



A Report on Law and
Protestant Ministry in the
United States



EMORY
UNIVERSITY

**Center for the Study
of Law and Religion**

Table of Contents

Executive Summary.....	1
Why this Study	6
Introduction to Legal Issues	7
Methodologies	10
Legal Research and Analysis.....	10
Quantitative Research: Survey	11
Qualitative Research: Focus Groups	13
Mapping Existing Resources for Clergy/Clergy in Training	16
Findings	17
Legal Research Findings	17
Quantitative Findings	18
Qualitative: Focus Group Insights.....	24
Mapping Existing Resources for Clergy/Clergy in Training	37
Conclusion.....	48
Appendix 1: Tort Law Overview	49
Appendix 2: Employment Law Overview.....	57
Appendix 3: Tax Law Overview	62
Appendix 4: Land Use and Zoning Law Overview.....	65
Appendix 5: Organizational Governance Law Overview	70
Appendix 6: Organizational Finance Law Overview.....	77
Appendix 7: Access to Government Funding Law Overview.....	82
Appendix 8: Education Law Overview	84
Appendix 9: Law and Ministry Course Offerings.....	87
Appendix 10: Selected Bibliography of Books on Law and Ministry	91

Executive Summary

Ministry is a calling. It is also a profession. Accountants, doctors, construction contractors, financial advisors, restaurateurs, teachers, and others are expected to possess sufficient legal knowledge to maintain compliance with relevant regulations—and to know when legal assistance is required. Students in many non-legal professions, from healthcare to media to business, now receive basic legal training as part of their formal education. **Similar training, tailored to ministers, is needed during seminary and in continuing ministerial education programs.**

Law impacts the activities of religious believers, clergy, communities, and organizations in numerous seen and unseen ways. The attention of the American public is focused on the church—and its relationship to the state—now more than ever. In the past several years, many instances of clergy sexual abuse, financial crimes and tax fraud, employment disputes, organizational misgovernance, and property disputes have made national news headlines. The lack of basic legal knowledge among American church leaders can limit the growth and success of Christian ministries, enable fraud and mismanagement of church funds and property, and can facilitate the sidestepping of meaningful reforms that could prevent sexual, financial, and power abuses. In short, lack of legal knowledge raises the risk of liability for intentional and unintentional legal violations and the public fallout that often ensues.

This multi-year study of Law and Ministry in the United States (“Study”) was generously funded by the Lilly Endowment, Inc. and prepared by the Center for the Study of Law and Religion (“CSLR”) at Emory University. Led by John Witte, Jr., Shlomo Pill, Justin Latterell, and Whitney Barth, a team of researchers used qualitative and quantitative methods to determine (1) which legal issues Protestant church leaders encounter in various ministries and contexts and with what levels of frequency; (2) how these matters are currently addressed (or not) both within the church and in cases that reach the courts; (3) which resources these leaders utilize in planning for and responding to legal concerns; and (4) which kinds of educational and professional training would most effectively prepare these ministers to navigate intersections of American law and ministry. Although there are many ways in which churches intersect with the law, this Study focused on nine distinct but sometimes overlapping legal issue areas that confront churches most frequently: employment law, land use and zoning, tax law, organizational governance, organizational finance, government funding, education law, and pastoral counseling.

Key Findings

This Study aimed to understand Protestant church leaders’ interactions with law, as well as their educational needs and the broader landscape of existing church law resources in order to develop legal and educational resources that will be both useful and well used. Although there are many ways in which churches intersect with the law, this Study focused on nine distinct but sometimes overlapping legal issue areas that confront churches most frequently: employment law, land use and zoning, tax law, organizational governance, organizational finance, government funding, education law, and pastoral counseling. Using a combination of legal research and quantitative and qualitative methods, we found that:

Legal Landscape: Encounters and Risk

- In a survey of 5,822 cases that made it to trial in federal or state court between 2010 and 2019, tort law issues (private or civil offenses) and employment law issues each made up nearly one-third of all cases.
- Although organizational finance issues comprised only a small portion of the cases that made it to trial, it was the only category in which more than 20% of survey respondents reported encountering the issue “all of the time.”
- More than one-third of respondents reported perceiving “some risk” of encountering six of the nine legal areas: organizational finance (39%), employment law (38%), tort liability (37%), pastoral counseling (36%), tax law (35%) and organizational governance (34%). More than one-fifth of respondents reported perceiving “some risk” of the remaining three areas: land use and zoning (28%), government funding (25%), and education law (20%).

Knowledge

- Focus group participants believed that seminary prepared them for the pastoral side of ministry, but neglected other important sides of ministry that veer into the law, such as human resources, insurance, taxes, and contract issues.
- Although tort law was one of the most frequent types of cases that made it to trial, more than a third of all survey respondents reported “poor” knowledge of tort law (39%), which was similar to those who reported “poor” knowledge of education law (38%), land use and zoning (37%), and government funding (36%).
- A quarter of respondents reported “poor” knowledge of employment law (25%), although just as many responded that they had “good” knowledge and 43% reported “fair” knowledge.
- Most respondents had some knowledge of each legal issue area, except for in four areas where more than 10% reported having no knowledge: education law (24%), government funding (20%), tort liability (20%), and land use and zoning (14%).
- Pastoral counseling, organizational governance, and organizational finance were the issues in which respondents had the most knowledge. Less than 5% of respondents reported “excellent” knowledge of six of the areas, with the exception of pastoral counseling, organizational finance, and organizational governance (none of which exceeded 15%). However, more than one-third reported “good” knowledge of organizational governance, organizational finance, and pastoral counseling.

- Between one quarter and less than half of all respondents reported “fair” knowledge of all the legal issues in the survey, with employment law (43%) and tax law (40%) garnering the highest responses, at 40%.

Resources

- Church size affected how participants navigated legal situations. Participants ministering larger churches shared that they navigated more legal areas than those running smaller churches. And, while some participants who ran smaller churches generally felt that they encountered fewer legal situations, they also shared that their lack of financial resources meant that they could not afford legal counsel.
- Some participants reported turning to people and resources supplied by their denomination and letting denominational leadership make decisions about how to respond to legal challenges. Other participants in less-centralized denominations appeared to rely more on fellow pastors in their denomination or educational programming provided by the denomination.

Evolving Needs and Future Directions

- Focus groups also raised other legal issues not in the Study’s initial list of topics, including interactions with law enforcement, criminal law, and immigration, underscoring that the nine areas covered by this Study are a snapshot, not an exhaustive list, of the kinds of legal issues faced by ministers.
- Participants often stated a desire for a trusted expert or guide they could go to early on if a legal question or issue arose. Ideally, this expert would be familiar with ministry and the law as well as the minister’s own denomination or would be able to direct the minister to the necessary expert(s). Some seemed to be imagining a person or a national clinic in this role, while others described something more like a database, continuing education modules using hypotheticals, or a decision tree.

Key Recommendations

This was a descriptive study on the state of law and Protestant ministry in the United States. Our findings suggest there are ample opportunities to improve education and resources for religious leaders who encounter legal issues as part of their ministry. Future initiatives could include:

- Creating a model curriculum for religious leaders that is available online and accessible to all that would cover a range of legal issues and would both showcase existing resources and place those resources within broader context.
- Convening an annual event, conference, or set of lectures to educate the educators (seminary deans, presidents, and key faculty) about emerging and enduring issues in law and ministry.

- Building stronger connections between seminaries / continuing education programs for ministers / denominations and the existing legal resources for religious leaders and communities, including national and regional legal organizations.
- Organizing professional development opportunities for seminary educators to consider how to integrate law and legal themes into existing courses.

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About the Study

This Study was made possible by a grant from the Lilly Endowment, Inc. John Witte, Jr. served as principal investigator. Shlomo Pill and Justin Latterell supervised the student research team and oversaw the development and implementation of the survey and focus groups. The survey was designed based on conversations with colleagues at Candler School of Theology and elsewhere, and John Bernau and Pearce Edwards consulted on its design and development. John Bernau played a lead role in survey data analysis. An earlier draft of this Report was written by Shlomo Pill and Justin Latterell, with later drafts and finalization by Whitney Barth and John Bernau. Graduate student researchers included Jonese Austin, Sarah Baker, Sophia Bavaro, Zev Breyer, Davis Caswell, Alex Chiang, Sophie Degani, Pearce Alexander Edwards, Trevor Fortenberry, George Gelzer, Joshua Howard, Christina Lanier, Abigail Lecroy, Kara McCord, Adam McDuffie, Joseph Mineo, Alexandra Opdyke, Addison Schlatter, Constance Schneider, Fiona Syed, Claire Toh, Casey Woodall, and Hong Zhang. Undergraduate students Sandra Bordon provided additional support and Eythen Anthony produced the *Interactions* podcast episode further exploring this Study's findings.

About the Center for the Study of Law and Religion

The [Center for the Study of Law and Religion at Emory University](#) (CSLR) promotes and produces innovative research and scholarship, exemplary teaching and training, and robust public engagement. For the past 40 years, CSLR has been a global thought leader in the burgeoning interdisciplinary field of law and religion. Center-affiliated faculty and fellows have directed two dozen international projects on the intersections of law and religion, published more than 370 books, and taught dozens of courses on law and religion to thousands of students.

In 2021, Christianity Today published an in-depth investigative report that detailed Evangelical Protestant leader Ravi Zacharias's fall from grace, including decades of sexual abuse and the organization's attempted cover up and pattern of victim-shaming. Unfortunately, Zacharias was not the only prominent leader to make national headlines in recent years for sexual abuse scandals.

In 2022, a pastor in Charlotte was accused of using fraudulent information to obtain a small business loan from the federal government as part of the government's COVID-19 relief program and significantly underreporting his income. In another instance, a church in Georgia with a robust ministry to veterans was raided by the FBI after the pastor embezzled millions from his congregation's veteran's benefits and the church was found to have defrauded congregants of their military benefits.

In 2020, a pastor sued his church for attempting to alienate him and wrongfully terminating him through a vote taken during an allegedly unlawful meeting with the church body and then calling the police who appeared during a Sunday morning service to forcibly remove him from the property.

In Jacksonville, Florida, a church's founder and head pastor resigned after a heated dispute with other church trustees over alleged mismanagement of money and was later sued by the church's bank for refusing to pay over \$700,000 allegedly owed.

In June 2022, the leaders of the North Georgia conference of the United Methodist Church voted to allow more than 70 churches to disaffiliate from the United Methodist Church and join the more conservative Global Methodist Church.

A church in Newport, Kentucky was the center of public criticism because, in an attempt to attract new members, it installed a bright LED message board on its property, much to the dismay of neighbors living across the street who shared photos of the LED light shining through their windows and curtains at night.

In Bedford, New Hampshire, a church received a cease-and-desist order from local officials regarding its use of a house and a newly constructed meeting hall to accommodate 50 people for services after the church failed to obtain a special permit.

Why this Study

In numerous seen and unseen ways, federal, state, and local laws impact and govern the ministry activities of Christian clergy and lay leaders, as well as Christian schools, charities, and other religious organizations. Despite this reality, few pastors enter the ministry with basic legal knowledge and skills needed for pastoral and administrative work. Protestant seminaries in the United States do not offer even basic training in the legal aspects of pastoral vocations. **The primary objective of this project was to understand the pressure points and patterns of interactions between American law and professional Christian ministry work as a preliminary step to designing and implementing improved opportunities for legal education and training opportunities for clergy and church administrators.**

Beyond the sensational legal disputes reported in the morning news, there have been thousands of lawsuits filed against churches since 2010 arising especially from instances of sexual abuse, fraud, and corporate governance. Our team identified 5,822 trials in state or federal court between 2010 and 2019 involving Protestant churches as parties, 450 of which took place in 2019 alone. These numbers are only a fraction of disputes involving churches. Most legal disputes generally resolve before making it to trial, but not without incurring steep costs for both parties.

Legal disputes impact churches both financially and reputationally. Depending on location and other factors, attorney services can easily cost between \$200-\$800 per hour. Smaller, less-resourced churches are even more vulnerable to the financial impact of litigation. Even larger, more financially stable organizations can encounter trouble when leaders lack a basic understanding of when professional help is needed. In these situations, small issues can grow into much bigger problems down the road. The cost of prevention might very well be a fraction of what it would cost a church to hire legal defense. Sometimes, the reputational harm caused by a lawsuit may cause [even greater harm](#) than the [financial costs](#). Thus, an important role of pastoral legal education is to prevent liability and public distrust while sparing church and community members personal and emotional harm.

The financial, legal, and reputational risks faced by ministry organizations are exacerbated when clergy and other ministry professionals lack a basic understanding of the legal issues that affect their ministries. However, training in this area is often not provided during seminary, and it may not occur to some leaders to seek it out—as one focus group participant succinctly put it, “It has legitimately never occurred to me to have that conversation”—until they are confronted with a crisis. While pastors should not be expected to serve as legal experts (although there were a handful of respondents who disclosed they had some familiarity with law, gained from outside of their role as a minister), adequate training could reduce the potential for legal liability if it means that pastor better understands how to handle such issue or knows when to call for legal assistance. As one focus group participant with a background in business and experience working closely with attorneys during his job at a state agency put it: “I worked with him constantly on legal issues of one type or another. And not that they apply directly to the Church, but more of here are the kind of things to watch out for in that world, and I think that probably helped me more than anything else.”

Introduction to Legal Issues

Through a research process detailed more in the next section, our team focused its research efforts into exploring eight¹ major areas of potential liability for religious organizations:

- tort liability
- employment law
- tax law
- land use and zoning
- organizational finance
- organizational governance
- government funding
- education law

Tort liability, broadly understood, is an area of law that concerns disputes between two or more individuals where the action of one person causes damage, injury, or harm to the other(s).² It is one of the two most prevalent types of lawsuits that churches and their organizations face. Religious organizations can be found liable in tort for any number of reasons, including: intentionally harming others; engaging in unreasonable, negligent conduct that causes injuries to others; failing to uphold fiduciary duties toward congregants; or for the intentional or negligent conduct of employees. See Appendix 1 for more information about basic types of tort claims.

Employment law comes into play because religious organizations are often employers and therefore face many of the same employment issues—hiring, firing, workplace conditions, and compensation—as secular employers. That said, churches do not always have the same legal obligations under state and federal law, including exemptions from prohibitions on “religious discrimination.” These obligations are highly case- and issue-dependent, and churches should be

¹ Given our perception of the important role of ministers in offering pastoral counseling, we anticipated that pastoral counseling would be another area of frequent litigation. However, this turned out not to be the case, and Pastoral Counseling issues were typically ancillary or rarely made it to trial, making these categories extremely uncommon. Perhaps this is one area where a disproportionate number of cases are resolved before reaching trial, but further study would be needed to fully understand this dynamic.

Two issues within Pastoral Counseling that can arise in different contexts is the scope of clergy-penitent privilege and who among a church’s staff and volunteers is considered a mandatory reporter under state law. The clergy-penitent privilege protects ministers from being forced to testify in court. 505 UNIFORM RULES OF EVIDENCE (2005). The scope of this privilege varies across states, and may differ on aspects such as the nature of the communication, which roles qualify, and whether the person disclosing the information has shared the information with anyone else. For more on these nuances, see Richard R. Hammar, “Legal Library: The Clergy-Penitent Privilege—In General,” *Pastor, Church & Law*, § 3.07, <https://www.churchlawandtax.com/pastor-church-law/authority-rights-and-privileges/the-clergy-penitent-privilege-in-general/>.

The U.S. Department of Health and Human Services also offers an online resource (current through April 2019) detailing state by state law regarding clergy as mandatory reporting for child abuse and neglect. See U.S. Department of Health and Human Services, “Child Welfare Information Gateway: State Statutes,” <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/?CWIGFunctionsaction=statestatutes:main.getResults>.

² RESTATEMENT (SECOND) OF TORTS § 282 (AM. L. INST. 1965); W. PROSSER, TORTS § 69 (5th ed. 1984).

aware of which legal exemptions apply to them. Appendix 2 offers an overview of these and other employment law issues faced by churches.

Tax law is important to religious organizations because 501(c)(3) nonprofit private organizations enjoy significant tax exemptions at the federal and state level, although, depending on the type of activity undertaken, they may not be entirely tax exempt. Employees of religious organizations may also be eligible for tax exemptions as an extension of their employment status. An overview of tax law issues facing religious communities is provided in Appendix 3.

Land use and zoning laws affect churches in a number of ways. Most churches own property. That property, despite ownership by a religious organization, is subject to land use and zoning regulation. Most of these regulations are enacted at the local level and explicitly designed to control land use and accomplish a comprehensive plan or some specific goals regarding land use.³ Most commonly, land use regulations place restrictions on the location, size and the number of religious structures or exclude religious purposes from certain types of property.⁴ Appendix 4 introduces a few of the common zoning and land use issues churches face.

Organizational governance is important because religious organizations are nonprofit organizations, a legal status which entitles an organization to certain benefits, like tax and reporting exemptions.⁵ Legally, nonprofit organizations can be structured in several ways—as corporations, trusts, or associations—but share the fact that no part of their income is distributable to members, officers, or directors.⁶ Additionally, a religious organization may choose to use these legal structures conjointly or interchangeably, especially if one type of legal structure is better suited for one purpose and another structure for a different purpose.⁷ Appendix 5 provides an overview of organizational governance issues.

Organizational finance issues arise in a variety of ways. Taxes and public funds may not be used to directly support religion or organizations performing religious functions, therefore churches rely primarily on private funding to support their operations.⁸ Financial accountability is a key topic for churches. According to a 2015 study, Christian organizations in the United States lost an estimated \$50 billion due to fraud and embezzlement.⁹ Since churches are almost entirely financed

³ WILLIAM W. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW § 29:2 (2d ed. 2017); PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 1:18 (5th ed. 2008).

⁴ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:2.

⁵ I.R.C. § 501(c)(3).

⁶ 8:17. *See* 42 U.S.C.A. § 291(e); I.R.C. § 501(c)(3); Henry B. Hansmann, *Reforming nonprofit Corporation Law*, 129 U. Pa. L. Rev. 497, 501 (1981).

⁷ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:1.

⁸ *Lemon v. Kurtzman*, 403 U.S. 602, 602 (1971).

⁹ *See* Todd Johnson, Gina Zurlo and Albert Hickman, *Status of Global Christianity, 2015, in the Context of 1900-2050*, INTERNATIONAL BULLETIN OF MISSIONARY RESEARCH 39(1):28-29.

by private contributions, an adequate understanding of fundraising and solicitation regulation is also essential. An overview of organizational finance issues can be found in Appendix 6.

Government funding is often essential for many church-related organizations to maintain their operations as a school, shelter for the unhoused, food pantry, or other social service. The First Amendment entitles religious organizations to protections from religious discrimination, establishing a pathway for religious organizations to secure funding from, and contracts with, local, state, and federal governments. However, the First Amendment also prohibits the government from unfairly advantaging religious organizations and limits how they can use the funding they receive. Appendix 7 provides an overview of the types of legal issues churches may face when accessing and making use of government funding.

Education law, in the case of religiously-run schools, typically relates to educational standards, and whether governmental bodies may regulate, or otherwise interfere with, religious educational programs. Although these cases certainly intersect with government funding cases, the prominence of litigation identified as pertaining to education law warranted separate analysis for the purposes of this study Appendix 8 provides an overview of the types of legal issues religious organizations who run schools may face.

Methodologies

This Study involved quantitative and qualitative research, as well as research into existing resources for law and ministry education and training. These sources were then supplemented by responses to an online questionnaire.

Legal Research and Analysis

Our team started the legal research phase with a comprehensive study of federal, state, and local laws and regulations governing religious organizations and professional pastoral work. From the initial results of that analysis, we identified and categorized reported cases within Westlaw involving Protestant Christian churches from 2010-2019. Once we compiled a list of topics designed to cover all areas of the law that relate to ministry work, we conducted state-by-state research on these topics. Our team then condensed that list into nine (later eight) major legal subjects, in consultation with secondary sources that offer typologies of legal issues faced by clergy and religious organizations.¹⁰ Additionally, we used Westlaw and other electronic and printed legal resources to identify reported state and federal judicial proceedings involving Christian ministers, churches, or other Christian ministry organizations. These cases were then analyzed and categorized based on jurisdiction, areas of the law at issue, the nature of the parties, whether outcomes were favorable or adverse to the minister/church, and the stage of litigation at which the matter was resolved.

Questions Informing Legal Research Phase

The legal research phase of this study was informed by a number of questions, including:

- Which areas of federal, state, and local law directly and indirectly impact the *ministry and professional work of pastors* (i.e., taxes, counseling, contract negotiation, clergy-penitent privilege and confidentiality, sexual misconduct, copyright, performing marriages, abuse reporting, etc.)?
- Which areas of federal, state, and local law directly and indirectly impact *church administration by lay leadership* (i.e., taxes, contracts, corporate governance, workplace conditions, hiring and firing, negligence, land-use and zoning, education, financial management, agency, sexual abuse, alternative dispute resolution, etc.)?
- Which areas of federal, state, and local law directly and indirectly impact relationships between *religious organizations* and the government (for example, First Amendment establishment and free-exercise, religious exemptions, public-private partnerships, etc.)?

¹⁰ Such resources include Richard R. Hammar's, *Pastor, Church, and Law* (2008) and periodical *The Church Law and Tax Report*, and William W. Bassett's, *Religious Organizations and the Law* (2017).

See note 1 above for an explanation of why the ninth subject, pastoral counseling, is not highlighted.

- What are the most/least common legal issues that bring pastors and/or churches into contact with the legal system?
- What are the possible and most common outcomes for pastors and churches involved in various kinds of legal cases, conflicts, and disputes?
- Which legal issues are the most/least costly or damaging to the individuals or institutions involved?
- How do patterns in the answers to these research questions differ by state, denomination, demographics, socioeconomic class, and other characteristics of congregations and ministers?

This robust list of questions proved ambitious and is a starting place not only for this current study but also for potential future research.

Quantitative Research: Survey

This Study sought to understand how pastors and churches manage and experience legal matters and activities with legal implications, how they (seek to) resolve legal disputes that arise in their ministry, how much they already know about the law, and which forms of training they prefer or need to have. Although research into statutes, regulations, and court decisions can tell us much about the law on the books, it cannot fully describe the interactions between Christian ministries and legal systems. Therefore, to gather data and better understand the legal knowledge and experiences of Christian leaders working within the context of a congregation, we conducted a quantitative survey of Christian ministers (ordained, licensed, associate, assistant and/or senior), lay leaders (for example, full- or part-time church staff, volunteer church board members or leaders, or non-leadership volunteers) across the United States.

Design

We first designed a survey to gather data about pastors, churches, and their interactions with law. Specifically, the questions were designed to collect church demographic data and the personal information of the ministers surveyed. We then asked the ministers to describe their personal experiences with the eight areas of the law mentioned above.

Distribution

We distributed this survey online between February and December of 2021 via email and social media to pastors, church administrators, denominational leaders, and other paid and volunteer ministry workers across the United States. We aimed to gather a survey sample that mirrors the diversity of Protestant communities and clergy. Our survey is best understood as a non-probabilistic, opportunity/referral sample. Starting from a list of American Christian seminaries and theology schools, denominational leadership offices, and other associations of churches and ministers, we asked these organizations to invite their members and alumni to help improve the state of ministry interactions with the law by completing an online questionnaire. An outside marketing consultant assisted with the distribution of the survey and conducted targeted campaigns

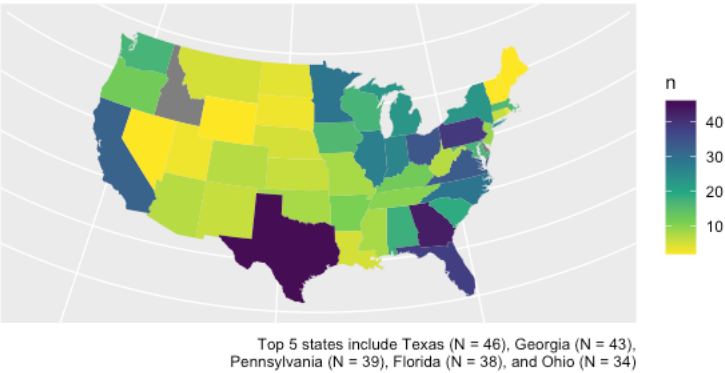
on LinkedIn, Facebook, Twitter, and other social media platforms. To incentivize individuals to complete the questionnaire, respondents were offered access to a series of lectures, reading lists, and guided learning questions on financial literacy and responsibility for clergy, which we are making available to respondents online in partnership with Candler School of Theology. Later in the year, a contact list of churches was also purchased, and the survey was emailed to churches on the list.

Respondents

In total, 1333 respondents started the survey and 819 completed the survey. Of those who completed the survey, we removed 109 respondents whose denomination affiliation did not meet the scope of our study (i.e. Catholic, Eastern Orthodox). This left us with 710 respondents. As a robustness check, we further split this sample into ministers (N = 603) and laity (N = 107) based on their reported roles and qualifications, however, most of the reported analysis uses the full sample (N = 710). Most respondents reported working with organizations with less than 15 employees and less than 500 registered members.

