

Legal Updates for Churches & Ministries

Church & Ministry Seminar – October 20, 2026
Jonathan Ruybalid
jon@azbarristers.com

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1. Bylaws Review for the Win.

Does each board member have a current copy of the organization's Bylaws?

Are board members required annually to attest to reading:

- *The Bylaws*
- *Statement of Faith*
- *Conflict of Interest Policy*

When is the last time Bylaws were formally reviewed and updated?

Common Bylaws gaps discovered in reviews:

- *Outdated quorum and voting requirements*
- *Missing or weak conflict of interest and recusal language*
- *Inadequate board succession planning provisions*
- *Organizational structure no longer reflected accurately*

A Bylaws review can be just what the doctor ordered — schedule one today

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2. Church Political Activity Landscape.

Lobbying Activity

- *Definition: Support or opposition to legislation*
- *An insubstantial amount of lobbying is permitted*
- *Organizations must track and stay within IRS thresholds (501(h) election)*

Political Activity

- *Definition: Support or opposition to a candidate for office*
- *Strictly PROHIBITED for all 501(c)(3) organizations*
- *Any violation risks loss of tax-exempt status*

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2. Church Political Activity Landscape.

National Religious Broadcasters, et al. v. Werfel, IRS — Johnson Amendment Challenge

Litigation challenging the Johnson Amendment's application to churches

Consent Agreement language — IRS agreed: 1) *Not to enforce against Plaintiff Churches based on speech by a house of worship to its congregation; 2) In connection with religious services through its customary channels of communication; and 3) On matters of faith concerning electoral politics viewed through the lens of religious faith*

District Court Dismissed Case – Lack of Jurisdiction as Tax Anti-Injunction Act & Declaratory Judgment Act say federal courts cannot block collection of taxes.

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3. Donor Disclosure Under Review.

- *Americans for Prosperity Foundation* – limited compelled state collection of major-donor information when it was not narrowly tailored.
- *Buckeye Institute v. IRS* asks a related, potentially broader question, can federal government require confidential Schedule B donor reporting to the IRS.
- IRS collects Schedule B information for tax administration and exemption compliance purposes.

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4. The Clergy Act: Key Elements.

Bipartisan Act passed by Congress and sent to the President for signature.

1. A Second Chance.

Pastors who irrevocably opted out of Social Security may revoke that exemption and re-enroll.

2. Temporary Window.

Re-entry is limited to a two-year window beginning in 2029.

3. 40 quarter rule.

Returning clergy must pay in for 40 quarters (about 10 years) before qualifying for benefits.

4. Outreach Plan.

The IRS and Social Security Administration must plan how to notify eligible clergy.

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5. Ministry Technology Sovereignty. The core question.

A. Technology providers increasingly supply many layers of a ministry's operations at once: research, fundraising, communications, finance, data and AI, often under one integrated platform.

B. How do we gain the benefits of shared technology and AI without surrendering the capabilities, data, relationships and authority our mission depends on?

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Outsourcing is not the danger.

The danger is outsourcing without understanding what is being surrendered in the exchange.

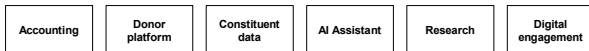
Most ministries cannot build their own AI, data or security systems, so partnering is often the right call. Ministries whose leaders who do not think about or understand acquisitions, technology governance, intellectual property and business systems are more vulnerable than they think.

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Convenience can become dependency

Each decision looks reasonable on its own:



Together, they can leave an outside organization understanding your donors, finances, audiences and systems better than you do. At that point, changing providers is no longer a technology decision. It is an institutional one.

Leaders must step back from individual contracts and examine the total dependency being created.

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Mission alignment vs. incentive alignment.

Mission alignment

Shared faith, relationships, trust and values. These matter enormously.

Incentive alignment

A commercial partner must grow revenue, retain customers, expand margins and create value from its data and customer relationships.

The two can coexist well, but they are not the same thing. Good governance & decision making looks through both lenses.

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Seven questions to ask before outsourcing.

- 1 Who ultimately owns our data, and can we retrieve it in usable form?
- 2 Can we leave, and what would it cost?
- 3 What does the provider know about us collectively?
- 4 What happens if the provider is acquired or changes direction?
- 5 Are we outsourcing execution, or judgment?
- 6 Do we keep enough internal capability to be an intelligent customer?
- 7 Are we evaluating the whole ecosystem, or just another contract?

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Outsource execution, not judgment.

Let technology do the work

Processing, analysis, operations, outreach support and other execution tasks.

Keep in-house

Discernment, theological judgment, constituent relationships, strategy and mission-critical decisions.

Keep enough internal knowledge to understand what you buy, evaluate it, challenge recommendations and change direction.

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Goal: strategic sovereignty, not independence.

Use technology, AI, platforms and partners aggressively, while keeping control of:

Mission	Theology	Relationships	Data rights
	Institutional knowledge	Strategic decisions	The ability to leave

A healthy partnership makes a ministry more capable, not just more dependent.

