Open Journal of Business and Management, 2023, 11, 3098-3124
https://www.scirp.org/journal/ojbm
ISSN Online: 2329-3292
ISSN Print: 2329-3284

Business Formation for Christian Entrepreneurs

Dutch Mumphord H. Kendall[1], Sonnet M. Johnston[2]

[1]Indiana Wesleyan University, Louisville, USA
[2]Indiana Wesleyan University, Marion, USA
Email: Dutch.Kendall@indwes.edu, Sonnet.Johnston@agsfaculty.indwes.edu

How to cite this paper: Kendall, D. M. H., & Johnston, S. M. (2023). Business Formation for Christian Entrepreneurs. *Open Journal of Business and Management, 11,* 3098-3124.
https://doi.org/10.4236/ojbm.2023.116170

Received: September 3, 2023
Accepted: November 13, 2023
Published: November 16, 2023

Abstract

One of the first and most important decisions every entrepreneur must make is their business form. The choice of business form can impact Christian entrepreneurs' freedom in pursuing their vision for a sacred workplace. Business textbooks tend to stop with the most common forms of business organizations, but there are almost endless combinations of financial and ownership structures possible. There are alternatives available that have advantages for religious-oriented businesses, and the details matter. The purpose of this research study was to integrate the latest academic, legal, and industry literature to present options for Christian entrepreneurs, and to help them understand the tradeoffs inherent with their selection of business form. Guidance has been curated to help Christian entrepreneurs set up their new businesses in a manner commensurate with their faith goals. Much like an introductory business textbook, this study will present a list of alternative business legal structures, discussing the advantages and disadvantages of each. However, uniquely, this will be done from the perspective of a Christian entrepreneur.

Keywords

Business Forms, Entrepreneurship, Religion in Business, Religious Freedom

1. Introduction

> There are no unsacred places; there are only sacred places and desecrated places.
>
> Wendell Barry, "How to be a Poet (to remind myself)", 1998

It is one of the first subjects in virtually every introductory business textbook. It is also one of the first decisions every entrepreneur must make: business form. Textbooks often begin by reviewing the major business forms or legal structures, giving the advantages and disadvantages of each (Gitman et al., 2018). Reviews of the various forms of business organizations are also commonly provided in government and association guides (Michigan Small Business Development Center, 2022). As students are taught, this decision is critical, because each business form involves tradeoffs (Gitman et al., 2018). Christian entrepreneurs often wish for their workplaces to be sacred places, where they can live out their values. The choice of business form can impact their ability to pursue this vision unfettered.

This article is organized much like one of those introductory business textbooks. First, the article describes the methodological approach taken to synthesize the relevant literature to form the foundation for this study. Then, the bulk of article presents a list of alternative business legal structures, discussing the advantages and disadvantages of each from the perspective of a Christian entrepreneur. The article concludes with general advice for the formation of new Christian businesses, which applies regardless of the legal form chosen.

2. Purpose and Method

Numerous government, industry association, higher education, and even private equity organizations stand ready to offer advice for entrepreneurs. However, these organizations almost exclusively take a secular viewpoint and ignore the perspective of entrepreneurs who wish to incorporate their religious beliefs and practices into their new business. There are surprisingly few sources of legal advice for religious entrepreneurs. The public references that are available come predominantly from advocates and lobbyists, such as the Alliance Defending Freedom (2023). These organizations have published a few pamphlets and blog posts, but it must be recognized that these guides, while helpful, are not meant to be objective, but rather are designed to support a partisan agenda. This has left an acute literature gap for scholarly, substantiated, objective guidance.

As a result of this gap, the purpose of this study was to integrate the latest academic, legal, and industry literature to present alternative options for Christian entrepreneurs, and to help them understand the tradeoffs inherent with their selection of business form. In the academic sense, it is an integrative, systematic literature review on the subject. More pragmatically, the study is curating the best guidance currently available to help Christian entrepreneurs set up their new businesses in a manner commensurate with their faith goals.

The literature review underpinning this article encompassed thousands of academic, legal, journalistic, and industry references. An iterative search was conducted in a series of scholarly and legal databases, including HeinOnline's Law Journal Library, EBSCO's Business Source Complete, Google Scholar, LexisNexis, and ProQuest's ABI/INFORM. Key search terms included "Christian entrepreneurship," "religious entrepreneurship," "social business forms," "religious legal structure", and numerous related combinations and variations. Candidate references were screened initially by reviewing their titles and abstracts. References were considered if they were relevant to the intersection of faith and legal business forms. A strong preference was given to peer-reviewed works and others that showed rigor and credibility. Given the fast-changing nature of this area of law, highest priority was given to sources produced in the past five years, but some earlier works are included as background reference. Some sources were identified from the reference lists of other promising sources. This process yielded roughly 200 relevant sources. Once the sources had been curated, they were sorted with a thematic analysis. Applicable information was extracted from these sources and synthesized, and finally condensed into this article. This process allowed a list to be generated of alternative business legal structures, including advantages and disadvantages from the perspective of a Christian entrepreneur, which is now presented.

3. 501(c)(3) Nonprofit Doing Business

Many socially inclined entrepreneurs, not just religious ones, struggle with the question of whether they should organize their businesses as nonprofit or for-profit (Chen, 2013). At the federal level, the choice between for-profit and nonprofit has traditionally been treated as a binary one (Clark & Vranka, 2013). This has forced many social entrepreneurs to organize as for-profit entities, feeling they had no better alternative. However, the legal and regulatory landscape has changed, and for some types of Christian businesses, it may be preferable to operating as a nonprofit entity.

Many organizations operate like a traditional business but are organized as nonprofits. Nonprofit organizations can sell products or services offered with a substantial margin. This is permissible, under U.S. law, as long as any profits are reinvested back into the organization in order to further the stated social mission of the organization, and the employees of the nonprofit are not paid above-market rates. One example of this approach is Embrace Global, a nonprofit business that sells incubators for infants. The incubators are sold for a profit but are also provided as a mission to third-world countries, funded by donations (Embrace Global, n.d.). The organization sells the product, with a healthy margin, to those who can afford it. Chen (2013), one of the founders of Embrace Global, stated, "The most important part of choosing the right structure is starting with your mission, and then adopting a structure that allows you to best achieve it" (para. 10).

Under the law, for-profit and nonprofit entities are created for different purposes. For-profit organizations are designed to generate revenue that exceeds the cost required to produce that revenue, resulting in financial value. In contrast, nonprofit organizations are designed to benefit the broader community. While the means used may be similar, the intended audience is different (Upcounsel, 2020). The difference between for-profit and nonprofit is a matter of intended outcome, not the type of activity conducted (Chen, 2013; Clark & Vranka, 2013). So, if a nonprofit entity can show its business trade activities directly align with and support its declared tax-exempt purposes, this form may have some advantages for Christian entrepreneurs.

3.1. Advantages

One of the fundamental differences between nonprofit and for-profit entities is the ways they can acquire capital to pursue their purposes. For-profit businesses raise funding from private investors who generally expect some sort of financial return on their investment, such as dividends or interest. Nonprofits have donors who expect a social return on their contributions rather than any personal return. For-profit businesses cannot have donors, only customers, lenders, or shareholders (Chen, 2013).

Certain types of tax-exempt organizations offer Christian entrepreneurs more freedom of choice regarding important operating issues, such as hiring practices and customers served. This is one of the strongest incentives for choosing one of these forms, even if the organization plans to operate as a traditional business. Churches and other religious organizations are largely, although not entirely, exempt from Title VII restrictions on employment discrimination, so are permitted to only hire employees who meet religious standards (Gregory, 2011; Schopf, 1997; Charlton, 2021). Private social clubs, on the other hand, are exempt not only from Title VII mandates, but also allowed to restrict whom they serve as customers (CBS News, 2012; Jolly-Ryan, 2006). These additional freedoms may be appealing to Christian entrepreneurs, providing, of course, they can live without significant personal enrichment from the organization's success. This is just one of many disadvantages that must be considered for this business form.

3.2. Disadvantages

Nonprofits are often registered as nonprofits so they can receive exemption from federal and state income taxes. This exemption, however, comes with strings attached (Springly, n.d.). To qualify for tax-exempt status under section 501(c)(3) of the Treasury code, organizations must be organized for an approved, exempt purpose. This includes charitable, religious, public safety, educational, or other social causes (IRS, 2023). The organization must show they aim to benefit the public or a specific group of worthy individuals (Springly, n.d.). They then must operate consistently with this stated purpose. Straying from this purpose could cause the organization to lose its tax exemption (IRS, 2023).