Demographics

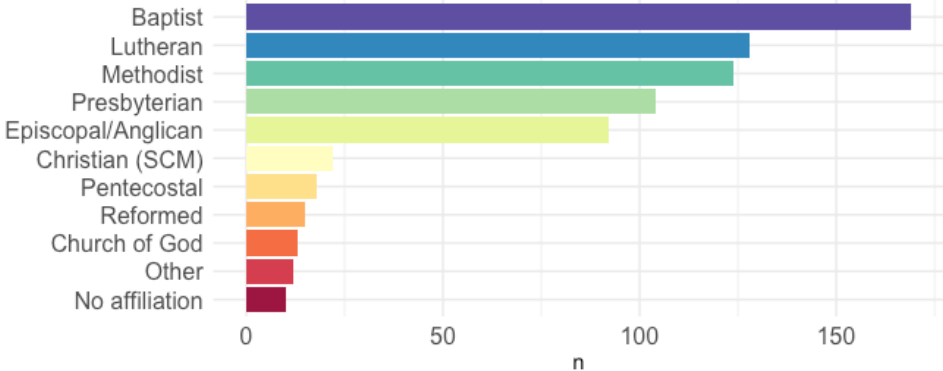
- 68% identified as male, 32% identified as female
- Average age of 55
- 87% identify as white, 6% identify as black
- 84% were either licensed or ordained ministers
- 85% had post-graduate degree
- Came from all 50 states, highest numbers in Texas, Georgia, Pennsylvania, Florida, and Ohio



Denominational Affiliation

Denominations with the highest representation:

- Baptist,
- Lutheran,
- Methodist,
- Presbyterian, and
- Episcopal/Anglican



Qualitative Research: Focus Groups

A mixed methods approach (a combination of quantitative and qualitative approaches) can greatly enrich the understanding of survey data.¹¹ Even carefully designed survey instruments are at best the researcher's educated guess about which questions are the right ones to ask, which answer categories are the appropriate ones to offer, and whether either the survey questions or answer choices supplied are exhaustive or may have missed something critical to the research questions. Qualitative research can allow participants to elaborate with details that would not be captured in closed-ended questions and importantly, to suggest topics, questions, and concerns that the researcher may never have thought of, using the language of the participants and providing a glimpse into their reasoning and talk through their responses.

Recruitment

To better understand the survey results, our team conducted a series of focus groups with clergy from across the United States. A total of 41 clergy participated across 15 sessions that took place between mid-March to late July 2022. The main criterion for participation was full-time employment as Protestant Christian clergy at any level in a church or religious organization.¹² Participants included 29 males and 12 females, with 38 identifying as white, 2 as Asian, and 1 as Hispanic/Latino. Geographically, 6 were from the Northwest & California, 5 from the Southwest, 10 from the Midwest, 18 from the Southeast, and 2 from the Northeast. Data on age, time in ministry, and prior careers were not formally collected, but most participants were estimated to be middle-aged or at retirement. Five mentioned a prior career, including two as attorneys.

Recruitment was more difficult than anticipated, with implications for these findings as well as for future research. Non-response to email and voicemails was common, and some churches were found to have closed or reorganized due to COVID. As researchers moved beyond the survey sample to recruit, they attempted to focus on a diversity of church types, but it was challenging to find independent churches and smaller denominations because of the lack of directories. After the incentive was expanded to include a gift card for every participant rather than simply a chance to win one, study organizers also briefly tried two snowball sampling methods to increase participation: Asking at the end of focus group sessions if participants might be part of an interfaith alliance in their community or region and be able to refer acquaintances from other denominations or independent churches. Many participants seemed enthusiastic about this possibility, but no known referrals were generated. Second, study organizers tried asking friends and acquaintances if they might know a clergy member they could approach directly with an "arms-length" invitation and research assistants created a copy-and-paste blurb for this purpose that echoed the wording of the recruitment email. Several leads may have been generated from

¹¹ Each method offers both advantages and drawbacks: Quantitative research (such as surveys and experiments) using large, randomly selected, probability samples is critical for gathering statistically representative data that can be generalized to a larger population. Yet survey research alone often leaves unanswered questions, from how individual interpreted questions to why they chose particular answers.

¹² Several participants identified as Unitarian Universalism, a tradition that, while not exclusively Protestant, has Protestant roots and today [welcomes people who weave different traditions](#), including Christianity, into their religious identities.

this, but at least one person responded whose identity as a clergy member could not be confirmed and was therefore turned away.

While reasons for this recruitment challenge are difficult to pin down, a few may have included:

- **Timing.** The project began during the Lenten and Easter seasons, and soon after coincided with mission trips and summer sabbaticals.
- **Perceived (lack of) expertise.** Even when reached directly, some ministers declined to participate because they said they felt “unqualified” to speak about the law.
- **Lack of clarity about the topic.** Others who declined appeared to conflate “law” with government or “law enforcement” and were reluctant to discuss those topics.
- **Contemporaneous, high-profile scandals.** During the recruitment period, two scandals made headlines, one at the Hillsong megachurch that led to criminal charges and the resignation of its pastor in March 2022, and the May 2022 independent investigation report on sexual abuse within the Southern Baptist Convention. It is noteworthy that Southern Baptist clergy participated prior to the report but no Southern Baptists or evangelicals of any denomination were successfully recruited in the report’s aftermath. While no focus group questions dealt with sexual abuse or misconduct, prospective participants for whom these events were especially salient or embarrassing may have wrongly assumed this was the primary topic.
- **Difficulty recruiting historically marginalized and underrepresented groups.** More than half of African American churchgoers belong to historically Black denominations, and none of those denominations were represented here despite inclusion in recruitment emails and phone calls. Additionally, no participants in the group represented independent churches, although according to the 2018-2019 National Congregations Survey, more than 20% of evangelical/fundamentalist and historically Black churches report they are non-denominational. Difficulty in identifying and reaching participants who are part of historically marginalized groups can be a challenge, as is overcoming mistrust of the research process and/or of outsiders; minimizing any real or perceived risks of participation; and taking into consideration how lack of resources (time, childcare, privacy, etc.) might impact participation.¹³ More focused recruitment among these churches for future research might include mailed letters followed by phone calls, approaches to organizations with connections to independent non-denominational churches, groups representing

¹³ See Jeffrey A. Ellard-Gray, et al., *Finding the Hidden Participant: Solutions for Recruiting Hidden, Hard-to-Reach, and Vulnerable Population*, International Journal of Qualitative Methods (December 2015).

historically black churches, alumni lists from historically black colleges and universities with strong divinity or theology programs, and organizations of Hispanic/Latino and Asian-American clergy.¹⁴

Implementation

Each session lasted one hour and was conducted on Zoom by an experienced qualitative facilitator contracted by Emory, with technical support from a research assistant trained as an analyst on the project. When possible, groups included clergy from the same denomination to minimize differences in norms and practices that might distract from the discussion.

The following research questions were identified for exploration during the focus groups, along with a set of hypotheticals:

- Which legal restrictions and opportunities are ministers and administrators aware of in areas like religious exemptions, funding opportunities, partnerships with government agencies, etc.?
- What are the most frustrating and challenging legal issues that pastors or church leaders face in their work?
- In what ways does the law hamper or help the church further its ministry?
- How do churches manage the processes of hiring and firing employees and maintaining proper workplace conditions?
- How do churches receive, distribute, and track the use of funds?
- How do churches determine when issues implicate legal concerns?
- Which kinds of legal training or education have pastors and ministers received, formally or informally, in seminary or professional contexts?
- Which resources do pastors and church leaders use for legal information and guidance?

¹⁴ Additionally, while it is generally a best practice not to share questions for focus groups or in-depth interviews in advance (to ensure spontaneous, associative answers and avoid burdening participants with a perceived need to prepare), a preview of the actual topics to be covered may ease the minds of clergy who may be worried about being put on the spot to answer questions about real-life controversies. Another tactic for building trust during qualitative research with hard-to-reach populations is to employ a moderator of the same racial or ethnic background as participants. Although more difficult to telegraph a similar *denominational* background (for example, independent evangelical) while maintaining the neutrality of the moderator, future research might want to explore ways to use homogeneity to increase trust. However, participants must first be recruited and future researchers may wish to explore enlisting a member of a particular denomination or type of church or of a similar race/ethnicity as a recruiter whose inside access and perceived trustworthiness could overcome recruitment barriers.

The initial recruitment goal was up to 100 participants in up to 20 groups or until findings reached “saturation,” a subjective measure based on traditional qualitative protocols suggesting research should continue until additional sessions no longer yield new information.¹⁵ Sessions varied from 2-5 participants. Due to no-shows, two sessions were conducted as individual interviews. For this study, significant saturation was achieved after 15 groups, but not all potential strata were recruited. White clergy and clergy from mainline Christian denominations were over-represented in the sample.

Analysis

All Zoom sessions were recorded and transcribed, and transcripts were reviewed to ensure fidelity between the audio and text. Two graduate research assistants (“coders”) from Candler School of Theology performed the primary coding and analysis after training by a qualitative research professional, who also supervised their work and based the final focus group report on their memos. Coders viewed each video recording and read each transcript in its entirety, making notes of initial impressions and assigning participants pseudonyms to preserve confidentiality. The coders then performed a line-by-line analysis of the text for each transcript, using a constant-comparison method to discern differences and similarities between participants, developing codes related both to research questions and emerging ideas.¹⁶ After separately coding each of the first three transcripts, the coders met to align their coding schema, then continued coding each subsequent transcript and meeting periodically to discuss findings and ensure inter-coder reliability. Finally, the coders grouped their line-by-line analysis into themes and created memos for each, using representative quotes from participants, and developing grounded theory to explain emergent findings.¹⁷

Mapping Existing Resources for Clergy/Clergy in Training

In order to understand the existing law and ministry resources available to Protestant clergy or clergy in training, our research team took steps to chart the current landscape, including contacting theological school administrators and denominational bodies via phone and email; surveying theological school course catalogs; and conducting online searches for law and ministry-related classes, degree programs, and other resources available to current and future pastors via theological schools, law schools, and online learning platforms.

¹⁵ See M.M. Hennink MM, et. al., *What Influences Saturation? Estimating Sample Sizes in Focus Group Research*, 10 Qual Health Res. 1483 (2019).

¹⁶ See Barney G. Glaser, *The Constant Comparative Method of Qualitative Analysis*, 12 Social Problems 436 (Spring 1965).

¹⁷ See Kathy Charmaz, *Constructing Grounded Theory* 18 (2016). Analysis of qualitative data follows a rigorous inductive process that is ongoing and iterative, following a well-established process of “constant-comparison.” The process is designed not only to examine *a priori* research questions and hypotheses, but also to result in the creation of “grounded theory”—theories or possible explanations that are developed based on emerging findings. For this project, analysis began with a brief discussion after each session between the moderator and the research assistant who observed the call to highlight general impressions, including new information that had emerged during the session, recurrent themes from earlier sessions, and any noteworthy moments or quotes.

Findings

Legal Research Findings

In the legal research stage of our study, we sought to understand the broad contours of litigation involving religious organizations. Based on our analysis of 5,822 cases involving a Protestant Christian organization and that went to trial between 2010-2019, we found that:

- Tort liability is one of the most common types of liability a church may face, comprising approximately 32% (1,822) of the 5,822 cases identified. Baptists (675), Methodists (633), and Church of Christ (348) had the highest number of tort cases.
- Employment law, like tort law, is a significant source of potential legal liability for churches, with nearly another third of the 5,822 cases (1,837) involving employment law disputes to which churches were a party.
- Tax law is also a relatively common source of liability for churches and religious organizations, making up nearly 10% (567) of the 5,822. The Friends General Conference, Nazarene, African Methodist Episcopal, and Disciples of Christ congregations appear to encounter tax law issues slightly more frequently (between 10-30% of cases) than other congregations.
- Land use and zoning issues are a rather uncommon source of liability for churches and religious organizations. In particular, only about 2% (124) of the 5,822 cases involved land use and zoning to which churches were a party.
- Organizational governance issues comprised about 6% (376) of the 5,822 cases. However, since there were many cases implicating both organizational governance and organizational finance and they were ultimately sorted into only one category, the issue could be more prominent than our research suggests. Baptists (109 cases), the Church of Christ (103 cases), and United Methodist (85 cases) had the largest number of organizational governance cases, while the Church of God experienced the highest proportion of organizational governance cases compared to the overall number of cases in which the denomination was involved (18 of 78 cases, or roughly 23%).
- Organizational finance issues came up in only .5% (27) of the 5,822 cases). Each of the four denominations with the largest number of cases—Methodist, Baptist, Church of Christ, and AME—have distributions of case types that mirror the aggregate profile for organizational finance law issue encounters based on their denominational size.
- Government funding issues came up in only .3% (15) of the 5,822 cases. Methodist, Baptist, Church of Christ, and AME denominations had the largest

numbers of cases, and each has distributions of case types that mirror the aggregate profile for government funding issue encounters based on their denominational size.

- Education law issues came up in 918 of the 5,822 cases (nearly 16%), making education law the third largest litigation category in our study. Baptist and Methodist were involved in over 600 of those cases.

Quantitative Findings

In our quantitative research, our team set out to find answers to several research questions relating to religious leaders' knowledge of the legal issues that could affect their ministry, including:

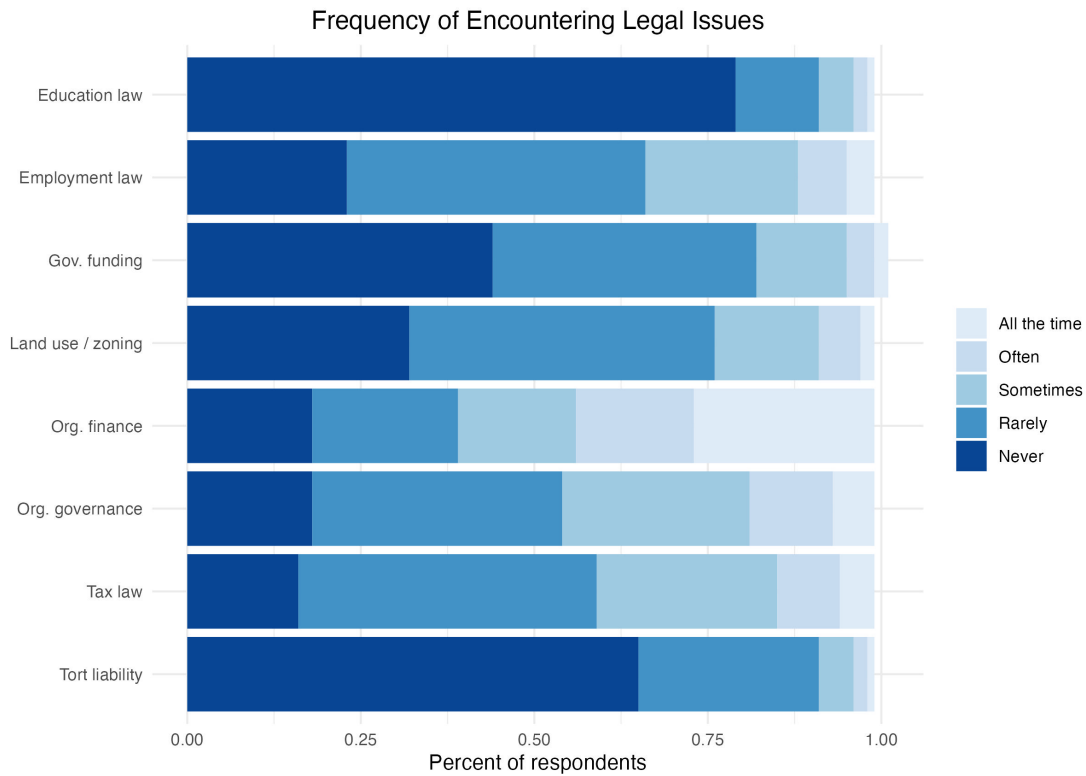
- Does the frequency of encountering a legal issue vary by the type of legal issue?
- Does knowledge of a legal issue vary by the type of legal issue?
- Does training on legal issues vary by the type of legal issue?
- Does the use of different types of resources vary by the type of legal issue?
- Does perceived risk vary by the type of legal issue?

Our team also wanted to know whether there was any relationship between organizational attributes (for example, congregation size, number of employees, location, denominational affiliation, socio-economic status, and racial and ethnic composition) and the frequency with which religious leaders reported a religious organization encountering a particular legal issue, perceiving a risk of encountering a particular legal issue, having access to certain legal resources, or having training about a particular legal issue. Unless noted, the percentages below are the combined clergy and lay leader responses. Responses of clergy and of lay leaders were also analyzed separately, and mention is made where responses from each group diverged by 15% or more.

Frequency

- Very few respondents (1-6%) reported encountering a particular legal issue “all the time.” Organizational finance issues were the exception, with 26% of all respondents saying they encountered these issues “all the time.”
- Slightly more respondents (2-9%) reported encountering a particular legal issue “often,” although 12% and 17% said they “often” encountered organizational governance and organizational finance issues, respectively.

- Few respondents (5%) reported encountering tort and employment law issues “sometimes,” whereas the numbers increased slightly for issues relating to pastoral counseling (13%), government funding (13%), land use and zoning (15%), and organizational finance (17%). Of the remaining issues, 22% of all respondents said they “sometimes” encountered education law issues, 27% encountered organizational governance issues, and 26% tax law.
- More than 12% of all respondents reported “never” or “rarely” encountering any of the legal issues discussed in the survey, although the range varied significantly by legal issue. For example, of all the legal issues, education law was the area encountered the most infrequently, with 79% of respondents reporting they “never” encountered education law issues and 12% saying they did so “rarely.” In contrast, only 18% of respondents said they “never” encountered organizational finance issues and 21% reported doing so “rarely.”

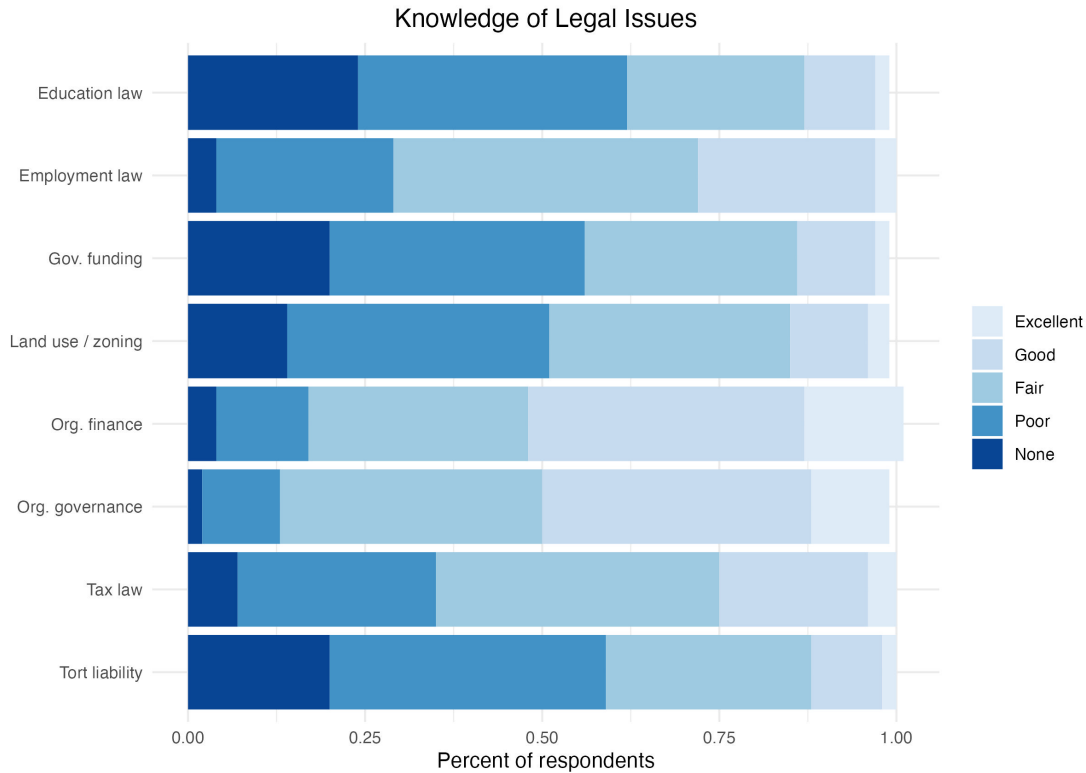


Source: CSLR Study on Law and Ministry (c) 2023

Knowledge

- Very few respondents (2-4%) reported “excellent” knowledge of a particular legal issue, with the exception of pastoral counseling (15%), organizational finance (14%), and organizational governance (11%).

- Proportionally, ministers reported “good” knowledge of pastoral counseling at a higher rate compared to lay leaders, with 29% more ministers than lay leaders selecting that option and 15% more lay leaders selecting “poor” and “none.”
- More respondents reported “good” knowledge of particular legal issues, including torts (10%), employment law (25%), education law (10%), government funding (11%), land use and zoning (11%), and tax law (21%). More than one-third reported “good” knowledge of organizational governance (38%), organizational finance (39%), and pastoral counseling (39%).
- A quarter or more of all respondents reported “fair” knowledge of all the legal issues in the survey, with employment law (43%) and tax law (40%) garnering the highest responses.
- More than a third of all respondents reported “poor” knowledge of tort law (39%), education law (38%), land use and zoning (37%), and government funding (36%).
- Proportionally, 15% more lay leaders as compared to ministers reported “poor” knowledge of land use and zoning issues.
- Most respondents had some knowledge of each legal issue area, except for four areas where more than 10% reported having no knowledge: education law (24%), government funding (20%), tort liability (20%), and land use and zoning (14%).



Source: CSLR Study on Law and Ministry (c) 2023

Training

- Very few (0-6%) of respondents reported having “excellent” training in particular legal issues, with the exception of pastoral counseling (16%).
- Similarly, very few (2-5%) respondents reported having “good” training in particular legal issues, with the exceptions of organizational finance (15%) and organizational governance (21%), and pastoral counseling (32%).
- A quarter or more of respondents reported having “fair” training in organizational finance (25%), organizational governance (25%), and pastoral counseling (26%). For the remaining legal issues, less than 10% of respondents reported a “fair” amount of training, except for in tax and tort law, both of which were at 10% (tort law) or slightly above (13% in tax law).
- While less than a quarter (12-23%) of respondents reported having “poor” training in any of the legal issue areas, a substantial number (60-78%) reported having no training in tax law (60%), employment law (64%), tort law (70%), education law (72%), government funding (74%), and land use and zoning (78%).
- Large percentages of lay leaders reported having no training in any of the nine legal issue areas, with the highest percentages for tort liability (57%), land use and zoning (57%), and government funding (54%), followed by education and employment

law (both 50%), tax law (49%), organizational governance (42%), pastoral counseling (35%), and organizational finance (34%).

- The percentages of ministers reporting having no training in any of the nine legal issue areas had greater fluctuation than those of the lay leaders, ranging from 82% for land use and zoning to 9% for pastoral counseling.

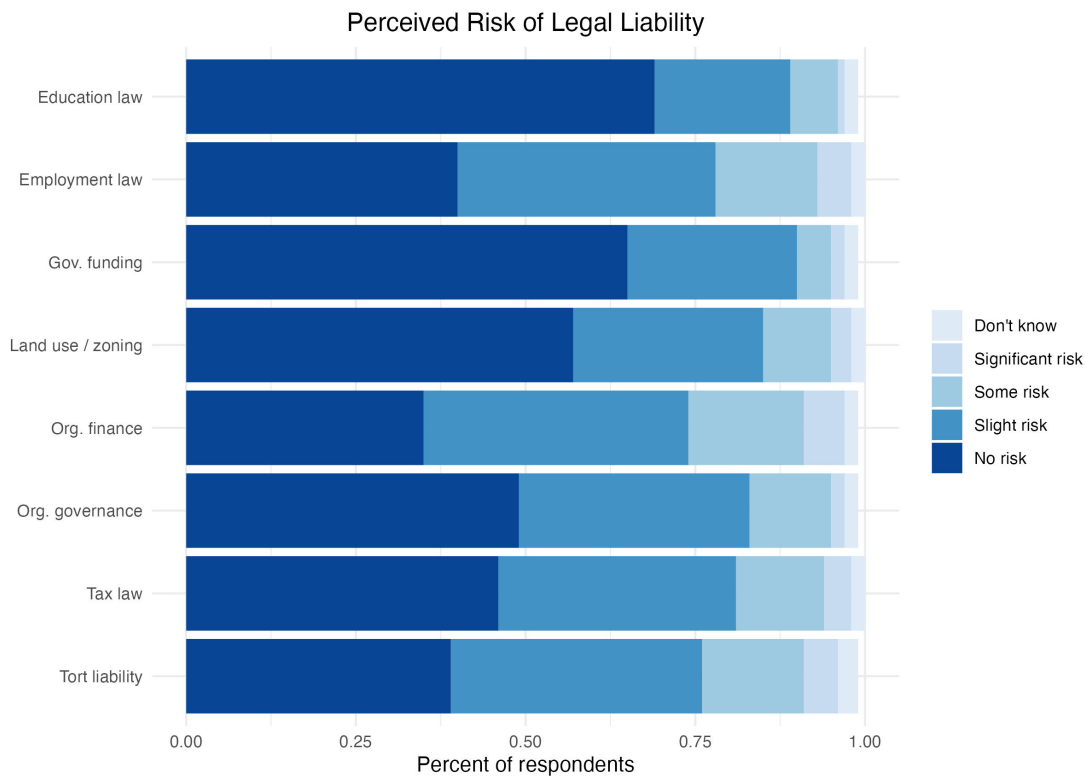


Perceived Risk of Encountering a Legal Issue

- Very few respondents reported perceiving there was a “significant risk” of encountering any of the legal issues asked about in the survey (1-6%).
- Slightly more (5-17%) perceived “some risk,” with organizational finance (17%), employment law (15%), tort liability (15%), and pastoral counseling (15%) as the top four issues, followed closely by tax law (13%), organizational governance (12%), and land use and zoning (10%).
- More than one-third of respondents reported perceiving “some risk” of encountering organizational finance (39%), employment law (38%), tort liability (37%), pastoral counseling (36%), tax law (35%), and organizational governance (34%) issues. Education

law (20%), government funding (25%), and land use and zoning (28%) were the exceptions.

- Significant percentages of respondents reported “no risk” of encountering legal issues (35-69%), with education law (69%) receiving the highest percentage of responses perceiving no risk and organizational finance (35%) receiving the lowest.



Source: CSLR Study on Law and Ministry (c) 2023

Use of Legal Resources

- Denominational resources were by far the most popular type of resource among respondents, although the percentages did vary substantially by legal issue. Over 70% reported using denominational resources to address pastoral counseling (73%), organizational finance (53%), and organizational governance (79%) issues. Over 50% reported using denominational resources for tax law (58%) and employment law (55%) issues. The numbers dropped to 46% for government funding, 47% for torts, and 36% for land use and zoning issues.
- Reference materials were also frequently used, with over half of respondents reporting they used reference materials for employment law (51%), organizational finance (53%), and organizational government (54%) issues. Half or nearly half reported using reference materials for the remaining issues: government funding

(44%), pastoral counseling (46%) tax law (50%). Educational law (32%), torts (37%), and land use and zoning (37%).

