



# How the Supreme Court's 2020 Ruling in *Bostock* Affects Churches and Ministries

## **BOSTOCK V. CLAYTON COUNTY**

Alliance Defending Freedom represented Tom Rost at the U.S. Supreme Court in *R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission*, one of a trio of cases related to sexual orientation and gender identity in the employment context that were collectively decided under a decision titled *Bostock v. Clayton County*.

In *Bostock*, the Court ruled that an employer cannot fire or decline to hire an employee solely because of the employee's sexual orientation or transgender status. The Court concluded that such employment decisions take into account the employee's sex, and Title VII of the 1964 Civil Rights Act prohibits employment discrimination "because of sex." The ruling rejected the common-sense understanding of Title VII's ban on sex discrimination. However, the Court fortunately agreed that "sex" is biological and genetic.

## **WHAT QUESTIONS DID BOSTOCK RAISE?**

Under *Bostock*, churches and religious organizations may not "discriminate" on the basis of sexual orientation or gender identity unless they can successfully assert one or more potentially available defenses.

Title VII's existing religious exemptions permit religious employers to prefer individuals "of a particular religion." Whether these exemptions protect religious employers from claims of sexual orientation and gender identity discrimination is a hotly contested issue that will likely be resolved in future court decisions.

Other potential defenses include the Religious Freedom Restoration Act, the First Amendment's "ministerial exception" doctrine, and other First Amendment rights courts have recognized. It remains to be seen how powerful these potential defenses will be. The Supreme Court did reaffirm and broaden the ministerial exception in another 2020 case, *Our Lady of Guadalupe School v. Morrissey-Berru*. Learn more about this case and its impact [here](#).

If courts reject these defenses, churches and religious organizations will face a number of challenging questions, including the following:

- Can religious organizations maintain faith-based conduct standards that reflect their beliefs about marriage, sexual morality, and biological sex?
- Will religious employers be forced to cover puberty blockers, cross-sex hormones, and so-called sex reassignment surgeries in their healthcare plans?
- Will employers and employees be required to use transgender pronouns (anything other than "he" for males or "she" for females) in violation of their own religious beliefs about biological sex?
- Will employers be required to give men who identify as women access to private spaces set aside for women (e.g., locker rooms, showers, changing stations)?

## WHAT CHALLENGES ARE AHEAD FOR CHURCHES AND MINISTRIES?

Activists are attempting to use the *Bostock* decision to dramatically rewrite other federal, state, and local bans on sex discrimination to reach sexual orientation and gender identity. And they want to limit—or eliminate—religious protections in the process.

Recent federal proposals regarding sexual orientation and gender identity legislation are particularly dangerous for churches, ministries, and religious schools. For example, the deceptively named “Equality Act” would add “sexual orientation” and “gender identity” as protected classes to various laws in ways that would prohibit religious organizations from properly living out and teaching their faith. A similar piece of legislation, titled “Fairness for All,” is another deceptively named bill that poses many of the same threats to religious freedom, the rights of women and children, and the common good.

Activists also want to reinterpret Title IX of the 1972 Education Amendments to allow biological males identifying as female to compete in women’s sports. This would undermine the very purpose of Title IX and destroy fairness and opportunities for female athletes.

Simply put, these efforts to undermine the truth that we are made “male” and “female” would create chaos. Churches and ministries must be prepared to stand strong in a world that rejects the very nature of God’s design and recognize that doing so may require litigation.

## WHAT CAN I DO TO BETTER PROTECT MY CHURCH OR MINISTRY?

The *Bostock* decision should motivate churches and ministries to ensure their governing documents, which are an important line of defense, provide the strongest possible religious liberty protections. Church and ministry leaders should ask the following questions:

- Do your church or ministry’s governing documents make clear your beliefs on marriage and human sexuality?
- Have your employees signed a statement affirming that they have read, agree with, and will abide by your church or ministry’s beliefs?
- Has your church or ministry adopted a facility-use policy that prohibits uses that conflict with those beliefs?
- If your church or ministry performs weddings, do you have a marriage policy grounded in your view of biblical marriage?

A thorough review of your governing documents is critical. If your church has not yet started reviewing its governing documents—particularly documents related to employment—we encourage you to begin now.

ADF attorneys can also help better prepare churches and ministries by providing a legal review of your governing documents. This service is available to ADF Church Alliance and ADF Ministry Alliance members for free.

An ADF attorney will review your governing documents with an eye toward better protecting your religious freedom, consistent with the membership scope of services. You don’t have to compile all your documents or make them perfect before beginning this process. You can even start with our team reviewing just one document, like your statement of faith.

## WHAT IF MY CHURCH OR MINISTRY NEEDS LEGAL HELP?

If your church or ministry encounters a legal situation challenging your beliefs on marriage or human sexuality, please contact us immediately by [requesting legal help here](#). We recommend seeking legal advice before responding in any manner.

In addition to document review, members of the Alliance have access to attorneys who can advise you on the best possible protections for your church or ministry. To request a religious liberty document review or legal help, follow these three easy steps:

- (1) Go to the [legal intake form](#).
- (2) Fill out [the form](#), and in the “Brief description of your legal situation” section, state that you are an ADF Church Alliance or ADF Ministry Alliance member requesting a document review or consultation on a legal matter.
- (3) After you submit this form, an ADF attorney will contact you about your document review or legal matter.

## WHAT CAN MY CHURCH OR MINISTRY DO BEYOND LEGAL PREPARATION?

The Supreme Court’s decision in *Bostock* gives pastors, priests, ministry leaders, and lay people a great opportunity to reaffirm and share God’s design for marriage and sexuality.

As the *Bostock* decision illustrates, the biblical understanding of these important matters is continuing to erode. Your voice and the voice of your ministry can be a powerful means to change hearts on these issues. By speaking up, you can reveal the beauty of what the Bible teaches about marriage, including how our marriages picture the gospel (Eph. 5), what it means to be created in God’s image as either male or female (Gen. 1:27), and who we are as human beings.

*Members of ADF Ministry Alliance and ADF Church Alliance can access this and many other resources within the members-only website.*

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1-800-835-5233

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