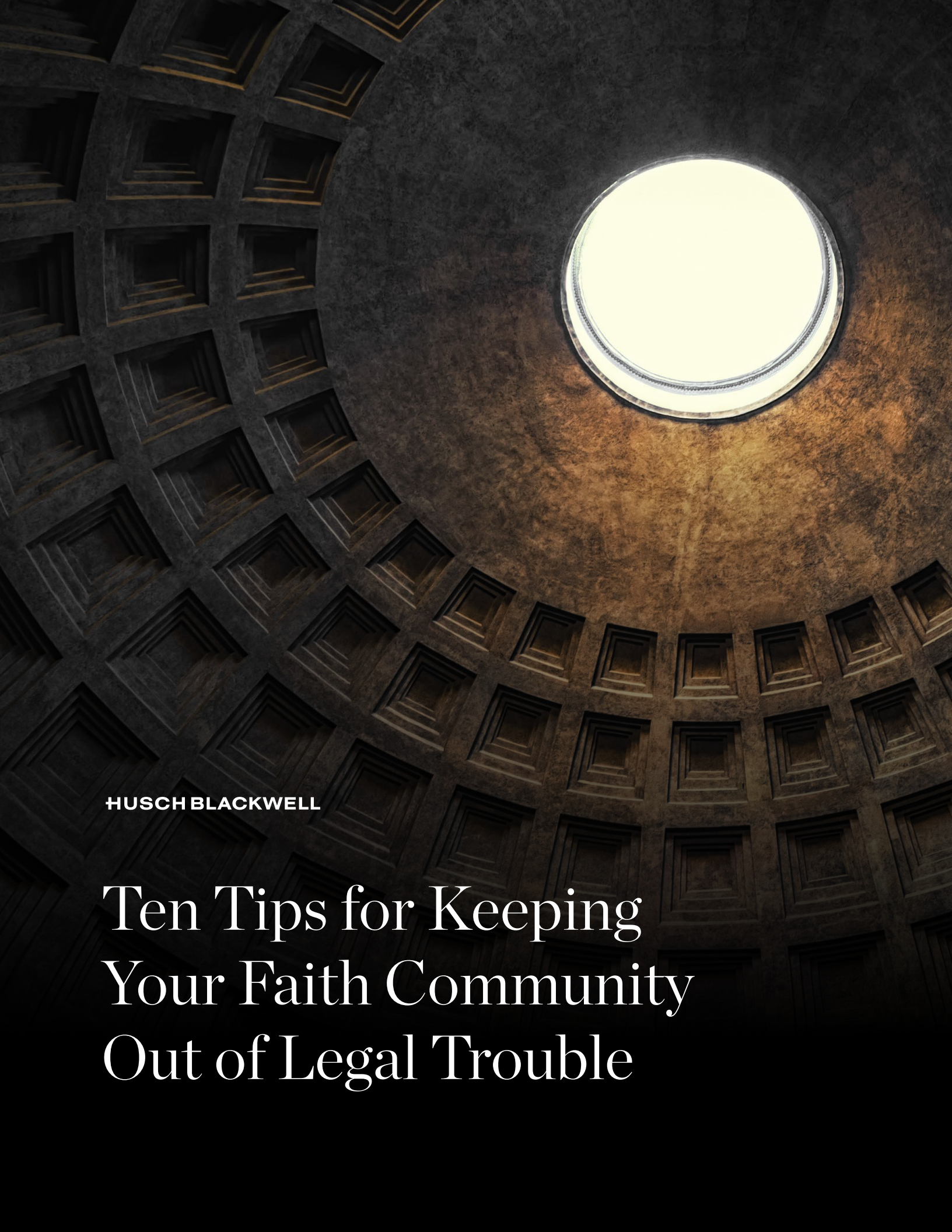

HUSCH BLACKWELL

Ten Tips for Keeping Your Faith Community Out of Legal Trouble

A Word from the Author

Faith communities often debate whether they should be classified as a business. Most faith leaders would emphatically insist that their place of worship is not a business, but administrators understand that faith communities face the same economic and legal pressures as any legal entity. Faith communities often hire and terminate employees, buy and sell real estate and enter into contracts. They also deal with unique intellectual property issues, shifting tax laws and complex rules involving planned giving. Many faith communities must also abide by ecclesiastical or doctrinal issues related to their faith structure or denomination. Although each faith community is unique, there are common legal issues that often apply regardless of size, location or doctrine.