- Proportionally, 16% more lay leaders than ministers reported using reference materials for education law issues.
- There were several legal issue areas for which more than half of the respondents indicated they use outside counsel: employment law (53%), land use and zoning (51%), tax law (51%), and torts (58%). Close to a third said they use outside counsel for education law (32%), governing funding (31%), organizational finance (36%), organizational governance (39%), and pastoral counseling (29%) issues.
- Relatively few respondents reported using a community organization when confronted with any of the legal issues, with responses varying from 8% to 26%, with land use and zoning (26%) and government funding (21%) garnering the highest percentages.
- The survey options appear to have covered the range of resources that most respondents rely upon when confronted with legal issues. Only a few respondents (4-12%) reported using “other” resources not listed.
- Importantly, nearly all respondents reported using some kind of legal resource (only 1-18% reported not using any resource). The one exception was for education law issues, with 28% reported not using any resources. This is perhaps not surprising given that education law issues only affect those churches running an educational institution.

Qualitative: Focus Group Insights

Based on the results of the survey, researchers hypothesized three possible underlying orientations that might be influencing the attitudes and behaviors of ministers:

- Caution: “Always call a lawyer, that’s all clergy need to know.”
- Thrift: “Lawyers are expensive, get free help from the congregation.”
- Lack of concern: “Churches don’t often get sued, you don’t have to worry too much.”

During the focus groups, neither of the first two hypotheses proved exactly true. Clergy did not appear to have lawyers on speed dial, and many seemed reluctant to turn a pastoral matter into a legal one; some also expressed that they did not know whom to call. There was, however, a tendency for some clergy to “always call the denomination offices” and let the presbytery, the synod, or equivalent decide whether to call a lawyer—“punt to the Bishop” as one Episcopalian termed it. Very few participants seemed to consider free legal help from the congregation, although

many availed themselves of free help from people with expertise in human resources, accounting, or other fields that intersect the law.

No participants expressed the opinion that churches did not have to worry about getting sued, and many seemed highly aware of the ways a church could run afoul of the law—lessons often learned by observing situations at other churches and sometimes learned through the school of hard knocks. Staying out of trouble—out of court and out of the newspaper—appeared to be an important driver of not just de-escalating conflict, but also acting with transparency in all matters.

The focus groups could not possibly cover every area of the law that a minister or church might encounter, but what was perhaps surprising was how many other areas of the law were brought up by participants. Participants also mentioned a laundry list of other local ordinances and policies that presented potential legal issues: copyright law for music webcast during sermons, the handling of burial remains, assisted suicide, COVID restrictions, fire codes, trespassing laws, local ordinances banning food donations to unhoused persons, and the difficulties of preparing personal taxes as a clergy member were some of the many new topics raised. Multiple participants also brought up concerns about being forced to comply with local open carry or concealed carry gun laws and working with local law enforcement or with church committees to develop plans to protect churches from active shooters. Several focus group members also mentioned immigration laws and another civil disobedience. None of these could be explored in detail in the format of the focus groups but may be worth future investigation. Whether these issues are more prevalent for clergy than those issues around which the hypotheticals were developed or were simply more salient to the participants at the time of the focus group, is unknown.

The following are some general findings from the focus groups, followed by findings specific to particular legal issue areas.

General Findings

The frequency of encounters fluctuated, as did the use of (and access to) legal resources.

- Church size affected how participants navigated legal situations. Participants ministering larger churches shared that they navigated more legal areas than those running smaller churches.
- While some participants who ran smaller churches generally felt that they encountered fewer legal situations, they also shared that their lack of financial resources meant that they could not afford legal counsel. When asked what legal resources they wished they had, they responded that they wanted affordable access to legal advice.
- Some participants reported turning to people and resources supplied by their denomination and letting denominational leadership make decisions about how to respond to legal challenges.

- Other participants in less-centralized denominations appeared to rely more on fellow pastors in their denomination or educational programming provided by the denomination.
- Participants often stated a desire for a trusted expert or guide they could go to early on if a legal question or issue arose. Ideally, this expert would be familiar with ministry and the law as well as the minister's own denomination or would be able to direct the minister to the necessary expert(s). Some seemed to be imagining a person in this role, while others described something more like a database or a decision tree.
- When asked who or what they would wish for in terms of legal resources, participants had a number of other suggestions, including: an online database specific to the ministry and the law; a decision tree that would route them to the correct resource or expert; mentoring by someone with real-world experience; an organization to call or consult with at no cost or low cost, somewhat like a national law clinic; more continuing education trainings; and online modules using hypotheticals similar to those used in the focus groups

Seminary does not prepare ministers to face legal challenges relating to ministry.

- One participant said memorably that the law “doesn’t really play into much of what [ministers] do, or how they do it, until it does,” and seminary did not prepare them to navigate the legal issues confronting them as ministers. The impact of this lack of training is especially acute if a minister enters seminary directly from college, without having work experience that might have introduced them to legal issues.
- Participants most frequently identified employment, land use and zoning, and tax (especially as related to understanding non-profit status) as legal areas in which recent seminary graduates need better understanding. Although participants felt seminary prepared them for the pastoral side of ministry, it neglected other areas such as human resources, insurance, taxes, and contracts. The basic coverage in seminary of church administration is not sufficient to manage a church and to navigate legal issues.
- Some considered the conversation about what ministers need to know about the law as a novelty. “It has legitimately never occurred to me to have that conversation,” one participant put it.

Ministers have a range of views on the proper relationship with the government.

- Many focus group participants had positive attitudes toward the law, seeing the government as a help and benefit to their ministry. Some participants saw the law as a partner, supporting clergy by taking care of problems, providing provisions for how to conduct themselves, and allowing ministers to focus on other issues.

- The topic of obedience to government also came up, with one participant explaining: “I would [encourage recent seminary graduates] to have a well-formed understanding of how Romans 13 and how we submit to governing authorities because I think . . . we apply that when it comes to external laws and decisions but it's also a reality of you know When we think about compliance and payroll and all those different laws, they're not optional, but sometimes they get treated as optional We don't take an optional approach, because we believe that submit[ting] to the government [is] to be faithful [S]eparation of Church and State doesn't mean...we don't have to abide by those laws . . . using Romans 13 kind of as the framework.”
- Interestingly, several participants associated questions about “the law” with law enforcement and added that ministers should view law enforcement as a resource to the church. Some recounted close relationships with local law enforcement agencies: “We have close relationships with the police chief and with different police officers. We use [them], not regularly, but on occasion.”
- Others recounted outreach efforts from local law officers: “Our criminal district attorney here in [the city] has . . . about 12 to 15 session seminars on criminal law and interaction with their office[.]”
- One encouraged outreach by the church: “Reach out to [law enforcement], invite them to the congregation, and talk with them. And let them know . . . what . . . all you want to do. That way, [you do not only] reach out to them when there's an emergency, but instead it's a partnership where the law enforcement is trying to support the committee of worshippers that go there.”
- Not all accounts of interactions with the government were positive. One participant explained that she felt “like the litigiousness [that] the world is introducing [into] the church, a level of litigiousness and or anticipating the worst in one another” was “unhelpful.”
- Several focus group members also mentioned the enforcement of immigration laws that led to the arrest of a church member or the termination of an employee. One clergy member spoke about the legal challenge of risking arrest or fines for taking part in civil disobedience—which he described as “almost a badge of honor” in his denomination.
- Others contrasted pastoral and legal thinking: “Grace, love, forgiveness is part of what the church is about, and sometimes legalities can be problematic.”
- A theme that came to the fore across multiple topics and discussions was that some laws seemed somewhat arbitrary and sometimes thwarted a church’s ability to deliver aid to people in need, conflicting with the church’s mission. As one participant explained: “We have several ministries through our church that we could do more if we if the law didn't restrict us. For instance, we opened a cold

weather shelter, but because of COVID and because of the fire marshal and because of whatever we can only serve 8 people in a gymnasium that could fit . . . 30 if we needed. In a way, it hindered us, because we can only do a certain capacity on the fire marshal and the COVID rules and things like that So yes, it helps us from the standpoint of we're being safe, we're following fire marshal codes, those kind[s] of things, but are we able to do as much ministry as we would like? Perhaps not. So it's a little bit of a double-edged sword”

For ministers, reputational risk is a deterrent to interpersonal conflict and law-breaking.

- Many participants indicated they would avoid engaging in interpersonal conflict, legal disputes, or disobeying the law out of fear of damaging their personal reputation or that of the church.
- Several felt churches are already under scrutiny because of previous scandals and worried that any action not in alignment with the church’s values could put them at risk for negative publicity.

Legal Issue Areas

Tort Law Issues

- Survey results showed only a slight correlation between church size and confronting tort liability issues, while focus group responses underscored that church size can impact how leaders navigate legal situations.
- For example, when posed the hypothetical about a boy breaking his leg on church property, one Episcopal minister serving a “very large parish” shared that there were pre-established processes to manage tort claims because the parish is large and has a school and they “have a large number of young people and children here in the parish regularly. And so you got to have something in place that governs what happens when anything happens here so that the response is almost immediate.”
- In contrast, some participants leading a small church, explained that they lack the resources to offer services that could cause tort lawsuits. For example, when posed with a hypothetical involving the suicide of a teenager, one Presbyterian minister responded: “I’m the only paid employee of the Church, so this idea that you're going to have certified staff to do these sorts of things is just absurd.” A Methodist minister, also highlighting the small size of their church, explained that they had “done very little counseling,” finding that, in the small churches they have served, people tended to seek out help from someone “not related to the church” if they needed counseling.
- When presented with a hypothetical involving a nursery volunteer and asked about preventative measures to protect the church from liability, one Baptist minister explained that his church trained volunteers and required that they be members of

the church for more than six months before volunteering so that there is “some familiarity with the organization and . . . some built-in knowledge of what the role is or what we want the role to be[,]” but, at the same time, the church lacked a formal onboarding process for volunteers.

- The same participant added that smaller churches often feel greater impact if something goes awry: “. . . the smaller the church, that is, the more risk that's involved. We're a fairly large church and so, if somebody gets miffed at us, you know, we can count on a couple days or maybe a week of bad Facebook press, but eventually it's going to go away and people trust us. In a small church, it can be very, very destructive.”
- Clergy in multiple focus groups also explained that insurance companies provide important resources and counsel on how to avoid liability by preventing hazards and creating policies for such things as child protection. On the other hand, several ministers recounted stories about people being injured on church property and, although the individual did not threaten legal action, the individual's insurance company *did* sue to cover claims.

Spotlight on Practice: *Pastoral v. Legal Thinking*

When asked to respond to hypothetical scenarios in which a congregation experienced an incident that could lead to a tort claim, some participants' responses revealed a **tension between pastoral impulses and taking action to protect against liability**. Although some participants indicated they would be quick to consult legal counsel if threatened with litigation, many participants expressed concern for the individual who suffered from the tort and a desire to first minister to that person's emotional and/or material needs before seeking legal advice or representation.

In some cases, participants suggested they would maintain some distance from the situation by referring the individual to counseling or assistance from a more objective minister from an unrelated church but would still prioritize helping the individual to cope emotionally and spiritually with their situation.

Overall, ministers from more centralized denominations that provide more legal resources tended to embrace this approach and to have greater complacency about any looming liability, whereas more decentralized denominations appeared more concerned about legal risk in the hypothetical scenarios. This is an area ripe for future study.

You can listen to the Center for the Study of Law and Religion's podcast episode discussing this theme and others from this Study by visiting: <https://cslr.law.emory.edu/research-programs/law-and-christianity/cslr-study-on-law-and-ministry.html>.

Hiring and Firing

- Although some clergy had little experience with hiring and firing because their churches were so small (often they were the only employee), all nonetheless offered opinions on the hypotheticals.
- The “pastoral care first” theme arose here, too, even toward an employee being terminated for poor performance.
- Interestingly, when asked about a situation in which a pastor was being fired allegedly for bad sermons, there was an expectation among some participants that a church employee would not sue because ministers need to “be the bigger person” and avoid bitterness. As one Episcopalian participant explained, he would counsel a pastor to have an attorney review his contract but “...also to remember that is, as a pastor, as hard as this is, you still have to cure souls in this space. And so, even as horrible as they're being for you, try to be the bigger person. Ensure that you're getting what is right and appropriate as best as you can, but do everything in your power to make this . . . as un-acrimonious as possible and to kind of lower the heat to come to a negotiated agreed-upon departure.”
- One participant expressed frustration with what he called a need for “padding the file” to document a grievance against an employee in order to prevent being sued. He attributed this to the large denomination that he felt “[put] individual churches in a bind and we're having to pay bad employees” because the denomination was unwilling to support necessary terminations.
- While many participants did not appear to have clear employment policies at their churches, several brought up the issue of policy when responding to a hypothetical in which an unmarried church employee is fired for becoming pregnant. As one Presbyterian minister explained: “If it's not stated in the employment policy [termination upon pregnancy due to church values], you're setting the church up for trouble If you wholesale fire her without having that stated in your employment policy, you're setting the church up for a wrongful termination lawsuit.”
- Compassion was also exhibited toward the employee in that hypothetical, although participants split in response to that case; clergy from more conservative denominations moved ahead with terminating her employment (but with “grace, love, and forgiveness”), while more liberal denominations seeing the pregnancy as a cause for celebration, especially in churches with declining numbers of families with young children.
- One Unitarian Universalist participant whose church is thinly staffed and low on resources noted the use of an “NDA” clause upon termination, but later corrected himself and called it an “Everybody's going to be good to each other . . . clause.” The policy encompassed confidentiality about all church matters, the provision of

what the participant termed a “generous . . . eight weeks severance,” and the promise to “speak well” of each other into the future. It was unclear what, if anything, including dismissal for cause or for civil or criminal wrongdoing, would invalidate this clause.

- Another employment policy, or “guidelines” (as some described it, noting it was not so formal as a “rule”) that emerged across multiple groups and denominations was a prohibition on hiring church members, and conversely, on church employees deciding to join the church. Several identified the tensions, the need to counsel the applicant that, if something happened, there is the risk that they would very likely lose both their job and their church, or the likelihood that their “relationship will be different” with other members, who may start to come to them *as an employee* when they need things. As one participant explained, “These people are not your friends, they are part of your employers, they are an extension of me, you know. This is not a place for friends and community for you, because you are an employee.”
- On the other hand, there are “times where . . . [a member] is the only person interested in the job, or this is the only person remotely qualified. We're a small denomination, and so who actually gets us?”
- At least one participant described a ban on “hiring internally” as a way of “preserving trust within the congregation,” especially in a congregation with “a history of nepotism in hiring practices in the past.”

Supervision

- In a hypothetical involving a teenage nursery volunteer and an injured child, many participants cited formal policies for onboarding and vetting volunteers, including following established “Safe Sanctuary” guidelines for protecting children. While two participants said their church prohibited teenage volunteers from providing childcare, others were not troubled by it as long as there was proper supervision at all times.

Knowledge

- Employment law was among the most popular responses to the question of what legal areas recent seminary graduates needed to better understand. As one Baptist participant explained, “The preparation for the ministry was good, the preparation for reality was a little less robust and I would definitely encourage [seminary students] to learn about some things like insurance and . . . HR law[.]” Also important was “having someone that they can reach out to . . . there's no way to remain an expert in HR law, but we need access to those people.”

- Another participant added, “[ministers lack] a basic understanding of contracts,” including answers to questions like “. . . what's the difference between a contract and agreement . . . whether it's employment contracts or leases or letters of agreement or whatever.”
- One participant also noted the unique status of clergy in employment law: “I think something that they really need to understand is their unique classification underneath employment law as clergy and how that come[s] about, what are the implications of that. Because that's something that's really lacking. I studied ministry in my undergrad and there was nothing about that, and then you step into the world and it gets really complicated really fast.”

Tax Law Issues

Tax-Exempt Status

- While none of the focus group hypotheticals presented tax issues directly, taxes and tax-exempt status were nevertheless mentioned in many of the groups.
- Most participants seemed familiar with the rules around maintaining tax-exempt status, and many expressed caution about taking any actions that could compromise their church’s protected status.

Knowledge

- Still, when asked what legal areas recent seminary graduates needed to better understand, tax law was among the top three, especially related to understanding the meaning of a church’s non-profit status and the relevant IRS rules.
- One Methodist participant explained: “[Seminarians need to know] what things you can and can't do as a nonprofit as far as . . . income....There was a church that started renting out their parking lot and they got hit with this huge tax bill for doing that.”
- Several ministers shared that their seminary education included some education on church administration, but those courses were insufficient to manage a church and navigate legal issues.
- One Baptist participant explained: “The closest I got to something . . . structural like that in my formal seminary education was like a church finances class where I had to look at a budget at a church. And that's not even like tangentially hitting on some of the legal issues we're talking about. There's just a very sparse formula so it's been all experiential.”

Resources

- Multiple participants expressed concern about the difficulty in finding an accountant with specialized knowledge. One explained: “I had you know, a pastor friend that had a good accountant doing his taxes and then discovered about six years down the road that they were being done wrong. And a very qualified tax person, but knew nothing about how to do ministers taxes and was very confident they were doing them right and didn't have a clue and . . . then they're staring at the IRS for a \$20,000 tax bill.”
- Throughout the groups, this difficulty in finding specialized help from both attorneys and accountants emerged, raising the issue of whether there may be a need for increased training in these professions about the special considerations for clergy and churches as clients.

Land Use and Zoning Issues

Range of issues

- Several issues of concern relating to property and zoning emerged from the focus groups, including the handling of burial remains on church property, tax implications for generating revenue from church property, and a host of local ordinances and policies that presented potential legal issues, ranging from concerns about trespassers to fire codes.
- In one property-related hypothetical, participants were presented with a scenario in which a minister purchased a property with the intent to lease the property to the church. While perhaps more relevant to assessing potential conflicts of interest, with property law taking a back seat, participants notably showed a willingness to consult outside legal counsel. Some participants were untroubled by the scenario, as long as the church benefited from a below-market-rate rental agreement, but emphasized they wanted a lawyer to weigh in.

COVID-19

- COVID-related restrictions that impeded the ability of churches to use their property to minister to unhoused persons or limited the size of church services in some locations also came up during the conversations, which took place during the height of the COVID-19 pandemic.
- One participant mentioned bypassing municipal actors during the COVID-19 pandemic and lobbying the governor directly: “We have lawmakers that are not part of [the] church and thus, they do not really understand the dynamics of ministry and how ministry should operate. And so, there's a lot of laws and a lot of blanket things that are going through local, state and federal that could . . . create some very difficult situations in the future.”

Knowledge

- When asked what legal areas recent seminary graduates needed to better understand, land use and zoning was among the top three, alongside employment law and tax issues.

Organizational Governance Issues

Prevalence and Structure

- Comments on organizational governance seemed to transcend the boundaries of legal issue areas, as organizational governance came up in conversations on almost every topic covered in the focus groups.
- When considering organizational governance in relation to legal guidance, participants saw three possibilities: decentralized and independent; centralized and deferential; and centralized but weak.
- Baptists were in the first group, tending to seek guidance and legal resources from other pastors, local experts, and “Christian leaders.”
- More centralized denominations—Methodists, Episcopalians, Lutherans, and Presbyterians—deferred to a “chain of command” for advice, and most felt confident in the resources and guidance their denomination could provide. (Although one participant described herself as a skeptic who double-checks the validity of information and guidance from her denomination.)
- Unitarian Universalists fell into the third category, finding that they received valued guidance and policy from the denomination’s central infrastructure, but lacked access to any robust legal counsel or resources provided by the denomination.
- One participant mentioned the positive buffering effect of a more hierarchal governing structure: When congregation members were lobbying for the dismissal of an employee, he was able to refer the matter to a higher authority in the church, which took the decision out of his hands and prevented conflict with church members. Participants also spoke of the ability to focus on ministering to people while deferring legal decisions to a governing body and generally seemed less concerned about legal problems due to the support of their denominational resources.
- Several clergy noted the emergence of trained, certified professional church administrators who are able to handle many legal and organizational issues more ably and objectively than ministers.

Benefits of Incorporation

- One hypothetical presented focus group participants with whether incorporation was necessary or beneficial. Baptists in the groups seemed very familiar with the question and had been asked this advice in real life. Anecdotally, they knew of many churches getting into legal or financial trouble when they eschewed incorporation.
- These participants overwhelmingly advocated for incorporation, with one warning against the “sticky goey mess” you can get into without this legal structure. They claimed that incorporation helped the church’s organizational governance, leading to greater longevity, transparency, and structure. One participant explained: “The bottom line reason is that it pushes them to go ahead and have some bylaws. They have some ground rules for a church [on] how decisions are made, who makes those decisions, and, if there’s property or if there's loans or if there’s payroll . . . it outlines who’s responsible.” He likened it to “ trying to play Monopoly with just opening the box and not knowing what the rules are but going ahead and trying to play. And everybody around the table has different ideas of what it should be.”
- Another explained: “You incorporate and get things spelled out or you're just asking for trouble. It may be in six months; it may be in six years; it may be in six decades, but you're going to have problems and you need to have these things written down and documented [Ministers] need to be careful about making decisions [with] any one person or couple of people. You don't want a back room, so to speak, of making decisions that are going to affect the body. And you need to make sure that these decisions, there are different opinions on them That, if the leadership in that church, pastors, deacons, elders, [if that’s what] their structures says, this is how we're going to do it, then that's fine.”
- One Baptist participant explained the reasons some people gave for not wanting to incorporate: “Our experience with this little church, it was interesting because they really had it backwards. They felt like [incorporation] was control—that if they were incorporated, they were somehow surrendering control of the organization. And my counter-argument was you don't have any control with no organization I think it's a little bit [of a] conspiracy theory. It’s a little bit . . . ‘government's tracking us,’ whatever. You know, you're just been good stewards of God's resources, this is my response to that. So that was their fear.”
- Participants saw the ability to enter into contracts for property, take full advantage of land and building use, and the ability to purchase property insurance as additional reasons to incorporate. The involvement of insurance agents to advise on policy guidance was seen by many as one of their key resources for reducing tort liability.
- The incorporation hypothetical did not work for more centralized denominations, because they would not wrestle with the question. For many, the property on which their church is located is owned by the denomination and not the church

corporation, thus taking some aspects of control and decision-making about the property out of their hands.

Organizational Finance Issues

- Focus group conversations revealed that churches often rely on multiple streams of revenue. Several participants expressed concerns about any fundraising that could jeopardize the church's tax-exempt status, and one participant mentioned an incident in which another local church rented out its parking lot, resulting in significant tax liability.
- Several participants mentioned the importance of transparency in collecting offerings, including the exclusion of clergy from any physical handling of the offering plate. As one succinctly said: "I don't touch money." Another participant described a process: A committee of seven people counts the money and makes the deposit, then posts the monthly receipts where they can be visible to the entire congregation.
- Some participants had learned the importance of oversight from unfortunate experience: One participant related a story about starting at a new church where a longtime, trusted treasurer operated with very little transparency about his work. When she pressed for more information, the church eventually discovered that the treasurer had been embezzling money for many years.
- Participants were presented with a hypothetical in which a longtime, terminally ill member wanted to change her will into increase her bequest to the church. In response, no participants expressed an unwillingness to accept the contribution, but nearly all suggested ways to make the process transparent. This included involving others in the process, such as the family of the donor, other pastors, an estate planning attorney, or a hospital social worker. One participant even suggested making a video recording of the conversation to document the donor's mental state and cited a time when—to protect the church—they had recorded the wishes of a terminally ill church member who planned to exclude a family member from her will.

Government Funding Issues

- Although initially developed for use, the education law and government funding hypotheticals were removed from the list to address with focus groups since many churches do not operate schools or government-funded programs and their clergy would be less likely to be familiar with these issues.
- Although no hypothetical specifically raised issues directly relating to government funding, but the topic did come up indirectly in several conversations. Participants who mentioned government funding were mainly concerned with how funding came with strings that sometimes impacted their ability to minister to people in ways aligned with their mission.

- As an illustration, one participant mentioned cumbersome laws and regulations requiring their church to serve milk to children in a government-funded summer food program even though the milk could not be easily kept cold.

Education Law Issues

- Although initially developed for use, the education law and government funding hypotheticals were removed from the list to address with focus groups since many churches do not operate schools or government-funded programs and their clergy would be less likely to be familiar with these issues.

Concluding Observations

These focus groups indicated many clergy are well-sensitized to the legal challenges they could face and are eager to avoid trouble with the law by taking precautions, being transparent, and de-escalating conflict, they are nevertheless under-resourced in terms of time, expertise, and often money. They are aware of the benefits of getting advice from professionals, and yet, often don't know where to turn. For those who know a strong central denomination has their back, there appears to be less worry about litigation, but this could indeed reflect a “success to the successful” causal loop in which knowing you have legal resources at your disposal gives you the freedom and confidence to de-escalate instead of becoming defensive. For others—and perhaps for the majority of churches and denominations that are neither centralized nor well-resourced—more legal resources could relieve stress, prevent costly mistakes and missteps, and potentially improve their ability to engage in their church's mission.

Mapping Existing Resources for Clergy/Clergy in Training

In total, we contacted twenty-four Protestant seminaries, ten denominational bodies, and thirteen denominational publishing houses to inquire about the resources available to seminarians and church leaders. The response rate to our inquiries was roughly 50 percent, with the highest response rate coming from educational institutions. More information about these efforts can be found in the next section of this report.

Theological Schools

The following institutions were contacted during this Study. Theological schools that responded by phone or email are denoted with an asterick (*). Several indicated that their curricula and/or course catalogs included classes directly or indirectly addressing law-related issues and themes.