When a particular segment of the operation strays too far from this initial purpose, or simply when this segment starts to generate too much profit, it can draw IRS scrutiny in the form of Unrelated Business Income Tax (UBIT). This tax was created in 1950 to ensure nonprofit organizations would not have an unfair competitive advantage over for-profit businesses when they conducted trade activities and to prevent businesses from trying to cheat the system by mis-categorizing themselves. Nonprofits can be liable for UBIT when they conduct commercial operations that do not align with their organization's professed charitable purpose in a direct, causal manner (American Bar Association, 2014).

A classic example is a nonprofit museum that includes a gift shop. If the gift shop is selling items directly related to the artifacts on display at the museum, then it is probably in safe territory. However, if a significant portion of the revenue starts coming from unrelated items, such as snacks or local souvenirs, or the gift shop's income starts to become a disproportionate amount of the nonprofit's total revenue, then they may be in trouble (American Bar Association, 2014; Upcounsel, 2020). Similarly, a church selling coffee during or directly after one of its worship services probably won't attract undesirable attention. But a church that owns and operates a coffee shop that daily serves the public will almost certainly owe UBIT (D. Newkirk, StartChurch, personal communication, March 28, 2023).

For income to be judged unrelated and therefore taxable, the nonprofit's activity must constitute a trade or business, be carried on regularly, and be unrelated to the organization's stated, exempt purpose (Chen, n.d.-a). For instance, a charity raising money by selling cookies once a year would not be considered regular business, since cookie companies sell throughout the year. However, a nonprofit that regularly sold cookies to generate funding for its charitable activities would probably be taxable, as mere financial support is not a clear enough causal connection to the organization's exempt purpose to prevent UBIT from being assessed (Seton & Associates, n.d.).

One familiar example is Goodwill. Goodwill Industries International coordinates a network of over 3200 community retail stores that collect and sell donated goods. A large portion of the profits are used to support the salaries and overhead of the stores. This includes, controversially, substantial salaries for top executives, in several cases exceeding $700,000 annually (Paddock, 2022). However, most of the funds generated are verifiably used to support charitable causes, such as career services and employment for the disabled. As a result, even though the organization is operating a traditional trade, it qualifies as a tax-exempt 501(c)(3) organization.

It is, of course, possible for a nonprofit organization to simply pay any UBIT owed on its business activities, but only up to a point. Once these business activities become substantially important to the organization, it puts the organization's tax-exempt status at risk. Unfortunately, there is no clear boundary established as to how much revenue must be created before this becomes a risk. Nor is there a clear definition as to what constitutes an unrelated business activity. So, a nonprofit might be wise to establish a for-profit subsidiary to protect itself before this becomes an issue (American Bar Association, 2014).

A Christian entrepreneur may desire to organize as a nonprofit to avoid discrimination laws, such as to only hire fellow Christians, but in practicality, this is very difficult. In one case, a religious school was allowed to discriminate in its hiring practices, but only insofar as to ensure employees practiced the same religion as the employer (Boyd v. Harding, 1996). In another case, a Christian college was granted exemption from Title VII's sex discrimination rules (EEOC v.

Mississippi College, 1980). It is noteworthy that in both cases, the organizations were private, nonprofit institutions owned by a religious denomination. Operating as any other form of nonprofit does not exempt an organization from Title VII and Title II discrimination mandates. Even with expressly religious nonprofit organizations, exemptions for discriminatory actions do not apply to non-religious positions, such as clerical roles. With extremely few exceptions, nonprofits are exempt from taxes, not from discrimination laws.

There are a few other constraints on a nonprofit's operations that can be a disadvantage. Nonprofit entities technically have no owners, so cannot sell equity to raise capital (Chen, 2013). Furthermore, tax-exempt 501(c)(3) organizations are not allowed to participate in political or legislative activities, such as lobbying. Finally, a nonprofit cannot operate for the benefit of private interests. If the IRS judges any individual is receiving excess benefits, such as a director being paid an above-market salary, taxes may be imposed on that individual and the organization (IRS, 2023). For these reasons, it may be preferable to organize a faith-driven business as a section 502 feeder organization (IRS, 1983).

4. 502 Feeder Organization

While a for-profit cannot technically own a nonprofit, the reverse, a nonprofit owning a for-profit, is common. Increasing numbers of nonprofits, including churches, wish to become self-sustaining by earning income through trade activities (Perez, 2022). These activities include virtually anything conducted by a traditional business, from retail sales to manufacturing. In some instances, revenue can be generated while staying within the boundaries of the nonprofit's defined mission, as mentioned above, but in other cases, revenue is desired merely to generate funding to fuel that mission, and the planned activities do not fit inside their tax-exempt framework. This situation may call for a for-profit subsidiary (American Bar Association, 2014).

The IRS defines such for-profit subsidiaries as *feeder organizations* under section 502 of the Internal Revenue Code (26 U.S.C. §§ 502, 2009). What distinguishes which organizations can qualify as 501(c)(3), and receive tax exemption, and which are defined as 502 feeder organizations, and therefore must pay taxes, hinges on their structure. Only organizations that are legally obligated to turn over their profits to a nonprofit, tax-exempt parent are considered feeder organizations by the IRS. A for-profit company who simply chooses to turn over their profits, at their discretion, to an exempt organization is not considered a feeder organization. If an operation turns over all its profits to charity, by choice, it may qualify as a tax-exempt 501(c)(3) organization (IRS, 1983), but it would not be considered a feeder organization. This is important because feeder organizations offer some unique advantages to Christian entrepreneurs.

4.1. Advantages

Prior to the Revenue Act of 1950, churches and other nonprofit organizations were using commercial enterprises as a source of funding, and these businesses were tax exempt, merely because their profits were ultimately used for charitable purposes. This gave these businesses an unfair advantage over their tax-paying competitors (Arnsberger et al., 2013). A foundational case in 1951 involved a company that operated a macaroni factory that turned over all its profits to a charitable parent organization. The company had been held completely exempt from federal income tax (IRS, 1983). Today, section 502 of the Internal Revenue Code defines and sets the boundaries of feeder organizations. The general rule set out by Section 502 is that organizations whose primary purpose is to conduct trade are not exempt from taxation, even if profits are used to support other organizations that are exempt (26 U.S.C. §§ 502, 2009).

This general rule helps explain why some nonprofits would consider setting up a feeder corporation. The IRS is always concerned about alignment between the primary activities of an exempt organization, such as a church, and its stated exempt purpose. It will apply an activities test to the operations. If the activities conducted by the organization do not directly support its exempt purpose, in a direct and causal fashion, then it will not qualify for tax exemption under 501(c)(3) (American Bar Association, 2014; 26 U.S.C. §§ 502, 2009). Goodwill is again a good example. Since conducting trade is essential to job training, Goodwill's stated purpose, their activities are tax exempt (Paddock, 2022).

In contrast, simply turning over profits does not align activity with purpose (IRS, 1983). For example, in a revenue ruling from 1973, a church was operating a commercial printing operation whose profits were turned over to the church. This business had no other charitable activities and was wholly owned by the church. Since its income was required to be directed to the church, the IRS ruled it was a 502 feeder organization and was required to pay taxes (IRS, 1973). Setting up a for-profit subsidiary to conduct business activities thus protects a nonprofit's tax-exempt status and gives it a more direct way of paying any taxes due, rather than being assessed UBIT.

Organizing as a feeder organization offers advantages for raising capital. Unlike nonprofit organizations, for-profit companies can attract investment from both lending and equity sources. Nonprofit organizations are required to limit their funding to contributions, loans, or investment income, but are not allowed to sell ownership shares. A for-profit feeder organization expands the envelope of potential funding sources available to the nonprofit. Donors can support the nonprofit parent, while customers and investors can support the for-profit directly. In a symbiotic relationship, the for-profit subsidiary can attract investors who are enticed by the mission of the parent organization, not just the earnings potential of the for-profit operation (Chen, n.d.-b). Organizing as a for-profit subsidiary also makes it easier to later spin off or sell the business to generate funding for the nonprofit parent (American Bar Association, 2014).

There are other financial advantages offered by feeder organizations. Dividends paid to a nonprofit owner, if the business is properly structured and segregated, will be treated as passive income, so will be tax exempt. Housing a for-profit under the umbrella of a nonprofit could also help shield the nonprofit's endowment or other assets from any liability from the for-profit's operations (American Bar Association, 2014). If the separate nature of the two groups is respected, the nonprofit should be protected from liability from the for-profit's operations, ensuring the larger mission of the organization isn't risked (Chen, n.d.-d). Layering a for-profit as a subsidiary of a nonprofit also helps shield some information from the public that a nonprofit is required to disclose. This includes the subsidiary's income, budget, and the compensation paid to certain individuals (American Bar Association, 2014).