While faith communities face a wide range of legal issues, they are often ill-prepared to handle them. Many faith leaders, though gifted in many aspects of ministry, have little training related to human resources, finance or other issues that impact the legal landscape. At the same time, faith communities (correctly) want as much of their budget as possible to be used to support their ministries, and addressing potential legal liabilities isn't at the top of anyone's list. This often creates situations in which faith communities take on unnecessary risk.

Over the last decade, I have worked closely with a number of faith communities as a trustee of a United Methodist church, as the spouse of an ordained pastor and as an attorney. I currently serve as Chancellor for the Missouri Annual Conference of the United Methodist Church. In that position, I work with hundreds of churches across the State of Missouri, from small rural churches to multi-site congregations in urban areas. They all face different legal issues, but my advice to all of them would be nearly identical for many topics. My goal in this publication is to address legal issues that are common to dioceses, churches, synagogues, mosques and other faith communities so they can avoid exposure to legal liability.

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01 | Understand Your Tax-Exempt Status, and Know It Is Not Limitless

A common misunderstanding is that 501(c)(3) organizations must not pay any taxes.

Churches (including most denominational entities) that meet the requirements of section 501(c)(3) of the Internal Revenue Code are automatically considered tax exempt and are not required to apply for and obtain recognition of exempt status from the IRS. Many faith communities also choose to apply for – and receive – tax-exempt status. The familiar term "501(c)(3)" refers to this section of the tax code and governs charitable organizations that are organized and operated exclusively for exempt purposes, one of which is the advancement of religion. Tax-exempt organizations under section 501(c)(3) must not be organized or operated for the benefit of private interests, and earnings cannot inure to the benefit of a private individual. In addition, 501(c)(3) organizations are restricted from performing certain political or legislative activities, which are described in more detail below.

The "private inurement" clause is fairly self-explanatory: the activities and ministry of your faith community should benefit the community at large, the poor or the distressed. In other words, tax-exempt religious entities should not serve the private interests of any individual or organization. This is usually an easy distinction to make. Allocating money from the offering plate to fund a philanthropic effort in your community or abroad does not benefit a private individual or organization. The lines get blurrier when funds flow to an individual or for-profit entity. Imagine a lay leader of your faith community operates a for-profit snow removal company. Paying the company to plow the parking lot is a reasonable expense and does not violate the private inurement clause, so long as the rate charged is fair. What about a direct payment to a member of your faith community? Payments made for philanthropic reasons, such as helping a member pay utilities to keep the heat on during the winter, are typically allowable because they are in line with an exempt purpose. A loan made to a member with no strings attached, however, would likely violate the private inurement clause of section 501(c)(3). In gray areas, it is always best to seek counsel from your attorney or tax advisor.

A common misunderstanding is that 501(c)(3) organizations must not pay any taxes. That is not the case. Your faith community may be subject to tax for income unrelated to the organization's exempt mission, called unrelated business income tax. Faith communities must pay taxes on unrelated business income from a trade or business, regularly carried on, that is not substantially related to the charitable purpose that is the basis of the organization's tax exemption. Faith communities with $1,000 or more of gross income from an unrelated business must file Form 990-T. For example, if a mosque charges the public a fee to utilize their parking lot during business hours on weekdays, those fees are typically taxable. Similarly, some churches sell advertising space in weekly bulletins or photo directories. Profits from the sale of these advertisements may be taxable

Although it is beyond the scope of this article, be sure that your staff members or volunteer bookkeepers understand the complexities of employment taxes. These taxes can be extremely difficult to understand, particularly due to the clergy housing allowance, and reliable tax guidance is critical.

02 Don't Share Media Without a Proper License and Know the Rules for Streaming Your Services

Faith communities face several complex intellectual property issues. A very common mistake – and the most infuriating to congregations – is faith communities sharing images that someone found using a Google image search and cut-and-pasted onto a website or other document that was shared electronically. You may freely use images in the public domain or those that are designated as copyright-free or subject to fair use; however, it is critical that your staff understands that just because you can download and share an image for free does not mean that you have the legal right to do so.

Many faith leaders have received letters demanding several thousand dollars for the improper use of a stock photo.

