



Religious Schools & Colleges Guidance Webinar

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



Today's Webinar:

Legal areas with practical implications for religious schools and colleges:

- US Supreme Court's same-sex marriage decision
- Developing anti-discrimination laws
- Facility usage, employment, housing, admissions, and more.

Practical Guidance – Several Areas

Religious Schools and Colleges Guidance for Same-Sex Issues

and

Samples and Model Policies

www.religiouslibertyguidance.org

Questions?

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Technical Difficulties:

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Our speakers:



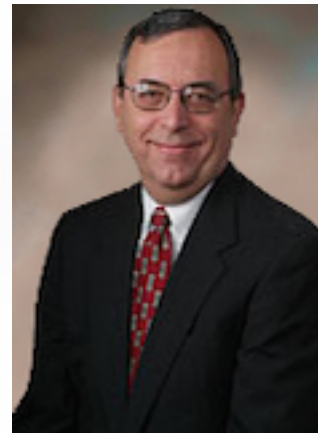
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Windsor Decision on Same-Sex Marriage

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.

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



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



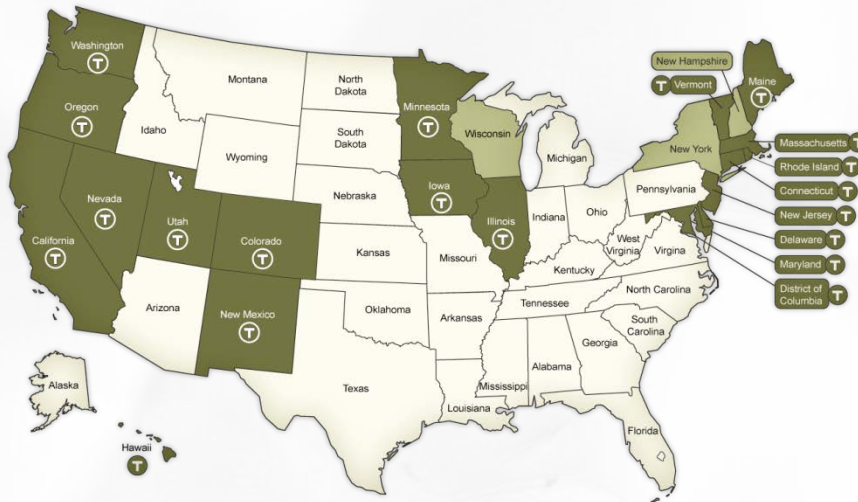
RFRA states where passed and pending

Existing Religious Freedom Restoration Act (RFRA)
Legislation (as of 2015)





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.



Public Accommodation?

- Property that is open to the public
- Stores, restaurants, hotels, and theaters
- No court has yet ruled that a Christian college or school is a “public accommodation”
- But two CA courts have considered it, and one trial court found elements of Cal Baptist to be a public accommodation
- Issues abound



Federal Protections for Employment Decisions

- Title VII – religious discrimination ok, but not race, age, disability or ethnicity. Can hire only Christians and enforce a Christian code of conduct
- Employees as “ministers”
- *Hosanna-Tabor* Decision
- Be prudent in classifying teachers as ministers and document decision well



Housing/Title IX/Fed. Fin. Asst.

- HUD regulations
- State laws prohibiting housing discrimination
- Title IX -- Gender identity complaints v. CCCU colleges & Dept. of Education exemptions
- Athletic associations



The Struggle is Real

Religious Liberty

Sexual Liberty/Equality



Specific Steps to Protect Religious Liberty



1. Strengthen Governing Documents
2. Develop Facility Use Policy
3. Strengthen Employment Policies
4. Develop Admission Policy and Procedures
5. Have Clear Student and Employee Handbooks
6. Strong Religious Instruction and Worship
7. Housing/Tax Exempt Status/Political Involvement
8. Get Good Legal Advice



Governing Documents

- Incorporate statement of faith including stance on Biblical marriage and sexual conduct, with Biblical citations
- Clarify where spiritual authority resides
- Include Christian dispute resolution
- Emphasize the doctrines of sin, grace, repentance, and restoration
- Train staff and apply consistently



Facility Usage Policies

Does the school have a facility usage policy?



