



MEMORANDUM CONCERNING THE RECENT SUPREME COURT RULING ON SAME-SEX MARRIAGES¹

On June 26, 2015, the United States Supreme Court (the “Supreme Court”), by a 5-4 majority vote, issued a landmark ruling² making same-sex marriages legal in all 50 states. While the Supreme Court’s ruling clearly requires states to issue marriage licenses to same-sex couples and recognize same-sex marriages from other states, at the present time, it is unclear how the Supreme Court’s ruling affects clergy, churches, religious nonprofits, parochial schools, and other church operated and/or affiliated entities.

In light of the uncertain impact of the Supreme Court’s ruling, the Office of General Counsel (“OGC”) publishes this Memorandum to provide guidance to congregations and clergy throughout the Church Of God In Christ in regards to their current church policies to ensure that they align with the Church Of God In Christ’s resolution on same-sex marriage approved by the General Assembly on November 10, 2014 (the “2014 Same-Sex Marriage Resolution”).³ The OGC has received numerous queries regarding the impact of this ruling on religious institutions throughout the United States. While there are no definitive answers at the present time, it is important to recognize that a number of states and their law-making bodies continue to consider legislation that addresses particular exceptions for religious institutions. In the meanwhile, the OGC publishes this Memorandum to offer guidance to local pastors as churches review their bylaws, policies, practices and other rules, and conform them, if necessary, to ensure that they align with the 2014 Same-Sex Marriage Resolution.

The OGC recommends that you consider the following actions:

A. CONGREGATIONS

1. Develop a Building Use Policy that Prohibits the Use of Church Facilities For Same-Sex Marriages and Other Related Activities

Local congregations should adopt a building use policy that prohibits the use of its church facilities to conduct same-sex marriages and other activities related to such unions. Should your church be challenged on this issue, courts will likely conclude that the greatest constitutional protection under the First Amendment applies to churches that *only allow members in good standing* to use their premises for weddings or other related activities. However, such constitutional protection may be diminished or eliminated in the case of churches that rent their facilities to the general public as a revenue-raising activity. Church leaders should carefully consider the potential downside of entering the commercial marketplace in order to raise church funds. Thus, **churches should avoid advertising their facilities for public use**. Once a church begins to “look like” it is in the business of facilitating public weddings, it may become subject to non-discrimination commerce laws.

2. Develop a Policy that Limits Weddings, Funerals, and Baby Dedications to Members Only

Local congregations should consider adopting a policy that not only limits weddings, but also funerals and baby dedications to *members of the congregation in good standing with the faith and teachings of the Church Of God In Christ*. “Members in good standing” should be carefully defined as members who offer evidence by their confession and conduct that they are living in accord with the faith, teachings and doctrine of the Church Of God In Christ.

3. Bylaws

Many who are opposed to same-sex marriage are encouraging churches to amend their bylaws or other governing document(s) to insert a provision defining marriage as exclusively a union between one man and one woman. **While such an amendment is not inappropriate, it may be unnecessary, redundant, or ineffective** for the following reasons:

First, the governing documents of many religious denominations contain provisions that provide a theological basis for a church’s definition of marriage. As mentioned above, the General Assembly of the Church Of God In Christ adopted the 2014 Same-Sex Marriage Resolution in November 2014, which prohibits our clergy from performing same-sex marriages and precludes

our church facilities from being leased, rented, or loaned for any purpose related to such a union. Because the General Assembly is the law expressing body of our church and the 2014 Same-Sex Marriage Resolution governs the conduct of our licensed clergy and member churches, amending the bylaws of your local church to reflect the same is not necessary, but optional.

Second, bylaws are rules of internal governance and administration. Policies pertaining to marriage or other issues are best addressed in a policy manual.

Third, and most importantly, a bylaw amendment adding a marriage policy to a church's bylaws is no guaranty of protection since it might be ignored by an activist court. For example, in 1983, the Supreme Court ruled that the U.S. Internal Revenue Service (the "IRS") had properly revoked the tax-exempt status of Bob Jones University on the basis of its racially discriminatory practices, even though the university based its practices on biblical grounds that were clearly referenced in its governing documents.⁴ This suggests that bylaw amendments are no guaranty of protection.

