



NAE | National Association of
Evangelicals

Church Guidance Webinar

Practical legal steps to address same-sex concerns and related nondiscrimination laws



Today's CLS Webinar:

Legal areas with practical implications for churches:

- US Supreme Court's same-sex marriage decision
- Developing anti-discrimination laws
- Facility usage, marriage, employment, membership, speech

Practical Guidance – Several Areas



Church Guidance White Paper:

www.religiouslibertyguidance.org

Technical Difficulties:

webinar@ecfa.org



Our speakers:



Kim Colby
kcolby@clsnet.org
Christian Legal Society



Robert Showers
hrshowers@simmsshowerslaw.com
Simms Showers



Sally Wagenmaker
sally@wagenmakerlaw.com
Wagenmaker & Oberly

5



Windsor Decision on Same-Sex Marriage



5-4 decision with Justice Kennedy writing majority opinion:

Congress's definition of marriage as "only a legal union between one man and one woman" for purposes of 1000 federal laws and regulations was unconstitutional:

1. Federalism: States traditionally define marriage.
2. Improper animus: Allegedly only reason Congress passed law was to harm and demean same-sex couples.

6



Obergefell Decision on Same-Sex Marriage



5-4 decision with Justice Kennedy writing majority opinion:

States' definition of marriage as only between a man and a woman violates the Constitution:

Due Process Clause

Equal Protection Clause

7



Obergefell Decision on Same-Sex Marriage



Holding: Marriage is a fundamental right from which same-sex couples cannot be excluded for four reasons:

1. Individual autonomy
2. Two-person union unlike any other
3. Safeguard for children and families
4. Keystone of our social order



Obergefell Decision on Same-Sex Marriage



Dissents:

1. For millennia across all societies, marriage has been defined as between a man and a woman.
2. Constitution does not define marriage, and especially does not protect any "fundamental right to same-sex marriage."
3. States have authority to define marriage.
4. Democratic process should not be short-circuited by 5 unelected judges.



Obergefell Decision on Same-Sex Marriage



Religious liberty

Dissenters voice concern.

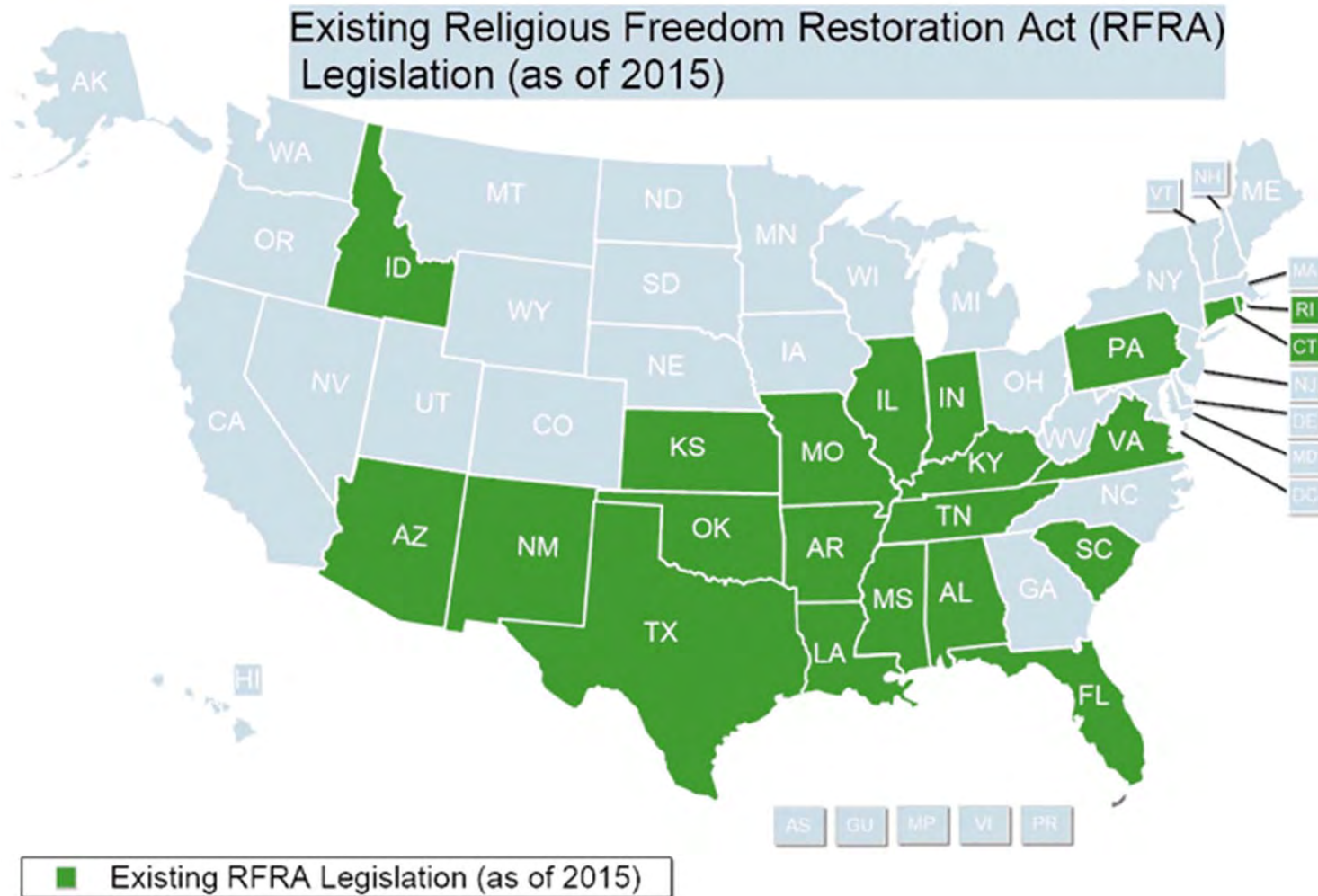
Majority: First Amendment ensures religious organizations and persons are properly protected as they seek to teach the principles central to their faiths.

