

The LGBT Legal Harassment of Churches Has Only Begun

Whenever government assumes a greater role in a societal or cultural debate, expect both intended and unintended consequences. The U.S. Supreme Court's decision to make same-sex marriage a constitutional right under the Fourteenth Amendment will generate huge conflicts – in some cases unforeseen – with the First Amendment right to the free exercise of religion. Until this constitutional showdown is ultimately decided, the campaign on the part of some same-sex marriage advocates to vigorously go after religious people and institutions that do not actively support same-sex marriage will intensify. In their orthodox versions, none of the teachings of the three major faiths in the United States (Christianity, Judaism, and Islam) condone same-sex marriage, so there will be a myriad of legal challenges in lower courts against those institutions once same-sex couples are inevitably denied marriage vows by them. The language of Justice Anthony Kennedy's opinion elevates same-sex marriage to a civil right, meaning that a refusal to comply with the demand of same-sex couples to be married will likely subject a religious organization to penalties. The most obvious is losing tax-exempt status, which means that a church, mosque, or synagogue would be forced to operate as a for-profit corporation subject to corporate tax laws. This would cause the closing or reorganizing of religious institutions *en masse*, since many already operate on a bare-bones budget. Justice Kennedy tried to reassure religious organizations by stating that "those who adhere to religious doctrines may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." However, the exact language in a court opinion is significant, and Kennedy's use of the word "advocate" instead of "exercise" is revealing. In his dissent, Chief Justice John Roberts

flagged this judicial sleight of hand. "The majority graciously suggests that religious believers may continue to 'advocate' and 'teach' their views of marriage," he wrote. "The First Amendment, however, guarantees the freedom to 'exercise' religion. Ominously, that is not a word the majority uses." Justice Kennedy could have included a sentence that carved out an exemption to the law for religious institutions or people acting according to their conscience and the teachings of their faith but he chose not to. This indicates that he and the other four justices in the majority believe that the implied right to same-sex marriage in the Fourteenth Amendment trumps the explicit right to the free exercise of religion in the First Amendment. During oral arguments of the *Obergefell v. Hodges* case, Solicitor General Donald Verrilli (the government lawyer arguing in support of same-sex marriage) admitted that the tax-exempt status of a non-compliant religious organization would be open to review. He candidly replied to a direct question about this by Justice Samuel Alito by saying, "It's certainly going to be an issue.. I don't deny that... it is going to be an issue." This sentiment has already been echoed by many in the media as numerous outlets immediately began calling for stripping tax-exempt status from religious organizations. *New York Times* columnist Mark Oppenheimer, writing for *Time Magazine*, said "... for organizations that dissent from settled public policy on matters of race or sexuality, we need to take a more radical step. It's time to abolish, or greatly diminish, their tax-exempt statuses." While many are quick to assure that this is not the end goal, government action on both the local and national levels says otherwise. The Obama administration issued a compliance mandate to The Little Sisters of the Poor, an order of Roman Catholic nuns, for refusing to allow contraception coverage in their insurance plans as required by Obamacare. The Little Sisters are fighting back by filing suit, claiming that this requirement violates their conscience and their free exercise of religion. The Obama administration rejected their free exercise claim and continues its fight

against them. *Investor's Business Daily* estimates that if the Little Sisters lose their case against the government they will either have to violate their conscience and provide contraception coverage or be fined around \$2.5 million (about 40 percent of their annual budget). The same trends are already occurring on the local level. In 2014, the city of Houston issued subpoenas to various church leaders to turn over all speeches, sermons, and communications with congregants regarding homosexuality and gender identity. This caused a huge public uproar and the subpoenas were rescinded. The city acted against those leaders who opposed a non-discrimination ordinance proposal that would, in part, allow men to use women's restrooms and vice versa. Houston provides a great example of what can happen in cities and states, especially since local governments will now be emboldened by the finding that same-sex marriage is a constitutional right. State legislatures and city councils will begin passing laws that will constrict the free exercise liberties of religious people and organizations. Any religious speech or action that contradicts a current policy or ordinance regarding same-sex marriage could be subject to heavy-handed government intervention. Consider the following recent cases: An Oregon bakery has been fined \$135,000 for refusing to bake a wedding cake for a gay couple; New York has fined the owners of a farm \$13,000 for refusing to host a same-sex wedding on their farm; and the state of Washington fined a florist \$1,000 for refusing to provide flowers for a same-sex wedding. All of these fines were based on non-discrimination ordinances that were passed prior to the Supreme Court finding a constitutional right to same-sex marriage. Now, with the full weight of the Constitution on their side, state and local officials will strengthen these ordinances and give them more teeth with regard to enforcement. Proponents of traditional marriage are fighting back to ensure that the free exercise of religion is not impeded by the Court's ruling. The First Amendment Defense Act, proposed by Senator Mike Lee of Utah, would strengthen religious liberty protections in federal law

by offering specific protections for individuals and organizations that support traditional marriage. However, even if the bill passed Congress it would have to survive a possible veto by President Barack Obama, and beyond that it would also have to pass scrutiny by the courts with regard to the *Obergefell* decision. This begins a new era for religion in America. Many religious institutions that have self-governed since the inception of the country will now be forced to adopt a government-imposed definition of marriage in contradiction to their doctrinal beliefs. Those that do not conform will pay a price, which could include loss of tax-exempt status, fines, or even forced closure. One of the founding principles of America is the free exercise of religion, but that once fundamental right now comes with a caveat: The freedom to exercise religion as long as your religion includes the government's new definition of marriage. *Reprinted from the Acton Institute.*