Companies exist that hold the ownership of images that are easily found on the internet (and often appear at the top of Google searches). These companies scour the internet for sites that use these images. They are quick to threaten litigation and make a significant demand. Many faith leaders have received letters demanding several thousand dollars for the improper use of a stock photo. Although the demands are outrageous, these companies know they often have a strong legal argument and most faith communities will agree to settle rather than pay for expensive litigation.

There are easy ways to avoid receiving such an unwelcome letter. Many sites exist that allow you to use images for a fee. If you pay to use such images, make sure you retain records of these payments. There are also dozens of sites with free stock imagery available to churches. Most require proper attribution, including a link to the original image, the creator's name and a link to the type of license. Finally, the easiest way to avoid issues is to create your own content. Not only is there no chance of legal proceedings, but members often appreciate the more personal touch. If you find yourself on the wrong end of a demand letter, make sure you work with your attorney to investigate the claim. For example, you should confirm that the party issuing the demand actually owns the image and your faith community did not pay for the rights to use the image.

Intellectual property concerns are not limited to images. As faith communities shifted in-person meetings to a virtual environment in 2020, many were unaware of the requirements for properly licensing media. An already tangled web of rules became much more complex with the advent of streaming services. Copyright law provides a limited exemption for the "performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly." This exception does not extend to services that are broadcast on radio, television or the internet. If you are streaming copyrighted materials, you must secure a license or the written permission of the copyright holder. Failing to do so can be a time-consuming – and expensive – mistake. For this reason, many faith communities limit their broadcasts of worship services to exclude music or video that may by copyrighted.

As with many of these topics, an attorney's go-to proverb is appropriate: an ounce of prevention is worth a pound of cure. Always consult with an expert on questions of fair use. It may take some time to understand how to properly license media, but the shift to streaming services has exposed many churches to unnecessary liability.

03 | Don't Stray from Restrictions on Gifts

How can the ministry effectively use these funds when it seems impractical to do so?

Most faith communities understand that if a planned gift in a will or trust contains specific restrictions, the church must only use those funds for such purposes.

In most cases, complying with these restrictions is easy: if a donor states that the donation is for a scholarship fund, for example, the money should be used only for scholarships.

A gift to a restricted fund is a blessing and should always be celebrated, but they can sometimes cause headaches and are not always practical. Take, for example, money that was specifically given to a church to fund a ministry to collect and distribute winter coats for members of the community that could not afford them. A generous gift for an important ministry! But what if the money set aside in the trust grew – considerably – to several hundred thousand dollars? How can the ministry effectively use these funds when it seems impractical to do so?

There are options, of course, but they are not always simple or obvious. First, you could secure the written consent of the donor to amend the restrictions. This is often easier said than done, and is impossible if the donor is deceased. Second, you could attempt to find a creative way to honor the restrictions of the gift. For example, purchasing tens of thousands of winter coats in a rural community is illogical; however, the funds could be used to pay for a building expansion that would house outreach ministries, including the winter coat ministry. Finally, you could secure a court order to remove or alter restrictions. The requirements for such an order will vary by state, but the court will generally consider the donor's intent and may consider amending the restrictions if they are unlawful, impracticable, impossible to achieve or wasteful.

The best way to avoid these headaches is simple: encourage donors to remove these restrictions. (Faith community leaders celebrate any gift, but they will celebrate unrestricted gifts extra hard.) If, however, you are stuck with restrictions that are difficult or impossible to honor, there is always the option to seek a court's intervention.

04 | Always Put Agreements in Writing, Particularly Leases

If your faith community has outside organizations or individuals using space without a written agreement, you should correct this immediately.

Faith communities are notorious for reaching agreements with a handshake rather than a written contract. This is typically the easiest approach, and it can avoid seemingly distasteful conversations about the business aspects of a ministry. Handshake agreements can also be a recipe for disaster. The most obvious area for problems involves real estate.

Most administrators of faith communities understand that buying and selling property is a major undertaking that requires carefully worded written instruments. You should work with a real estate agent or attorney to make sure that real estate transfers are properly recorded. Property ownership can be incredibly complex, particularly if your faith community has a history of denominational combinations and schisms, so it is essential to request a title report.