- | | |
|-------------------------------|--|
| • Candler School of Theology* | • United Lutheran Seminary* |
| • Duke Divinity School* | • Lutheran School of Theology
at Chicago* |
| • Wesley Theological Seminary | • Wartburg Theological
Seminary* |
| • Vanderbilt Divinity School | • American Baptist College |
| • Andover Newton* | |

- Chicago Theological Seminary*
- Hartford International University for Religion and Peace
- Interdenominational Theological Center (ITC)*
- New Brunswick Theological Seminary
- Western Theological Seminary
- Princeton Theological Seminary*
- Columbia Theological Seminary*
- Berkeley Divinity School at Yale
- Brite Divinity School
- Dickerson-Green Theological Seminary*
- Payne Theological Seminary
- Southern Baptist Theological Seminary
- Southwestern Baptist Theological Seminary
- Southeastern Baptist Theological Seminary
- Vanderbilt Divinity School*

Due partly to the limited responses that we received from these institutions, and partly to the fact that the registrars and other administrators were not always familiar enough with individual course syllabi, our team heavily supplemented this portion of our research by searching organizations’ websites and course catalogs to identify courses and other resources that are available to their students, pastors, and other lay leaders.

Course Offerings

Many of the courses currently offered at these theological schools focus on theological questions related to social justice and politics, and not on practical legal questions related to church leadership and administration. However, some seminaries do offer pragmatic instruction in at least some legal issues that pastors commonly face in their ministries. Most commonly, these courses are classified as **church administration** or **leadership courses**. For example, at the time of our research:

- Interdenominational Theological Center and Princeton offered courses on church/nonprofit administration and management;
- Wartburg Theological Seminary offered a course on “Negotiating Boundaries in Ministerial Relationships,” which deals with legal issues such as confidentiality and pastors’ duty to report instances of child abuse and other crimes;
- Andover Newton includes similar themes in a polity course;
- Candler School of Theology at Emory has offered a course on “Church Financial Leadership and Administration,” taught by a lay accountant with experience working with churches and denominational bodies to address (and prevent) fraud and related legal issues; and

- Princeton Theological Seminary’s course on nonprofit administration, which addresses questions such as property law and organizational governance, was created partly in response to the strong recommendations of alumni who, upon entering the ministry, realized the importance of such training.

Some of these courses, or earlier ones, did deal directly and substantially with the legal issues facing churches. For example, Candler School of Theology has in the past offered a course on “Law and Ministry” taught by Dr. Shlomo Pill, a lead researcher of this Study. Similarly, the Southeastern Baptist Theological Seminary offered several courses on these topics, including a course under “pastoral ministry” entitled, PMN 6732: [The Minister, the Church, and the Law](#), which offers comprehensive and practical training on a wide range of relevant issues and topics. The course description reads:

This course attempts to survey the legal rights and responsibilities of pastor, church, and church-related institutions such as church camps and schools. It includes topics such as the tax laws affecting clergy, church liabilities for contracts and injuries to persons and property, laws relating to church organization and administration, the resolution of intra-church disputes, employer/employee relationships, and the growing law of clergy “malpractice.”

Seminary respondents also identified other courses that deal more tangentially with practical legal questions. For example, based on responses from institutional respondents, we learned that:

- Chicago Theological Seminary, Dickerson-Green Theological Seminary, United Lutheran Seminary, and Wartburg Theological Seminary have courses on church administration and leadership that address at least some legal issues related to matters like accounting, confidentiality, and organizational structures or polity;
- Wartburg offers an elective course focused on child abuse and protection that addresses questions of legal liability and mandatory reporting;
- Columbia Theological Seminary has within its curriculum fifteen to twenty classes that address legal issues in relation to pastoral care, biblical studies, ethics, and more; and
- Vanderbilt offers a course on critical race theory that includes a basic legal introduction to the topic of racism and the American legal system. The school previously offered a course entitled “Law and Religion.” However, the class was shelved after 2015 due to low enrollment.

Although extracurricular opportunities for legal education at these institutions were uncommon, our team identified a few instances of theological schools hosting speakers who discussed law-related issues and/or provided extracurricular learning options for students. For example, Andover Newton and Wartburg require students to participate in “boundary awareness” trainings that discuss, in part, legal questions surrounding ministerial roles and relationships within

congregations. And Duke Divinity School offers a [certificate program on immigration and racialized policing](#) that includes discussions about sanctuary laws.

The perceived demand for law and ministry courses among students and alumni varied, but most of the theological school respondents indicated that there was at least some demand from students and/or alumni for law and ministry courses. Only three indicated that they perceived no apparent demand for such training.

Joint Degree Programs

Several theological schools offer joint-degree programs in law and theology. Note that several of these programs are offered at institutions that otherwise fall outside the scope of this study given our focus on mainline Protestant seminaries. Joint-degree programs typically require students to apply to and be accepted by both schools, theology and law. These programs most often offer dual degrees combining a Master of Divinity (or Master of Arts or Master of Theological Studies) degree with a Juris Doctor. Joint degree programs in law and theology include:

- **Candler School of Theology, Emory University:** Master of Divinity (MDiv) / Juris Doctor (JD) and Master of Theological Studies (MTS) / Juris Doctor (JD)¹⁸
- **Duke University Divinity School:** Master of Theological Studies (MTS) / Juris Doctor (JD)
- **Truitt Seminary at Baylor University:** Master of Divinity (MDiv) / Juris Doctor (JD)
- **University of Chicago Divinity School:** Master of Divinity (MDiv) / Juris Doctor (JD)
- **Harvard Divinity School:** Master of Divinity (MDiv) / Juris Doctor (JD) and Master of Theological Studies (MTS) / Juris Doctor (JD)
- **Liberty University / Rawlings School of Divinity:** Master of Divinity (MDiv) / Juris Doctor (JD)
- **Vanderbilt University Divinity School:** Master of Divinity (MDiv) / Juris Doctor (JD) and Master of Theological Studies (MTS) / Juris Doctor (JD)
- **Wake Forest University:** Master of Divinity (MDiv) / Juris Doctor (JD)
- **Yale University:** Master of Divinity (MDiv) / Juris Doctor (JD) and Master of Arts in Religion (MAR) / Juris Doctor (JD)

¹⁸ Leaders within the Center for the Study of Law and Religion serve as a resource for current students enrolled in a joint degree program, as well as for prospective students interested in pursuing one of these programs.

Students who enroll in these programs complete coursework for each degree, often alternating semesters or academic years between the theology school and law school. Most joint degree programs are small—likely as a result of the potential cost of pursuing two graduate degrees, as well as the highly competitive admissions processes at elite law schools that admit only a small fraction of applicants. The programs listed above offer a wide range of courses that are, to varying degrees, related to law and ministry, although many of these courses focus not on practical legal matters facing church leaders, but on topics related more broadly to ethics, law, and politics.

The curricula for these respective degrees generally appear to run parallel to one another rather than being integrated. However, generally some elective credits count toward both degrees, and thus reduce the total number of credits that otherwise would be required if students completed both degrees outside of the joint-degree program.

Joint-degree programs offer unique opportunities for in-depth learning about ministry-related issues. While law courses do not necessarily focus on ministry per se, they can nonetheless offer relevant training for leading non-profit organizations, like churches. Some programs even offer courses that are directly focused on practical legal training for church leaders. For example, the joint-degree program at Wake Forest offers a course entitled, MIN 629: Public Leadership in Nonprofit Organizations – Legal and Theological Perspectives. The [course description reads](#):

The goal of this course is twofold: (1) to consider how legal and theological inquiry shed light on public leadership roles that theologically and legally trained professionals inhabit; and (2) to prepare students to be competent leaders of nonprofit organizations, considering issues like: the legal structure and status of a nonprofit organization (a 501(c)(3)), the process of casting a mission and vision in nonprofit organizations; fund-raising; developing and engaging a leadership board; cultivating a volunteer staff; representing an organization as a public leader; etc.

Courses so directly on-point are not the norm. Moreover, given their apparent rarity and the relatively low number of students who are enrolled in joint-degree programs, the impact of these courses in seminary education in the United States is limited. While joint degree programs offer a wide range of courses, and some are relevant to practical questions of law and ministry, the law curricula generally have relatively few courses that are directly related to ministry, and the theological school curricula tend to emphasize themes related to ethics, politics, and theology above practical legal issues for church leadership.

In addition to the joint-degree programs discussed above, some law schools offer programs or certificates specifically focused on nonprofit law. For example, Regent University Law School offers an online [Master of Arts in Law in Nonprofit Organization Law](#), which aims to provide students with “knowledge of the legalities surrounding nonprofit/tax exempt organizations, the management of nonprofit and faith-based organizations, negotiations, contracts, and other foundational legal coursework.” Regent’s program is not exclusively designed for ministers or lawyers, and it is not offered as a joint degree program. Additional course listings are available in **Appendix 9: Law and Ministry Course Offerings**.

Denominational Resources

The following denominational offices were contacted as part of this Study. Protestant denominations provide a variety of resources to train and otherwise support their clergy and congregations. These resources often include manuals or guidebooks or unofficial legal guidance (as opposed to direct legal advice) for churches facing legal problems. Denomination-specific resources, where located, are listed below.

United Methodist Church

General Council on Finance and Administration	GFCA Legal Manual <ul style="list-style-type: none">• Church Structure• Local Church• Personnel• Property and Estate Planning• Risk Management	Guide to the Guidelines Additional Resources
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United Church of Christ

Office of General Counsel	Office of General Counsel Webpage <ul style="list-style-type: none">• Abuse Prevention Resources• General Copyright FAQs• Hymnal Copyright FAQs• Local Church Bylaws Information• State Nonprofit Corporate Codes• Supreme Court Amicus Briefs• United Church of Christ Constitution and Bylaws	The Leader's Box (resources for leaders and congregations)
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Presbyterian Church (USA)

The Presbyterian Church (U.S.A.), A Corporation	Legal Resource Manual for Presbyterian Church (U.S.A.) Councils and Churches <ul style="list-style-type: none">• Basic Operation of PCUSA• Property• Incorporation and Boards of Trustees• Copyright and Trademark• Contracts• Personnel and Employment Matters• Immigration• Risk Management and Insurance• When a Lawsuit is Filed	Numerous guides and resources can be found online
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Reformed Church in American (RCA)

General Synod (General Counsel)	Navigating Legal and Financial Matters <ul style="list-style-type: none">• Incorporation as a local church• Creating bylaws for your church• Church treasurer and administrator resources	The Book of Church Order
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- Sexual harassment and abuse policies
- Church safety
- Record retention
- Risk assessment

Evangelical Lutheran Church in America (ELCA)

Office of the Secretary (Legal)	Legal Issues Resource Page <ul style="list-style-type: none"> • Employees/Volunteers • Financial • Misc. (Amending Constitutions, Computers and Internet, Copyright Issues, Legal Checklist, Parliamentary Procedure, Synod Business Ethics, Vehicles Use) • Property • Sexual Misconduct • Tax 	Various articles and blogs can be found by searching the ELCA website, such as “Keeping it Legal,” by Susan Lang, published in <i>The Lutheran</i> magazine
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African Methodist Episcopal Church (AME)

Public/online legal resources for pastors and congregations could not be located

Episcopal Church (EC)

General Convention	Resources on “Model Policies,” “Other Reports,” and Policies and Forms” <ul style="list-style-type: none"> • Protection of Children and Youth • Protection of Vulnerable Adults • Safe Ministries • Impairment [i.e. substance abuse] of leaders • Sexual harassment and exploitation • Anti-racism • Conflict of interest and disclosure • Deportation certification • Whistleblowing • Copyright • Business Methods 	Vestry Resource Guide The Blue Book (2021) Manual of Business Methods in Church Affairs
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National Baptist Convention USA (NBCUSA)

Public/online legal resources for pastors and congregations could not be located.

Southern Baptist Convention (SBC)

A number of regional SBC-affiliated organizations distribute online resources for clergy and congregations, but our team was unable to locate detailed legal resources/manuals online. When contacted, an SBC representative directed our team to the Ethics and Religious Liberty Commission of the Southern Baptist Convention (ERLC), ERLC, [“Protecting Your Ministry from Sexual Orientation Gender Identity Lawsuits”](#); [“White](#)

noting the unique autonomy of Baptist churches (each congregation is independent and primarily under the authority of a state body). Denominational state bodies provide legal resources when necessary, although practices vary widely from convention to convention.

[Paper: Facilitating Abuse Disclosures by Nonprofits,”](#)
[resources by topic.](#)

Demand for these resources, according to our respondents, tends to be reactive rather than proactive. As one Lutheran participant explained:

My observation is that our ordained ministers—pastors and deacons—typically express little attention to and willingness to be educated in legal, financial and risk management matters until they experience a problem. To the best of my (not current) knowledge, our [denomination’s] seven seminaries offer opportunities for seminarians to learn about legal concerns, but the opportunities are mostly co-curricular and very limited in scope. The Lutheran church has historically expected that ordained ministers will learn about congregational administration, including legal matters, during their internship experience in a congregation. That has, unfortunately, often not been the educational outcome.

A Presbyterian respondent similarly reported that his denomination provided general resources to congregations rather than direct legal support, explaining that “[t]here is a demand for legal resources on various topics at various times. If we get multiple requests on a topic, we try to publish information to respond to the common requests.”

Central denominational offices do not typically offer direct legal advice, at least in part, because they oversee congregations, synods, diocese, and/or congregations in multiple states, each of which has unique laws governing religious organizations. For example, a respondent for the Southern Baptist Convention explained:

To the extent that there are resources available to churches about the questions [that the research team asked], they exist on the state level and the availability and quality of those resources will vary from state to state. For instance, some states provide a pathway for churches to obtain nonprofit status through a group exemption, others provide resources for how to obtain such an exemption. Some states have model bylaws, model constitutions, and so forth.

Our online research bore this out, as there was a very limited number of central resources available for Baptist leaders and congregations. The same respondent further emphasized that different states have different laws—a phenomenon that makes it difficult for denominational bodies to provide direct legal support for geographically diverse congregations, despite the need for such support:

Speaking as a lawyer, I think there is some demand, yes, although I have fielded very few such questions during my time at [my congregation]. I imagine that most of these questions are raised at

the local or state level. However, there is certainly a need for high-quality, trusted resources in this area. Many churches use boilerplate bylaws that do not match their actual processes and intentions.

A Presbyterian Church (USA) respondent echoed this observation, explaining:

Pastors and congregations are not clients of the [Presbyterian Church's] Legal Services Office, so we cannot provide them with legal advice. Rather we can offer them guidance and share resources with them, such as what you see in the A Corporation resources page [on the denomination's website]. When we offer guidance, we always encourage pastors and congregations to consult with their local attorneys for legal advice pertinent in their state and locality. We do not have the staff to stay current on the laws of all of the states or cities/counties, etc.

Further research would be required to determine if and how state and local denominational entities provide legal training or support for congregations that fall under their leadership and governance. Our preliminary findings suggest, however, that national-level denominational bodies defer to state and local church leaders and/or attorneys to address their churches' legal problems and general education.

In general, the resources listed above provide valuable information targeted to leaders in specific denominations, even if the information they provide is general and broad in nature. Further research would be needed, however, to determine how many people use these resources, and to better understand the circumstances in which leaders typically access them.

Publishers

The following religious publishers were contacted during this Study. Responses from publishers were minimal, quantitatively and qualitatively. The few publishers who did respond were unaware of any legal resources published by their companies, or otherwise provided almost no relevant information.

- United Methodist Publishing House
- Cokesbury
- Abingdon Press
- Pilgrim Press
- Presbyterian Publishing Corporation
- Westminster John Knox
- Augsburg Fortress
- NBCUSA Sunday School Publishing Board
- Church Publishing Incorporated
- Chalice Press
- AMEC Sunday School Union
- Lifeway

Other Law and Ministry Resources for Church Leaders

In addition to contacting denominational sources, our team conducted extensive online searches for resources that are available to clergy and other church leaders. We imagined ourselves in the role of church leaders and used methods that real church leaders might use to find resources for learning about or addressing legal matters. For example, we searched denominational websites and publications; mainstream search engines like Google; retail websites like Amazon.com; and popular online learning platforms like Coursera, Udemy, and LinkedIn Learning. We also accessed Emory University's libraries and scholarly databases to search for popular and/or academic texts dealing with themes related to law and ministry. Through these efforts, we located a range of resources: books; online denominational resources; law firms that serve Christian congregations and/or specialize in church-related law; and online courses that address legal issues facing churches.

Organizational Profile: Church Law and Tax (Christianity Today)

[Church Law and Tax \(CL&T\)](#) specializes in providing educational and other resources to clergy and Christian (especially Protestant) churches in the United States. Affiliated with *Christianity Today*, CL&T is led by Richard R. Hammar, along with a team of specialized CPAs, attorneys, and pastors. It is the leading provider of resources related to law and ministry in the United States, offering a wide range of materials in print and online multimedia formats. Some of these resources are freely available online, while others are available through paid memberships/subscriptions or direct purchase through CL&T's online store.

CL&T publishes the most comprehensive resource on law and ministry that is presently available, namely, Richard R. 's [*Pastor, Church & Law* \(5th ed.\)](#). This tome has more than 1,200 pages and addresses dozens of topics under the following broad headings:

- The Pastor-Church Relationship
- Authority, Rights, and Privileges
- Liabilities, Limitations, and Restrictions
- Organization and Administration
- Church Property
- Employment Law
- Compensation and Benefits
- Employment Discrimination
- Termination
- Miscellaneous Issues
- Government Regulation of Churches
- Church Legal Liability
- Church and State [Constitutional law]

Pastor, Church & Law is notable for including not only broad overviews of the legal principles and norms that govern religious organizations, clergy, and taxes; but, also, for its descriptions of specific cases and legal questions that may arise in a congregational context. As such, it is a valuable resource for church leaders seeking to acquire in-depth information about how churches are structured and regulated under state and federal law.

In addition to *Pastor, Church & Law*, the CL&T Store offers a wide range of guidebooks and “bundles” of educational materials that address law-related topics, and several are updated annually. These resources are written as practical, informational guides for clergy and other church

leaders to use in the context of their ministries. These materials thus address perennial issues such as clergy taxes, sexual misconduct and abuse, and fraud, along with other timely issues such as Paycheck Protection Plan (PPP) loans during the coronavirus pandemic. CL&T also produces and distributes other multimedia resources, including [articles and blog posts](#), [webinars](#), [training videos](#), recent news and [legal developments](#), and a podcast (*Church Law*), that can be accessed via paid subscriptions/memberships, or, in some cases, viewed or downloaded for free.

CL&T is consistently one of the top results in online searches for topics and questions related to law and ministry; CL&T titles are even among the top search results on retail websites like Amazon.com. Importantly, CL&T publications and multimedia resources are intended to help churches prevent legal problems and abuses, on the one hand, and, on the other hand, to help churches navigate actual, existing legal problems. Relatedly, the various formats in which these resources are produced and distributed is aptly geared to church leaders.

Like denominational manuals and legal offices, CL&T resources are not intended to be formal legal advice. In addition, it is not clear if, or to what extent, CL&T resources are incorporated into seminary curricula as these materials appear to be for *current* church leaders.

Books on Law and Ministry

Our market research also identified numerous popular and academic books dealing with law and ministry. Based on these findings, a (non-exhaustive) selection of seventy-three titles related to various aspects of law and ministry can be found in **Appendix 10: Selected Bibliography of Books on Law and Ministry**. While useful, they are not intended to be used as training resources for future pastors tasked with leading churches as nonprofit religious organizations. In short, the list has been curated to emphasize practical, contemporary, and widely accessible guides for Christian leaders.

Conclusion

Between 2010 and 2019, over 5,000 cases involving Protestant religious organizations made it to trial in state and federal courts around the country. That number represents only a fraction of the cases filed but were resolved before trial or matters resolved prior to a formal court filing. Regardless of church size, location, denomination, or socio-economic status, ministers face any number of issues in ministry that may have legal implications. Ministers are attentive to the fact that they must respond to these issues in ways that minimize legal, financial, and reputational risk.

At the same time, seminary does not prepare ministers for this reality. Participants who did have training in law or human resources (gained from experience outside of ministry) found that training useful for their work in churches. Most ministers our team spoke with appeared to have learned through experience on the job, and, regardless of whether they benefited from abundant legal resources at the denominational level or perceived themselves to be on their own, nearly everyone expressed that they would find some type of legal resource helpful.

Appendix 1: Tort Law Overview

Torts occur when an actor performs an action that causes harm to another. This section outlines just a few of the types of tort liability churches could experience. Tort law is defined by state law, so the elements for a particular tort may vary depending on jurisdiction. This information is intended to be illustrative. It should not be construed as legal advice.

Intentional Infliction of Emotional Distress

The Restatement (Second) of Torts § 46 explains that the intentional infliction of emotional distress occurs when someone “by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another.”¹⁹ If the conduct at issue is religiously prescribed, there must be a compelling state interest that outweighs the burden placed on the religious practice for instilling liability.²⁰ Whether an actor’s misconduct rises to the level of “extreme and outrageous,” may depend on facts such as the relationship between the parties and the context in which the conduct occurred.²¹ For example, this can include instances where pastors seduce a congregant while providing marriage counseling.²²

Defamation

Defamatory statements are defined by the Restatement (Second) of Torts § 559 as those that “harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associated or dealing with him.”²³ The four elements that must be met to sustain a defamation claim are “(a) a false and defamatory statement concerning another; (b) an unprivileged publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.”²⁴ The level of intent necessary to establish a successful defamation claim varies depending on whether the subject of statement is a public, a

¹⁹ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 282.

²⁰ *Guinn v. Church of Christ of Collinsville*, 775 P.2d 766, 774 (Okla. 1989). See *In Re Pleasant Glade Assembly of God*, 991 S.W.2d 85, 87 (Tex. App. Fort Worth 1998)

²¹ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 22:47.

²² For example, *Arlinghaus v. Gallenstein*, 115 S.W.3d 351, 352-53 (Ky. App. 2003); *Amato v. Greenquist*, 679 N.E.2d 448-50 (Ill. App. 1997); *Payne v. Osborne*, 1999 WL; *Erickson v. Christenson*, 781 P.2d 383, 384-86 (Or. App. 1989).

²³ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 559.

²⁴ *Id.*

private, or a limited-purpose public figure. When the statement is on a matter of ecclesiastical concern, First Amendment concerns also come into play in a different way.²⁵

Statements made according to internal religious services and disciplines can be constitutionally protected.²⁶ That protection can extend to churches while sometimes not extending to statements made by individual clergy.²⁷ It can also bar ministers from suing denomination officials for defamation, even where no specific church doctrine is invoked.²⁸ But, even though courts are reluctant to get involved in internal church affairs, there are limits, as when, for example, a pastor is falsely accused of misusing church funds.²⁹ And defamatory statements about individuals who are not church members can waive First Amendment protections.³⁰ Further, in some cases where the audience of the alleged defamatory statements made by church officials extends to non-members, claimants may be successful on claims such as false light or invasion of privacy, even if their defamation claim is barred by the First Amendment.”³¹

Fraud

Fraud is the deliberate deception of another.³² The Restatement (Second) of Torts § 526 defines fraudulent misrepresentation to be “if the maker (a) knows or believes that the matter is

²⁵ *McNair v. WorldWide Church of God*, 197 Cal. App. 3d 363 (2d Dist. 1987). Compare *St. Luke Evangelical Lutheran Church v. Smith*, 568 A.2d 35 (Md. 1990) (finding a pastor guilty of defamation because he acted with malice when making statements to his congregation about an alleged affair between another pastor and a church employee, leading to the employee’s subsequent dismissal from the church) with *Murphy v. Harty*, 393 P.2d 206 (Ore. 1964). See also, *Browning v. Gomez*, 332 S.W.2d 588 (Tex. 1960) (a pastor was barred from relief where a minister sent a letter to another making allegations regarding the alleged conduct of another minister was not found guilty of defamation because the allegations were not subjectively made with malice).

²⁶ *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F. Supp. 1194 (W.D. Ky. 1994), aff’d, 64 F.3d 664 (6th Cir. 1995); *Pfeil v. St. Matthews Evangelical Lutheran Church of Unaltered Augsburg Confession of Worthington*, 877 N.W.2d 528, 541-42 (Minn. 2016); *Mallette v. Church of God Int’l*, 789 So. 2d 120 (Miss App. 2001). See also *Hiles v. Episcopal Diocese*, 773 N.E.2d 929 (Mass. 2002) (barring a pastor from seeking relief for defamation from statements made during an internal disciplinary hearing regarding his extramarital affair with a member of his church).

²⁷ *The House of God Church v. White*, 792 So.2d 491, 494 (Fla. App. 2001) (allowing a woman to sue her pastor for defamation based on his calling her a “slut” before other pastors and church members, but not her church because that would involve the court in “excessive entanglement with church policies, doctrines, and beliefs).

²⁸ *Yaggie v. Indiana-Kentucky Synod*, 860 F. Supp. 1194 (W.D. Ky. 1994) (barring a pastor from suing denominational officials for allegedly defamatory statements of his character and revealing to the congregation his psychiatric treatment because the allegedly defamatory statements were made within the pastor’s current and future relationship with the church, thus being of “ecclesiastical concern,” even when no specific church doctrine was directly involved).

²⁹ *LeGrande v. Emmanuel*, 889 So.2d 991 (Fla. App. 2004).

³⁰ *Rapp v. Jews for Jesus, Inc.* 944 So. 2d 460, 464 (Fla. 4th DCA 2006).

³¹ *Seefried v. Hummel*, 2005 WL 1773873 (Colo. App. 2005).

³² BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 22:31.

not as he represents it to be, (b) does not have the confidence in the accuracy of his representation that he states or implies, or (c) knows that he does not have the basis for his representation that he states or implies.”³³ Churches can be held liable for fraud for soliciting monetary contributions in exchange for unfulfilled promises, provided that the promises do not require the court to evaluate “key religious questions,” barring recovery by the First Amendment.³⁴

Negligence

When churches encounter tort liability claims, it is most commonly a result of negligence. The Restatement (Second) of Torts § 282 defines negligence as “conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm.”³⁵ What negligence looks like and what is required to establish a claim based on negligence varies by state. However, the four most essential elements which typically show a cause of action for negligence include: 1) a preexisting duty of care; 2) an act or omission which breaches that duty; 3) causation of reasonably foreseeable harm as a result of that act; and 4) the harm caused results in actual damage or injury.³⁶ Universally, there is no requirement for intent when establishing a negligence claim.³⁷ Negligence is usually unintentional.³⁸

A church can be found liable for negligence where official policies or procedures are adopted that result in foreseeable harm or where there is failure to adopt official policies or practices that would have otherwise prevented foreseeable harm.³⁹ If a church does not have an affirmative duty of care to the victim of a negligent institutional act, or if the harm caused is not reasonably foreseeable, it will likely be difficult to find a church directly liable.⁴⁰

Negligent Hiring

The negligent selection of employees and volunteers creates an avenue for direct liability when a church fails to implement sufficient procedures or policies to ensure careful screening before hiring the employee or engaging the volunteer. Most often, negligent hiring claims result

³³ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 526.

