



LEGAL MEMORANDUM

TO: Local Registrars in the State of Minnesota Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: July 31, 2013

RE: Ensuring Local Registrars Have Freedom to Exercise their Religious Beliefs When Same-Sex Couples Request Marriage Licenses

In light of Minnesota's recent law redefining marriage to include same-sex couples, some local registrars might believe that they face a serious dilemma: either resign their positions or violate their sincerely held religious or moral beliefs about marriage by being forced by state law to issue marriage licenses to same-sex couples. But local registrars, as explained herein, can resolve this potential conflict.

In Minnesota, the local registrar is responsible for maintaining registration of vital statistics, including issuing marriage licenses. MINN. STAT. ANN. § 517.07 and § 144.212 (2013). But local registrars whose sincere religious or moral beliefs prevent them from issuing marriage licenses to same-sex couples should be allowed to appoint a designate. Indeed, a refusal by the State of Minnesota and its government subdivisions to protect a local registrar who receives a request to issue a marriage license in violation of his or her conscience suggests an unconstitutional discriminatory intent.¹ A local registrar thus should be allowed to appoint a replacement with full authority to perform all acts necessary to issue, administer, or process the marriage licenses of same-sex couples should a conflict arise. This should resolve the registrar's conflict.

Should a local registrar encounter resistance to their efforts to resolve their conflict, the protection afforded by the First Amendment to the United States Constitution ensures that neither state nor county officials may thwart local registrars' free exercise of religion. The First Amendment prohibits any government officials from "penaliz[ing] or discriminat[ing] against individuals . . . because they hold [particular] religious views." *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *accord Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (the First Amendment prohibits the government from "impos[ing] special disabilities on the basis of religious views"). Additionally, Minnesotans are afforded even greater religious liberty protection against government action under the state constitution. The Minnesota Constitution provides: "The right of every man to worship God according to the dictates of his

¹ See *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3rd Cir. 1999).



own conscience shall never be infringed...nor shall any control of or interference with the rights of conscience be permitted...” MINN. CONST. art. I, § 16. As the Minnesota Supreme Court noted in *State v. Hershberger*, “Whereas the first amendment establishes a limit on government action at the point of *prohibiting* the exercise of religion, section 16 precludes even an *infringement* on or an *interference* with religious freedom.” 462 N.W.2d 393 (1990). Accordingly, government actions that infringe on a local registrar’s conscience would violate the Minnesota Constitution. *Id.* Government officials therefore may not prevent a local registrar’s reasonable and legitimate effort to resolve his or her limited conflict.

In addition, ensuring that local registrars are not forced to issue licenses contrary to their conscience is consistent with Title VII’s requirements that employers, including governmental employers, must reasonably accommodate the religious beliefs or practices of their employees.² In other words, an employer must make reasonable adjustments to the work environment, or to the employee’s job requirements, to ensure that the employee’s ability to maintain his or her religious conscience remains unimpeded.

If local registrars face legal difficulties regarding their duties as they pertain to same-sex marriage, and would like legal advice in resolving their conflict, please contact Alliance Defending Freedom at 1-800-835-5233.

² See Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) (2012). See also *Shelton v. University of Medicine & Dentistry of New Jersey*, 223 F.3d 220 (3rd Cir. 2000) (Court found that state hospital reasonably accommodated the religious beliefs and practices of a staff nurse who had a conscientious objection to participating in an abortion when hospital offered to discuss with nurse other available positions and to transfer her to a different floor); and *Protos v. Volkswagen of America, Inc.*, 797 F.2d 129 (3rd Cir. 1986) (Court determined that employer would not incur undue hardship by accommodating employee whose religious beliefs prohibited her from working on Sabbath).