A commonly encountered problem involves leases or facilities use agreements. Many faith communities have a significant portion of their footprint – classrooms, fellowship halls, even gymnasiums – sitting unused much of the week. Faith communities regularly utilize these spaces by inviting in outside groups, sometimes charging rent and sometimes making the space available at no charge. In many cases, there is no written agreement governing the use of the space, and the tenant is typically a nonprofit organization engaged in its own ministry. This puts the faith community at significant risk. If your faith community has outside organizations or individuals using space without a written agreement, you should correct this immediately.

The written agreement should cover rent (even if none is paid) and how the agreement can be terminated. There are few headaches as severe as dealing with a bad tenant and having no agreement in place for bringing the relationship to an end. In addition, any agreement should state who is liable for the activities taking place on the property and properly indemnify the landlord. If you allow a basketball league to use your gymnasium, who will be at risk if someone is injured while playing? You should have an answer to that question and put it in writing before opening your doors. The same goes for upkeep: if an outside nonprofit regularly uses your kitchen and an oven breaks, you should already know who will pay for the repair or replacement.

This is particularly crucial if your faith community also hosts a preschool or childcare facility. If youth are present in the building, it is critical to have procedures in place to restrict access to certain areas of the building and to enforce those restrictions. In addition to reaching this agreement with your tenants, proper signage may be necessary so that guests and volunteers are aware of how to enter the building and access to areas where minors are present is properly restricted.

05 Document Your Policies to Protect Vulnerable Individuals, and Then Enforce Them – No Exceptions

One of the issues that has long plagued faith communities is the mistreatment of minors and other vulnerable individuals. Accounts of widespread sexual abuse, and the lack of acceptable response, has eroded the public's trust in faith communities. Enacting and enforcing policies to protect everyone in your building is nonnegotiable.

Ask yourself: do you have proper procedures in place to keep vulnerable members of your community safe? Are they documented? Is everyone in your community aware of these procedures? Is there training? How are the procedures enforced? If you hesitated in answering any of these questions, or if you answered in the negative, it is essential to take action.

Ask yourself: do you have proper procedures in place to keep vulnerable members of your community safe?

There are a few situations where even the best-laid plans fall apart. The first is working with invitees. Consider whether outside groups are aware of your procedures. Anyone that uses your building should not only receive a copy of your procedures, but should receive training (which should be properly documented) and sign off on all procedures before being allowed to use your facility. If you become aware of violations of your procedures, the group should not be allowed to use your facility until those violations are addressed and corrected.

Second, faith communities often shrug off lesser violations without correction for fear of offending volunteers. For example, your procedures should prohibit an adult from being alone with a minor. Imagine a situation in which a child becomes ill during a Sunday School class and a classroom volunteer takes the child to find their parents while the teacher remains with the remainder of the class. This may seem like an excusable incident and leaders may be hesitant to correct the situation. It is imperative, however, to realize that overlooking a seemingly excusable incident may have long-reaching effects. First and foremost, violations often occur in "seemingly excusable" situations. Moreover, if a child is the victim of sexual abuse in the future and a lawsuit is filed against your organization, situations like the one described above will be used as evidence that your procedures are not applied consistently, putting members of your community at risk. Evidence of knowledge of procedures being violated – without appropriate actions to address the problem – can be damaging.

Enforcing procedures can be uncomfortable, but always keep in mind that your failure to do so puts every member of your faith community at considerable risk. Every violation should be corrected immediately, and any steps to correct the violation should be well-documented.

06 Faith Communities Have Certain Protections When Hiring and Firing Staff, But They Are Not Absolute

Faith communities should make sure their employees are paid fairly and that they comply with all federal and state laws.

Faith communities have been the subject of many Supreme Court decisions over the last few years. One of the most litigated areas involves employment law: hiring and firing employees.

Many people are generally familiar with the so-called "ministerial exception" to state and federal employment laws. In the seminal case on the subject, Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission, 565 U.S. 171 (2012), the Supreme Court stated that federal discrimination laws do not apply to a faith community's selection of its religious leaders. The Establishment Clause and Free Exercise Clause of the First Amendment bar a minister from filing a suit against a religious organization claiming a violation of discrimination laws. Although Hosanna-Tabor provides extensive protections to religious employers, these protections are not absolute.