Operating under the threat of UBIT could restrict the activities of an organization and cause it to pass up on potential opportunities. Using a for-profit subsidiary thus affords more operational flexibility. For-profit entities also have more flexibility in terms of compensation. Excessive compensation for nonprofit directors can start to look like an attempt to pass on profits that have been sheltered by its tax-exempt status. For-profit entities therefore have a better opportunity to attract high-compensation talent (American Bar Association, 2014).

A for-profit subsidiary of a nonprofit parent will enjoy some benefits simply due to the clarification this arrangement provides regarding the for-profit's priorities and values (Rivera, 2022; Perez, 2022). The clarity of the shareholder's beliefs has been cited in several seminal cases ruling in favor of religious freedom for Christian businesses (Burwell v. Hobby Lobby Stores, 2014). However, while it is helpful, it is hard to label this a significant advantage. It is simply not necessary to establish a legally binding relationship with a church to clarify a for-profit's religious values (Reinsch, Jones, & Skalberg, 2017). It also creates a layer of complication, which is one of the many potential disadvantages of this business form.

4.2. Disadvantages

Conducting business activities as a separate for-profit subsidiary adds administrative complexity (American Bar Association, 2014). Each entity is expected to act, in good faith, as if they were separate operations (Springly, n.d.). The feeder organization must have a separate Federal Employer Identification Number, bylaws, and board of directors (Perez, 2022). While directors can overlap between the two organizations, this is not ideal (Upcounsel, 2020). There should be no shared office spaces or equipment, and no shared intellectual property. Assets and bank accounts should not be comingled (American Bar Association, 2014). When assets must be shared or exchanged, it should be done in a formal manner as if they were from two unrelated entities, by written contractual agreement (Chen, n.d.-d). There should be a formal leasing, licensing, or services agreement between the entities, and the nonprofit must receive fair market value for any resources it provides. Failure to clearly segregate governance and resources could cause a court or regulator to disregard the for-profit subsidiary's separate status (American Bar Association, 2014).

As a rule, the for-profit subsidiary should be organized as a traditional C-corporation or as an LLC taxed as a C-corporation. Passthrough entities, like S-corporations or LLCs taxed as a partnership, make it more likely any dividends passed to the nonprofit parent will be treated as Unrelated Business Income (American Bar Association, 2014; Upcounsel, 2020). In addition, the formality required for these types of organizations produces documentation that will help clearly demonstrate, for interested parties like the IRS, that the two entities are being operated separately (Chen, n.d.-d).

Dividends paid out of profits will generally be treated as passive income to the nonprofit parent. This is one of the reasons nonprofits often choose to organize business activities under a separate for-profit arm, to help protect the nonprofit from being taxed as Unrelated Business Income (Perez, 2022; Springly, n.d.). However, if the nonprofit owns more than 50 percent of the for-profit's stock, then any interest, rent, or royalties paid to the nonprofit from the for-profit could be taxable as UBIT (American Bar Association, 2014).

One misconception that has gotten attention by Christian entrepreneurs is that structuring a business as a feeder organization to a church grants the business additional freedoms to discriminate with employees or customers (Rivera, 2022). This is a rapidly developing area of law that has not been well tested. However, at this time, a for-profit business' ability to exercise religious discretion seems to depend more on subtle issues like the structure of its organizing documents than on whether it is attached to a church parent (D. Newkirk, StartChurch, personal communication, March 28, 2023). Affiliation with a church parent does not, by itself, grant a for-profit corporation any special privileges with respect to discrimination laws.

Choosing a for-profit or nonprofit structure affects taxation but does not directly impact discrimination issues. This is not the purpose of section 502 of the Treasury Code. Whether for-profit or nonprofit, an organization formed for the purpose of conducting a business trade, regardless of their owners, is not permitted to discriminate based on race, color, religion, sex, or national origin in any employment decisions. In fact, a non-church employer must make reasonable attempts to accommodate the religious beliefs and practices of their workers, even when a direct conflict arises between those practices and the employer's stated values (Gregory, 2011).

Similarly, businesses are not allowed discriminate in the provision of goods and services to potential customers (42 U.S.C. §§ 2000a, 2021). Organizing under the umbrella of a nonprofit, religiously oriented parent will not excuse a company from this requirement (Equal Employment Opportunity Act, 1972). So, a church-owned subsidiary must be prepared to employ and accommodate people who do not share the church's beliefs. For some organizations, this could be considered a significant disadvantage. The tension between freedom of expression and freedom from discrimination this creates is well recognized

(Schopf, 1997).

Some have noted Title VII offers exceptions for religion institutions. This is based on a First Amendment principle that the government should not interfere with the internal operations of churches and other religious organizations. This is often colloquially referred to as the *ministerial exception*. It effectively allows religious organizations to discriminate in their hiring practices, based not only on religious preference, but also in terms of other Title VII-protected categories, such as race and gender (Charlton, 2021). In *Our Lady of Guadalupe v. Morrisey-Berru*, it was applied to discrimination based on both age and disability (Our Lady of Guadalupe v. Morrisey-Berru, 2020). Whether this exception applies to employees of a subsidiary business owned by a church, however, is debatable, at best.

The ministerial exception applies broadly, even to roles beyond clergy, but it does not extend to a subsidiary set up specifically to operate a business trade. Its application is defined not based on title, but by responsibility. The Supreme Court said the exception "should apply to any 'employee' who leads a religious organization, conducts worship services or important religious ceremonies or rituals, or serves as a messenger or teacher of its faith" (Our Lady of Guadalupe v. Morrisey-Berru, 2020). The exception has thus been extended to teachers and choral directors. However, even inside a religious organization, it does not apply to all jobs. For example, the courts have ruled it does not apply to school librarians, editorial secretaries, lay teachers, and janitors (Charlton, 2021). Given this fact, for-profit institutions that are owned by churches should not expect any kind of exception to be given from the application of Title VII, allowing them to discriminate in their employment practices. Baristas in a church-owned coffee shop do not qualify for the ministerial exception.

Similarly, Title II was designed to prohibit discrimination in the provision of goods and services to potential customers. Places of *public accommodation* are not permitted to deny privileges or advantages to people on the basis of disability, race, sex, or religion. What qualifies as a public accommodation is defined very broadly, covering virtually every type of business that offers goods or services to the public (42 U.S.C. §§ 2000a, 2021). This would include 502 feeder organizations.

Title II has been the subject of numerous well-known cases, such as *State v. Arlene's Flowers*, *Inc* (2019) and *Craig v. Masterpiece Cakeshop* (2015). Generally, the courts have held that Christian businesses are not permitted to deny service to anyone based purely on their characteristics or lifestyles. For example, a restaurant could not refuse to serve homosexual customers, regardless of their religious beliefs about the matter (Hyams & Showers, 2017b). One court stated the government's interest in ending discrimination outweigh individual religious rights in such an instance, and that the imposition upon a business leader's conscience is "the price of citizenship" (Elane Photography v. Willock, 2013: p. 80). In the few cases Christian businesses have won, it has involved some sort of expression, such as when a Kentucky printer refused to print t-shirts for a local gay pride march (Lexington Fayette Urban Cnty. v. Hands on Originals, 2017) or when a Colorado baker refused to create a custom cake for a same-sex wedding (Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 2018). These cases were won based on First Amendment rights against compelled speech, not because an exception was made for religious discrimination.

Alternative for-profit structures, like the public benefit corporation, are probably of little value for a nonprofit wishing to form a for-profit subsidiary. If the nonprofit has complete control of the for-profit subsidiary, there should be no concern about directors of the for-profit considering social purposes in their decision making at the expense of profits (American Bar Association, 2014). However, if a Christian entrepreneur wanted to operate independently from a nonprofit parent, a public benefit corporation may offer some advantages.

5. Public Benefit Corporation

Increased interest in socially responsible investing, corporate social responsibility, and environmental sustainability has led to the advent of several new business forms. Christian entrepreneurs may not be aware of these options (Clark & Vranka, 2013). This includes the Low-profit Limited Liability Company (L3C), the Benefit Limited Liability Company (BLLC), the Statutory Public Benefit Limited Partnership (SPBLP), the Social Purpose Corporation (SPC), and the Public Benefit Corporation (PBC). The L3C and BLLC are the social enterprise versions of the LLC, while the SPBLP is the social enterprise version of the limited partnership. The SPC and the PBC, the most common form, are the social enterprise versions of the traditional C corporation (Kuhlik & Jorde, 2022). By the end of 2022, public benefit corporations were available in 41 states, plus the District of Columbia, in the United States (Grunin Center, 2022).

