine rational scrutiny, because there is no independent criterion for truth apart from compatibility with a predetermined agenda.

Moral Orthodoxy: a set of principles of right conduct that are consistent with the historical teachings of Judaism, Christianity, or Islam, especially regarding sexuality, marriage, family, the immutability of being female or male, and the intrinsic dignity of human life.

Religion: the human search for truths and ultimate meaning from an external source that is supernatural and greater-than-human, and the ordering of one's life in accord with those truths.

Religious Exercise: living out one's faith in private and public life, individually and communally.

Religious Freedom: the inalienable, natural right of all persons to believe, speak, and act – individually and in community with others, in private and in public – in accord with their understanding of ultimate truth that has a greater-than-human source.

Religious Institution: an entity that aims to embody the teachings of a particular religious faith and which can act and be acted upon in society. These institutions typically organize their identity and mission around a creedal statement, affiliation with a religious denomination or tradition, the teachings of a sacred text, and/or similar communal forms or expressions of a religious faith. Examples include, but are not limited to, worship congregations, religious schools and universities, and religious organizations, including those that provide social services.

Religion-Driven Organization: an organization that maintains an abiding respect for religion and is often informed by the religious commitments of its founders, executive leadership, and other staff, but does not look to a formal religious creed or have a legal relationship with a religious denomination or tradition.

Religious Community: a deep association of individuals and institutions bound together by a shared set of convictions about ultimate reality, including that there is a greater-than-human source, that inform their sacred practices, anthropological understandings, and moral commitments. Governments and non-government actors sometimes use affiliation with a religious community as the basis for invidious discrimination and other forms of religious persecution.

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