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The board/executive-level test.

If our largest technology and service partners disappeared tomorrow, would we still understand our people, have our data, know how our systems work, keep our critical relationships and be able to pursue our mission?

If yes You have partners.	If no You may have dependencies.
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Partner wisely.

The future of ministry will require partnerships with highly capable technology companies. The objective is not to fear them, but to become leaders sophisticated enough to partner with them wisely.

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6. ECFA New Leader Care Standard.

Every organization's board and senior leader shall work together to develop a care plan for the senior leader. The plan shall be approved annually by the board to demonstrate the organization's commitment to caring proactively for the leader's well-being and integrity.

- 2027 Renewal Cycle: compliance required.

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6. ECFA New Leader Care Standard.

1. New standard: Every organization's board and senior leader shall work together to develop a care plan for the senior leader

- — *The plan shall be approved annually by the board*
- — *Demonstrates the organization's commitment to caring proactively for the leader's well-being and integrity*

2. Compliance required beginning with the 2027 Renewal Cycle

3. What a care plan should address:

- — *Physical, emotional, and spiritual well-being of the leader*
- — *Accountability structures and peer relationships*
- — *Sabbatical and rest policies*

Action item: Begin developing your care plan framework now — do not wait until 2027

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7. *St. Mary Catholic Parish v. Roy, (10th Cir. 2025)*

- Catholic preschools in the Archdiocese of Denver were denied funding under Colorado's universal preschool program, which pays for children to attend public or private preschools.
- The preschools claim religious discrimination.
- A lower court and the Tenth Circuit sided with the state under *Employment Division v. Smith (1990)*: the program is generally applicable and does not target the preschools.

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Before the Supreme Court

- Case No. 25-581; oral argument November 2, 2026
- Question: how Supreme Court precedents apply when lower courts consider whether a government is explicitly excluding religious people and institutions from public benefits
- The outcome may shape whether states can exclude religious schools from universal benefit programs

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8. IRA Charitable Rollover & Enhancement Act: Bipartisan- Introduced

1. Amends Tax Code to Permit IRA owners to direct Qualified Charitable Distributions (QCD) into Donor Advise Fund (DAF).
2. QCD up to \$111,000 per year (2026).
3. QCD excludable from taxable income – CWA required.
4. Total DAF Assets = \$326B; 3.5M+ DAF Accounts Nationwide.

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9. Donor Advised Funds.

- **What organizations need to know:**
- A contribution to a DAF is **irrevocable** — the donor loses legal control over the funds upon contribution, though they retain advisory privileges. It is a contract.
- Grants from DAFs to your organization are **not** subject to donor restrictions in the traditional sense — the DAF sponsor is the legal donor. 501(c)(3) → 501(c)(3)
- There is **no deduction for services or time** contributed to a DAF
- The IRS and Congress have debated **mandatory payout requirements** for DAFs.

Key lesson: When a DAF makes a grant to your organization, the acknowledgment goes to the DAF sponsor, not the individual donor. You cannot acknowledge the individual donor in a way that implies they made a direct deductible contribution in that year.

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9. Donor Advised Funds: Opportunities.

1. Make it easy for DAF Donors to Give.
2. Identify Donors who have DAFs. (Retro & Prospective)
3. Proper Gift Processing and Record Keeping.
4. Suggest DAFs for Gift of Appreciated Assets.
5. Include DAF Donors in Solicitations; Planned Giving.
6. Connect with DAF Sponsors to Reach Donors. (i.e. Community Foundations).
7. Consider starting your own DAF Program & Accounts.

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10. Avoid AI Recording of Board Meetings, Processing or Substitute for Minutes.

1. Confidentiality and privilege of board meeting are undermined.
2. If record of a meeting exists and is relevant, it can be subject to "discovery" in a lawsuit.
3. Goes to "third party" AI vendor so attorney-client confidentiality (if attorney in meeting; or privileged communication shared) can be waived.
4. Vendor data practices are a critical privacy risk.
5. Can "chill" open discussion and debate by board.
6. Excess record of board discussion. Minutes should selectively mention topics and only record board actions.

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Real Property Issues for Leaders of Religious Nonprofits:

Key issues to watch and questions to ask.

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Robert Brown & Jonathan Ruybalid

bob@churchlaw.us

jon@azbarristers.com

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Why Real Property Matters:

- Real estate is often the organization's largest asset
- It is also a major source of legal, financial, and mission risk
- Directors have a duty to understand and oversee it

Topics covered

- Title and ownership • Governance • Property tax • Federal tax
- Zoning and RLUIPA • Condition and maintenance • Safety and liability • Insurance
- Outside users and leases • Debt • Historic designation • Strategy and mission
- Environmental and cemetery issues • Records and stewardship

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1. Title, Ownership, and Control.