Public benefit corporations are also known as benefit corporations, or in some cases, B-corps (B Lab, 2023). The basic concept behind benefit corporations is that they are held accountable to not only financial goals, but also social goals. These social goals are defined when the business is incorporated. Many recognizable names are now organized as benefit corporations, including Tom's of Maine, Warby Parker, Kickstarter, and Patagonia (Tomasetti, 2022).

The expectations of a benefit corporation vary by state. However, Clark and Vranka (2013) summarized the major differing characteristics of the benefit corporation as:

> 1) a requirement that a benefit corporation must have a corporate purpose to create a material positive impact on society and the environment; 2) an expansion of the duties of directors to require consideration of non-financial stakeholders… and 3) an obligation to report on its overall social and environmental performance (p. 2).

Public benefit corporations are required to pursue public benefits in addition to economic value creation. This is a legal requirement for this business form, not an option. Delaware law defines a public benefit as "a positive effect (or reduction of negative effects) on one or more categories of persons, entities, communities, or interests other than the pecuniary interests of the stockholders." (Klinger-Wilensky & DiVincenzo, 2020). Benefits are allowed within a broad range of categories, including those of a religious nature. Directors are then required to balance the interests of shareholders of the corporation with the public benefits that have been specified by the benefit corporation's founding certificate of incorporation. While this can be tricky, it also offers some advantages for companies pursuing dual causes, including religious businesses.

5.1. Advantages

One of the advantages of the public benefit corporation is that it helps protect the founders' vision, ensuring it will be passed to successors (Chen, n.d.-b). Organizing as a benefit corporation "protects company missions through capital raises and leadership changes, creates more flexibility when evaluating potential sale and liquidity options, and prepares businesses to lead a mission-driven life post-IPO" (B Lab, n.d.: para. 1). Successful Christian entrepreneurs face increasing challenges as they scale, bringing in more diverse perspectives from investors, directors, or even merger partners. They may fear being pressured to change their practices and priorities by empowered investors who have divergent interests. This fear can "have a chilling effect on corporate behavior as it relates to pursuit of a social mission" (para. 2). Organizing as a benefit corporation helps to clarify those values, provides some level of protection from discontented shareholders, and helps reassure entrepreneurs their mission-focus will not be lost, giving them more flexibility with fundraising efforts (Clark & Vranka, 2013).

Another potential benefit is the added protection for directors of benefit corporations. While there is much disagreement, some experts assert that by custom and law, directors of traditional corporations are required to maximize financial returns (B Lab, n.d.). Clark and Vranka (2013) argued that without either clear precedents or statutory authority, it is at least reasonable for corporate directors to fear they might be sued for breaching their fiduciary duties if they dare to consider priorities other than shareholders' financial success. The public benefit corporate form helps to protect directors from liability for their pro-social business decisions by allowing for social or environmental priorities to be codified into the organization's founding documents (Chen, n.d.-b).

Public benefit corporations can be safely operated without concern about *constituency statues*. Corporations are organized at the state, not the federal level. Therefore, the responsibilities of directors of corporations are governed by state-specific laws, which of course vary. One of the common variations involves constituency statutes, which govern which stakeholders that directors are permitted to consider in making certain decisions, such as an offer to acquire the company. In some states, directors are allowed to consider employees or the local economy, even if it meant they would reject a higher offer price. Christian entrepreneurs may not want this to be optional, but rather a strict requirement in perpetuity for their company. These constituency statutes are now being evaluated in light of other types of decisions, such as whether a corporation can pursue social aims at the expense of financial goals (Clark & Vranka, 2013). A few states don't have constituency statues at all. Notably, Delaware, the most popular state for legal incorporation, does not have a constituency statute. The state of Delaware actually advertises this as a feature, arguing other states have chosen to protect managers over stockholders as a way to attract incorporation businesses away from them (Delaware Department of State, n.d.). However, social enterprise forms, such as the public benefit corporation, remove the issue entirely by mandating directors consider the organization's non-financial mission.

Another commonly cited advantage of public benefit corporations is the form's attractiveness to social investors (Tomasetti, 2022). Research conducted by the Global Sustainable Investment Alliance showed 35.9% of all assets invested at the end of 2020 were invested with some form of environmentally sustainable investment strategy (GSIA, 2020). There has been an explosive growth in sustainable investing, with funds invested increasing 50% between 2015 and 2020. As a result, it has become a major sector of the market, with venture capitalists, private equity investment groups, and individual angel investors focusing on the sector and seeking companies that align with their values (Clark & Vranka, 2013). This certainly supports the demand for validated companies that investors can place their funds into.

Public benefit corporations might enjoy a competitive advantage with customer and employee perception (Debtor, 2017). Consumers have become increasingly aware of social and environmental issues, and are using their purchasing power to reward companies who support causes they are interested in. They also increasingly distrust corporate messaging around socially responsible behavior, making third-party validation more valuable. Moreover, studies have shown people are steering their choice of employer towards companies whose values they respect (Clark & Vranka, 2013).

For example, college education company Laureate Education was the first public benefit corporation to go public. Laureate Education is a for-profit educational institution that supports over one million students, making it the largest education provider in the world. The vast majority of the company's students are international, but several notable colleges in the United States are included under its umbrella, including Walden University. The company had previously been public but was purchased by private equity firms and turned private in 2007. After converting to a public benefit corporation, the company achieved certification as a B-corp by B Lab, and then went public in 2017. The company credits its verifiable focus on education and student welfare, not just profits, for its success at avoiding much of the scrutiny that has befallen for-profit colleges in the United States (Debtor, 2017).

Tom's shoes is a well-known example of a for-profit business that has a social cause. Some have wondered, given the charitable nature of Tom's concept, why the company didn't organize as a tax-exempt, nonprofit entity. Its model of "buy-one-give-one" (Hessekiel, 2021: para. 1) has been widely copied. However, to qualify as a 501(c)(3) nonprofit, the organization would have to pass an activity test. While the donation of shoes seems to be directly related to the sale of shoes, the relationship must be causal and substantial to qualify for 501(c)(3) status (American Bar Association, 2014). Paying staff members to sell shoes does not cause the charitable donation of shoes. The IRS has repeatedly ruled merely using the profits from an activity to fund a charitable cause does not constitute a direct and causal relationship to an exempt purpose (Seton & Associates, n.d.). Therefore, Tom's shoes was set up as a traditional C corporation, and then in 2018 it converted to a benefit corporation and was certified by B Lab (Toms, n.d.).

As of today, all the alternative social enterprise corporate forms are taxed the same as traditional C corporations (Chen, n.d.-b; Tomasetti, 2022). However, there is reason to believe this may change in the future, offering another advantage of the form. Two states, New Jersey and Pennsylvania, have already proposed legislation giving tax benefits to benefit corporations. This has been a consideration in several other states and could become a trend (Kuhlik & Jorde, 2022). Nevertheless, for now, benefit corporations have no special tax privileges to compensate for the added complexity and costs of the business form, which can be a significant disadvantage.

5.2. Disadvantages

One of the major disadvantages of the public benefit corporation is added administrative complexity and cost. The process of setting up and maintaining a public benefit corporation is more complex than with a traditional corporation, and there are currently no tax benefits to offset this expense (Reinsch et al., 2017). Benefit corporations must hold themselves accountable to their founding principles. This means they must measure their social performance and produce a public report detailing results in terms of both financial and social goals (Tomasetti, 2022; Chen, n.d.-c). For instance, Delaware law requires public benefit corporations to report on their efforts to promote benefits every two years. This report must evaluate the company's performance against standards its board of directors has set (Klinger-Wilensky & DiVincenzo, 2020).

Depending on the state of incorporation, the organization may be required to measure itself against a third-party standard or seek third-party certification (Reinsch et al., 2017; Chen, n.d.-c). These requirements vary from state to state. In Delaware, benefit corporations are not required to use a third-party standard or employ an independent evaluator (Klinger-Wilensky & DiVincenzo, 2020).

However, in most states, public benefit corporations must use an independent evaluator, such as B Lab or SASB. This could become an issue for Christian entrepreneurs, as the third-party standard may not align with the organization's intended purpose (Clark & Vranka, 2013).