³⁴ *Gulbbraa v. Corp. of the Pres. Of the Church of Jesus Christ of Latter-day Saints*, 159 P.3d 392 (Utah Ct. App. 2007). *See also Hancock v. True Living Church of Jesus Christ of Saints of Last Days*, 118 P.3d 297 (Utah Ct. App. 2005).

³⁵ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 282.

³⁶ BARRY A. LINDAHL, 1 MODERN TORT LAW: LIABILITY AND LITIGATION § 3:2 (2d ed.).

³⁷ *Id.*

³⁸ *Id.*

³⁹ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 302 (“A negligent act or omission may be one which involves an unreasonable risk of harm to another through . . . the foreseeable action of the other, a third person, an animal, or a force of nature.”).

⁴⁰ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 282.

from failure to investigate or act on potential red flags uncovered during the screening process, or from the employment of unqualified workers.⁴¹ Courts usually require that churches knew (or should have known), of the employee's traits or proclivities that create a risk of harm,⁴² and lack of adequate screening can also lead to liability.⁴³ Sexual misconduct and clergy malpractice are two of the most common employee behaviors that create a reasonably foreseeable risk of harm that a religious organization might be liable directly. Employees underqualified for specific positions within the church also raise direct liability concerns.⁴⁴ Developing clear employment criteria and implementing basic employee screening protocols that incorporate standard background checks and an adequate inquiry into the candidates' employment history can help in reducing direct liability for negligent hiring.⁴⁵

Negligent Supervision and Retention

Religious organizations can also be held directly liable for negligent supervision of employees where they fail to exercise reasonable supervision over church programs and activities. Negligent supervision claims are often established when the church knew (or had reason to know) that the employee conduct was creating a reasonable risk of harm and failed to exercise reasonable care in the supervision of that employee to mitigate such harm.⁴⁶ Although churches are not

⁴¹ See, for example, *J. v. Victory Baptist Church*, 372 S.E.2d 391 (Va. 1988) (finding that the tort of negligent hiring operates as exception to charitable immunity of religious institutions and that negligent hiring tort did not require proof that misconduct was within wrongdoer's scope of employment).

⁴² See *M.L. v. Magnuson*, 531 N.W.2d 831 (Minn. App. 1995); *Bouchard v. N.Y. Archdiocese*, 719 F.Supp.2d 255 (S.D.N.Y. 2010); *A. v. First Church of Christ*, 2000 WL 232599 (Pa. Super. 2000). See also *Moses v. Diocese of Colo.*, 863 P.2d 310 (Colo. 1993) (holding that a church could be liable based on the negligent hiring where a pastor engaged in a sexual relationship with a woman for whom he was providing marriage counseling, even when the church screened the priest for hire and put him through a psychological evaluation, and the diocese regulated his counseling procedures). See also *Winkler v. Rocky Mouton Conf.*, 923 P.2d 152 (Colo. App. 1995) (holding that a minister and a denominational agency could be liable for negligent hiring where a minister made unwanted sexual advances toward several women).

⁴³ *Broderick v. King's Way Church*, 808 P.2d 1211 (Alaska 1991) (holding that a church could be held liable for the alleged sexual abuse of a child committed by a volunteer in a church nursery since it did not exercise enough care in selecting the volunteer).

⁴⁴ Depending on the church-sponsored activity or program, specific abilities or training may be required—for example, clerical training, CPR certification, or a valid driver's license. See also *Piney Grove Baptist Church v. Goss*, 565 S.E.2d 569 (Ga. App. 2002) (holding that a church was liable based for negligent hiring when it failed to investigate the qualifications of a construction foreman and a member sustained injuries while participating in a construction project).

⁴⁵ Where a background check is conducted, and no red flags are raised; usually there is no basis for direct liability even where hiring the employee resulted in harm or injury. *Tichenor v. Roman Catholic Church*, 32 F.3d 953 (5th Cir. 1994); *Roman Catholic Bishop v. Superior Court*, 50 Cal. Rptr.2d 399 (Cal. App. 1996). Attentive hiring procedures can reduce the risk of direct liability. *Olinger v. Corp. of the Pres.*, 521 F.Supp.2d 577 (E.D. Ky. 2007).

⁴⁶ *Hutchinson v. Luddy*, 1999 WL 1062862 (Pa. 1999) (finding that the church had reason to know); *Fortin v. Roman Catholic Bishop of Portland*, 871 A.2d 1208 (Me. 2005) (finding that the church had actual knowledge); *Doe v. Redeemer Lutheran Church*, 531 N.W.2d 897 (Minn. App. 1995) (finding the church had actual knowledge); *Kenneth*

guarantors of safety,⁴⁷ they do have an affirmative duty of care to those that participate in its programs and activities, and failure to exercise reasonable supervision of its employees can constitute a breach of that duty.⁴⁸ Negligent supervision does not necessarily have to involve sexual conduct.⁴⁹ Negligent supervision is also not limited to child victims but can also apply to misconduct towards adults.⁵⁰

In negligent retention cases, religious organizations usually already have information or knowledge indicating that employee behavior creates a reasonable risk of harm.⁵¹ A religious organization can be held directly liable for negligent retention when the organization fails to act on this information by terminating the employee.⁵²

Vicarious Liability

Churches can also be held responsible for tortious acts committed by individual agents of the organization through the doctrine of *respondeat superior*, a variation of *vicarious* liability

R. v. Roman Catholic Diocese, 654 N.Y.S.2d 791 (N.Y.A.D. 1997) (finding the church had actual knowledge); *Doe v. Liberatore*, 478 F.Supp.2d 742 (M.D. Pa. 2007) (finding that the church had reason to know).

⁴⁷ *Wallace v. Boys Club of Albany, Ga., Inc.*, 439 S.E.2d 746 (Ga. App. 1993).

⁴⁸ *Fortin v. Roman Catholic Bishop of Portland*, 871 A.2d 1208 (Me. 2005) (stating the special relationship between the church and its members establish a duty of care). See also *Doe v. Liberatore*, 478 F.Supp.2d 742 (M.D. Pa. 2007) (finding there was sufficient evidence to hold a church liable based on negligent supervision for a priest's acts of child molestation because it had "adequate warning" that the priest was "grooming" the victim for a sexual relationship when the priest was taking the boy on several overnight trips and providing him with gifts and the two were sleeping together in the bedroom in the church rectory); *Bear Valley Church of Christ v. DeBose*, 928 P.2d 1315 (Colo. 1996) (finding based on negligent supervision for a pastor who molested young boys when the boys' parents entrusted them to provide individual trauma counseling for them).

⁴⁹ *Bell v. USAA Casualty Insurance Co.*, 707 So.2d 102 (La. App. 1998) (holding a church liable based on negligent supervision for injuries sustained by a high school youth group member hit by a car while crossing the street during a field trip with other group members and four adult chaperones); *Daniels v. New St. Paul Tabernacle Church*, 2003 WL 1984453 (Mich. App. 2003) (holding a church liable for negligent supervision when a small boy sustained injuries after slipping and falling off a piece of exercise equipment on the church's property); *Rivera v. Phila. Theological Seminary*, 580 A.2d 1341 (Pa. Super. 1990) (holding a seminary liable for negligent supervision when a 12-year-old altar boy drowned at a seminary-owned pool since there was no qualified lifeguard on duty).

⁵⁰ See, for example, *Vione v. Tewell*, 820 N.Y.S.2d 682 (N.Y. Sup. 2006) (holding a church liable for negligent supervision where a pastor had an affair a woman for whom he was providing marriage counseling and another church officer informed the church of the affair and the church permitted the counseling to continue and urged the husband not to pursue legal action); *Smith v. Privette*, 495 S.E.2d 395 (N.C. App. 1998) (holding that female church employees could sue their church and denominational agencies based on negligent supervision for a pastor's sexual harassment). See also *Wheeler v. Catholic Archdiocese of Seattle*, 829 P.2d 196 (Wash. App. 1992).

⁵¹ See, for example, *Mills v. Deehr*, 2004 WL 1047720 (Ohio App. 2004) (where organizational knowledge that a priest frequently had victims in his room late into the night was sufficient to establish a claim for negligent retention); *Hutchinson v. Luddy*, 1999 WL 1062862 (Pa. 1999) (where knowledge of prior conduct that caused harm was sufficient to establish a claim for negligent retention).

⁵² See note 51 *supra*.

under which employers are held responsible for the actions of their employees.⁵³ While churches usually can minimize the risk of direct liability by implementing policies and procedures limiting reasonably foreseeable harm and acting on knowledge of misconduct that creates a risk of reasonably foreseeable harm, these precautions may not protect it against vicarious liability for certain employee misconduct.⁵⁴

Generally, to find an employer vicariously liable for the tortious acts of their employee: 1) an employer-employee relationship must exist at the time of the injury; 2) the employee's negligence causes the injury; and 3) the employee was acting within the scope of their employment.⁵⁵ Scope of employment includes conduct and behavior that furthers the mission or supports the church's operation, regardless of whether they are secular or religiously motivated.⁵⁶ The level of discretion and control an individual employee has over their own actions can implicate the extent to which the doctrine of *respondeat superior* applies.⁵⁷ Similarly, a court held that churches could only be responsible for a pastor's defamatory comments if they're made in the course of employment *and* furtherance of the mission and functions of the church.⁵⁸ Denominational entities, too, can be found vicariously liable for the actions of a particular church and its employees, depending on the level of direct supervision a denominational entity has over a local church.⁵⁹

⁵³ *Perez v. Van Groningen & Sons, Inc.*, 227 Cal.Rptr. 106 (Cal. 1986); *Doe v. Samaritan Counseling Center*, 791 P.2d 344 (Alaska 1990) (holding pastoral counseling center liable for several emotional injuries experienced by a woman seduced by a priest who was providing her with counseling).

⁵⁴ *See, for example, Vind v. Asamblea Apostolica De La Feen Christo Jesus*, 307 P.2d 85 (Cal. 1957) (finding a church liable for the reckless driving of its pastor because the negligent act was committed during his employment).

⁵⁵ LINDAHL, MODERN TORT LAW, *supra* note 36, at § 7:3; *see also Drexel v. Union Prescription Ctrs, Inc.*, 582 F.2d 781 (3d Cir. 1978).

⁵⁶ Depending on the circumstances, acts committed for the purpose of carrying out personal business, acts committed outside of normal business hours, or acts committed outside of authorized work areas are not considered within the scope of employment. Due to the nature of the church activity or program, the church may consider such acts within the scope of employment. For example, the church may be vicariously liable for tortious acts committed by employees on church sponsored mission trips even if the act was not committed at the church itself, or within usual hours of work. This can consist of sexual misconduct, so long as the conduct is a "direct outgrowth" of actions within the scope of his employment. *Fearing v. Bucher*, 977 P.2d 1163 (Ore. 1999). *See also Does 1-9 v. Compcare, Inc.*, 763 P.2d 1237 (Wash. App. 1988) (a diocese can be liable for alleged sexual molestation of minors by a priest since they knew about his pedophilia, yet still did not revoke his status as a Catholic priest).

⁵⁷ *See, for example, Brillhart v. Scheier*, 758 P.2d 219 (Kan. 1988) (finding a church not liable for the negligent driving of one of its priests because he was sufficiently independent of the church throughout his day-to-day responsibilities, making him "self-employed" rather than an employee of the church).

⁵⁸ *Cooper v. Grace Baptiste Church*, 612 N.E.2d 357 (Ohio App. 1992).

⁵⁹ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 17:18.

Premises Liability

Any landowner, including religious organizations, may incur premises liability regardless of their religious status.⁶⁰ Under the common law, the duty of care a landowner owes to someone on their land is determined by the status of a person entering the land—trespasser, licensee, and invitee—each accompanied by increasing levels of care owed to the individual who enters the premises with that status.

- A **trespasser** is not invited onto the premises but goes there anyway. A landowner has a minimal duty to eliminate any openly hazardous conditions on the property and has no obligation to warn the trespasser of hidden dangers on the property. Trespassing children, however, are owed a higher standard of care.⁶¹
- A **licensee** enters the property to benefit himself but provides no benefit to the property owner. A landowner has a limited duty to warn the licensee of any hidden dangerous conditions on the premises that the possessor either knows or reasonably should know.⁶²
- An **invitee** is invited onto the property for commercial benefits, and the landowner and the person entering the property benefit from this invitation. A landowner assumes a full duty to ensure the invitee’s safety on his premises in these situations.⁶³ Similar to commercial employers who owe a heightened standard of care to their employees because their employees are on the premise to further the employer’s commercial benefit, individuals who volunteer their time to assist the church to further the goals of the church, rather than for individual spiritual reasons, are also invitees.⁶⁴

⁶⁰ *Id.* at § 22:47.

⁶¹ RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 282. *See, for example, Blackburn v. Broad Street Church*, 702 A.2d 1331 (N.J. Super. 1998) (finding a church did not exercise reasonable care in eliminating the accumulation of water on the property after a heavy rain and should have known it created an unreasonable risk of serious harm to children that were known to play on the property, thereby was liable for the injuries of a child’s mother who darted after her child as she ran onto church property).

⁶² For example, a volunteer at a Vacation Bible School class at a church is considered a licensee because he was on the premises for spiritual, religious, or social reasons, not for commercial or material purposes. *See Kosmalski ex rel. Kosmalski v. St. John’s Lutheran Church*, 680 N.W.2d 50 (Mich. App. 2004).

⁶³ *See, for example, Sullivan v. First Presbyterian Church*, 152 N.W.2d 628 (Iowa 1967) (finding that the president of a church’s state organization was an invitee when she fell a darkened church stairway because she had been invited to preside over a women’s meeting).

⁶⁴ *See Atwood v. Board of Trustees*, 98 A.2d 348 (N.J. 1953) (a volunteer Sunday school teacher “entered the premises as a matter of duty to the [church], and for furtherance of the important interest”); *see also Haugen v. Central Lutheran Church*, 361 P.2d 637 (Wash. 1961) (church member injured while volunteering in the construction of the church is an invitee because he was on the premises as an economic benefit to the church); *See also Clark v. Moore Memorial United Methodist Church*, 538 So.2d 760 (Miss. 1989) (member attending Sunday School was an invitee, rather than a licensee, stating the members who participate in religious services and functions are generally invitees, for “religious

About half of the states do not recognize the distinction between an invitee and a licensee, obligating property owners to have a duty to provide reasonable care to anyone who enters their property by permission. In jurisdictions that retain the licensee/invitee distinction, courts may construe visitors to the church as licensees, thus entitling them to a lower standard of care.⁶⁵

Fiduciary Duties

A fiduciary duty is “an affirmative duty that arises out of a special relationship in which one person has custody or control over another, whereby the latter entrusts his or her care and protection to the former.”⁶⁶ It may extend to the employer of those in the special relationship via the doctrine of *respondeat superior*.

Courts have held that “there is no inherent fiduciary duty that arises from being a leader in a religious organization.”⁶⁷ Relationships between priests and congregants have been characterized as having “a unique degree of trust and confidence, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.”⁶⁸ Thus, courts have held that a breach of that trust and confidence is a breach of fiduciary duty.⁶⁹

bodies do expressly and impliedly invite members to come and attend their services and functions . . . while they do not charge admission fees . . . churches do depend on contributions . . . so that they may continue to be open to the public”); *Accord Heath v. First Baptist Church*, 341 So.2d 265 (Fla. App. 1977), *cert denied*, 348 So.2d 946 (Fla. 1977).

⁶⁵ *Hambright v. First Baptist Church-Eastwood*, 638 So.2d 865 (Ala. 1994); *Kosmalski ex rel. Kosmalski v. St. John’s Lutheran Church*, 261 Mich. App. 56 (2004)

⁶⁶ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 18:30.

⁶⁷ *Id.*

⁶⁸ *Doe v. Horwich Roman Catholic Diocesan Corporation*, 309 F.Supp.2d 247 (D. Conn. 2004).

⁶⁹ *Id.* See, for example, *Doe v. Liberatore*, 478 F.Supp.2d 742 (M.D. Pa. 2007).

Appendix 2: Employment Law Overview

This section outlines just a few of the types of employment law issues churches could experience. Employment law is regulated at the federal, state, and local levels, so it is important to remember that issues and their application to any given situation vary depending on jurisdiction. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Hiring

Subject to some important exceptions, churches and religious organizations are generally subject to the same rules and regulations regarding employee hiring practices. Ministries may also bear legal liability if they fail to take adequate care to comply with these legal obligations and standards of conduct. Generally, churches must adhere to the same federal hiring practices that all U.S. employers are subjected to. For example, churches—like all employers—are subject to new hire reporting and employment eligibility verification requirements.⁷⁰ Within new hire reports, churches are required to disclose the name address, and social security number of the employee, as well as the name, address, and federal employer identification number of the employer.⁷¹

Firing

Religious organizations can employ workers indefinitely, or for a set term.⁷² Indefinitely employed workers are understood as “at will” workers, meaning both the employer and the employee can terminate employment at any time, without cause.⁷³ As detailed further below, although an employer need not provide a reason for the termination of an at will employee, they are still prohibited in many cases from terminating an employee on the basis of a protected class.⁷⁴ Employees hired for a definite term cannot be dismissed without cause.⁷⁵ As discussed more

⁷⁰ Every newly hired employee must be reported to the relevant state Department of Labor. In addition, the employment eligibility and immigration status of each new hire must be reported as well. Such requirements are not unique to religious organizations and are practiced by all employers in the United States. 42 U.S.C. §653(a) (1996).

⁷¹ *Id.*

⁷² W. HOLLOWAY AND M. LEECH, EMPLOYMENT TERMINATION 43 (2nd ed. 1993).

⁷³ *Id.*

⁷⁴ *Id.*; 42 U.S.C. § 2000e-2. Unacceptable reasons for the termination of at will employees vary by state. Some of the most common include traditional anti-discrimination statute protected classes, including religious, race, sex, disability, and age. Some courts have also found that termination of at will employees can be improper where the termination violates public policy. Note, *Protecting At Will Employees Against Wrongful Discharge: The Duty to Terminate Only in Good Faith*, 93 HARV. L. REV. 1816 (1980).

⁷⁵ Normally, good cause includes basic employment contract violations, as well as misconduct, negligence, and exceptionally poor performance. Churches are unique in that doctrinal and moral deviation from church standards can be sufficient good cause.

below, courts are generally unwilling to interfere with the termination of ministers under the ministerial exception, regardless of the nature of the employment contract.

Compensation

The Fair Labor Standards Act requires that certain employers adhere to basic wage standards to protect the employee.⁷⁶ FLSA applies to entities that are engaged in commerce (or in producing goods for commerce) that make over \$500,000 a year in sales, that run hospitals or other institutions providing residential care to certain populations, or that operate public or private schools (preschool, secondary, or higher education), regardless of whether the school operates for profit.⁷⁷ FLSA applies only to employees (not volunteers), and certain types of employees, namely ministers, may be exempt from FLSA's wage and hour requirements.⁷⁸ Religious organizations are subject to FLSA's prohibition of child labor.⁷⁹

All states have some form of workers compensation laws. Employers must buy in to workers compensation systems through workers compensation insurance coverage.⁸⁰ Religious organizations may be required to maintain workers compensation coverage for each of their employees, unless they are specifically exempted by state statute, and courts have been unwilling to apply religious exceptions to such laws or to employer payments into the social security system unless specified by the legislature.⁸¹

Anti-Discrimination Laws

A number of federal anti-discrimination statutes apply to religious organizations, depending on their size. Some have specific carve outs exempting religious organizations in some instances; others do not. Here is a non-exhaustive list of federal anti-discrimination laws:

- **Title VII of the Civil Rights Act** prohibits employers with 15 or more employees from firing (or taking any other adverse employment action toward) an individual

⁷⁶ See, for example, U.S. Department of Labor, Wage and Hour Division, "Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act (FLSA), Aug. 2015, <https://www.dol.gov/agencies/whd/fact-sheets/14a-flsa-non-profits>.

⁷⁷ 29 U.S.C.A. § 603(s). See also, for example, *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985).

⁷⁸ See, for example, U.S. Department of Labor, Wage and Hour Division, Opinion Letter FLSA2021-2 Letter, Jan. 8, 2021, https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2021_01_08_02_FLSA.pdf.

⁷⁹ 29 U.S.C.A. § 212(c).

⁸⁰ TRACY BATEMAN FARRELL, GEORGE BLUM, GLENDA K. HARNAD, SONJA LARSEN, LUCAS MARTIN, JEFFREY J. SHAMPO, AND ERIC C. SURETTE, 82 AM. JUR. 2D WORKERS' COMPENSATION § 8.

⁸¹ See, for example, *United States v. Lee*, 455 U.S. 252 (1982) (holding that employer tax payments into social security system must be "uniformly applicable to all, except as Congress provides explicitly otherwise."); *Victory Baptist Temple v. Industrial Commission*, 442 N.E.2d 819 (Ohio App. 1982), cert. denied 459 U.S. 1086 (1982); *South Ridge Baptist Church v. Industrial Commission*, 676 F. Supp. 799 (S.D. Ohio 1987).

on the basis of race, color, religion, sex, and national origin.⁸² Title VII exempts “religious corporation[s], association[s], educational institution[s], or societ[ies]” from the prohibition on making employment decisions on the basis of religion where the work is “connected with the carrying on by [the religious] corporation, association, educational institution, or society of its activities.”⁸³ Title VII also contains an exemption for religious organizations where religion is a bona fide occupational qualification (BFOQ).⁸⁴ In other words, a religious organization may make hiring and firing decisions on the basis of religion if religion is “reasonably necessary to the normal operation of the particular business or enterprise.”⁸⁵

- **The Americans with Disabilities Act (ADA)** explicitly states that religious organizations may consider religion when making employment decisions.⁸⁶ Like Title VII, the ADA also only applies to employers with 15 or more employees.⁸⁷
- **The Age Discrimination in Employment Act (ADEA)**, which prohibits hiring discrimination against employees over 40 years of age, does not have any specific exemption within its text for religious organizations, although courts are divided on whether the ADEA applies to religious organizations in all instances.⁸⁸ Further, the ADEA applies only to employers with 20 or more employees.⁸⁹
- **The Pregnancy Discrimination Act (PDA)** prohibits employment discrimination against a woman on the basis of pregnancy,⁹⁰ however some religious organizations

⁸² 42 U.S.C. § 2000e-2(a). *See also* 42 U.S.C. § 2000e-1 (defining “employer” for the purposes of the statute).

⁸³ 42 U.S.C. § 2000e-1. *See also Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) (explaining that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination by removing “artificial, arbitrary, and unnecessary barriers to employment ... [that] operate invidiously to discriminate on the basis of racial or other impermissible classifications.”).

⁸⁴ 42 U.S.C. § 2000e-2(e)(1); *Pime v. Loyola Univ. Chicago*, 803 F.2d 351, 353 (7th Cir. 1986).

⁸⁵ 42 U.S.C. § 2000e-2(e)(1). *See also Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327 (1987) (finding that 42 U.S.C. § 2000e-1’s exemption of religious corporations from Title VII does not violate the First Amendment’s Establishment Clause).

⁸⁶ Americans with Disabilities Act of 1990, 42 U.S.C. § 12113 (1990).

⁸⁷ 42 U.S.C. § 12111(5)(A).

⁸⁸ Michael G. Walsh, “Application of Age Discrimination in Employment Act (29 U.S.C.A. §§ 621 et seq) to Religious Institutions,” 136 A.L.R. Fed. 487 (1997).

⁸⁹ Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 630 (1967).

⁹⁰ 42 U.S.C.A. §§ 2000e(k) (1978). However, some religious organizations have successfully terminated pregnant employees without PDA liability due to well established policies against extra-marital sex, where pregnancy of the employee indicated the policy had been violated. *Boyd v. Harding Academy of Memphis, Inc.*, 88 F.3d 410 (6th Cir. 1996).

have successfully terminated pregnant employees without PDA liability due to well established policies against extra-marital sex, where pregnancy of the employee indicated the policy had been violated.⁹¹

In *Bostock v. Clayton County*, the U.S. Supreme Court noted that the Religious Freedom Restoration Act (RFRA), discussed in **Appendix 4**, “operates as a kind of superstatute, displacing the normal operation of other federal laws,” and therefore might provide additional exemptions.⁹² Many states also have anti-discrimination laws that prohibit discriminatory employment practices and that may apply to religious organizations.⁹³ The scope of these laws varies by state, and many state courts have similarly recognized a ministerial exception that shield religious organizations from liability in some instances.⁹⁴

The Ministerial Exception

While religious organizations may not be exempt by statute from anti-discrimination and other employment-related federal laws, state and lower federal courts came to recognize a ministerial exception that bars “ministers” from bringing many types of suits against their employers, and this exception was acknowledged by the U.S. Supreme Court in 2012.⁹⁵ In *Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, a unanimous Court justified the ministerial exemption by explaining that:

By imposing an unwanted minister, the state infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments. According the state the power to determine which individuals will minister to the faithful also violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions.⁹⁶

⁹¹ *Boyd v. Harding Academy of Memphis, Inc.*, 88 F.3d 410 (6th Cir. 1996).

⁹² *See Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1754 (2020).

⁹³ *See, for example, Gabriel v. Immanuel Evangelical Lutheran Church*, 640 N.E.2d 681 (Ill. App. 4 Dist. 1994); *Montrose Christian School v. Walsh*, 770 A.2d 111 (Md. 2001); *Porth v. Roman Catholic Diocese*, 532 N.W.2d 195 (Mich. App. 1995); *Assemany v. Archdiocese of Detroit*, 434 N.W.2d 233 (Mich. App. 1988); *Geraci v. ECKANAR*, 526 N.W.2d 391 (Minn. App. 1995); *Sabatino v. Saint Aloysius Parish*, 672 A.2d 217 (N.J. Super. 1996); *Scheiber v. St. John's University*, 600 N.Y.S.2d 734 (A.D. 2 Dept. 1993); *Speer v. Presbyterian Children's Home and Service Agency*, 847 S.W.2d 227 (Tex. 1993); *Jocz v. Labor and Industry Review Commission*, 538 N.W.2d 588 (Wis. App. 1995).

