



## LEGAL MEMORANDUM

TO: Rhode Island Clerks Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: July 31, 2013

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

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In light of Rhode Island's recent law redefining marriage to include same-sex couples, some clerks 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 relationships inconsistent with those beliefs. But clerks, as explained herein, can resolve this potential conflict.

Effective August 1, 2013, town or city clerks in the State of Rhode Island are instructed to "issue a license to any two (2) persons eligible to marry."<sup>1</sup> *See* R.I. GEN. LAWS § 15-2-1(c) (2013). But clerks whose sincere religious or moral beliefs prevent them from issuing marriage licenses to same-sex couples may appoint a deputy to perform that task. State law provides that "[t]own clerks may, by and with the approbation of the town council, appoint a deputy, whenever the appointment is necessary," and that "[t]he appointed deputy has all the powers and can perform all of the duties which are incumbent on the town clerk." R.I. GEN. LAWS § 45-7-2 (2013). A refusal by the State of Rhode Island and its government subdivisions to protect a clerk who receives a request to issue a marriage license in violation of his or her conscience suggests an unconstitutional discriminatory intent.<sup>2</sup>

A clerk thus should appoint a deputy clerk 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 clerk's conflict.

Should a clerk 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 clerks' free exercise of religion. The First Amendment prohibits any

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<sup>1</sup> In Rhode Island, town or city clerks are elected or appointed depending on the county. *See* <http://www.muni-info.ri.gov/documents/publications/Town%20&%20City%20Clerks%20in%20R.I.pdf> (last visited Jul. 25, 2013). Additionally, in the city of Providence, the registrar of births, deaths, and marriages performs the duties devolved upon town and city clerks. *See* R.I. GEN. LAWS § 15-2-13 (2013). For purposes of this memo, "clerk" includes the registrar of Providence.

<sup>2</sup> *See Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3rd Cir. 1999).



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, Rhode Island law provides that “a governmental authority may not restrict a person’s free exercise of religion.” R.I. GEN. LAWS § 45-80.1-3 (2013). Given that less restrictive means exist for the government to still ensure that same-sex couples receive marriage licenses, government officials may not prevent a clerk’s reasonable and legitimate effort to resolve his or her limited conflict.

In addition, ensuring that clerks 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.<sup>3</sup> 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 clerks 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.

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<sup>3</sup> 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).