



## LEGAL MEMORANDUM

TO: Oklahoma Clerks Responsible for Issuing Marriage Licenses

FROM: Alliance Defending Freedom

DATE: October 10, 2014

RE: Rights of Conscience Pertaining to the Issuance of Marriage Licenses

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On October 6, 2014, the U.S. Supreme Court declined to review the Tenth Circuit Court of Appeals' decision that declared unconstitutional Oklahoma's laws defining marriage as the union of one man and one woman since 1907. The full legal impact of this decision, and whether it undermines other traditional restrictions on marriage, like bigamy or consanguinity, is not yet known. Some clerks might believe that they face a serious dilemma: either resign their positions or violate their sincerely held religious or moral beliefs about marriage by being forced to issue marriage licenses to relationships inconsistent with those beliefs. But clerks, as explained herein, can resolve this potential conflict.

Clerks of the district courts are generally responsible for issuing marriage licenses. *See* OKLA. STAT. ANN. tit. 43, §§ 4, 8, 9, 10, 15 (2014). But clerks whose sincere religious or moral beliefs prevent them from issuing certain marriage licenses have the ability to appoint a deputy to perform that task. *See* OKLA. STAT. ANN. tit. 19, § 242 (2014).

A clerk thus should appoint a deputy with full authority to perform all acts necessary to issue, administer, or process marriage licenses should a conflict of conscience arise. This should resolve the situation and facilitate the interests of all parties.

Should a clerk encounter resistance to their efforts to resolve a conflict, the First Amendment to the United States Constitution ensures that neither state nor county officials may impede clerks' free exercise of religion. The First Amendment prohibits any government officials from "penaliz[ing] or discriminat[ing] against individuals . . . because they hold [particular] religious views." *Sherbert v. Verner*, 374 U.S. 398, 402 (1963); *accord Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (the First Amendment prohibits the government from "impos[ing] special disabilities on the basis of religious views"). Additionally, Oklahoma law provides that "no governmental entity shall substantially burden a person's free exercise of religion even if the burden results from a rule of general applicability." OKLA. STAT. ANN. tit. 51, § 253 (2014). And given that state law already prescribes other means for clerks to ensure that parties seeking marriage licenses receive them, government officials may not prevent a clerk's reasonable and legitimate effort to resolve his or her limited conflict.



Indeed, a refusal by the State of Oklahoma and its government subdivisions to protect a clerk who cannot issue a marriage license in violation of his or her conscience suggests an unconstitutional discriminatory intent.<sup>1</sup>

In addition, ensuring that clerks are not forced to issue licenses contrary to their conscience is consistent with Title VII's requirements that employers, including governmental employers, must reasonably accommodate the religious beliefs or practices of their employees.<sup>2</sup> In other words, an employer must make reasonable adjustments to the work environment, or to the employee's job requirements, to ensure that the employee's ability to maintain his or her religious conscience remains unimpeded. Clerks are certainly no exception to this rule.

If clerks face legal difficulties regarding their duties as they pertain to issuing marriage licenses, and would like legal advice in resolving their conflict, please contact Alliance Defending Freedom at 1-800-835-5233. All such calls are strictly confidential and protected by the attorney/client privilege even if Alliance Defending Freedom is not hired to represent the caller.

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<sup>1</sup> See *Fraternal Order of Police v. City of Newark*, 170 F.3d 359 (3d Cir. 1999).

<sup>2</sup> See Civil Rights Act of 1964, 42 U.S.C. § 2000e(j) (2012). See also *Thomas v. Nat'l Ass'n of Letter Carriers*, 225 F.3d 1149, 1156 (10th Cir. 2000) (“[A]n employer has a duty reasonably to accommodate an employee's religious beliefs . . .”); and *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106, 1120 (10th Cir. 2013), *cert. granted*, 2014 WL 3702553 (U.S. Oct. 2, 2014) (No. 14-86) (“Religion-accommodation claims are a subset of the types of religion-discrimination claims that an applicant or employee may present under Title VII.”).