⁹⁴ *Madsen v. Ervin*, 481 N.E.2d 1160 (Mass. App. 1985); *Temple Emanuel of Newton v. Mass. Comm. Against Discrimination*, 463 Mass. 472 (2012); *Egan v. Hamline United Methodist Church*, 2004 WL 771461 (Minn. App. 2004); *Dignity Twin Cities v. Newman Center and Chapel*, 472 N.W.2d 355 (Minn. App. 1991); *Logan v. Salvation Army*, 809 N.Y.S.2d 846 (Sup. Ct. 2005).

⁹⁵ *See, for example, Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.*, 565 U.S. 171 (2012).

⁹⁶ 565 U.S. at 188–89.

However, the ministerial exception does not apply to all church employees. There is a great deal of discussion among scholars and in the case law around the question of who qualifies as a minister for the purposes of the ministerial exception, a determination that is intensely fact-specific.⁹⁷

⁹⁷ Compare *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S.Ct. 2049 (2020) (reversing Ninth Circuit decision and holding that two teachers at a Catholic school were ministers for the purposes of the ministerial exception) with *Gordon College v. DeWeese-Boyd*, 124 S.Ct. 952 (2022), *cert denied* (declining to hear a case involving a social work professor at an Evangelical Christian college where the Massachusetts Supreme Judicial Court determined she was not a minister for the purposes of the ministerial exemption).

Appendix 3: Tax Law Overview

This section outlines just a few of the types of tax law issues churches could experience. Tax law is regulated at the federal, state, and local levels, so it is important to remember that issues and their application to any given situation vary depending on jurisdiction. Readers may notice some connections between this section and **Appendix 6: Organizational Finance Law Overview**. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Federal Taxes

Churches, like other nonprofit organizations, are exempt from paying federal income tax so long as certain conditions are met.⁹⁸ There are certain restrictions in place that limit the circumstances in which the IRS may open an investigation into a church's tax situation.⁹⁹ There are additional non-statutory requirements for tax exemption status, chiefly compliance with public policy.¹⁰⁰ And, in order for the property of a religious organization to be tax exempt, it must meet ownership and use requirements.¹⁰¹

Although qualifying churches under I.R.C. 501(c)(3) are “automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS,” churches still apply to the IRS for tax exempt recognition because “this recognition assures church leaders, members and contributors that the church is recognized as exempt and qualifies for related tax benefits.”¹⁰² Churches can be covered under a “group ruling” through a central or parent organization.¹⁰³

⁹⁸ These conditions include that no private shareholder or individual receives any of the organization's net earnings and the organization does not participate in political campaigns on behalf of a candidate for public office and stay within certain limits when it comes to lobbying on a particular political issue. I.R.C. § 501(3). *See also* Internal Revenue Service, “Charities, Churches and Politics,” <https://www.irs.gov/newsroom/charities-churches-and-politics>; *Church of Spiritual Tech. v. United States*, 26 Cl. Ct. 713 (1992) (holding that a church was not entitled to a tax exemption as a religious organization because its primary purpose was to serve the financial goals of other non-exempt entities).

⁹⁹ I.R.C. § 7611.

¹⁰⁰ *Bob Jones University v. United States*, 103 S.Ct. 574, 574 (2017). Certain church behaviors may jeopardize compliance with public policy, such as criminal or racially discriminatory activity. *Synanon Church v. United States*, 579 F.Supp 967, 967 (D.C. 1984). Although groups have argued other church practices violate public policy, churches need not be concerned about these claims from a legal standpoint.

¹⁰¹ *Herrick v. Marlboro*, 789 A.2d 915, 915 (Vt. 2001). *See also In re Westboro Baptist Church*, 189 P.3d 535, 554 (Kan. App. 2008) (holding that a church truck used to transport signs to various religious and political events did not qualify for a tax exemption because the truck was not used for only religious activities when the church truck transported the signs to political conventions).

¹⁰² Internal Revenue Service, Pub. 1828: “Tax Guide for Churches & Religious Organizations,” at 2, <https://www.irs.gov/pub/irs-pdf/p1828.pdf>.

¹⁰³ *Id.*

In tax law, a distinction is made between churches and religious organizations, and not all religious organizations are tax exempt.¹⁰⁴ Unlike churches, religious organizations generally must apply to the IRS for tax-exempt status.¹⁰⁵ Moreover, even if a religious organization is generally entitled to an exemption, this does not necessarily mean all of its activities will qualify for the exemption.¹⁰⁶ For example, a religious organization acting as an elderly home or retirement center may not be entitled to a tax exemption if its activities are not considered to be sufficiently charitable.¹⁰⁷ There are several tests a religious organization must pass to be tax exempt, and the foundations for this are laid when the organization establishes itself as a 501(c)(3) entity.¹⁰⁸ Courts will look to the articles of incorporation, and the adherence to those articles since inception, to determine whether religious organizations pass the required tests to be considered tax exempt.

State Taxes

State income tax benefits vary. Some states, such as Kentucky and Ohio, derive exemption status qualification from federal exemption.¹⁰⁹ By contrast, other states, such as California, require direct application to state revenue agencies for exemption determination.¹¹⁰ Most states allow some sort of tax exemption from sales and use tax, although the scope of the exemption varies.¹¹¹

¹⁰⁴ See, for example, *Church of the Visible Intelligence that Governs the Universe v. United States*, 4 Cl. Ct. 55, 65 (1983) (holding that a religious organization did not qualify as a church for purposes of the Internal Revenue Code because it did not establish that it possessed a body of believers who frequently assembled for worship).

¹⁰⁵ See Internal Revenue Service, Pub. 1828, *supra* note 102, at 3.

¹⁰⁶ See *Parker v. Commissioner*, 365 F.2d 792 (8th Cir. 1966) (holding that the petitioner's organization was not entitled to the religious organization tax exemption because the religious organization's activities had a substantial non-religious purpose).

¹⁰⁷ See *In re Evangelical Lutheran Good Samaritan Society*, 804 P.2d 299 (Idaho, 1990) (holding that a religious organization was not sufficiently "charitable" to be entitled to a tax exemption for its retirement home because it provided the same or comparable rates as housing in private or commercial retirement centers).

¹⁰⁸ The organizational test requires that the organizational purpose of the religious organization must be "religious."

¹⁰⁹ See *Commonwealth v. Interstate Gas Supply, Inc.*, 554 S.W.3d 831, 832 (Ky, 2018) (explaining the state's tax exemptions); *Way Int'l v. Limbach*, 552 N.E.2d 908, 908 (Ohio, 1990) (holding a because the association was a church, it was exempt from paying sales taxes).

¹¹⁰ California requires churches to apply to the Franchise Tax Board (FTB) for exemption from state franchise and income taxes. See, for example, *Jimmy Swaggart Ministries v. State Bd. of Equalization*, 204 Cal.App.3d 1269, 1285 (1988) (describing the requirements churches must satisfy to qualify for an exemption from state franchise and income taxes).

¹¹¹ See, for example, *Catholic Health Initiatives of Colo. v. City of Pueblo*, 207 P.3d 812, 814 (Colo. 2009) (holding that a religious organization, in its operation as an elderly facility, was not a "charitable organization" for purposes of sales and use tax exemption because the organization's work was not exclusively free or voluntary and did not lessen the burden of government).

Ministers and Tax Benefits

Certain tax rules apply to ministers and to how churches treat ministers' compensation. For example, churches are not required to withhold income tax paid to "duly ordained, commissioned, or licensed ministers for performing services in the exercise of their ministry."¹¹² There are also special rules concerning minister's housing, whether that housing is in the form of a parsonage or a housing allowance.¹¹³

Reasonable Compensation

Courts have concluded that unreasonable or excessive compensation or benefits given by a tax-exempt organization can amount to impermissible inurement that runs afoul of tax exemption requirements.¹¹⁴ An excessive benefit is any benefit paid by an exempt organization to an insider in excess of the reasonable value of services performed.¹¹⁵ If the organization gives excessive salaries to employees, sells its exempt property at less than market value, or someone uses the exempt organization's property at no cost, these are examples of unreasonable compensation.¹¹⁶

If a church is found to have given unreasonable compensation to an employee, the IRS is likely to impose "intermediate sanctions" in the form of substantial excise taxes on insiders (referred to as "disqualified persons") who receive the excessive benefit, including officers and board members from the organization.¹¹⁷ Alternatively, the church could lose its tax-exempt status.

¹¹² Internal Revenue Service, Pub. 1828, *supra* note 102, at 22.

¹¹³ *See id.*

¹¹⁴ I.R.C. § 501(c)(3). *See, for example, Harding Hospital v. United States*, 505 F.2d 1068 (6th Cir. 1974).

¹¹⁵ *See* RICHARD HAMMAR, CHURCH AND CLERGY TAX GUIDE, ch. 4.

¹¹⁶ *See New Life Tabernacle v. Commissioner*, 44 T.C.M (CCH) 309 (1982) (holding that church that required its members to pay into a common fund and then provided its staff with housing, food, clothing, and cars from the fund did not carry its burden of showing it should be tax exempt).

¹¹⁷ I.R.C. § 4958.

Appendix 4: Land Use and Zoning Law Overview

This section outlines a few of the ways in which land use and zoning law impacts churches. While zoning is generally regulated at a state level, changes to potentially discriminatory zoning decisions or policies can implicate federal law as well. It is important to remember that land use and zoning issues and their application to any given situation vary depending on jurisdiction. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Churches and Land Use

Most zoning laws divide land uses into categories such as residential, commercial, and industrial. In the majority of jurisdictions, churches and other religious use buildings cannot be excluded from residential areas on the basis that such exclusions are inconsistent with the First Amendment.¹¹⁸ For example, courts have rejected such exclusions on the grounds that municipalities lack authority to exclude churches as contrary to community health, safety, morals or general welfare and hold that many public inconveniences are outweighed free exercise concerns.¹¹⁹ In other municipalities, churches may be entirely excluded from residential zones, or included through special use permits only.¹²⁰ Some state courts have struck down these limitations in various circumstances.¹²¹ That being said, a majority of municipalities still place certain

¹¹⁸ See, for example, *Church of Christ in Indianapolis v. Metropolitan Bd. Of Zoning Appeals of Marion Cnty. (Division 1)*, 175 Ind. App. 346, 371 N.E.2d 1331 (1978) (holding that a municipal ordinance excluding churches from residential zones as an unconstitutional abridgement of First Amendment freedom of worship); *Diocese of Rochester v. Planning Bd. Of Town of Brighton*, 1 N.Y.2d 508 (1956).

¹¹⁹ *Community Synagogue v. Bates*, 1 N.Y.2d 445 (1956) (holding that inconvenience from increased traffic congestion is outweighed by free exercise and general welfare considerations).

¹²⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, AT § 29:2–3. See also *C.L.U.B. v. City of Chicago*, 157 F.Supp.2d 903 (N.D. Ill. 2001); *Village Lutheran Church v. City of Ladue*, 997 S.W.2d 506 (Mo. App. 1999); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Corporation of Presiding Bishop v. City of Porterville*, 203 P.2d 823, 825 (Cal. App. 1949). *Lakewood, Ohio Congregation of Jehovah's Witnesses v. City of Lakewood*, 699 F.2d 303 (6th Cir. 1983); *Christian Gospel Church, Inc. v. San Francisco*, 896 F.2d 1221 (9th Cir. 1990); *Messiah Baptist Church v. County of Jefferson*, 859 F.2d 820 (10th Cir. 1988).

¹²¹ *Holy Spirit Association for Unification of World Christianity v. Rosenfeld*, 458 N.Y.S.2d 920 (N.Y.A.D. 1983). See also *Genesis Assembly of God v. Davies*, 617 N.Y.S.2d 202 (A.D. 2 Dept. 1994); *Application of Covenant Community Church*, 444 N.Y.S.2d 415 (N.Y. Sup. 1981); *Harrison Orthodox Minyan v. Town Board*, 552 N.Y.S.2d 434 (N.Y. App. 1990); *North Syracuse First Baptist Church v. Village of North Syracuse*, 524 N.Y.S.2d 894 (1988); *Church of Jesus Christ of Latter-Day Saints v. Jefferson County*, 741 F. Supp. 1522 (N.D. Ala. 1990); *Grace Church v. Planning and Zoning Commission*, 615 A.2d 1092 (Conn. Super. 1992); *Jesus Fellowship v. Miami-Dade County*, 752 So.2d 708 (Fla. App. 2000); *Our Saviour's Evangelical Lutheran Church of Naperville v. City of Naperville*, 542 N.E.2d 1158 (Ill. App. 2nd Cir. 1989); *Hope Deliverance Center, Inc. v. Zoning Board*, 452 N.E.2d 630 (Ill. App. 1983); *Church of Christ v. Metropolitan Board of Zoning*, 371 N.E.2d 1331, 1333-34 (Ind. 1978); *Islamic Center of Mississippi, Inc. v. Starkville*, 840 F.2d 293 (5th Cir. 1988); *Jehovah's Witnesses v. Woolrich Township*, 532 A.2d 276, 280 (N.J. Super. 1987); *Ellsworth v. Gercke*, 156 P.2d 242 (Ariz. App. 1949); *North Shore Unitarian Society v. Village of Plandome*, 109 N.Y.S.2d 803 (1951); *Andrews v. Board of Adjustment*, 143 A.2d 262 (N.J. App. 1958); *Black v. Town of Montclair*, 167 A.2d 388 (N.J. App. 1961); *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990); *Diocese of Rochester v. Planning Board*, 154 N.Y.S.2d 849 (1956).

restrictions on churches and religious structures, such as restrictions on off-street parking and after-hours music or other nuisances.¹²²

Constitutional and Statutory Protections

Churches may challenge zoning rules that restrict their ability to operate by seeking changes to local land use or zoning ordinances or opt to sue the local government responsible for zoning decisions.¹²³ There are several legal avenues for churches to sue municipalities for unconstitutional regulation of church property.

- **42 U.S.C. § 1983** – This statute, passed in the wake of the U.S. Civil War and during Reconstruction, permits suits against government entities and officials acting under color of law for the deprivation of rights, privileges, or immunities secured by the Constitution.¹²⁴ It is not limited to religion. In the case of officials, the scope of immunity from such suits depends on the nature of the actions at issue, and several circuits have found that while zoning activity is usually “legislative” (and thus immune if in good faith), when the zoning activity singles out an individual to affect them differently than others, it is “administrative” (only garnering qualified immunity).¹²⁵
- **The Religious Freedom Restorations Act of 1993 (RFRA)** – This statute was passed in the wake of the U.S. Supreme Court’s decision in *Employment Division v. Smith*,¹²⁶ and sought to restore what legislators saw as the Court’s departure from a substantial burden/compelling interest test in religious freedom matters.¹²⁷ The Court later invalidated RFRA’s constitutionality as applied to state and local governments,¹²⁸ leading to the passage of RLUIPA (more below). Consequently, zoning practices with regard to public lands are litigated under RFRA and have

¹²² See, for example, *Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Ashton*, 92 Idaho 571, 448 P.2d 185 (1968).

¹²³ *Burlington Assembly of God Church v. Zoning Board*, 570 A.2d 495 (N.J. Super. 1989). See also *Burlington Assembly of God Church v. Zoning Board*, 588 A.2d 1297 (N.J. Super. 1990).

¹²⁴ 42 U.S.C. § 1983; *Burlington Assembly of God Church v. Zoning Board*, 570 A.2d 495 (N.J. Super. 1989); *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990); *Lutheran Day Care v. Snohomish County*, 829 P.2d 746 (Wash. 1992).

¹²⁵ See *Adam Community Center v. City of Troy*, 381 F. Supp. 3d 887, 898–900 (E.D. Mich. 2019) (explaining the First, Fourth, and Sixth Circuits had adopted this approach).

¹²⁶ 494 U.S. 872 (1990).

¹²⁷ See *City of Boerne v. Flores*, 521 U.S. 507, 515 (1997); 42 U.S.C. § 2000bb(a)–(b).

¹²⁸ See *City of Boerne*, 521 U.S. at 535–36.

resulted in victories for religious groups and organizations.¹²⁹ Numerous states have passed their own statutes modeled after RFRA.¹³⁰ However, these state RFRA statutes vary in scope and some have restrictions that could limit their applicability to land use cases.¹³¹

- **The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000**
– Under RLUIPA, a municipality cannot regulate land use in a way that “imposes a substantial burden” on religious exercise.¹³² For example, RLUIPA can be an avenue for relief where land use regulation disadvantages religious organizations more than secular organizations, discriminates against religious organizations based on the fact the organization represents a specific religion, or entirely excludes or unreasonably limits religious assembly within a specific jurisdiction.¹³³ Even though language from RFRA was incorporated into RLUIPA, the scope of RLUIPA has only been applied to private land.¹³⁴

Accessory Uses, Special Permits, and Variances

Where zoning ordinances permit churches, they often permit accessory uses,¹³⁵ which may include, for instance, a recreation center, bookstore, child-care center, homeless shelter, and housing.¹³⁶ However, these uses will often be closely scrutinized to determine if they are being done to serve a religious objective.¹³⁷ In other instances, state courts have held that local zoning

¹²⁹ *Id. See, for example, Comanche Nation v. U.S.*, 2008 WL 4426621 (W.D. Okla. 2008) (holding that a proposed site on public land would have substantially burdened the religious practice of the Comanche people).

¹³⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 3:26-27.

¹³¹ *See, for example, Tex. § 110.001-012* (limiting the statute so that it “does not affect the authority of a municipality to adopt or apply laws and regulations as the authority has been interpreted by any court in cases that do not involve the free exercise of religion.”).

¹³² 42 U.S.C.A. § 2000©.

¹³³ *Id. See, for example, Bethel World Outreach Ministries v. Montgomery County Council*, 706 F.3d 548, 553 (4th Cir. 2013) (holding that a county’s regulations were impermissible because they imposed a substantial burden on religious exercise, despite the county’s assertion that the water and sewage concerns were legitimate government interests); *Murphy v. Zoning Commission*, 402 F.3d 342 (2nd Cir. 2005); *Digrugilliers v. Consolidated City of Indianapolis*, 506 F.3d 612 (7th Cir. 2007).

¹³⁴ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:19.

¹³⁵ *Id.* at § 29:7.

¹³⁶ *See, for example, Greentree at Murray Hill Condominium v. Good Shepard Episcopal Church*, 550 N.Y.S.2d 981 (Sup. 1989); *City of Richmond Heights v. Richmond Heights Presbyterian Church*, 764 S.W.2d 647 (Mo. 1989); *Neddermeyer v. Town of Ontario Planning Bd.*, 548 N.Y.S.2d 951 (4th Dep’t 1989).

¹³⁷ *See, for example, Glenside Center, Inc. v. Abington Tp. Zoning Hearing Bd.*, 973 A.2d 10 (Pa. Commw. Ct. 2009) (no religious exemption to zoning ordinance prohibition on substance abuse treatment centers in a given area when the purpose of the centers was to treat drug addictions rather than practice religion).

ordinances cannot interfere with activities that churches and religious organizations believe are an integral part of their charitable mission.¹³⁸

Moreover, even if a given zoning ordinance prohibits a certain type of land use, a religious organization may seek a special permit as a means of allowing certain uses that may be seen as harmful to the municipality's comprehensive plan, but that it is willing to authorize on specific terms and conditions.¹³⁹ This special permit is typically conditional upon proof that required facts and conditions are met and that the special use being permitted will not injure the public interest.¹⁴⁰ When deciding whether to grant a special permit, courts generally attempt to strike a balance between accommodating religious use and mitigating adverse effects on the community.¹⁴¹

Additionally, when the special permit is sought and granted, it presents *prima facie* evidence that the use is permitted and comports with the municipality's zoning plan.¹⁴² However, the applicant for the special permit still holds the burden of proving he has complied with the conditions imposed by the ordinance or special permit.¹⁴³ A religious organization requesting a special permit also needs to show that its conditions are reasonable.¹⁴⁴

If an organization cannot seek a special permit, variances and amendments are another route to enable approval of land usage. A variance is the right to use or to build in a manner that is prohibited by a zoning ordinance.¹⁴⁵ There are two types of variances: use and non-use variances. Use variances permit an exception to an otherwise prohibited use, whereas the non-use variances are sought when the use of the building is accepted, but the desired improvements are not.¹⁴⁶ In general, use variances are sought for the building of churches prohibited by zoning ordinances,

¹³⁸ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:7. *See, for example, St. John's Evangelical Lutheran Church v. Hoboken*, 479 A.2d at 937 (finding that an accessory use was "customarily incident" to the organization's religious purpose and therefore permissible).

¹³⁹ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:3.

¹⁴⁰ *See Kulak v. Zoning Hearing Bd. Bristol Tp.*, 128 Pa. Commw. 457, 563 A.2d 978 (1989).

¹⁴¹ *See, for example, Tabernacle of Victory Pentecostal Church v. Weiss*, 101 A.D.3d 738, 740, 955 N.Y.S.2d 180 (2nd Dep't 2012) (holding that the zoning board should have granted the special exemption permit to accommodate the stated religious use).

¹⁴² *See Irshad Learning Center v. County of Dupage*, 937 F. Supp. 2d 910 (N.D. Ill. 2013) (holding that a Muslim organization should have been granted a special permit because the property was used in a similar manner allowed by a special permit given to the prior owners).

¹⁴³ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:3.

¹⁴⁴ *See Cormier v. Town of Danville Zoning Bd. Of Adjustment*, 142 N.H. 775, 710 A.2d 401 (1998) (holding that, to be reasonable, the conditions should be (1) limited in nature, (2) should be binding on the zoning board, (3) and must relate to the zoning purposes).

¹⁴⁵ EDWARD ZIEGLER, RATHKOPH'S THE LAW OF ZONING AND PLANNING § 58.1 (4th ed. 2020).

¹⁴⁶ *Id.*

and non-use variances are sought for accessory uses of the building and land.¹⁴⁷ When determining if a variance application will be granted or not, a zoning committee or the board will consider whether: (1) the variance is contrary to the public interest, (2) special circumstances differentiate the parcel, (3) literal enforcement of the ordinance would create great hardship, and (4) the spirit of the ordinance is being observed.¹⁴⁸ Alternatively, an organization can seek an amendment to the zoning ordinance, but these are difficult to obtain.¹⁴⁹

Limits on Delegation of Zoning

While states and localities can, and do, grant churches and religious organizations special permits and exemptions from zoning ordinances, they cannot delegate authority over land use and zoning to these organizations.¹⁵⁰ The U.S. Supreme Court has found that such a delegation would constitute a “fusion of governmental and religious functions” with the primary effect of advancing a certain religion, violating the Establishment Clause.¹⁵¹

Nuisance

Churches must also be aware of the impermissible uses of property beyond zoning regulation. Nuisance is another area of law that may regulate the use of church property by prohibiting conduct that causes material annoyance, inconvenience, discomfort, or harm to neighbors of the property. Religious activities may be prohibited by nuisance law, such as loud and disruptive communal gatherings.¹⁵² The scope of courts’ application of nuisance law to the disruptive activities of a church depends on the local nuisance law and varies by jurisdiction.¹⁵³

¹⁴⁷ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:4.

¹⁴⁸ A Standard State Zoning Enabling Act Under Which Municipalities May Adopt Zoning Regulations, U.S. Dep’t. of Commerce (rev. ed. 1926). As the board reviews these basic criteria, the potentiality for a RLUIPA challenge will arise if the variance is not granted, with the likelihood of a successful challenge likely depending on whether the steps listed above were faithfully followed or not. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 29:4.

¹⁴⁹ PATRICIA E. SALKIN, AMERICAN LAW OF ZONING § 13:3 (5th ed. 2008).

¹⁵⁰ *See Board of Education of Kyrias Joel School District v. Grumet*, 512 U.S. 687, 690 (1994).

¹⁵¹ 512 U.S. at 696–97 (internal citations omitted).

¹⁵² *Waggoner v. Floral Heights Baptist Church*, 288 S.W. 129, 131 (Tex. 1926); *Assembly of God Church v. Bradley*, 196 S.W.2d 696 (Tex. 1946).

¹⁵³ *See, for example, Dorsett v. Nunis*, 13 S.E.2d 371 (Ga. 1941) (disruptive service is not a nuisance); *Murphy v. Cupp*, 31 S.W.2d 396, 399 (Ark. 1930) (threshold for establishing a nuisance claim is high); *Impellizzeri v. Jamesville Federated Church*, 428 N.Y.S.2d 550 (1979) (church bells are not a nuisance); *Devaney v. Kilmartin*, 88 F.Supp.3d 34 (D.R.I. 2015) (church bells are not a nuisance); *Diehl v. Village of Antwerp*, 964 F. Supp. 646 (N.D.N.Y. 1997) (broadcast music is not a nuisance).

Appendix 5: Organizational Governance Law Overview

This section outlines a few of the ways in which organizational governance impacts churches. Organizational governance is generally handled at the state level. These issues and their application to any given situation vary depending on jurisdiction. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Organizational Structure

When it comes to legal structures for organizational governance, churches have a few options. Most churches choose to incorporate as a nonprofit corporation to take advantage of the benefits that the legal status offers, including the ability to own and transfer title to property, to accept contributions of property in its name, to directly manage its resources, to prevent members from being held liable for corporate debt, and to provide legal continuity.¹⁵⁴ Churches that do not choose to incorporate may opt to form an association instead.¹⁵⁵ Forming an association usually does not require any legal paperwork or official documents, in contrast to incorporation, and for this reason many churches that do not incorporate are associations by default.¹⁵⁶ Churches may also decide to establish a trust.¹⁵⁷

Corporations

A corporation is “an entity, usually a business, having authority under law to act as a single person distinct from the shareholders who own it.”¹⁵⁸ In essence, a corporation is an artificial person, operating duties, and legal characteristics as natural persons.¹⁵⁹ In addition to these benefits, since corporations are single entities, third parties are secure in their transactions with corporations

¹⁵⁴ Sarah J. Hastings, “Cinderella’s New Dress: A Better Organizational Option for Churches and Other Small Nonprofits,” 55 DRAKE L. REV. 813, 820 (2007).