The public benefit corporate form results in added burdens for directors. Directors are required, as a matter of law, to consider how their actions affect a broad set of stakeholders, not just shareholders (Tomasetti, 2022). When resources are scarce, a public benefit corporation must weigh its purposes against each other. As it is required to pursue both profitability and social benefits, this could create some dilemmas. In some states, the organization is required to have at least one independent director who is focused on the public benefit the organization is trying to produce (Reinsch et al., 2017).

Another potential disadvantage for public benefit corporations is a poorly developed legal landscape. The relatively newness of this corporate form means there is little case law and developed precedents to cover disputes, which could present some risks for an organization. In some states, if a public benefit corporation fails to live up to its social purpose, lawsuits can be brought in the form of a *Benefit Enforcement Proceeding*. How exactly these lawsuits would be settled is currently unknown, as the case law has not yet fully developed. This represents an unknown legal risk for public benefit corporations (Reinsch et al., 2017).

It can be difficult for a company that hopes to pursue a social mission, but is already organized in a more traditional way, to convert to a benefit corporation, or even to simply revise its organizing documents, because this would generally require a supermajority shareholder vote (Clark & Vranka, 2013). However, it is not always necessary for a Christian entrepreneur to formally organize as a public benefit corporation to ensure the founder's values are sustained. A traditional for-profit offers more freedom and flexibility than many expect.

6. Traditional For-Profit Businesses

After several high-profile lawsuits, a tangible fear has developed in the Christian business community that organizing in a traditional for-profit fashion precludes businesses from exercising their religious values. This is not a wholly accurate perception (Alliance Defending Freedom, 2023). There are of course many examples of companies that are organized in the traditional for-profit fashion that pursue social causes, such as Starbucks and Whole Foods (Reinsch et al., 2017). Yet the directors of these companies have not come under fire for prioritizing their missions, not just profits. Meanwhile, in the famous *Burwell v. Hobby Lobby Stores* case, the Supreme Court affirmed there is no contradiction between operating as a for-profit entity and exercising sincerely held religious beliefs. In fact, unlike social causes, religious beliefs and practices are due special protection from government intervention (Burwell v. Hobby Lobby Stores, 2014).

Corporations are often described as legal persons who have a separate life of their own. They are organized by a state charter and are granted the right to operate under the laws of the state in which they are formed. As a separate legal entity, they can hold title to property, enter into contracts, and be sued, all without directly involving the corporation's owners (Gitman et al., 2018). In *Burwell v. Hobby Lobby*, the Supreme Court ultimately upheld the principle that a corporation is a legal person in the eyes of the law, and therefore, like a person, can have religious values (Meese & Oman, 2014).

Despite the concern expressed by many politicians, legal scholars have noted that business owners imposing religious principles on their operations occur all the time in the United States. It is simply not unusual (Meese & Oman, 2014). The ubiquity of religious-infused commerce can be seen everywhere in American society, from stores that close on Sundays to kosher supermarkets and corporate chaplains. This should not be surprising, as studies have repeatedly shown the United States is the most fervently religious, developed country in the world. Christian entrepreneurs can legally use corporations as instruments for their religious exercise, with few restrictions. Meese and Oman (2014) concluded, "nothing about limited liability or entity status justifies stripping corporations, whether for-profit or nonprofit, of their religious personhood" (p. 286). This makes the traditional for-profit form's unique advantages available to the Christian entrepreneur.

6.1. Advantages

The Hobby Lobby case shows it is possible to use existing legal structures to embed a religious purpose into a for-profit organization's foundation, helping to protect its freedom of choice and to guard against mission drift (Reinsch et al., 2017). The Supreme Court affirmed corporations are permitted to "act for any lawful purpose," (Burwell v. Hobby Lobby Stores, 2014: p. 711) not just profits. This could include social benefit or a religious purpose. Delaware says in its code a corporate charter can include "any provision for the management of the business and for the conduct of the affairs of the corporation" (8. Del. Law. Chapter 1, 2023: p. 2) as long as it is not "contrary to the laws of this State" (p. 2). Explicitly restricting the behavior of the corporation or otherwise imposing religious aspirations on its conduct would not be contrary to the law (Meese & Oman, 2014). In contrast, public benefit corporations are required to have general public benefit as one of its purposes, so it could be argued this is an additional constraint on a Christian business (Reinsch et al., 2017).

Organizing as a for-profit entity offers advantages when the nonprofit form creates disadvantages. For instance, it avoids concerns about tax-exempt status and UBIT (American Bar Association, 2014). For-profit entities can sell equity to raise capital and are permitted to participate in political or legislative activities, such as lobbying (Chen, 2013). A for-profit, unlike a nonprofit, can choose to operate for the benefit of private interests, not just social interests. There are few constraints on compensation (IRS, 2023). For-profit entities can also offer greater anonymity to their owners. In some states, only the person who formed the corporation is publicly listed. Using an attorney as the agent to form the corporation means owners are shielded. With nonprofit organizations, public transparency is required by law (Chen, n.d.-b). However, there are good reasons why many Christian entrepreneurs have reconsidered using the traditional for-profit form.

6.2. Disadvantages

The mere perception for-profit corporations are run exclusively or even just primarily for shareholder wealth maximization could become a disadvantage for a Christian entrepreneur. While this idea is outdated and untrue, in the legal sense, it is a paradigm that persists, and may pressure religiously conscious entrepreneurs to conform to that principle (Clark & Vranka, 2013). When a company fails to live up to this tradition, regardless of support in the law, they may face lawsuits. Nothing stops activists from filing suit to try to make a point, even if they will fail to prevail in court (Alliance Defending Freedom, 2023).

With a for-profit corporation, it can be difficult to ensure the founder's intent of operating a business as a religious entity persists past their exit of the business. Succession planning becomes more perilous. The risks increase as more shareholders are brought into the company (Chen, n.d.-b). Once a corporate charter has been issued from the state of incorporation, forming a corporation requires an initial organizational meeting to adopt bylaws and elect directors. Bylaws establish the legal and managerial procedures for controlling the firm (Gitman et al., 2018). However, all these things are changeable. Directors come and go, and bylaws can be modified through a majority vote. If a shareholder feels the directors are not adequately prioritizing profitability, the directors could face a lawsuit or proxy fight (Chen, n.d.-b).

Corporate statutes widely vary by state, so to provide maximum flexibility, it may be wise to choose a state that offers the most freedom to pursue non-financial aims. Companies do not have to incorporate in the state where they are based, so they "may benefit by comparing the rules of several states before choosing a state of incorporation" (Gitman et al., 2018: Section 4.3). Most states have based their laws for chartering corporations on the Model Business Corporation Act, produced by the American Bar Association. However, some states, such as Delaware, have removed some of the restrictions on for-profit corporations that could interfere with the intent to operate the company for a religious purpose (Delaware Department of State, n.d.).

Note again while the law is evolving, there is currently no measure that will exempt a traditional for-profit enterprise from discrimination laws (Hyams & Showers, 2017a). There are a few forms of nonprofit entities that are allowed more leeway in this area, such as the ministerial exception for churches, but the exceptions that are available do not apply to a for-profit company (Gregory, 2011). Christian entrepreneurs who choose a for-profit structure must be therefore prepared to navigate these restrictions.

While it would be ideal to have legal clarity regarding the limitations of religious freedoms with respect to for-profit business, that is simply not the current reality. For example, the debate as to whether directors are required to elevate shareholders, much less profits, above other priorities has not been firmly settled in law (Reinsch et al., 2017). The answers tend to rest on technicalities and details of the specific situation, such as whether the company can be considered closely held. Fortunately, there is an abundance of alternative organizational forms available for Christian entrepreneurs' consideration. Depending on the nature of the vision for the business, some of these other forms might be a better choice.

7. Other Forms

There are far more options available to Christian entrepreneurs than they may realize. Instead of a nonprofit, it may be better for a religious business to take a *not-for-profit* form. While the terms are often used interchangeably, under U.S. statute, there is a distinction between a nonprofit organization and a not-for-profit organization. A nonprofit organization has no members or owners. It is created to serve the larger public good or to promote a social cause. In contrast, a not-for-profit organization operates for the benefit of its members, not society at large (Heaslip, 2023). A nonprofit is required to explicitly state some social purpose for their organization and to offer goods and services in strict alignment with that purpose. Not-for-profit organizations aren't required to have such an orientation. They can exist solely for the purpose of serving their membership, rather than for the public good (IRS, 2022b). However, this means while the organization is exempt from income taxes, contributions to the organization are not considered tax deductible for the donor (Heaslip, 2023).

