



## **Pastors: There is No Legal Reason to Stop Signing Marriage Licenses**

In response to the Supreme Court’s same-sex marriage decision, some pastors have decided to stop signing marriage licenses. Although a few pastors have done so as a matter of conscience, far more have taken this step fearing that the government might someday force them to marry same-sex couples in violation of their faith. But refusing to sign marriage licenses is neither legally necessary at this time, nor practically prudent.

### **I. Pastors Can Still Choose Who They Will Marry.**

Pastors still have the right to choose who they will marry. Laws in all 50 states authorize pastors to perform marriages recognized by the state. These laws are permissive: pastors “may solemnize” or are “authorized to solemnize” marriages within their state. As of now, not a single state *requires* pastors to perform any marriages, much less those marriages that violate a pastor’s religious beliefs.

There is a common misconception that pastors who sign marriage licenses have become “agents” of the state who could be forced to perform same-sex weddings. That is false. Just because an individual has permission to act does not mean that the state can force that person to act. For example, motorists obtain state permission to drive on public roads, but the state cannot require them to drive. Similarly, pastors are authorized to sign a marriage license, but they cannot be required to perform marriages.

Pastors are not acting on the state’s behalf. For now, they still enjoy the same religious freedom they have exercised for decades: the right to decide who they will—and will not—marry.

### **II. The Government Cannot Force Pastors to Perform Marriages.**

The government cannot force pastors to perform marriage ceremonies. The First Amendment protects the freedom of religious groups to shape their religious beliefs and conduct their internal affairs without government interference.<sup>1</sup> Marriages performed by pastors are inherently religious ceremonies, shaped and informed by religious convictions. As such, any government attempts to dictate to pastors what marriages they must perform violates core First Amendment principles.

Acknowledging this First Amendment “off-limits” zone, many state marriage laws specifically provide that pastors cannot be forced to perform marriages contrary to their faith.<sup>2</sup>

---

<sup>1</sup> See *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 132 S.Ct. 694, 706 (2012).

<sup>2</sup> See, e.g., Cal. Fam. Code § 400 (“A person authorized by this subdivision shall not be required to solemnize a marriage that is contrary to the tenets of his or her faith.”); see also Conn. Gen. Stat. Ann. § 46b-22b; Del. Code Ann. tit. 13, § 106; Haw. Rev. Stat. § 572-12.1; Iowa Code Ann. § 595.17; 750 Ill. Comp. Stat. Ann. 5/209; Me.

No pastor has ever been legally compelled to perform a marriage ceremony. There is only one reported case in which a minister was sued for refusing to marry a couple—and the minister won resoundingly.<sup>3</sup> The court recognized that when pastors perform weddings, they are performing a “religious sacrament” inextricably tied to their personal religious beliefs.<sup>4</sup> Based on the First Amendment’s religious liberty guarantees, the court determined that the minister was free to decide for himself who he would marry.<sup>5</sup>

At this time, pastors still enjoy constitutional rights that protect their freedom to only perform marriages consistent with their faith.

### **III. Withdrawing from Civil Marriage Raises Serious Concerns.**

There are also a host of practical concerns that should cause pastors to think very critically and prayerfully before deciding to stop signing state marriage licenses. By refusing to sign marriage licenses, are pastors participating in the further deterioration of an institution that society—and particularly children—desperately needs? Is such a step practically necessary when there are currently no attempts to force pastors to perform weddings that violate their faith?

Consider also the legal ramifications for a couple that is religiously married, but not civilly married. Civil marriage affects property rights, assumptions of paternity, probate and inheritance rights, family visitation rights, and numerous other legal issues. How will these legal matters be addressed? And if pastors do encourage couples to obtain a separate civil marriage, why is it appropriate for congregants to do something (sign a marriage license) that pastors will not?

## **Conclusion**

Pastors, be encouraged! You still have the freedom to choose what marriages you will perform, free of government interference and consistent with your faith.

Alliance Defending Freedom is closely monitoring the legal landscape on this issue, and will alert pastors to any changes in this area. Visit [www.ADFlegal.org](http://www.ADFlegal.org) to stay abreast of current developments. Alliance Defending Freedom will also vigorously defend any pastor who is threatened with legal coercion to perform a marriage ceremony that violates his religious beliefs.

---

Rev. Stat. tit. 19-A, § 655; Minn. Stat. Ann. § 517.09; N.H. Rev. Stat. Ann. 457:3; N.Y. Deom. Rel. Law; §1R.I. Gen. Laws Ann. § 15-3-6.1; 2015 Texas Senate Bill No. 2065, Texas Eighty-Fourth Legislature (signed into law June 30, 2015); Vt. Stat. Ann. tit. 18, § 5144.

<sup>3</sup> *State v. Barclay*, 708 P.2d 972 (Kan. 1985).

<sup>4</sup> *Id.* at 976.

<sup>5</sup> *Id.* at 976-77.