To be clear, the ministerial exception does not apply to staff members that do not serve a ministerial role. Recent decisions have made clear that the ministerial exception applies to staff members that serve an important religious function, even if they do not hold the title or training of a religious leader. Many of those cases have involved musicians and teachers. There is no doubt that the law is still in flux and there will be future decisions addressing the scope of the ministerial exception and the types of claims that are protected.

Even with the protections of the ministerial exception in place, faith communities should implement sensible employment policies. Most church employees are subject to the Fair Labor Standards Act (FLSA), which governs federal minimum wage and overtime requirements. Faith communities should make sure their employees are paid fairly and that they comply with all federal and state laws. Faith communities should always take employee complaints seriously, making sure to perform proper investigations. Finally, employment reviews, discipline and performance issues should be documented the same as any for-profit business. If your staff is unaware of the intricacies of employment law, seek counsel before making any adverse employment decisions.

07 | You Can Get Political – Just Not Too Political

Faith leaders should be aware of the so-called Johnson Amendment, which applies to entities that are tax-exempt under section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) provides that tax-exempt entities must not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Although the Johnson Amendment was a hot topic during the early years of the first Trump Administration, legislative efforts to repeal or weaken the Johnson Amendment failed. In 2025, the IRS communicated a narrow exception to the Johnson Amendment for discussions of political candidates "between the house of worship and its congregation, in connection with religious services." That said, there have been no formal changes to the Internal Revenue Code or state nonprofit statutes governing political speech.

If your faith community is tax-exempt under section 501(c)(3), certain actions are absolutely prohibited, including contributions to political campaigns on behalf of the organization; public statements (verbal or written) made on behalf of the organization in favor of or in opposition to any candidate for public office, even if only inferred; and voter education or voter registration with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates.

Although these restrictions are clear-cut, the mandate against political activity is not absolute. Faith communities may participate in voter education activities, such as sponsoring a public forum or publishing a voter education guide. Similarly, faith communities often encourage people to participate in the electoral process through voter registration opportunities and "get out the vote" drives. This type of activity is allowable so long as it is conducted in a nonpartisan manner and is not "masked candidate advocacy." For example, compiling and distributing the voting records of legislators is permissible, but nonprofits cannot include editorial commentary suggesting approval or disapproval of votes.

In addition, the law does not prohibit a religious leader from making political statements, so long as the advocacy is clearly taking place in the leader's individual, personal capacity. For example, a faith community should not post a candidate's sign in its yard or on its building, but there is nothing prohibiting a faith leader or staff member from displaying such a sign at their residence. In addition, faith communities may speak on political issues that are not tied to a specific candidate. For example, churches may place signs related to a political movement, referendum, or ballot initiative, although it would be inappropriate to include a candidate's name on or near the sign. Faith communities should exercise caution if it is difficult or impossible to separate an issue from a specific candidate or political party, and in no event should a significant portion of a faith community's actions be dedicated to lobbying.

Religious organizations often have questions about how to address political issues. There is a common misconception about the "separation of church and state" and a belief that faith communities are prohibited from engaging in any political discourse. The reality is more complicated.

08 | Carefully Protect Personal Health Information

The Health Insurance Portability and Accountability Act – commonly known as HIPAA – establishes policies for maintaining the privacy and the security of individually identifiable health information.

Members of faith communities often share information about their own health and the health of their loved ones.

For better or worse, members of faith communities often share information about their own health and the health of their loved ones. It's common to attend services where specific health information is shared on a public prayer list or even during services. During the pandemic, some churches shared—and continue to share this information on videos or websites that are available to the public. It is generally not advisable to share personal health details unless a patient specifically asks. That is particularly true if the information is being shared publicly. However, doing so is not necessary a violation of HIPAA. HIPAA applies to Covered Entities (healthcare providers, health plans or healthcare clearinghouses) and Business Associates (organizations that store medical records). If your faith organization maintains medical records, perhaps because it hosts a clinic, then it should seek legal advice to make sure that its method for maintaining those records does not violate HIPAA.

There are, however, situations in which HIPAA violations can take place in a faith community, and community leaders should be quick to combat such violations. Imagine a situation in which a healthcare professional attends church and shares that a member of the congregation was recently admitted to the ICU with a severe medical issue. If the medical professional learned this information due to their employment at a healthcare provider, sharing that information without the patient's consent is likely a HIPAA violation. If the patient learned that the information was shared publicly, they could file a complaint that would lead to an investigation and a possible fine.

