



Marriage Law and the Protection of Congregations’ Religious Liberty

Guidance to Pastors and Congregations in the United States from the NALC

In light of the recent decision by the US Supreme Court in *Obergefell v. Hodges*, NALC pastors and congregations may be concerned about potential implications for their ministries. While that concern is very understandable, we urge NALC members not to panic. From a legal point of view, it is unlikely that church bodies, congregations, or pastors will be compelled to violate their religious beliefs by participation in the formalizing of same-sex unions. At least for the foreseeable future, the religious liberty provisions in the United States Constitution will almost certainly continue to protect church bodies, congregations, and pastors who align their practices on marriage with their confessions of faith.¹

This is not to minimize the challenges that the *Obergefell* decision may create, both for laypeople living out their faith in the world and for congregations operating schools or community service organizations (more on that below). We also recognize the possibility of other legal challenges to congregations whose teaching on marriage is consistent with the historic Christian consensus, such as challenges to the ability of pastors to sign state marriage certificates, or, more speculatively, challenges to the tax exempt status of congregations. These are possibilities that cannot be ruled out. However, as to the fundamental question of whether government actors in the United States might compel church bodies, congregations, and pastors to participate in formalizing same-sex unions, that is a very remote possibility today.

Still, some understandably ask whether their congregations can or should do anything specific to strengthen the protection of their religious liberty as it relates to marriage. The answer is “yes!” Congregations can and should take steps to protect their religious liberty by doing what they ought to do in any event: state clearly what they believe and confess, adopt congregational policies consistent with their stated beliefs, and follow those policies consistently. The following is some initial specific guidance for congregations in this regard.

¹ Indeed, this same US Supreme Court, just three years ago, ruled unanimously that churches have complete freedom in hiring clergy and other religious education personnel, regardless of secular employment laws. (*Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 2012)

State What You Believe And Confess – Congregations should have a broad statement of faith that lays the foundation and evidences the sincerity of their religious convictions. With respect to marriage specifically, the 2005 *Common Confession*, which is endorsed in the NALC's Confession of Faith, affirms that we "believe and confess that the marriage of male and female is an institution created and blessed by God. . . . We teach and practice that sexual activity belongs exclusively within the Biblical boundaries of a faithful marriage between one man and one woman." Many NALC congregations have endorsed the *Common Confession* in their governing documents or in some other manner. Other congregations should consider endorsing the *Common Confession* or some other statement on marriage.

Adopt Congregational Policies Consistent With Stated Beliefs – Congregations obviously should act in accord with what they say they believe about marriage. The best way to do this is by enacting policies regarding the congregation's practices. These policies should cover:

1. **Congregational Practice** – A congregation should have a policy governing the circumstances under which it will host a wedding or wedding-related event. This policy, among other things, should make clear that the congregation will only recognize, participate in, solemnize, and host weddings between one man and one woman.
2. **The Use Of Facilities** – Congregations often permit outside groups to use their facilities. Such a congregation should adopt a policy defining the bounds of acceptable third-party use of church property. To avoid confusion over its beliefs regarding marriage, a congregation should include a prohibition on third-party use of church facilities for weddings, for the formalizing or blessing of sexual relationships, and for receptions or celebrations of weddings or other unions. This prohibition should apply to all weddings and unions, or at least to all unions that fall outside of Christian marriage as the congregation understands it. In addition, congregations should consider restricting the use of their facilities to those that are consistent with the church's biblical beliefs.
3. **Pastoral Acts Outside The Congregation** – A congregation (with its pastors' involvement) should adopt a policy that ensures that pastors, when undertaking pastoral acts outside the congregation (e.g., presiding at a family wedding out of town), conform their behavior to the congregation's beliefs.

Follow Those Policies Consistently – A congregation should follow its policies consistently. Ensuring consistent practice requires adopting processes through which someone or some group is responsible for approving each church-hosted wedding, third-party use of congregational facilities, and pastoral act outside the congregation. Being consistent and deliberate about following your policies will help ensure that your church is viewed as taking seriously its stated beliefs.

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As mentioned above, the *Obergefell* decision may create special issues and considerations for congregations that operate schools or other community service ministries. We will develop additional guidance for these and other situations, and will share that guidance with the NALC when ready. We also believe that some guidance to congregations regarding congregational

membership policies and practices may be appropriate, and we will work toward providing such guidance. Finally, we would note that our NALC brothers and sisters in Canada have been living for some time now under legal rulings similar to the *Obergefell* decision, and consequently there is likely to be much that we can learn from them.

We know there is great unease about the cultural shifts that appear to be occurring. But in these times, we must remember that God's people can and will have a profound impact through their faithful witness to Christ's love and truth. Even while we love those who look to persecute us, we can still take steps to protect the faith that we attempt to live each and every day. It is our hope that, in doing so, light and hope will shine even in times of spiritual darkness.