Does it reference specific doctrinal issues?



What about fees?



Are written agreements required?

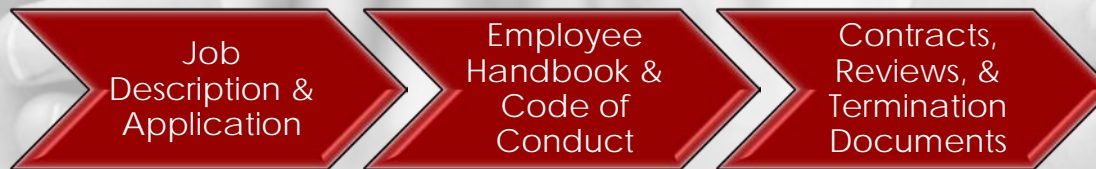


Is the policy actually used?



Employment Policies

- Reflect the school's religious nature in all employment policies and practices



- Identify staff as “ministers” as appropriate (*Hosanna-Tabor* decision)



Admissions Policies

Full Disclosure

Routine Standard of
Practice

Clarity of Commitment



Handbooks & Disciplinary Procedures

- Include in the handbook:
 - Religious mission
 - Statement of faith
 - Philosophy of Christian education
 - Prohibited conduct
 - Discipline Guidelines
- Ensure that all parents and middle- and high-school aged students have signed and agreed to abide by the handbook



Religious Instruction and Teaching on Biblical Sexuality

- Integration of faith and learning
- Regular devotions and worship services
- Biblical view of sexuality: 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?



Church Schools vs. Church & School

- Which corporate structure is better for religious liberty exemption generally?
- Per *Hosanna-Tabor*, which structure is better for ministerial exception?
- What about unemployment insurance coverage?
- Other risk management considerations?



Housing

- Title IX
 - Apply or claim exemption
 - Emphasize requirement for shared religious beliefs
 - Tie housing policies to mission
- Where Commercial?
 - Restrict to community members as much as possible
 - Review local housing laws with an attorney



Accreditation Issues

- **Nature of Challenges to a School's Accreditation**
 - Required for Title IX funding
 - Current language requires respect for religious missions
 - Explicitly connect all policies to mission

- **Proactive Measures**
 - Involvement
 - Prudent Policies
 - Additional accreditation



Tax-Exempt Status

- Challenges seem inevitable if a national consensus isn't reached
- Distinguishing Bob Jones
- Local & State Level challenges coming first

irs.gov



Consider Political Involvement

- Our elected leaders should hear from their constituents
- Consider supporting candidates who prioritize religious liberty when voting for political candidates
- Remain attentive to political campaign prohibitions and lobbying restrictions on nonprofits
- Seek appropriate legal counsel



Sample and Model Policies

Religious Schools & Colleges
Guidance for Same-Sex Issues
Sample and Model Policies

The above document can be found at:

www.religiouslibertyguidance.org

And it includes:

**Doctrinal Language, School Bylaw Language,
Facility Use Policies, Handbook Language, School
Policy Language, and much more**

Q & A

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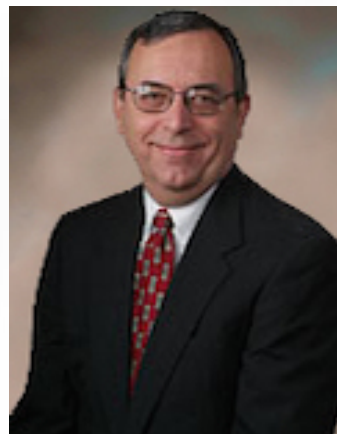
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Q & A

More questions?

Email: clshq@clsnet.org

ALL INFORMATION, INCLUDING A RECORDING OF THIS
WEBINAR, CAN BE FOUND HERE:

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