Solicitor General Verrilli:

1. Tax-exempt status
2. Religious colleges' housing



RFRA states where passed and pending





Legal Complexities Abound



Source: Movement Advancement Project (www.lgbtmap.org)

22 States include Sexual Orientation as Protected Class in State Nondiscrimination Laws (17 of these also include Gender Identity)

- Public accommodation for facilities
- Employment
- Housing

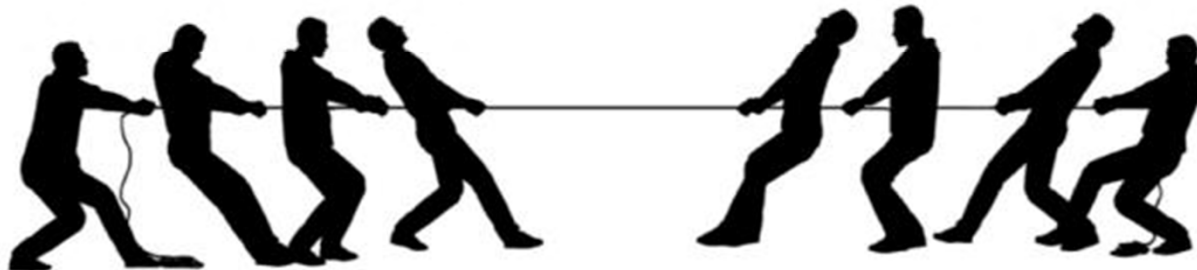
28 States do not protect SOGI, but localities may.



The Struggle is Real

RELIGIOUS
LIBERTY

SOCIAL
EQUALITY





Practical Applications



- Doctrine = freely held religious beliefs – absolute constitutional protection
- Practice → better protected when rooted in beliefs
- Policies and governing docs are the conduit between faith and practice



Governing Documents

- Incorporate statement of faith including stance on Biblical marriage and sexual conduct, with Biblical citations
- Root theologically sensitive bylaw provisions in the Church's sincerely held religious beliefs
- Statement of Final Authority on Matters of Faith and Conduct
- Membership policy-becoming member, termination/discipline of member, and Biblical dispute resolution
- Require signed membership agreement, covenant, or application

**Articles of
Incorporation**

**Constitution &
Bylaws**

Policies



Public Accommodation?



- Strictly: “property that is made open to the public”
- Stores, restaurants, hotels
- Educational facilities, community centers
- Issue: When could a church’s activities lead to a public accommodation legal challenge?



Facility Usage Policies

- Does your church have one?
- Consistent with doctrine?
- Authority of church leadership to make final decisions?
- What about fees?
- Written agreements required?
- Actually used?





Wedding/Special Event Policies

- Does your church have one?
- Consistent with doctrine?
- Authority of church leadership to make final decisions?
- What about fees?
- Written agreements required?
- Actually used?





Employment Policies and Practice



- Faith requirements for church employment
- Volunteers too!
- Job description aspects – “minister”
- Code of conduct
- Discipline and conflict resolution
- Handbooks
- Written acknowledgement
- Walking the talk



