"THE TIMES THEY ARE A CHANGIN’"
*Robert Allen Zimmerman (1964)*

The Legal Duties of Nonprofit Directors
in our Evolving Legal Landscape

Association for Biblical Higher Education

February 21, 2019

John R. Wylie
Sherman & Howard L.L.C.
90 S. Cascade Avenue, Suite 1500
Colorado Springs, CO 80903
(719) 448-4037

PART 1 – LEGAL DUTIES AND RESPONSIBILITIES OF DIRECTORS/TRUSTEES OF BIBLE COLLEGES AND SEMINARIES
DUTIES OF DIRECTORS AND OFFICERS

● Duty of Care
  ➢ Each director shall discharge the director’s duties as a director . . . with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

● Duty of Loyalty
  ➢ Each director shall discharge the director’s duties as a director . . . in good faith . . . in a manner the director reasonably believes to be in the best interests of the corporation.

STEPS THAT CAN BE TAKEN TO PROTECT AGAINST DIRECTOR AND OFFICER LIABILITY

● Review Articles of Incorporation
● Review Bylaws
● Education Board Members and Officers
● Directors’ and Officers’ Insurance
● Personal Umbrella Liability Insurance
PART 2 – THE IMPORTANCE OF UNDERSTANDING LEGAL RISKS – A LOOK AT THE COLLISION OF RELIGIOUS LIBERTIES AND SEXUAL LIBERTIES IN THE LAW

I. INTRODUCTION
II. The Advance of Religious Liberty

A. Mostly good cases and legislation
   • 1987 – Amos
   • 1993 – Church of Lukumi Babalu Aye
   • 1993 – RFRA
   • 2000 – RLUIPA
   • 1996 – DOMA
   • 2012 – Hosanna-Tabor
   • 2014 – Hobby Lobby
   • 2014 – YMCA
   • 2017 – Trinity Lutheran
   • 2018 – Masterpiece Cakeshop

B. What is a religious organization or religious activity or religious worship?

C. Where we are in 2019

III. The Advance of Sexual Liberty

A. The changing culture (and resulting culture wars)
   • 1960s
   • 1970s
   • 1980s
   • 1990s
   • 2000s
III. The Advance of Sexual Liberty (cont.d)

B. The cases and the legislation
   - 1986 – Bowers
   - 1992 – Colorado Amendment 2
   - 1996 – Evans v. Romer
   - 2003 - Lawrence
   - 2008 – Prop 8
   - 2013 – Windsor; Hollingsworth
   - 2015 – Obergefell
   - 2016 – U.S. Civil Rights Commission Report

C. Where we are in 2019

IV. Difficult Issues on Horizon

A. Employment
B. Public accommodations
C. Commercial activity
D. Potential impact on insurance coverages
V. Proactive Steps to Consider

A. Broad brush steps
B. Adopt a Christian community policy
C. Consider “church” and/or “minister” status
D. Public Accommodations

VI. Conclusions