



MEMORANDUM

TO: County Auditors in the State of Washington Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: November 8, 2012

RE: Ensuring County Auditors Have Freedom to Follow their Religious Beliefs When Same-Sex Couples Request Marriage Licenses

In light of Washington’s recent redefinition of marriage to include same-sex couples, some county auditors might believe that they face a serious dilemma: either resign their positions or violate their sincerely held religious beliefs by issuing marriage licenses to same-sex couples. But county auditors, as explained herein, can readily resolve this potential religious conflict.

County auditors in the State of Washington are legally required to issue marriage licenses. *See* Wash. Rev. Code §§ 26.04.140 – 26.04.160. But auditors whose sincere religious beliefs prevent them from issuing marriage licenses to same-sex couples may appoint a deputy to perform that specific task. *See* Wash. Rev. Code § 36.16.070. Indeed, in this regard, state law provides (1) that a county “officer may employ deputies and other necessary employees with the consent of the board of county commissioners,” (2) that “[t]he officer appointing a deputy or other employee shall be responsible for the acts of his or her appointees . . . and may revoke each appointment at pleasure,” and (3) that “[a] deputy may perform any act which his or her principal is authorized to perform.” *Id.*; *see also* Wash. Op. Atty.

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Gen. 1965-66, No. 70 (permitting an employee in the sheriff's office to act as a deputy county auditor with authority to issue marriage license when the county auditor's office is closed).

Thus a county auditor who already employs deputies or other employees should appoint one of those individuals as a deputy with full authority to perform all acts necessary to issue, administer, or process the marriage licenses of same-sex couples.¹ This should resolve the auditor's religious conflict.

Even if county auditors encounter resistance in their efforts to resolve this religious conflict, the protection afforded by the First Amendment to the United States Constitution ensures that neither state officials nor county officials may thwart this legitimate attempt to preserve auditors' 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"). Thus higher-ranking government officials may not prevent a county auditor's reasonable and legitimate efforts to resolve this limited religious conflict.

If county auditors face this crisis of conscience and want assistance in resolving their religious conflict, please contact Alliance Defending Freedom at 1-800-835-5233.

¹ In the unlikely circumstance that a county auditor does not employ any deputies or other employees, he or she will need the consent of the board of county commissioners to employ a deputy to address these tasks. *See* Wash. Rev. Code § 36.16.070.

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