¹⁵⁵ *Barr v. United Methodist Church*, 153 Cal. Rptr. 322, 327 (1979) (The social and economic realities of the present-day organization of society has thus led this court and others to recognize the suability of unions. We must recognize that the society of today rests upon the foundation of group structures of all types, such as the corporation, the cooperative society, the public utility. Such groups must, of course, operate successfully within the society; one of the prerequisites to that functioning is, generally, liability to suit and opportunity for suit. To frustrate that viability by the imposition of outmoded concepts would be to impair the institutions as well as to impede the judicial process.), cert. denied, 444 U.S. 973 (1980); *Murphy v. Taylor*, 289 So.2d 584, 586 (Ala. 1974).

¹⁵⁶ UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT § 6 (1996).

¹⁵⁷ See RESTATEMENT (SECOND), TRUSTS § 2 (1959).

¹⁵⁸ *Progressive Cas. Ins. Co. v. Dias*, 151 A.3d 308, 313 (R.I. 2017) (citations omitted).

¹⁵⁹ *Id.* See, for example, Herbert Hovenkamp, *The Classical Corporation in American Legal Thought*, 76 Geo. L.J. 1593 (1988); HARRY G. HENN & JOHN R. ALEXANDER, *HANDBOOK OF THE LAW OF CORPORATIONS* 144–75 (3d ed. 1983) (“These rights and duties include the ability to sue or be sued, hold title to property, incur debts, buy and sell assets, enter into and enforce contracts, and be held responsible for criminal acts.”); BASSETT, *RELIGIOUS ORGANIZATIONS AND THE LAW*, *supra* note 3, at § 9:5 (“Legal characteristics such as citizenship, domicile and residence.”).

against the possibility of divided ownership, trailing interests, or dissent, against personal liability in relation to the corporation's legal activities.¹⁶⁰ Adopting this corporate structure does include filing requirements, filing fees and attorneys' costs, and reporting obligations to state officials, both at the time of incorporation and annually in many states.

Every state has an incorporation statute.¹⁶¹ Some states have adopted religious corporation statutes, which allow for religious organizations to incorporate specifically as a religious corporation, and not as a nonprofit corporation generally.¹⁶² These specific statutes are designed to provide flexibility so that the organizational structure can be molded to fit the religious polity of a religious body, a flexibility that is often accompanied by minimal government regulation in order to avoid excessive entanglement with the state.¹⁶³

There are several types of corporations from which to choose, and the differences between them are largely related to leadership structure and grant of decision-making authority.¹⁶⁴ Although the requirements of incorporating vary by state, there are universal basics that also apply to

¹⁶⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:6.

¹⁶¹ PATRICIA B. CARLSON, UNINCORPORATED ASSOCIATIONS AND CHARITABLE TRUSTS, IN RELIGIOUS ORGANIZATIONS IN THE UNITED STATES: A STUDY OF IDENTITY, LIBERTY, AND THE LAW 253 (James A. Serritella et al. eds., 2006) ("statutory requirements for incorporation vary by state, but usually include those that would be required at the federal level to qualify for tax exempt status [such as a tax-exempt purpose and operation]. Any nonprofit organization can incorporate under a nonprofit corporation statute.").

¹⁶² There is no affirmative constitutional requirement for a state to adopt a religious corporation law as churches can still incorporate with identical legitimacy under nonprofit corporation laws. However, it is unconstitutional to specifically ban the incorporation of religious entities. *Falwell v. Miller*, 203 F. Supp. 2d 624, 632 (W.D. Va. 2002) ("The portion of § 14(20) of Article IV of the Constitution of Virginia which reads, 'The General Assembly shall not grant a charter of incorporation to any church or religious denomination. . . ,' violates Plaintiffs' First Amendment rights to the free exercise of their religion made applicable to the States by the Fourteenth Amendment.").

¹⁶³ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:25. Many courts have recognized that incorporation does not impinge on church autonomy. *See, for example, Providence Baptist Church v. Superior Court of San Francisco* (1952) 40 Cal.2d 55, 63-64. ("If the problem was whether the pastor was preaching a theology contrary to the denominational doctrine or conducting religious services in a manner out of harmony with the ritual of the church, it would clearly not be within the province of a court to interfere, and the controversy would have to be settled by the church tribunals. But where, as here, the question presented is whether the property and funds of the church are being handled in accordance with the by-laws and rules of the church corporation or such by-laws and rules are being properly observed by the governing body of the church, those aggrieved may seek redress through court action."); *Gospel Tabernacle Body of Christ Church v. Peace Publishers & Co.*, 506 P.2d 1135, 1137-38 (Kan. 1973) ("We have expressly held that controversies over theological questions and matters ecclesiastical in character are to be determined by the authorities of the particular church involved according to its laws and usages and that ordinarily, the civil courts are without jurisdiction to review or control the decisions of duly constituted church authorities. On the other hand, we have repeatedly recognized and applied the rule that where such controversies involve civil or property rights the civil courts will take jurisdiction and decide the merits of the case for themselves." (citations omitted)).

¹⁶⁴ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at §§ 9:5-6, 9:21-22, 9:31; PATTY GERSTENBLITH, ASSOCIATIONAL STRUCTURES OF RELIGIOUS ORGANIZATIONS, IN RELIGIOUS ORGANIZATIONS IN THE UNITED STATES: A STUDY OF IDENTITY, LIBERTY, AND THE LAW 223 (James A. Serritella et al. eds., 2006) (originally published in 1995 BYU L. Rev. 439, 451 (1995)); CARL ZOLLMANN, AMERICAN CIVIL CHURCH LAW 51 (1917).

religious organizations.¹⁶⁵ In general, incorporating churches should be prepared to draft and file articles of incorporation and elect directors. Articles of incorporation usually include information like the name, address, and state of incorporation, as well as the number of directors, director rights and authority, meeting requirements (like notice), procedures for mergers with other organizations, dissolution,¹⁶⁶ and are drafted to meet applicable tax requirements.¹⁶⁷ If an incorporated church decides to end, it (like other nonprofit organizations) is required to transfer their assets to other 501(c)(3) organizations upon dissolution.¹⁶⁸

Associations

Requirements for the formation of an association are fairly straightforward: two or more persons must form an organization with a common name for a common purpose, such as to hold and administer the property of a congregation.¹⁶⁹ To facilitate accomplishing their shared purpose, congregants may elect members to sign all contracts respecting the acquisition, management and sale of property and oversee employment contracts, insurance and other aspects of the church's operations.¹⁷⁰ Some states have statutes that allow associations to organize in a more structured way, and may impose additional requirements, but also confer additional rights on associations that organize under such statutes.¹⁷¹

Absent association laws, organizations formed as unincorporated associations are not considered legal entities.¹⁷² Lack of legal existence poses issues if the church wants to own property, hire employees, or perform other necessary functions. As a result, elected board members will usually sign contracts to help legally document the acquisition of property and management of employment contracts.¹⁷³ Unincorporated churches can also sediment legal rights further by drafting charters and bylaws and closely following agreed-upon procedures and duties, all of which help to establish clear management procedure and provide indications that the association ought

¹⁶⁵ *Lozanoski v. Sarafin*, 485 N.E.2d 669, 671 (Ind. App. 1985); *Bd. Of Trustees v. Richards*, 130 N.E.2d 736, 739 (C.P.1954).

¹⁶⁶ MODEL NONPROFIT CORPORATION ACT § 30.

¹⁶⁷ Such requirements include a religious purpose for organization. I.R.C. § 501(c)(3); Treas. Reg. § 1.501(c)(3)-1(b)(4); RICHARD HAMMAR, CHURCH AND CLERGY TAX GUIDE, *supra* note 115, ch 11.

¹⁶⁸ Treas. Reg. § 1.501(c)(3)-1(b)(4)

¹⁶⁹ UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT § 6 (1996).

¹⁷⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:51.

¹⁷¹ HAMMAR, CHURCH AND CLERGY TAX GUIDE, *supra* note 115, ch. 6.

¹⁷² *See, for example, Kansas Private Club Asso. v. Londerholm*, 408 P.2d 891, 893 (1965) (“It is the general rule to which this jurisdiction has long adhered, that in the absence of a statute to the contrary, an unincorporated association is not a legal entity and can neither sue nor be sued in the name of the association.”).

¹⁷³ UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT § 6 (1996).

to be treated as an independent entity.¹⁷⁴ If the association fails to establish that it has these attributes, it will likely be as a mere group of individuals by courts, rather than a separate entity.¹⁷⁵

The members of the association usually face direct personal liability for the debts and obligations of the association, or the negligent acts of other members.¹⁷⁶ Some state courts have limited, or eliminated, direct liability for association members,¹⁷⁷ and some states have passed statutes to this affect as well.¹⁷⁸ Moreover, a majority of jurisdictions follow the rule that a member of an unincorporated association injured due to the tortious conduct of another member cannot sue the association.¹⁷⁹

There is less government oversight into an association's internal affairs, as compared to a corporation.¹⁸⁰ At the same time, although some states do allow unincorporated associations to use and dispose of real and personal property,¹⁸¹ many do not allow an unincorporated association to hold property in its name and property has to be held in a member or officer's name, which can subject the property to that individual's creditors.¹⁸² Additionally, property conveyed to the

¹⁷⁴ See *Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417, 424 (Tex.2020) (“The Fort Worth Diocese is an unincorporated association formed and operating in Texas. Accordingly, issues concerning its officers and control are governed by the Texas Uniform Unincorporated Nonprofit Association Act. Under Texas Associations law, control and governance are determined by the terms of the Fort Worth Diocese's charters.”).

¹⁷⁵ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:51.

¹⁷⁶ See *Hanson v. Saint Luke's United Methodist Church*, 704 N.E.2d 1020, 1027 (Ind. 1998) (“We abolish the ‘ancient precept’ which until now precluded members of unincorporated associations from suing their associations for tortious conduct, and we hold that such suits shall now be allowed, subject to the applicable principles of comparative fault and the limitations in place in our trial rules.”); see also *Crocker v. Barr*, 409 S.E.2d 368, 412 (S.C. 1992) (“We hold that in South Carolina an unincorporated association, regardless of its underlying purpose, is amenable to suit by its members for tortious acts”); *Cox v. Thee Evergreen Church*, 836 S.W.2d 167, 173 (Tex. 1992).

¹⁷⁷ *Mohr v. Kelley*, 8 P.3d 543, 545 (Colo. App. 2000) (individual association members are not liable for the acts of other members); *Juhl v. Airington*, 936 S.W.2d 640, 643 (Tex. 1996) (association members are not automatically liable for the acts of other association members).

¹⁷⁸ Chiefly, states who have implemented section 6 of the Uniformed Unincorporated Nonprofit Association Act. UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT § 6 (1996).

¹⁷⁹ See, for example, *Zehner v. Wilkinson Memorial United Methodist Church*, 581 A.2d 1388 (Pa. 1990).

¹⁸⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:52; *Indianapolis Baptist Temple v. United States*, 224 F.3d 627, 632 (7th Cir. 2000) (“However, associations are not free from government regulation and tax reporting requirements, although nonprofit associations can still enjoy tax exempt status.”).

¹⁸¹ See, for example, Cal. Corp. Code §§ 18105-18120.

¹⁸² BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:52.

association is transferred to all members of the association in equal share and decisions cannot be made about it without each member's permission.¹⁸³

Trusts

Trusts are a property management tool in which one person or corporation, the trustee, holds legal title to the property subject to a legal obligation to use or hold it for the benefit of another person, the beneficiary, or for a charitable purpose.¹⁸⁴ Trusts are relatively easy to establish, as compared to corporations, however, if legal issues arise, there can be more uncertainty with regards to whether the trust was validly created and will be recognized by the state.¹⁸⁵ Trusts could prove to be inflexible if the trust instrument fails to expressly provide rules and procedures for amendments at its inception.¹⁸⁶

The trustee has duties to preserve, defend, and manage the productivity and income of the trust.¹⁸⁷ The duties that the trustee performs should complement their overall obligation to administer the trust and its assets in accordance with the creator or donor's intent.¹⁸⁸ There are two basic kinds of trusts: private trusts, and charitable trusts. With a private trust, the beneficiary has equitable title, the right to benefit from the property, and has the right to enforce the duties the trustee should be performing.¹⁸⁹ With a charitable trust, a public officer, such as a state attorney general, or a co-trustee, or "a person who has a special interest" in the trust's enforcement may bring suit to enforce the trust.¹⁹⁰

The charitable trust can be useful for religious organizations because of the numerous benefits,¹⁹¹ including the fact that charitable trusts are not subject to the Rule Against Perpetuities and cannot fail for want of a trustee designated, or for lacking a detailed plan of execution.¹⁹² To

¹⁸³ See *Apostolic Holiness Union of Post Falls v. Knudson*, 21 Idaho 589, 595 (1912).

¹⁸⁴ RESTATEMENT (SECOND), TRUSTS § 2, § 348 (1959).

¹⁸⁵ Fishman, James, *The Development of Nonprofit Corporation Law and an Agenda for Reform*, 34 EMORY L. J. 617, 635 (1985).

¹⁸⁶ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:39.

¹⁸⁷ RESTATEMENT (SECOND), TRUSTS § 2, § 348 (1959).

¹⁸⁸ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:38 (discussing how, when the donor's intent is frustrated by future events, the may court intervene to decide whether the assets can be diverted to a similar purpose or whether some other remedy is required).

¹⁸⁹ See RESTATEMENT (SECOND), TRUSTS § 2, comments (e) and (f) (1959).

¹⁹⁰ *Id.* at § 391 (1959).

¹⁹¹ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:39.

¹⁹² RESTATEMENT SECOND, TRUSTS §§ 32, 33, 353 (1959); *Yeager v. Johns*, 484 S.W.2d 211, 215 (Mo. 1972) ("a devise in trust to unspecified charities creates a valid, public charitable trust even though the instrument creating the

qualify as “charitable” the purpose of the trust must be to benefit either the public welfare in some manner.¹⁹³ Oftentimes, charitable purposes are statutorily listed by the state,¹⁹⁴ or simply require the purpose to be one that is broadly conducive to the general welfare, but in all states, support for religious is a charitable purpose per se.¹⁹⁵ Accordingly, a church or religious organization, as a non-profit, may be the trustee of a religious or charitable trust, or a beneficiary of a trust, with income devoted to support its charitable objectives and overall purpose.¹⁹⁶ Moreover, religious trusts can be useful for holding cash, securities or income-producing property for religious purposes.¹⁹⁷ Additionally, trustee oversight can provide carefully monitored management of investments and uses of funds.¹⁹⁸

Other Forms: Foundations and Limited Liability Companies (LLCs)

A foundation is a permanent management entity for the investment and distribution of money and assets and “managed by its own trustees or directors, and established to maintain or aid social, educational, charitable, religious, or other activities serving the common welfare.”¹⁹⁹ Foundations can be managed as a trusts or a nonprofit corporation and often serve as a repositories for continuing contributions from others, with its income used to support its causes.²⁰⁰ The family foundation is the most common foundation model adopted by private entities. And enables him or her to use the foundation as a device to pursue religious or charitable goals with more flexibility and control than would be possible by donating money to a public charity.²⁰¹ In contrast, public foundations are subject to less regulation and control by the IRS because they may be less at risk of appearing to embrace private self-dealings and deceptive practices.²⁰² Additionally, contributions to public foundations are tax-deductible.²⁰³

trust does not limit in any way the possible charitable appointees. This has long been the law in Missouri”) (citations omitted); Cal. Prob. Code § 15621 (1994).

¹⁹³See *In re Graham's Estate*, 63 Cal. App. 41, 43 (2d Dist. 1923).

¹⁹⁴ See, for example, 225 Ill. Comp. Stat. Ann. § 460/1(f).

¹⁹⁵See RESTATEMENT SECOND, TRUSTS § 368 (1959).

¹⁹⁶ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:38.

¹⁹⁷ For example, funds for purposes such as retirement, health and welfare programs for members, and support for charity and missionary work can be protected by trusts. *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ EMERSON F. ANDREWS, PHILANTHROPIC FOUNDATIONS 11 (1956).

²⁰⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:58.

²⁰¹ *Id.* at § 9:59.

²⁰² *Id.*

²⁰³ See I.R.C. § 170(b)(1)(B), (b)(1)(A)(vi).

The Limited Liability Company (LLC) model combines features of both a corporation and a partnership. Like a corporation, LLCs provide their owners with protection from personal liability for debts and other obligations the business may encounter and, like a partnership, LLCs “pass-through” their profits so that they are taxed as part of the owners’ personal income.²⁰⁴ They also allow a great deal of flexibility in the corporate structure, potentially allowing a religious organization to mirror its communal polity while also maintain limited liability for directors and members.²⁰⁵ However, whether a religious organization can organize an LLC is not completely settled.²⁰⁶

Disputes

Internal disputes regarding control of the church and church property are perennial issues.²⁰⁷ Courts often approach disputes within a religious organization with caution.²⁰⁸ Courts—federal and state—do so out of deference to a church or denomination’s internal decision-making because that decision-making process can implicate religious beliefs and doctrine.²⁰⁹ This is sometimes call the ecclesiastical abstention, or church autonomy, doctrine.²¹⁰ Courts may choose to resolve such disputes on the basis of “neutral principles of law” without running afoul of the First Amendment, so long as the approach does not involve deciding questions of church doctrine.²¹¹

²⁰⁴ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 9:60.

²⁰⁵ *Id.*

²⁰⁶ *Bunzl Distribution USA, Inc. v. Franchise Tax Bd.* 27 Cal.App.5th 986, 992 & n.3 (2018) (“An LLC is a hybrid business entity that combines aspects of both a partnership and a corporation. It consists of members, which can be individuals, corporations, partnerships, or other LLCs. The company has a legal existence separate from its members and provides members with limited liability to the same extent shared by corporate shareholders, yet allows members to actively participate in management and control.”) (citations omitted).

²⁰⁷ *See, for example, Watson v. Jones*, 80 U.S. 679 (1871) (affirming the decision of the highest denominational adjudicatory body because congregation split over property dispute was part of a hierarchal denomination).

²⁰⁸ *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 712-13 (1976); *Solid Rock Baptist Church v. Carlton*, 789 A.2d 149 (N.J. Super. 2002); *Atterberry v. Smith*, 522 A.2d 683 (Pa. App. 1987); *Cherry Valley Church of Christ v. Foster*, 2002 WL 10545 (Tex. App. 2002).

²⁰⁹ *See, for example, Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *American Union of Baptists v. Trustees of the Particular Primitive Baptist Church*, 644 A.2d 1063 (Md. 1994). *But see Chimney Ville Missionary Baptist Church v. Johnson*, 665 So.2d 730 (La. App. 1995). *See also Wilkerson v. Battiste*, 393 So.2d 195 (La. 1980); *Trinity Pentecostal Church v. Terry*, 660 S.W.2d 449 (Mo. App. 1983); *In re Uranian 1st Gnostic Lyceum Temple*, 547 N.Y.S.2d 63 (N.Y. App. 1989).

²¹⁰ The ecclesiastical abstention doctrine prohibits civil courts from delving into matters of theological concern, including church discipline, or ecclesiastical government. *See generally Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Watson v. Jones*, 80 U.S. 679, 733 (1871).

²¹¹ *See Jones v. Wolf*, 443 U.S. 595, 602 (1979) (“It is also clear, however, that the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. Most importantly, the First

Appendix 6: Organizational Finance Law Overview

This section outlines a few of the ways in which organizational finance considerations impacts churches. These issues implicate federal and state law. These issues and their application to any given situation may vary depending on jurisdiction. Readers may notice some connections between this section and **Appendix 3: Tax Law Overview**. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Voluntary Contributions

Charitable giving is inherent to the structure of the church and voluntary contribution can take different forms.²¹² For policy reasons, some states place limits on certain forms of charitable giving, and, in addition, some voluntary contributions have tax benefits while others do not.²¹³ For example, many states have attempted to ban or restrict property donations through will or deed out of fear of undue influence,²¹⁴ although, in recent years, courts have refused to uphold such laws.²¹⁵ All gifts received from charitable giving are tax exempt if the church is registered as a 501(c)(3). Some income may be tax exempt *and* tax deductible, meaning the donor receives tax benefits as well.²¹⁶ Different types of gifts have different tax implications.²¹⁷

Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.”).

²¹² For example, tithes, freewill offerings, spiritual service fees, pew rents, building fund assessments, periodic dues, and other types of “fixed” donations. I.R.S. Rev. Rul. 70-47, 1970-1 C.B. 49. Additionally, offerings by religious organization members on the occasion of baptisms, marriages, funerals, confirmations, bar or bat mitzvahs, and similar special events are deductible contributions and are also excluded from the gross income of the religious organization. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:12–15; I.R.S. Rev. Rul. 70-47, 1970-1 C.B. 49.

²¹³ Treas. Reg. § 1.170A-1(c)(5).

²¹⁴ J. Sherman, “Can Religious Influence Ever Be ‘Undue’ Influence?,” 73 BROOKLYN L.R. 579, 603 (2008) (“To the extent legislatures wanted to restrain bequests generated by the deathbed fears of the faithful, they could hardly have approved of this technique when the inclusion of the substitutionary gift might have been prompted by the same undue influence or the same deathbed fears that prompted the charitable bequest.”).

²¹⁵ See, for example, *Shriners Hospital v. Zrillic*, 563 So.2d 64, 70–71 (Fla. 1990); *In re Estate of Cavill*, 329 A.2d 503, 506 (Pa. 1974).

²¹⁶ Generally, gifts are tax deductible and for gifts to churches, they are charitable per se. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:23.

²¹⁷ For example, both inter vivos and testamentary gifts to churches are tax deductible, but testamentary gifts are entitled to full tax deductibility whereas inter vivos gifts have a 50% deductibility ceiling. I.R.C. §§ 2055(e), 2522(c); I.R.C. § 170(b)(1)(A); Tregs. Reg. § 1.107A-8(b). The tax consequences of gifts of securities and real estate, as well as tangible property, vary depending on how long the securities or real estate has been held. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:15; I.R.C. § 170(b)(1)(C) (i) and (iii), (e)(1)(A); Treas. Reg. §

Unlike gifts, payments made in the exchange of services and benefits are not tax deductible.²¹⁸ Consequently, determining whether a donation is a gift or payment is a critical component of religious fundraising activities. To address ambiguities in the lower courts about these definitions,²¹⁹ the U.S. Supreme Court in 1989 adopted an objective quid-pro quo framework: if a donation is being made with the expectation of receiving a benefit, and such benefit is received, it is a quid pro quo payment and not a gift.²²⁰ Subsequent legislation clarified that charitable organizations which have received “a payment made partly as a contribution and partly in consideration for goods or services provided [to the donor]” must send notice to the donor that the contribution is only deductible to the extent that the contribution exceeds the fair market value of the reciprocated goods and services.²²¹

Professional or nonprofessional services donated to tax-exempt organizations, such as hospitals, schools, and shelter facilities, are not tax-deductible.²²² Accordingly, the donor may not calculate hours and hourly rates and then take a tax deduction in a comparable amount. However, actual tangible unreimbursed expenses such as the cost of meals and lodging when away from home incurred by volunteers are deductible when they are incurred in rendering services for a charitable or religious organization.²²³

1.107A-4, -8(d)(2). The donor is allowed to deduct up to 50% of the adjusted gross income in the year of a gift of ordinary income property, with a five-year carryover for excess contributions.

²¹⁸ Treas. Reg. § 1.170A-1(h). A gift is a “voluntary transfer of money or property made by the transferor without receipt or expectation of a financial benefit commensurate with the money or property transferred.” Treas. Reg. § 1.170A-1(c)(5).

²¹⁹ Courts may determine the gift status of a religious charitable donation by applying the subjective test, the objective test, or a combined test. The subjective test focuses on the intent of the donor. *See generally C.I.R. v. Duberstein*, 363 U.S. 278, 278 (1960) (applied generally); *see also DeJong v. C.I.R.*, 309 F.2d 373 (9th Cir. 1962) (applied specifically to charitable giving to religious organizations). The objective test attempts to correct uncertainties created by the subjective test by instead looking to the facts surrounding the donation, as opposed to the intent of the donor. *See generally Oppewal v. C. I. R.*, 468 F.2d 1000 (1st Cir. 1972). Some courts apply both in the combined test, considering donee intent and donation circumstances. *See generally U.S. v. American Bar Endowment*, 477 U.S. 105 (1986).

²²⁰ *See generally Hernandez v. C.I.R.*, 1989-2 C.B. 55, 490 U.S. 680 (1989). Intangible religious benefits are probably not included in this ruling, although the court was largely silent on this issue. J.W. Raby and William L. Raby, *Religious Tuition as Charitable Contribution*, 88 TAX NOTES 215, 217. (July 10, 2000).

²²¹ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 13172, 13173, 107 Stat. 312, 455 to 457, codified at scattered sections of 26 U.S.C.A. including I.R.C. § 6115(b).

²²² Reg. § 1.170A-1(g); Rev. Rul. 162, 1953-2 C.B. 127; Rev. Rul. 67-236, 1967 C.B. 103.

²²³ I.R.C. § 170(k); Rev. Rul. 55-4, 1995-1 C.B. 291; Rev. Rul. 73-597, 1973-2 C.B. 69.

Religious Organization Income Exclusion Benefits and Their Limits

In addition to tax deduction benefits, churches and religious organizations may exclude certain types of income for tax purposes.²²⁴ However, a church or religious organization must pay taxes on unrelated business income,²²⁵ with deductions for business expenses, interest losses, and charitable contributions.²²⁶ Moreover, income from religious literature, including published materials such as books and magazines, can be tax-free, if it is specifically sold by the church pursuant to the religious purpose and for the religious mission of the church.²²⁷

Charitable Solicitations

While members of the church can voluntarily contribute without drawing significant tax or regulatory attention, a church may have a more difficult time actively soliciting financial contributions because government regulations (most commonly at the state level) intended to deter fraud and other illegal activities now apply to a variety of fundraising activities.²²⁸ Many states also have time, place, and manner restrictions that control the solicitation methods.²²⁹ Many states also have registration requirements for charitable organizations as well as licensing and bonding requirements for professional fundraisers and paid solicitors.²³⁰

²²⁴ I.R.C. § 102(a); I.R.C. §§ 512(b)(1)-(3), (5) (dividends, interest, royalties, rents from real property, and gains or losses from the sale of investment property); *see also* BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:10, § 31:19 (income of members of religious institutes who take the vow of poverty).