One of the benefits of participation in a faith community is the knowledge that you will be lifted up in prayer by fellow members. There is no way to prohibit the sharing of information about members' health, nor would it be advisable to do so. However, as more services are being streamed and content is being shared publicly, faith communities would be wise to use caution when sharing details about a member's medical information. Less detail shared publicly is always preferable absent a member's consent.

09 | If You Face Litigation, Be Careful About What You Say (and How You Say It)

It comes as a surprise to many that faith communities often face litigation. Unfortunately, the reality is that faith communities often find themselves on the receiving end of lawsuits.

Some are simple – a slip-and-fall suit filed by the church organist after tripping over a misplaced chair at a potluck, for example – but others are more complex with litigation extending for many years.

When a faith community is served with a lawsuit, it is important not to panic. Never make a statement – particularly in writing – without speaking with your counsel. At a very basic level, civil litigation involves a process called discovery, which allows parties to the litigation to seek information and documents related to other parties' claims and defenses. Your communications – including those made after the lawsuit was filed – are likely subject to discovery. That means the party suing you is entitled to see most anything you put in a recordable format – handwritten notes, an e-mail, a text message or even a voicemail – related to the subject of the lawsuit. The last thing you want to do is make an admission in an email or a joke that could be easily misunderstood and later see it shown to a jury as Exhibit A.

This warning is particularly important when you are investigating claims raised in a lawsuit. For example, imagine a situation in which a child is injured while in a nursery and the family claims that the injury was caused by a volunteer's negligence. Although an investigation into the accusation is both warranted and necessary, keep in mind that the "paper trail" related to the investigation is subject to discovery. Any documentation should be limited to "just the facts, ma'am" without relying on personal thoughts or conjecture. Transcribing or summarizing what the subject of the investigation said in an interview is appropriate; commenting that you "tend to believe" the subject or that "this seems really bad" is not. Admittedly, this is easier said than done, and employees or volunteers are often surprised how often they include subjective details. Before submitting a document or hitting send, take a few minutes to review the language you use with an eye toward unnecessary subjective information.

If litigation is pending, you should always rely on face-to-face communication whenever possible when discussing the litigation. When that is impossible, a telephone call is preferable to email or text messages. Remember, though, that the general content of those discussions may come out during a deposition or trial testimony.

Although communications with your attorney are generally not subject to discovery, it is important to understand the scope of the attorney-client privilege. Generally, communications are privileged if they are made privately to your attorney for the purpose of securing legal advice. There are two important caveats. First, simply copying your attorney on an email to a large group of recipients does not magically make the correspondence confidential (and may serve to catch the attention of your opposing counsel). Second, clients can waive the privilege. For example, if you exchange emails with your counsel for the purpose of seeking legal advice, those emails are likely confidential. If, however, you then forward those emails to a large group of members of your faith community, you have arguably waived that privilege and jeopardized confidentiality. Although waiver can be complex and is often dependent on the circumstances of the situation, it is better to err on the side of caution and keep written communications with an attorney private.

10 Understand and Honor Ecclesiastical Law

Problems often arise when volunteer leaders guide the faith community as they would their own personal business without acknowledging or understanding the doctrinal law in place.

Although faith communities often operate just as any other nonprofit, many are subject to doctrinal law unique to their faith tradition or denomination. Problems often arise when volunteer leaders guide the faith community as they would their own personal business without acknowledging or understanding the doctrinal law in place.

An example: the United Methodist Church is governed by a book of rules called The Book of Discipline. The Discipline sets forth the structure of the denomination, from the episcopacy to local churches and everything in between. It also provides guidance for the operations of local churches, including buying, selling and leasing property. It is critical, therefore, for local church leaders to understand and follow the mandates of the Discipline before purchasing or leasing property. Failure to do so not only causes tense situations between the local church and the denomination, but may expose the church to liability if an interested party challenges a transaction that violated the Discipline. In addition, the United Methodist Church has a separate Judicial Council – a Supreme Court, of sorts – charged with ruling on questions of law pursuant to the Discipline. Knowledge of Judicial Council rulings can be critical when confronted with difficult questions of ecclesiastical law.

The same can be said for other denominational texts. If you have congregational leaders making decisions about your faith community, be sure that they understand how any denominational texts or laws impact your faith community.