

HELPING RELIGIOUS EMPLOYERS PREPARE FOR CONFRONTATION AFTER *OBERGEFELL V. HODGES*

The Supreme Court's decision redefining marriage marked a major cultural shift unleashing significant ramifications for years to come, especially for people of faith who seek to practice their sincerely held religious convictions. While the Court's decision was limited to actions of state governments in granting marriage licenses, the implication of the ruling is that people and organizations that oppose same-sex marriage or differentiate between civil law and traditional marriages are out of step with culture.

As churches and ministries look to engage the modern world, and minister to people who are struggling with same-sex attractions, some precautionary and proactive steps are prudent in light of potential legal challenges. As a ministry serving churches and pastors, GuideStone makes available this brief document to help churches, along with their legal advisors, determine steps they should take in a post-*Obergefell* world.

1. Review your ministry's organizational documents and Statement of Faith.

Ministry organizations are typically incorporated and have articles of incorporation or certificates of incorporation and bylaws. Depending on state law requirements, these documents will contain descriptions of the nature of the charitable purpose of the entity and will often contain important statements, such as a Statement of Faith, reflecting a desire to operate in accordance with Biblical principles. To demonstrate a sincerely held religious conviction, these documents should clearly and positively outline the ministry's religious purpose and tenets of faith, using Biblical references if possible.

The Ethics and Religious Liberty Commission, GuideStone's sister entity in the Southern Baptist Convention, has published a guide, titled *Protecting Your Ministry from Sexual Orientation and Gender Identity Lawsuits*. The free guide is available by visiting the links available at GuideStone.org/MarriageResources and contains a sample Statement of Faith designed to address these issues.

2. Review your ministry's employment policies, facility use policies and marriage policies.

The sincerity of the ministry's religious convictions is a key component of many cases. If a claimant can show inconsistent policies, inconsistent application of existing policies or the absence of such policies, these circumstances can call into question the sincerity of those convictions. All policies that touch on sexual conduct in your organization should be reviewed and updated as necessary.

3. Take advantage of existing legal resources.

As your church or ministry engages the culture as it now is, it's important to make sure that you are protecting your ministry from people who do not share your Biblical views. Leading Constitutional scholars at the Alliance Defending Freedom, the Liberty Institute and the Christian Legal Society (CLS) have all posted information on their websites. The CLS has posted an online webinar discussing in detail the legal ramifications of the cultural shift epitomized by *Obergefell*. The link to the webinar can be accessed by visiting GuideStone.org/MarriageResources. Included in the

CLS webinar is a whitepaper addressing many legal issues that may arise under federal and state law and providing helpful sample policies and statements that your ministry could consider to protect itself from future litigation. Since the needs of your organization are unique, please also consider consulting with your attorney to determine the best approach to defending your organization.

4. Review your insurance coverages.

Commercial insurance coverage is an important protection for your ministry's assets. Lawsuits are expensive. Attorney's fees can add up quickly and overwhelm a ministry's ability to defend against such a claim. Most insurance policies will provide some degree of coverage from liability, but each policy is unique and should be reviewed to determine whether there is coverage for a lawsuit challenging a ministry's exercise of its religious convictions. In particular, some policies only cover bodily injury and property damage claims, and suits alleging discrimination may not be covered. Talk to your insurance broker about additional coverage needs. Brotherhood Mutual Insurance Company, for example, specifically offers Religious Freedom Protection Coverage that may provide coverage for such a lawsuit. GuideStone recommends that you contact your insurance broker and discuss your current coverages and potential needs.

5. Consult your personal financial and legal advisors.

After *Obergefell*, ministries and ministers should be prepared to defend their faith-based beliefs and practices. Claims asserted on the basis of sexual discrimination may lead to personal liability of ministers and other individuals involved. The ERLC guide mentioned above has numerous examples of lawsuits imposing liability on individuals for acting in accordance with their deeply held religious convictions. Protection from personal liability varies from state to state and is a complicated matter. While federal law generally protects assets held in tax-deferred retirement plans, the protection afforded to Individual Retirement Accounts and other assets, such as your home, significantly varies depending on a person's state of residence. If you are an individual that may be called upon to take a stand on behalf of your ministry, you are a potential target for a lawsuit. Consult with your advisors and prepare a plan to protect your future ability to engage in your ministry.