²²⁵ I.R.C. § 512. Unrelated business income is income from “any trade or business the conduct of which is not substantially related . . . to the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501 . . . or 501(c)(3),” except “(1) where all the work is done for the organization without compensation, (2) where all the work is carried on for the convenience of its members, students, patients, officers, or employees, . . . and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or (3) which is the selling of merchandise, substantially all of which is received by the organization as gifts or contributions.” I.R.C. § 513.

²²⁶ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:11.

²²⁷ *Id.* at § 31:18. In contrast, income from literature prepared by private authors on religious subjects will not be considered tax-free income, especially if the author receives royalties from the publication, and the literature is available at commercial bookstores and other retail outlets. *Id.*

²²⁸ *Id.* at § 31:31. RESTATEMENT (SECOND) OF TORTS, *supra* note 2, at § 525. For example, some laws prevent fraud by providing full disclosure to prospective donors and consumers regarding the amount of donated money actually used for the charitable purposes outlined in the request and the amount consumed by the charitable organization’s own fees and overhead costs. BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:33.

²²⁹ *Cantwell v. Connecticut*, 310 U.S. 296, 303–304 (1940) (time, place, manner restrictions on speech are constitutional); *see also* *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640, 654 (1981); *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 687 (1992). *See also* RICHARD R. HAMMAR, 5 PASTOR, CHURCH & LAW (2000).

²³⁰ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:36.

The solicitation statutes of most states and municipalities have limited religious exception carve-outs from their reporting or time, place, and manner requirements,²³¹ although these sometimes distinguish between soliciting from the public and from a church's own congregation.²³² Depending on the state, the exemption many only extend to soliciting within its own congregation,²³³ under the theory that church members can regulate their own behavior, but the state must act in the best interests of the public and prevent exploitation.²³⁴ Moreover, some states require churches to receive formal tax-exempt status as a condition of exemption from fundraising regulations.²³⁵

Special events, including dinners, carnivals, and celebrity entertainment, provide the recipient organizations with net tax-free income.²³⁶ Gaming activities intended to raise funds for religious and charitable organizations are permitted in many states, subject to limits the state may place on the frequency and types of games permitted.²³⁷ Although the Internal Revenue Code provides a special statutory exemption for "bingo" games and their revenue,²³⁸ other forms of gambling are not granted a similar exemption. Some states refuse to follow the "bingo" exemption for state income tax purposes and others require special licenses for nonprofit organizations engaged in raffles, bingo, or such money-raising games and may need to report winning to state officials.²³⁹

If a state attorney general suspects that an organization is engaging in fraud or acting in some other manner that is detrimental to the public interest, he retains the authority under the Revised Model Nonprofit Corporation Act (RMNCA) to bring membership petitions before a state court to force accounting and disclosure of the financial records of all non-profit corporations to

²³¹ See, for example, Fla. Stat. Ann. § 49602(2)(b); Md. Ann. Code art.41, § 3-203.

²³² BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:33.

²³³ S.C. Code Ann. § 32-55-60(1). Usually, if any religious organizations are exempt, all must be exempt. *Larson v. Valente*, 456 U.S. 228, 242 (1982) (holding that registration laws exempting only certain kinds of religious organizations is unconstitutional). Such requirements must further a state interest to protect its citizens. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980).

²³⁴ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:33.

²³⁵ See, for example, Pa. Stat. Ann. tit. 10, § 1613.

²³⁶ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:16. However, deductible contributions by donors must be calculated only as the amount given over and above the value of the goods or services received. *Id.*

²³⁷ LISA RUNQUIST & JEANNIE CARMEDELLE FREY, GUIDE TO REPRESENTING RELIGIOUS ORGANIZATIONS 87 (2009).

²³⁸ I.R.C. § 513(f).

²³⁹ See, for example, Ill. Comp. Stat. §§ 120/110.1 to 120/110.7.

its own members.²⁴⁰ While there is no specific exception for religious corporations, state authorities must not run afoul of the First Amendment when enforcing the RMNCA.²⁴¹

²⁴⁰ RMNCA §§ 1.60, 16.02, 16.20.

²⁴¹ BASSETT, RELIGIOUS ORGANIZATIONS AND THE LAW, *supra* note 3, at § 31:49.

Appendix 7: Access to Government Funding Law Overview

This section outlines a few of the ways in which laws governing access to government funding impacts churches. Government funding issues can arise at any level of government and often implicate constitutional concerns. Issues and their application to any given situation vary depending on jurisdiction. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Over the past twenty years, the Executive Branch of the federal government has established partnerships with faith-based and secular organizations to serve communities and individuals in need.²⁴² These partnerships are through a number of different federal agencies. Religious organizations around the country receive millions of dollars in federal funding each year for different initiatives.²⁴³ Many states followed suit and established similar offices and opportunities for partnership.²⁴⁴ Generally, religious organizations cannot be denied access to government funding that is available to non-religious organizations for the same purpose.²⁴⁵ While religiously-affiliated social service and educational programs may receive government funding, the traditional test to evaluate whether such funding runs afoul of the First Amendment’s Establishment Clause looks at whether the programs and the laws by which they are funded have a secular purpose, advance religion, or otherwise create excessive entanglement between the government and religion.²⁴⁶

²⁴² See, for example, The White House, “Fact Sheet: President Biden Restablishes the White House Office of Faith-Based and Neighborhood Partnerships,” Feb. 14, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/14/fact-sheet-president-biden-reestablishes-the-white-house-office-of-faith-based-and-neighborhood-partnerships/>; Archived: The White House, President George W. Bush, “White House Faith-Based & Community Initiative,” undated, <https://georgewbush-whitehouse.archives.gov/government/fbc/i/president-initiative.html>.

²⁴³ Details about recipients, contracts, grants, and other financial assistance can be found by searching the U.S. Department of Health and Human Services’s online database, TAGGS, available online at <https://taggs.hhs.gov/SearchRecip>.

²⁴⁴ See, for example, Maryland Department of Health, Office of Faith Based and Community Partnerships, <https://health.maryland.gov/phpa/OIDPCS/OFBCP/Pages/Home.aspx>; Department of State, New Jersey Office of Faith Based Initiatives, <https://www.nj.gov/state/ofbi.shtml>; Oregon Department of Human Services, Faith-Based Partnerships, <https://www.oregon.gov/odhs/equity/pages/faith-based-partnerships.aspx>.

²⁴⁵ See *Carson v. Makin*, 142 S.Ct. 1987 (2022) (holding that Maine could not require private schools to be “nonsectarian” in order to receive tuition assistance); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (holding that the Missouri Department of Natural Resources denial of a church’s application for a grant to purchase rubber playground surfaces for its preschool and daycare center was a denial of a church’s free exercise rights since the denial was based on the department’s policy of denying grants to religiously-affiliated applicants). See also *Espinoza v. Mont. Dep’t of Revenue*, 140 S.Ct. 2246 (2020) (holding that states cannot bar scholarship aid to religiously affiliated schools).

²⁴⁶ *Lemon v. Kurtzman*, 403 U.S. 602 (1971). See also Congressional Research Service, *Carson v. Makin: Using Government Funds for Religious Activity*, July 6, 2022, <https://crsreports.congress.gov/product/pdf/LSB/LSB10785>.

In general, direct government funding can only be used for non-religious purposes and cannot have the effect of funding one religion over another.²⁴⁷ For example, the statute establishing community service programs and child development block grants allows for religious agencies or organizations to receive funds to construct facilities but the funding may only be utilized for bringing the facilities “into compliance with health and safety requirements.”²⁴⁸ And to receive child-care grants, all childcare facilities run by religious organizations must comply with all local authorities’ regulations.²⁴⁹

While faith-based recipients of government funding might be permitted to make hiring decisions based on the employees’ religion in some instances,²⁵⁰ at least one court has held that such discrimination is not permissible where a individual’s position is funded “substantially, if not entirely” by public funds, as was the case of a victim’s assistant coordinator at a domestic violence center run by a religious organization.²⁵¹ In the case of block grants for child care, if government funding provides for more than eighty percent of a religious organization’s childcare center’s budget, it may not discriminate against potential employees based on their religion if their “primary responsibility is or will be working directly with children in the provision of child care”²⁵² In the case of Title IX, the federal statute prohibiting sex discrimination in education, religious organizations receiving federal funding may be exempt from specific provisions of the statute “if the application [...] would not be consistent with the religious tenets of such organization.”²⁵³

When accepting government funds, religious organizations should ensure they comply with the federal conditions and, if applicable, state conditions, which vary from state to state.²⁵⁴ Further, religious organizations that receive government funding may publish their expenditures online for transparency.

²⁴⁷ See, for example, *Wilder v. Bernstein*, 848 F.2d 1338 (2d Cir. 1988); *Norwood v. Harrison*, 413 U.S. 455 (1973); *Tilton v. Richardson*, 403 U.S. 672 (1971); see also *Bd. of Educ. of Cent. School Dist. No. 1 v. Allen*, 392 U.S. 236 (1968).

²⁴⁸ 42 U.S.C.A. § 9858d(b)(2); 45 C.F.R. §9854(b)(2).

²⁴⁹ 45 U.S.C.A. § 9858c(c)(2)(E).

²⁵⁰ See, for example, *Siegel v. Truett-McConnell College, Inc.*, 13 F.Supp.2d 1335 (N.D. Ga. 1994), *aff’d*, 73 F.3d 1108 (11th Cir. 1995) (permitting application of Title VII exemption for religious preference in hiring where college received federal funds through student attendance).

²⁵¹ *Dodge v. Salvation Army*, 1989 WL 53857 (S.D. Miss. 1989) (holding that the position was not covered by the exemption because doing so would “give rise to constitutional considerations which effectively prohibit the application of the exemption in this case.”).

²⁵² 42 U.S.C.A. § 9858l(a)(4)

²⁵³ See, for example, U.S. Department of Education, “Exemptions from Title IX,” March 8, 2021, <https://www2.ed.gov/about/offices/list/ocr/docs/t9-rel-exempt/index.html>; see also The Civil Rights Restoration Act of 1987, 20 U.S.C.A. §1681 (a)(3).

²⁵⁴ Compare ARIZ. REV. STATE. ANN. §41-3751 (2012) with VA. CODE. ANN. §2.2-4343.1 (2020).

Appendix 8: Education Law Overview

This section provides information about a few education law issues as they apply to private Christian schools, including parental rights and involvement, government aid to private schools, and state regulation of private schools.²⁵⁵ While the regulation of education happens at the state level, these issues often implicate constitutional concerns. Issues and their application to any given situation vary depending on jurisdiction. This information is intended to be illustrative, not comprehensive. It should not be construed as legal advice.

Rights to Private School

The court system has a long history of upholding private religious schooling as a valid alternative to secular public education.²⁵⁶ In *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, the Court explained that the “fundamental theory of liberty” underlying the government prohibits states from forcing children to attend only public schools, as children are not “mere creature[s] of the state” but wards of their parents, who have the duty and right to choose how to educate their children.²⁵⁷ In *Wisconsin v. Yoder*, the Court found no compelling state interest in the prosecution of truancy law violations against Amish families who refused to send their children to public school and determined that informal private education equally satisfied the state’s goal of educating children.²⁵⁸

Government Aid to Religious Schools

The constitutionality of direct government aid to private religious schools is determined by whether it “. . . result[s] in governmental indoctrination; define[s] its recipients by reference to religion; or create[s] an excessive entanglement.”²⁵⁹ For example, the U.S. Supreme Court has held that funding provided pursuant to Title I of the Elementary and Secondary Education Act, which provides federal funds neutrally to both public and private educational institutions for the instruction of children from low-income families, is constitutional where the remedial instruction took place at the religious school and where the program contains sufficient “safeguards” to avoid endorsing religion.²⁶⁰

²⁵⁵ While the constitutional limits on religion in public education is another area that intersects with religion, education, and the First Amendment, it falls outside the scope of this Report.

²⁵⁶ See *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925).

²⁵⁷ 268 U.S. at 535.

²⁵⁸ *Wisconsin v. Yoder*, 406 U.S. 205, 210 (1972).

²⁵⁹ *Agostini v. Felton*, 521 U.S. 203, 234 (1997). See also *Lemon v. Kurzman*, 403 U.S. 602, 612–613 (1971).

²⁶⁰ See *Agostini*, 521 U.S. at 235; see also 20 U.S.C. § 7885 (provision of Strengthening and Improvement of Elementary and Secondary Schools Act prohibiting use of public funds for “religious worship or instruction”).

In *Lemon v. Kurtzman*, the U.S. Supreme Court found that state aid to private religious educational institutions to purchase teaching materials for non-secular subjects and to reimburse teachers of private religious educational institutions for teaching non-secular subjects violated the Establishment Clause.²⁶¹ However, the Court has found the use of public funds permissible in a number of other ways. For example, in *Everson v. Board of Education*, the Court determined that federal funding to reimburse parents for their children’s use of public bus transportation to and from religious private education was permissible and did not violate the Establishment Clause.²⁶² In *Board of Education of Central School District No. 1 v. Allen*, the Court held that loaning educational materials to parochial schools is also constitutionally permissible,²⁶³ a decision that was reaffirmed in *Mitchell v. Helms*.²⁶⁴

Religiously-affiliated schools may not be excluded from publicly-funded grant programs for educational supplies, such as playground equipment, solely because the school is religious.²⁶⁵ For example, in *Carson v. Makin*, the Court held that Maine’s tuition assistance program was unconstitutional insofar as it included a provision conditioning the aid on whether a school was “nonsectarian.”²⁶⁶ In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Court found that a grant program to purchase rubber playground surfaces violated the Free Exercise Clause.²⁶⁷

The Court has made a distinction between direct aid, like the programs discussed above, and those of “true private choice,” that is, where “government aid reaches religious schools only as a result of the genuine and independent choices of private individuals.”²⁶⁸ For example, in *Zelman v. Simmons-Harris*, the Court upheld an Ohio law that provided tuition aid to kindergarten through eighth grade students living in certain underperforming school districts so that their parents could enroll them in a private or public school of their choice.²⁶⁹ In 2020, the Court reached a similar conclusion in a case involving publicly-funded scholarships that had excluded religiously-affiliated private schools on the basis of a “no-aid” provision within the state’s constitution.²⁷⁰

²⁶¹ *Lemon*, 403 U.S. at 620–21 (1971).

²⁶² 330 U.S. 1, 17–18 (1947).

²⁶³ 392 U.S. 236, 240 (1968).

²⁶⁴ 530 U.S. 793 (2000).

²⁶⁵ *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017).

²⁶⁶ 596 U.S. ____ (2022).

²⁶⁷ 582 U.S. at 467.

²⁶⁸ *Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002).

²⁶⁹ 536 U.S. at 644.

²⁷⁰ *Espinoza v. Montana Dept. of Revenue*, 591 U.S. ____ (2020).

State Regulation of Religious Schools

Although individuals have a constitutional right to attend private schooling, private schooling still must meet the same educational standards as public schooling to ensure all citizens are similarly and adequately educated.²⁷¹ Courts have held that basic state regulation of private schools does not violate the First Amendment.²⁷² As explained in an earlier Appendix, state and local governments can also regulate the creation and use of buildings and facilities churches designated for religious education purposes.²⁷³ Private religious schools are regulated at the state level, and the actual requirements for approval and licensing varies,²⁷⁴ and can include meeting curricular standards, time requirements (length of acceptable school day, number of days in school each year), health and safety standards, and teacher certification.

²⁷¹ *Pierce v. Society of the Sisters*, 268 U.S. 510, 534 (1925); *New Life Baptist Church Academy v. Town of East Longmeadow*, 885 F.2d 940 (1st Cir. 1989).

²⁷² *State v. DeLaBruere*, 577 A.2d 254 (Vt. 1990); *Fellowship Baptist Church v. Benton*, 815 F.2d 485, 488 (8th Cir. 1987) (listing cases from other states that “generally resulted in decisions upholding the states’ regulatory schemes”).

²⁷³ See, for example, *Academy of Our Lady of Peace v. City of San Diego*, 2010 WL 1329014, *13 (S.D. Cal. 2010) (denying summary judgment, concluding that religious school had not provided enough evidence to show city had imposed a substantial burden on religious exercise under RLUIPA).

²⁷⁴ U.S. Department of Education, “State Regulation of Private and Home Schools,” <https://www2.ed.gov/about/inits/ed/non-public-education/regulation-map/index.html>.

Appendix 9: Law and Ministry Course Offerings

The following list of courses is sourced from phone calls and emails with theological school administrators, as well as from online course catalogs. Since administrators are not always familiar with the details of course syllabi, the list primarily includes courses that explicitly mention “law” in their titles and/or descriptions. Because detailed syllabi for these courses were not available, and because course catalogs offer only short descriptions of each course, this list should be viewed as illustrative rather than comprehensive.

Wesley Theological Seminary Facing the First Pastorate, Personal Finances for Religious Professionals, Church Finances, Faith, Politics, and the Public Square

Chicago Theological Seminary Administration: Transformative Techniques for Nonprofit Organizations, Leading Congregations: Principles and Practices, The Bible, Borders, and the Nation State’s Law of Immigration, Marriage: Rites and Wrongs, Public Theology and Racial Justice, Religious Liberty and LGBTQ Equality

Hartford International University for Religion and Peace The Politics of Religious Liberty, American Religious Realities: Sociological and Anthropological

Andover Newton at Yale Divinity School (Formerly Andover Newton) Financing Churches and Nonprofits (at Yale Divinity School), Managing Crisis in Churches and Nonprofits (at Yale Divinity School), Negotiating Boundaries in Ministerial Relationships (at Yale Divinity School), Pastoral Leadership and Church Administration (at Yale Divinity School). *Andover Newton also requires 4.5 credits in management courses. Students can choose from more than thirty courses that fulfill this requirement, including, for example, Foundations of Accounting and Valuation, and Nonprofit Strategy.*

Brite Divinity School Leadership in Nonprofit Organizations

Southern Baptist Theological Seminary Pastoral Ministry, Dynamics of Organizational Leadership

Southwestern Baptist Theological Seminary	Raising Ministry Funds and Resources, Family and Church Financial Management, Financial Issues for Ministers and Churches
Southeastern Baptist Theological Seminary	The Minister, the Church, and the Law, Christian School Administration, School Law and Finance, American Constitutional Development, Religious Liberty, Church Administration, Administration and Education in the Local Church
New Brunswick Theological Seminary	Pastoral Administration; Medical Ethics and Communal Health; Christian Ethics and Social Justice
Western Theological Seminary	Church and State in America
Princeton Theological Seminary	Religion and Immigration, Rethinking Religion in the Public Sphere, Parish Leadership and the Practice of Ministry, Church and Nonprofit Administration
Columbia Theological Seminary	Introduction to Christian Leadership; Congregational Leadership and Church Administration; Pastoral Counseling in the Parish
American Baptist College	Pastoral Ministry and Administration; Nonprofit Organization Development and Management; Church Finance and Business Math
Dickerson-Green Theological Seminary	Church Leadership and Administration
Payne Theological Seminary	Church Administration; The Ethics of Religious Freedom and Racial Equality in the U.S.
United Lutheran Seminary	Where Faith Hurts: Recognizing and Responding to the Spiritual Impact of Abuse in the Faith Community; Equipping the Saints

Lutheran School of Theology at Chicago	The Ministry of Administration
Wartburg Theological Seminary	Century Leadership: Public, Connected, and Adaptive, Finance and Stewardship for Ministers; Connecting Faith, Culture, and Daily Life

Below is a list of additional course offerings at institutions that have joint degree programs.

Vanderbilt Divinity School	Law and Religion (discontinued), Church and State in American History, Critical Race Theory, Intersectionality, and Social Ethics, Controversies and Debates in Business, Management, and Society, The Foundations of Ethical Leadership, Traversing our National Wound: Immigration and the United States and Mexico Border
Candler School of Theology (Emory University)	Law for Clergy, The Church on the Border, Nonprofit Leadership and Management, Introduction to Religious Leadership and Administration, Church Financial Leadership and Management, Law and Religion: Theories, Methods, and Approaches (Law School), History of Church-State Relations in the West (offered at the law school), First Amendment: Religious Liberty (Law School), Jurisprudence (Law School), History of Law, Religion, and Family in the West (Law School), Religion, Culture, and Law in Comparative Practice (Law School). <i>Additional law and religion courses are offered at the Law School and available for cross-registration by students in the theology school.</i>
Duke Divinity School	Theological Dimensions of American Law and Politics, Theological Grounding for the Practice of Ministry, Gender and Strategic Leadership, Political Theology, The Pastoral Responsibility for Leadership and Administration, Stewardship and Church Finance, First Amendment (offered at the law school), Distinctive Aspects of U.S. Law (offered at the law school), Community Enterprise Law Clinic (offered at the law school), Constitutional Law II: Historical Cases and Contemporary Controversies (offered at the law school), Nonprofit Organizations (offered at the law school), Counseling and Creating a New Entity (offered at the law school)

Baylor/George Truett Theological Seminary	The Business of Ministry; Nonprofit Organizations; Separation of Church and State; Constitutional Law: Individual Liberties
University of Chicago (Law School)	Constitutional Law V: Freedom of Religion (Law School); Illicit Religion: Contesting Religious Freedom under the Law in Modern America
Harvard University (Law School)	Constitutional Law: First Amendment; Religious Institutions and the Religion Clauses
Liberty University (Law School)	Law of Nonprofits; First Amendment Seminar
Wake Forest (Law School)	Microtrade Development Clinic, Food Law and Policy, Public Leadership and the Social Enterprise: Legal and Theological Perspectives, Nonprofit Organization Law, Freedom of Religion Under the Constitution, Church, Law, and Ethics
Regent University (Law School)	Managing Not-For-Profit and Faith-based Organizations, Contract Law, Regulatory Compliance Law, Nonprofit Organizations, Employment Law

Appendix 10: Selected Bibliography of Books on Law and Ministry

Our research team identified approximately 183 academic texts on topics related to this study—a substantial quantity of journal articles and other texts that nonetheless represent a small fraction of all scholarship related to law and ministry in the United States.

The list included here is comprised primarily of titles that are widely accessible and practical in nature, as opposed to academic or historical in nature. Excluded from this list are texts that are (1) primarily academic, theoretical, historical in nature, or (2) written prior to 1990, or (3) narrative or documentary as opposed to educational or instructive.

Addington, T. J. *High Impact Church Boards: How to Develop Healthy, Intentional, and Empowered Church Leaders*. Book Villages, 2020.

Anthony, Michael J. *The Effective Church Board: A Handbook for Mentoring and Training Servant Leaders*. Eugene, Or.: Wipf and Stock, 2000.

Balboni, Jennifer M. *Clergy Sexual Abuse Litigation: Survivors Seeking Justice*. Boulder, Colo: Lynne Rienner Publishers, 2011.

Batts, Michael E. *Church Finance: The Church Leader's Guide to Financial Operations*. Carol Stream, IL: Christianity Today International, 2019.

———. *Nonprofit Finance: The Field Guide for Financial Operations of Ministries, Schools, and Other Public Charities*. Carol Stream, IL: Christianity Today International, 2021.

Beauman, Bryan H., Lynn M. Daggett, Barbara M. De Luca, Steven A. Hinshaw, James L. Mawdsley, Ralph D. Mawdsley, R. Stewart Mayers, et al. *Legal Issues of Faith-Based and Other Nonpublic Schools*, 7th ed. Education Law Association, 2018.

Berkley, James, ed. *Leadership Handbook of Management and Administration*. Grand Rapids, MI: Baker Books, 2007.

Berneking, Nate. *The Vile Practices of Church Leadership: Finance and Administration*. Nashville, TN: Abingdon Press, 2017.

Blasi, Anthony J. *The Abuse of Minors in the Catholic Church: Dismantling the Culture of Cover Ups*. Routledge Studies in Religion. New York, NY: Abingdon, Oxon, 2020.

Bray, Ilona. *Effective Fundraising for Nonprofits: Real-World Strategies That Work*. Sixth ed. Berkeley, CA: NOLO, 2019.

Brunson, Samuel D. *God and the IRS: Accommodating Religious Practice in United States Tax Law*. Cambridge, United Kingdom ; New York, NY, Cambridge: Cambridge University Press, 2018.

Bullis, Ronald K., and Cynthia S. Mazur. *Legal Issues and Religious Counseling*. 1st ed. Louisville, KY: Westminster John Knox Press, 1993.

Busby, Dan, and Michael Martin. *Zondervan 2020 Church and Nonprofit Tax & Financial Guide: For 2019 Tax Returns*. Grand Rapids, MI: Zondervan, 2020.

Chawaga, Stephen P. *How to Keep Your Church Out of Court*. St. Louis, MO: Concordia Publishing House, 2002.

Christian Ministry Resources. *Church & Clergy Tax Guide. Church & Clergy Tax Guide*. Matthews, NC: Christian Ministry Resources, 1992.

Christopher, J. Clif. *The Church Money Manual: Best Practices for Finance and Stewardship*. Nashville: Abingdon Press, 2014.

Corkin, Terence, and Julia Kuhn Wallace. *The Church Guide for Making Decisions Together*. Nashville: Abingdon Press, 2017.

Couser, Richard B. *Ministry and the American Legal System: A Guide for Clergy, Lay Workers, and Congregations*. Minneapolis: Fortress Press, 1993.

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²⁷⁵ Note: With this exception, this bibliography does not include books, articles, or other materials published by Church Law & Tax. Those resources are numerous, and can be viewed, searched, and sorted via the online store of Church Law & Tax. See <https://store.churchlawandtax.com/> for a full list of Church Law and Tax's publications.

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