Key issues

- Title may be held by the congregation, a denominational body, a trustee, or a holding corporation.
- Potential reversion clauses.
- Old deeds may name former trustees or an unincorporated association.
- Denominational trust clauses may claim an interest in local property, critical in disaffiliation or merger
- Deed restrictions or reverter clauses may limit use or return land to the donor's heirs

Questions to ask

- Do we have current title reports and recorded deeds for every parcel?
- Are there trust clauses, reversionary interests, or use restrictions?
- Who has authority to buy, sell, mortgage, or lease, and what approvals are required?

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2. Governance and Authority.

Key issues

- Bylaws, articles, denominational rules, and state law may impose approval requirements for real estate transactions
- Some states require court or attorney general approval to sell substantially all assets

Questions to ask

- What approvals do our bylaws and polity require for acquisitions, sales, leases, and debt?
- Who is authorized to sign on behalf of the organization?
- Are conflicts of interest disclosed when a board member, staff member, or donor is a party?

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3. Property Tax Exemption.

Key issues

- Exemption is usually tied to use, not just ownership
- Parking lots, parsonages, vacant land, leased space, and income-producing uses may lose exemption in whole or part
- Rules vary significantly by state and county

Questions to ask

- Is every parcel properly filed and exempt?
- Have any uses changed, such as leasing to a for-profit tenant, a daycare, or a cell tower?
- Are renewal filings current?

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4. Federal Tax Issues.

Key issues

- Unrelated business income (UBIT): rental income is generally excluded, but debt-financed property and service income can create UBIT
- Clergy housing allowances require proper board designation in advance

Questions to ask

- Does any property income create UBIT exposure?
- Are housing allowances designated annually and documented?

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5. Zoning, Land Use, and RLUIPA.

Key issues

- Expansions, new buildings, shelters, schools, food pantries, and community uses may face zoning hurdles
- The federal Religious Land Use and Institutionalized Persons Act (RLUIPA) limits governments from substantially burdening religious exercise through land-use rules
- RLUIPA also bars treating religious uses worse than comparable secular uses

Questions to ask

- Are current uses permitted under zoning?
- Do planned ministries require permits or variances?
- Are we grandfathered, and could a change jeopardize that status?
- Do we understand our rights under RLUIPA?

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6. Physical Condition and Deferred Maintenance.

Key issues

- Aging buildings often carry large deferred-maintenance liabilities
- Common items: roofs, HVAC, boilers, steeples, organs, stained glass

Questions to ask

- Do we have a recent facilities assessment and capital reserve study?
- What is our deferred-maintenance backlog, and how is it funded?
- Is the building sized appropriately for current and projected membership?

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7. Safety, Compliance, and Liability.

Key issues

- Fire and building code compliance
- Accessibility (ADA has some religious exemptions, but state law and other uses may differ)
- Asbestos and lead paint in older buildings
- Playground safety, security, and child-protection policies tied to facility use

Questions to ask

- When were our last fire and safety inspections?
- Are there known hazardous materials?
- Do we have a security plan and emergency procedures?

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8. Insurance.

Key issues

- Underinsurance is common, especially for historic buildings with high replacement costs

Questions to ask

- Is property insured at replacement cost, including historic features?
- Do we have adequate coverage: general liability, D&O, abuse and molestation, flood, and earthquake as appropriate?
- Do outside users carry insurance naming us as an additional insured?

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9. Asset Protection: Campus Preservation Plan.

Key issues

- Valuable assets at risk in same corporate entity where activity and employees that create liability exist.
- Catastrophic judgements; underinsured, uninsured, uninsurable.
- Separate assets using separate controlled legal entities.

Questions to ask.

- What are our total assets that could be exposed?
- What steps have we taken for asset protection?
- Can we consider requesting a Concept Memo that proposes a legal structure?

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10. Use by Outside Groups and Leases.

Key issues

- Community groups, other congregations, schools, daycares, cell towers, and parking agreements can produce income
- They can also create tax, liability, and zoning risks

Questions to ask

- Are all third-party uses documented in written agreements with indemnification and insurance requirements?
- Do any leases affect our tax exemption or zoning status?
- Are rents at fair market value, and are related-party arrangements reviewed?

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11. Debt and Financing.

Key issues

- Mortgages, construction loans, and bond financing often carry covenants
- Personal or denominational guarantees may be involved

Questions to ask

- What are our loan covenants and maturity dates?
- Can giving trends sustain debt service?
- Does denominational approval apply to borrowing?

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12. Strategy and Mission Alignment

Key issues

- Declining membership leads many congregations to consider sale, redevelopment, affordable housing, co-location, or merger
- Some states have passed "Yes in God's Backyard" laws easing affordable housing on religious land

Questions to ask

- Does our real estate serve our mission, or is it consuming resources?
- Have we considered redevelopment, partnerships, or affordable housing?
- What would a sale or merger require legally and denominationally?

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13. Records and Stewardship.

Questions to ask

- Do we maintain a central property file with deeds, surveys, title policies, leases, permits, insurance policies, and inspection reports?
- Is there a designated property or facilities committee with clear responsibilities?

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