Nonprofits fall under section 501(c)(3) of the IRS code, but there are well over 50 types of tax-exempt entities defined by the IRS. This ranges from traditional churches to private foundations to black lung benefit trusts (IRS, 2022a). Depending on the line of business being pursued, it might be preferable for a Christian business to organize as some other form of tax-exempt organization, such as a 501(c)(4) social welfare organization, a 501(c)(6) business league or chamber of commerce, or a 501(c)(7) private social club (IRS, 2022b).

If the desire is to only serve member-customers who meet strict religious or other entrance requirements, a 501(c)(7) private social club offers maximum flexibility (Heaslip, 2023). This organizational form has been the subject of significant controversy due to the fact it allows overt discrimination based on race, gender, or religion, in terms of both membership and employment (McCann, 2019). Private social clubs can discriminate based on categories that are normally not allowable, such as country clubs that only allow men or even people of a particular race. These entities are generally tax-exempt, although this varies somewhat from state to state (Jolly-Ryan, 2006). The key is these clubs are not open to the public, so they are permitted to discriminate based on the Constitutional right to freedom of association. The law prohibits discrimination in places of public accommodation, but this gives a loophole for truly private clubs (CBS News, 2012).

One option considered by some entrepreneurs is the not-for-profit mutual benefit corporation, organized under section 501(c)(4) or 501(c)(6) of the IRS code (IRS, 2022b). Mutual benefit corporations are not-for-profit, but they are not required to have a charitable or religious purpose. Homeowner's associations, unions, professional groups, and fraternities are often organized as mutual benefit corporations. Like social clubs, mutual benefit corporations are organized for the mutual benefit of their members. This grants more discretion regarding their activities, such as participating in political advocacy, something 501(c)(3) charities are prohibited from doing (Church Law Center, 2021). However, unlike social clubs, it is more difficult for mutual benefit corporations to qualify for tax-exempt status, despite their not-for-profit nature. Taxes are generally accrued on the corporation much like any for-profit organization (Wong, 2023).

Another form that should be mentioned is the credit union. In a highly regulated industry, credit unions, unlike banks, are legally allowed to distinguish who they serve and to even exclude others. They act like private social clubs for financial services. AdelFi, a Christian credit union, only serves evangelical Christian members who agree to their statement of faith (Center for Christianity in Business, 2022). They are afforded this flexibility because credit unions are allowed to define their purpose for existence and are then expected to operate in alignment with this purpose.

Cooperatives, which fall under 521(b) of the IRS code, are membership organizations that function much like a corporation, but are controlled by dues-paying members, not shareholders (IRS, 2022b). Members pay fees to be part of the cooperative and take a share of the profits, which are fully distributed. Since cooperatives don't retain any profits, they are pass-through organizations and don't pay taxes. Buyer and seller cooperatives operate in many industries and can be quite large (Gitman et al., 2018). CHS, an agricultural supplier cooperative, is the largest cooperative in the United States, reporting $47.8 billion in revenue in 2022.

A for-profit alternative worth consideration is the Limited Liability Company (LLC), which may have some advantages over a traditional corporate structure for religious businesses. This is because there is more flexibility in the way LLCs are managed. Unlike corporations, LLCs are not required to have a Board of Directors but can be run directly by the management team. There are no shareholders, but rather members of the organization. Virtually anyone or any entity (like another LLC) can be a member of the LLC, and profits can be distributed unequally, according to the agreement outlined in the LLC's organizing documents. The founders can develop a set of operating principles as part of these organizing documents that govern the organization's behavior, which then cannot be changed without dissolving the LLC (Chen, n.d.-b). Of course, since there are no shareholders, it can be much more difficult to raise capital with an LLC than with a corporation.

Low-Profit Limited Liability Companies, commonly known as L3C companies, are hybrid entities that are designed to provide an outlet for private foundations. They are allowed to operate for profit but have charitable missions. They are not tax exempt. They have simplified guidelines for the IRS's program-related investment rules, and thus make it easier for private foundations to support. Like nonprofits, they must support a social purpose, and are not allowed to involve themselves in any political or legislative agendas. They are not tax exempt (Michigan Small Business Development Center, 2022). Their ability to attract traditional investors is limited, but they might attract private investors interested in the organization's charitable goals (Chen, n.d.-b).

Finally, while a for-profit company can't really own a nonprofit subsidiary, because technically, no one owns a nonprofit, this doesn't mean a nonprofit couldn't be structured so that a for-profit organization has effective control. A for-profit company could control a nonprofit's funding stream and could act in partnership with the nonprofit (Springly, n.d). The relationship could be formalized with legally binding agreements. If a for-profit company wishes to support a religious cause, setting up this sort of formal partnership might be a viable option.

8. Advice Regardless of Form

Regardless of the legal structure chosen, there are some measures Christian entrepreneurs could take to maximize their ability to exercise their beliefs and to protect themselves from lawsuits. In *Bear Creek Bible Church v. EEOC* (2021), the court noted Title VII allows exemptions for religious organizations, but "does not define 'religious corporation, association, educational institution, or society'" (Bear Creek Bible Church v. EEOC, 2021: p. 12). Based on a long list of cases, the court listed nine factors that should be considered to determine if an organization could be classified as religious, for the purposes of Title VII exemptions:

> 1) whether the entity operates for a profit, 2) whether it produces a secular product, 3) whether the entity's articles of incorporation or other pertinent documents state a religious purpose, 4) whether it is owned, affiliated with or financially supported by a formally religious entity such as a church or synagogue, 5) whether a formally religious entity participates in the management, for instance by having representatives on the board of trustees, 6) whether the entity holds itself out to the public as secular or sectarian, 7) whether the entity regularly includes prayer or other forms of worship in its activities, 8) whether it includes religious instruction in its curriculum, to the extent it is an educational institution, and 9) whether its membership is made up by coreligionists (Bear Creek Bible Church v. EEOC, 2021: p. 12).

This list of factors reads like a set of instructions for businesses who wish to be viewed by the court system as a religious entity.

The court tested the for-profit plaintiff included in the *Bear Creek Bible Church v. EEOC* case, Braidwood Management, against these factors, and concluded it did not qualify as a religious employer. The company was for-profit, promoted secular products, its articles of incorporation did not articulate a religious purpose, it was not owned or managed by a religious entity, and it did not hold itself out to the public as a religious organization. So, while its internal operations may reflect religious practices, such as prayer before staff meetings, it did not qualify as a religious employer for the purpose of Title VII exemptions (Bear Creek Bible Church v. EEOC, 2021). This case is instructive for Christian business owners.

The *Burwell v. Hobby Lobby Stores* (2014) Supreme Court case was won, in part, because the identity and beliefs of the shareholders were sufficiently and verifiably similar that granting an exception based on religious principles was merited for the corporation, as it would be for an individual (Burwell v. Hobby Lobby Stores, 2014). The shareholders of Hobby Lobby sign an agreement to acknowledge certain religious beliefs (Reinsch et al., 2017). The company was thus treated as an extension of the identities of the owners. The court ruled that, by agreement, shareholders could choose the purposes of an organization. Bartlett et al. (2014) therefore recommended shareholders certify they have a unity of interest and identity on key issues, such as the religious purposes and doctrines of their corporation. This could be done with a formal agreement, such as that enacted by Hobby Lobby (Hyams & Showers, 2017a; Reinsch et al., 2017).

In the *Burwell v. Hobby Lobby Stores* (2014) case, the Supreme Court specifically pointed out the organization was private and closely held by a small group of shareholders, who happened to be family members. The Court was very clear their ruling was limited to closely held private companies, not public ones. If the company had been widely traded by the public, it is unlikely it would have been shielded from government intervention (Hyams & Showers, 2017a). This suggests entrepreneurial Christian businesses should carefully manage whom they invite as shareholders (Hyams & Showers, 2017b). It may be better for contributors to loan money to a for-profit rather than to become equity owners, as this risks diversifying interests and authority.

There is already case law established regarding when the "corporate veil" (Bartlett et al., 2014: para. 5) between a corporation and its owners can be pierced. Normally, the concern is to protect shareholders from the liabilities of the corporation, but the principle could be applied in reverse. For example, to help support its case that its religious beliefs are sincerely held, new businesses should infuse theological language into their articles of incorporation, bylaws, operating agreements, mission statements, and policy manuals (Hyams & Showers, 2017a; Rivera, 2022). Documented statements that clarify the company is an extension of the shareholders, rather than a separate entity, may facilitate piercing the corporate veil in court, allowing the owners' individual rights to pass to the company more easily. This could be as simple as an assertion in organizing documents that the business is not permitted to act against the owners' closely held religious beliefs (D. Newkirk, StartChurch, personal communication, March 28, 2023).