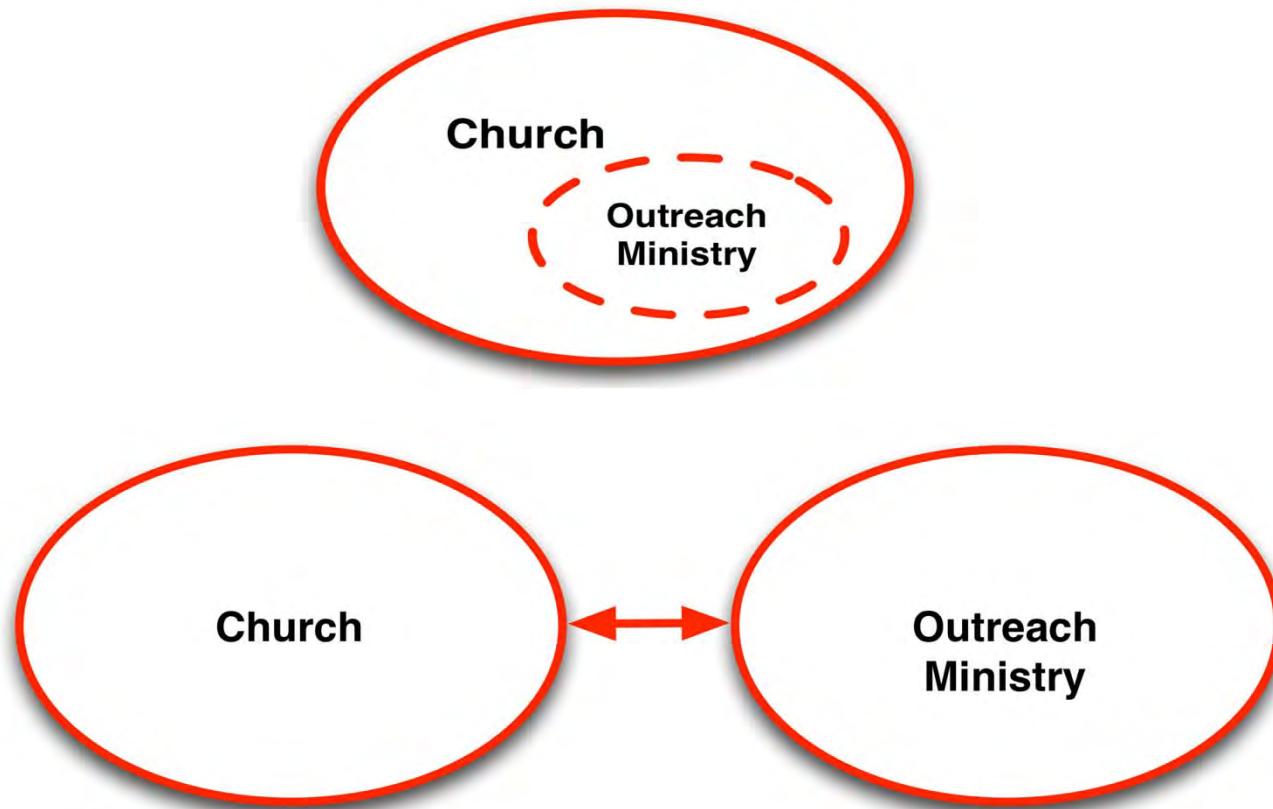
Words and actions matter



- What is contained in the Church's documents?
- What does the Church actually DO?



Impact on Outreach Ministries





Housing

- Can be important church ministries
- What about SOGI protections?
- What about religious exemptions?
- In-house/separately incorporated?
- Maintain religious identity





Importance of Training

- Written policies will mean very little if not actually carried out in practice!
- Employment
- Facility Usage, including weddings
- Paid and volunteer staff
- How to handle sensitive membership issues?





Preaching and Teaching on Biblical Sexuality

- Bigger issues are CULTURAL, SPIRITUAL
- What does the Bible say?
 - About God, His plans for us, marriage, men and women, our submission with our hearts, minds, souls, and bodies?
 - About compassion, humility, love, His sufficiency for all?





Political Dimensions and Limitations



- Legal constraints on churches and their representatives (501(c)(3) status)
 - No political campaign activities
 - Limited lobbying
 - Issue advocacy – educational
- First amendment rights for individuals (speech, free exercise, association)



No one legal solution fits all





Time to call the Church's lawyer?

- Growing legal complexity
- Options:
 - Planning . . .
 - Crisis . . .
- What are your Church's –
 - Priorities
 - Greatest concerns?
 - Specific issues?
- Find a knowledgeable lawyer who fits your church.





What's next?

- Be more “religious”
 - Check/upgrade corporate charter, bylaws, membership requirement
 - Facility usage policies and agreements (Weddings, etc.)
 - Workers – employees and volunteers
 - Policies, agreements, “ministers”





What's next?

- Keep up with religious exemptions in SOGI laws (or not)
- Consider implications for separately formed ministry organizations
- Train the first responders - **reflect religious nature**





What's next?

- Preach and teach on Biblical sexuality – why is this area important to our identity as Christians?
- Political involvement?
- Get a good lawyer!
- Continue praying and watching





Q & A



Kim Colby
kcolby@clsnet.org
Christian Legal Society



Robert Showers
hrshowers@simmsshowerslaw.com
Simms Showers



Sally Wagenmaker
sally@wagenmakerlaw.com
Wagenmaker & Oberly

Q & A



More questions?

Email: clshq@clsnet.org

FAQ will be posted next week on the website:

www.religiouslibertyguidance.org



CHRISTIAN
LEGAL SOCIETY

NAE | National Association of
Evangelicals

Church Guidance Webinar

www.religiouslibertyguidance.org

Disclaimer: These materials are provided for general information purposes only and is not a substitute for legal advice particular to your situation. No recipients of this information should act or refrain from acting solely on the basis of this memorandum without seeking professional legal counsel. The Christian Legal Society and any of its partners expressly disclaim all liability relating to actions taken or not taken based solely on the content of this material. For specific legal advice, which will be needed, please see attorney referrals at www.christianlawyer.org.