The bottom line is that including a statement in a church's bylaws defining marriage may be of some help should the church's tax exemptions be challenged,⁵ or if the church is sued for violating a public accommodations law due to its refusal to host same-sex marriages, but it, in itself, is no guaranty of protection. Should you choose to amend your church bylaws, the OGC strongly recommends that you consult a local corporate attorney experienced in representing religious nonprofit organizations.

B. CLERGY

The November 2014 Same-Sex Resolution prohibits licensed credential holders of the Church Of God In Christ from performing same-sex marriages. Therefore, the OGC recommends that our clergy:

1. Refrain from conducting, or engaging in the appearance of, conducting a wedding business for the public; and
2. Consider limiting your official role in weddings to members of your local congregations in good standing with the faith and teachings of the Church Of God In Christ. This way, pastors should have some familiarity with the beliefs and/or lifestyle of the couples they are marrying. We understand that this may appear as a rather brash suggestion, however, until more

clarity is provided on the issue, either by your local, state and/or federal legislators, caution should be taken in this area. As of this writing, we are aware that the state of Texas has enacted the Pastor Protection Act⁶ and the states of Kansas and Tennessee are pursuing similar legislation. However, there is much uncertainty in the majority of our states on this issue. As an additional precaution, or in the alternative, clergy may want to condition their services upon the successful completion of at least one marriage counseling session with you prior to the wedding. If you choose this option, you should not receive any money until the session is successfully completed by the couple.

C. TAX EXEMPT STATUS OF RELIGIOUS SCHOOLS AND CHURCHES

A question frequently asked is: Are the tax exemptions of religious schools, churches and organizations jeopardized by the recent Supreme Court ruling? Possibly.

As discussed above, in 1983, the Supreme Court upheld the IRS's revocation of the tax-exempt status of a university based on its racially discriminatory practices, even though the university based its practices on an interpretation of the Bible clearly articulated in its governing documents. The Supreme Court's ruling in that case suggests that doctrinal provisions in the governing documents of religious schools that are viewed by the IRS or the courts as incompatible with the fundamental right of same-sex couples to marry may not be enough to fend off IRS challenges to tax-exempt status.

This same logic could apply to churches based on the Supreme Court's recognition of same-sex marriage as a fundamental right enshrined in the Constitution. Some legal experts believe that churches that engage in any discriminatory practices involving sex, sexual identity, or sexual orientation should be denied tax-exempt status.

D. CONCLUSION

The Supreme Court's same-sex marriage ruling leaves many unanswered questions. The OGC will be monitoring developments and will provide you with updates when warranted. We ask that if you become aware of any proposed or active legislation in your respective states or municipalities regarding this issue that you notify our office at uchenderson@cogic.org.

¹ This Memorandum contains certain excerpts from RICHARD HAMMAR, *Supreme Court Decision: Four Common Questions*, PE News! (June 30, 2015), available at http://penews.org/Article/Supreme-Court-Decision--Four-Common-Questions/?fb_ref=Default

² *Obergefell v. Hodges*, 2015 WL 213646 (2015).

³ A copy of the 2014 Same-Sex Marriage Resolution is attached to this Memorandum as Exhibit A. The 2014 Same-Sex Marriage Resolution reaffirms a previous resolution against same-sex marriage adopted by the General Assembly on April 13, 2004.

⁴ *Bob Jones University v. United States*, 461 U.S. 574 (1983). In *Bob Jones*, the Supreme Court, in particular, held that the religion clauses of the First Amendment did not prohibit the Internal Revenue Service from revoking the tax exempt status of a religious university whose practices are contrary to a compelling government public policy, such as eradicating racial discrimination.

⁵ Please note that churches are tax exempt by law. Therefore, a church does not need to obtain 501(c)(3) status to be tax exempt. But once a church obtains 501(c)(3) exempt status, it must abide by the federal code governing such religious nonprofit organizations.

⁶ Senate Bill 2065, also known as The Pastor Protection Act, protects houses of worship, religious organizations and their employees and clergy or ministers, from being required to participate in a marriage or celebration of a marriage if it would violate a sincerely held religious belief.