To further support its case a company's religious beliefs are sincerely held, a Christian entrepreneur should consider including a church or other religious ministry in the company's management. As previously mentioned, this doesn't automatically grant businesses special legal rights, but it does help clarify its mission and values. For instance, church leaders could be included on the company's board of directors. The closer the affiliation between the for-profit and a traditional church, the more likely it will be treated as a religious organization in court (Hyams & Showers, 2017a).

Rivera (2022) recommended adopting and publicly posting a right to refuse business policy, clarifying for potential customers the business organization will refuse orders that force it to support positions that conflict with its majority shareholders. Once these policies are established, to protect against future lawsuits, it is important the organization operate consistently in accordance with them. Shrewdly devised polices that are neutrally applied, such as rules against public displays of affection, dress codes, or crude language, can help shield a faith-forwards business from claims of discrimination (Bear Creek Bible Church v. EEOC, 2021). For example, while it might be discrimination to refuse to hire better-qualified Islamic employees, it would not be discrimination to enact a policy that requires all employees to positively support the business' faith branding in the workplace.

9. Conclusion

Christian entrepreneurs should be warned this continues to be a developing area of law, and even by the time this study is published, the rules may have shifted again. Court opinions at different levels often seem to contradict. Quite a few cases in this area are headed for the Supreme Court, which will help to clarify the boundaries between religious expression for a for-profit business and the rights of employees or customers (Hyams & Showers, 2017b). In the meantime, unfortunately, Christian entrepreneurs may have to carefully consider how much time, money, and non-business effort they are willing to dedicate to court battles. Testing legal limits can be extremely painful. Consider Masterpiece Cakeshop, which was sued and fined by the State of Colorado for refusing to bake a cake for a same-sex wedding. Their case was won in the Supreme Court after six years of appeals (Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 2018). They were then sued and cited again, this time for refusing to bake a cake celebrating a gender transition. The case is currently under appeal (Karlick, 2023).

This study has made clear, just as introductory business textbooks declare, the choice of business form inevitably requires tradeoffs (Gitman et al., 2018). Which form is best is dependent on the mission and priorities of the business owners (Chen, 2013; Heaslip, 2023). Christian entrepreneurs need to carefully consider their priorities and the tradeoffs they are willing to make to pursue both their business and religious goals. Ultimately the best advice is also the simplest: seek the counsel of an experienced, skilled attorney. There are a few who specialize in this area and have been cited in this article. Regardless, it is hoped this article helped illuminate the issues and will lead aspiring Christian entrepreneurs to be wiser consumers of legal advice and better enabled to make astute business form decisions.

> The contents of this article are intended to convey general information only and not to provide legal advice or opinions. The contents of this article should not be construed as, and should not be relied upon for, legal advice in any particular circumstance or fact situation. We disclaim all liability in respect to actions taken or not taken based on any or all of the contents in this article to the fullest extent permitted by law. An attorney should be contacted for advice and guidance on specific legal issues.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

26 U.S.C. Subtitle A, Chapter 1, Subchapter F—Exempt Organizations. §§ 502 (2009). https://www.govinfo.gov/content/pkg/USCODE-2005-title26/pdf/USCODE-2005-title26-chap1-subchapF-partI-sec502.pdf

42 U.S.C. Chapter 21, Subchapter II—Public Accommodations. §§ 2000a (2021). https://www.govinfo.gov/content/pkg/USCODE-2021-title42/pdf/USCODE-2021-title42-chap21-subchapII-sec2000a.pdf

8. Del. Law. Chapter 1—General Corporation Law. §§ 102 (2023). https://delcode.delaware.gov/title8/Title8.pdf

Alliance Defending Freedom (2023). *Faith in the Workplace: Legal Protections for Christians Who Own or Lead a Business*. https://adflegal.org/sites/default/files/2023-01/alliance-defending-freedom-adf-faith-in-the-workplace.pdf

American Bar Association (2014, June 22). Taking Care of Business: Use of a For-Profit Subsidiary by a Nonprofit Organization. *Business Law Today*. https://www.americanbar.org/groups/business_law/publications/blt/2014/06/03_levitt/

Arnsberger, P., Ludlum, M., Riley, M., & Stanton, M. (2013). *A History of the Tax-Exempt Sector: SOI Perspective*. Internal Revenue Service. https://www.irs.gov/pub/irs-soi/tehistory.pdf

B Lab (2023). *About B Lab*. https://www.bcorporation.net/en-us/movement/about-b-lab

B Lab (n.d.). *Benefit Corporations*. https://usca.bcorporation.net/benefit-corporation/

Bartlett, R., Buxbaum, R., Gadinis, S., McCrary, J., Solomon, S., & Talley, E. (2014, October 13). *Hobby Lobby and Closely Held Corporations*. Columbia Law School. https://clsbluesky.law.columbia.edu/2014/10/13/hobby-lobby-and-closely-held-corporations/

Bear Creek Bible Church & Braidwood Management, Inc. v. Equal Employment Opportunity Commission, United States District Court, Northern District of Texas (2021). *Civil Action 4:18-cv-00824-O*. https://www.govinfo.gov/content/pkg/USCOURTS-txnd-4_18-cv-00824/pdf/USCOURTS-txnd-4_18-cv-00824-0.pdf

Boyd v. Harding Academy of Memphis, Inc., 88 F. 3d 410 (6th Cir. 1996). https://casetext.com/case/boyd-v-harding-academy-of-memphis-inc

Burwell v. Hobby Lobby Stores, 73 U.S. 682 (2014). https://casetext.com/case/burwell-v-hobby-lobby-stores-inc-1

CBS News Minnesota (2012, August 20). *Good Question: Why Can Some Clubs Discriminate*? CBS News. https://www.cbsnews.com/minnesota/news/good-question-why-can-some-clubs-discriminate/

Center for Christianity in Business (Producers) (2022, August 10). *Building a Bank for Christians (Interview w/Abel Pomar), Episode 142*. Christianity in Business [Audio Podcast]. https://hc.edu/center-for-christianity-in-business/2022/08/10/building-a-bank-for-christians-interview-w-abel-pomar/

Charlton, K. (2021, September 13). *Title VII Doesn't Protect Church Staff from Workplace Harassment*. Hawks Quindel, S.C. https://www.hq-law.com/blog/employment-law/title-vii-protections-dont-apply-for-ministeri-al-employees/#:~:text=After%20Demkovich%2C%20the%20%E2%80%9Cministerial%20exception,origin%2C%20disability%2C%20or%20age

Chen, J. (2013, February 1). Should Your Business Be Nonprofit or For-Profit? *Harvard Business Review*. https://hbr.org/2013/02/should-your-business-be-nonpro

Chen, J. (n.d.-a). *Operating a Business as a Nonprofit Organization*. The Law Office of Jeremy Chen. http://jeremychenlaw.com/operating-a-business-as-a-nonprofit/

Chen, J. (n.d.-b). *Entity Choices for Social Enterprises*. The Law Office of Jeremy Chen. http://jeremychenlaw.com/entity_choice_for_social_enterprises/

Chen, J. (n.d.-c). *Accountability: How Benefit Corporations and Social Purpose Corporations Differ*. The Law Office of Jeremy Chen. http://jeremychenlaw.com/benefit-corporation-accountability-enforcement/

Chen, J. (n.d.-d). *Forming a For-Profit Subsidiary of a Nonprofit*. The Law Office of Jeremy Chen. http://jeremychenlaw.com/for-profit-subsidiary-of-a-nonprofit/

Church Law Center (2021, June 29). *How Mutual Benefit Corporations Differ from Other Nonprofits*. https://www.churchlawcenter.com/nonprofit/how-mutual-benefit-corporations-differ-from-other-nonprofits/

Clark, W., & Vranka, L. (2013, January 18). *The Need and Rational for the Benefit Corporation*. B Lab. https://drive.google.com/file/d/1QyMrBS9_6fC9guMYotZ5DElsTxuD16K9/view

Craig v. Masterpiece Cakeshop, Inc., 370 P. 3d 272, 2015 COA 115 (Colo. App. 2015). https://casetext.com/case/craig-v-masterpiece-cakeshop-inc-1

Debtor, L. (2017, February 1). The World's Biggest For-Profit College Company, Laureate

Education, Raises $490 Million in Public Debut. *Forbes*. https://www.forbes.com/sites/laurengensler/2017/02/01/laureate-education-initial-public-offering/?sh=54f6729c2b3d

Delaware Department of State (n.d.). *Delaware Corporate Law: Facts and Myths*. Delaware.gov. https://corplaw.delaware.gov/facts-and-myths/#fn:35

EEOC v. Mississippi College, 626 F.Supp 2d 477 (5th Cir. 1980). https://casetext.com/case/e-e-o-c-v-mississippi-college

Elane Photography, LLC v. Willock, 309 P. 3d 53 (N.M. 2013). https://casetext.com/case/elane-photography-1

Embrace Global (n.d.). *We Believe in a World Where All Premature Babies Have Access to Incubators.* https://www.embraceglobal.org/

Equal Employment Opportunity Act, Pub. L. No. 92-261 (1972). 42 U.S.C. § 2000e(j). https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964

Gitman, L. J., McDaniel, C., Shah, A., Reece, M., Koffel, L., Talsma, B., & Hyatt, J. C. (2018). *Introduction to Business*. Rice University. https://cnx.org/contents/Tgl3H6iq@8.5:HFQiJQgd@7/Introduction

Gregory, R. F. (2011). *Encountering Religion in the Workplace: The Legal Rights and Responsibilities of Workers and Employers*. Cornell University Press. https://doi.org/10.7591/cornell/9780801449543.001.0001

Grunin Center for Law and Social Entrepreneurship (2022). *Social Enterprise Law Tracker.* New York University School of Law. https://socentlawtracker.org/#/map

GSIA (2020). *Global Sustainable Investment Review.* Global Sustainable Investment Alliance. https://www.gsi-alliance.org/wp-content/uploads/2021/08/GSIR-20201.pdf

Heaslip, E. (2023, February 6). *Nonprofit vs. Not-for-Profit vs. For-Profit: What's the Difference*? U.S. Chamber of Commerce. https://www.uschamber.com/co/start/strategy/nonprofit-vs-not-for-profit-vs-for-profit

Hessekiel, D. (2021, April 28). The Rise and Fall of the Buy-One-Give-One Model at Toms. *Forbes*. https://www.forbes.com/sites/davidhessekiel/2021/04/28/the-rise-and-fall-of-the-buy-one-give-one-model-at-toms/?sh=402b2b1771c4

Hyams, D., & Showers, R. (2017a, May 10). *Religious for-Profits: Oxymoron or Orthodox Obedience.* Simms Showers LLP. https://www.simmsshowerslaw.com/religious-for-profits-oxymoron-or-orthodox-obedience/

Hyams, D., & Showers, R. (2017b, October 6). *Christian for-Profits: Understanding Public Accommodation Laws' Impact on Christian Business Owners.* Simms Showers LLP. https://www.simmsshowerslaw.com/christian-for-profits-understanding-public-accommodation-laws-impact-on-christian-business-owners/

IRS (1973). *Revenue Ruling 73-164, 1973-1 C.B. 223.* U.S. Department of the Treasury. https://www.irs.gov/pub/irs-tege/rr73-164.pdf

IRS (1983). *IRC 502—Feeder Organizations—Continuing Professional Education.* U.S. Department of the Treasury. https://www.irs.gov/pub/irs-tege/eotopicf83.pdf

IRS (2022a, January 1). T*ax-Exempt Status for Your Organization*. U.S. Department of the Treasury. https://www.irs.gov/pub/irs-pdf/p557.pdf

IRS (2022b, June 16). *Types of Tax-Exempt Organizations.* U.S. Department of the Treasury. https://www.irs.gov/charities-non-profits/types-of-tax-exempt-organizations

IRS (2023, February 6). *Exemption Requirements—501(c)(3) Organizations.* U.S. De-

partment of the Treasury.
https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations

Jolly-Ryan, J. (2006). Teed off about Private Club Discrimination on the Taxpayer's Dime: Tax Exemptions and Other Government Privileges to Discriminatory Private Clubs. *William & Mary Journal of Women and the Law, 13,* 235-272.
https://doi.org/10.2139/ssrn.894335

Karlick, M. (2023, February 14). *Colorado Appeals Court Finds Masterpiece Cakeshop Violated Anti-Discrimination Law Again*. Colorado Politics.
https://www.coloradopolitics.com/courts/colorado-appeals-court-finds-masterpiece-cake-shop-violated-anti-discrimination-law-again/article_a1452488-9d3f-11ed-a029-db9f03467b09.html

Klinger-Wilensky, E., & DiVincenzo, M. (2020). *Public Benefit Corporations (DE)*. Thomas Reuters.
https://www.morrisnichols.com/assets/htmldocuments/BylinedArticles/2020_PracticalLaw_PublicBenefitCorpDEPracticeNote.pdf

Kuhlik, M., & Jorde, W. (2022). *The State of Social Enterprise and the Law*. Grunin Center for Law and Social Entrepreneurship, New York University School of Law.
https://socentlawtracker.org/wp-content/uploads/2022/08/2021-2022_Grunin_Tepper_Report.pdf

Lexington Fayette Urban Cnty. Human Rights Comm'n v. Hands on Originals, Inc., NO. 2015-CA-000745-MR (Ky. Ct. App. May. 12, 2017).
https://casetext.com/case/lexington-fayette-urban-cnty-human-rights-commn-v-hands-on-originals-inc

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, 584 U.S. 16-111 (2018).
https://supreme.justia.com/cases/federal/us/584/16-111/

McCann, M. (2019, July 1). *Why Private Golf Clubs Are Legally Still Able to Discriminate against Women*. Sports Illustrated.
https://www.si.com/golf-archives/2019/07/01/private-golf-clubs-muirfield-augusta-women-discrimination

Meese, A., & Oman, N. (2014, May 20). Hobby Lobby, Corporate Law, and the Theory of the Firm. *Harvard Law Review Forum, 127,* 273-301.
https://harvardlawreview.org/wp-content/uploads/2014/05/vol_127_Meese-Oman.pdf

Michigan Small Business Development Center (2022). *Guide to Starting and Operating Small Businesses.* Michigan Economic Development Corporation.
https://www.michiganbusiness.org/4a8307/contentassets/9e9d0c936ff44225b270b26abec9208f/mi-sbdc-english-fullbook.pdf

Our Lady of Guadalupe School v. Morrisey-Berru, 591 U.S. No.19-267 (2020).
https://supreme.justia.com/cases/federal/us/591/19-267/#tab-opinion-4270870

Paddock, A. (2022, December 15). *Executive Compensation at Goodwill*.
https://paddockpost.com/2022/12/15/executive-compensation-at-goodwill-2020/

Perez, T. (2022). *New Trend: Church Owned Business*. StartChurch.
https://www.startchurch.com/blog/view/name/new-trend-church-owned-business

Reinsch, R., Jones, I. R., & Skalberg, R. (2017). The Hobby Lobby Decision: Legal Formation for Social Enterprises Made Easier. *Social Enterprise Journal, 13,* 4-16.
https://doi.org/10.1108/SEJ-08-2016-0037

Rivera, R. (2022). *Supreme Court Rules in Favor of Religious Freedom*. StartChurch.

https://www.startchurch.com/blog/view/name/supreme-court-rules-in-favor-of-religious-freedom

Schopf, J. (1997). Religious Activity and Proselytization in the Workplace: The Murky Line between Healthy Expression and Unlawful Harassment. *Columbia Journal of Law and Social Problems, 31,* 39-59.

Seton & Associates (n.d.). *Why Didn't Toms Shoes Set up as a Not for Profit Entity*? Seton Law Group. https://setonlawgroup.com/why-didnt-toms-shoes-set-up-as-a-not-for-profit-entity/#:~:text=Whether%20the%20general%20public%20knows,of%20dollars%20for%20its%20shareholders

Springly (n.d). *Can a For-Profit Own a Non-Profit? Your Questions Answered.* https://www.springly.org/en-us/blog/can-a-for-profit-own-a-nonprofit/

State v. Arlene's Flowers, Inc., 441 P. 3d 1203 (Wash. 2019). https://casetext.com/case/state-v-arlenes-flowers-inc-2

Tomasetti, B. (2022, August 4). *Public Benefit Corporations*. Carbon Collective Investment LLC. https://www.carboncollective.co/sustainable-investing/public-benefit-corporations

Toms (n.d.). *Our Story.* https://www.toms.com/us/about-toms.html

Upcounsel (2020, June 24). *Can a Nonprofit Own a for Profit Business*. https://www.upcounsel.com/can-a-nonprofit-own-a-for-profit-business

Wong, B. (2023, February 1). *Advantages of Turning Your Business into a Public Benefit Corporation.* LegalZoom. https://www.legalzoom.com/articles/advantages-of-turning-your-business-into-a-public-benefit-corporation