



MEMORANDUM

TO: New York Municipal Clerks Responsible for Issuing Marriage Licenses

FROM: Alliance Defense Fund

DATE: July 15, 2011

RE: Your Right to Request An Accommodation of Your Sincerely Held Religious Beliefs Concerning Issuance of Marriage Licenses to Same-Sex Couples.

Introduction

In light of New York's recent redefinition of marriage to include same-sex couples, many municipal clerks and other employees believe that they are faced with a serious dilemma: either violate their consciences by issuing a marriage license to same-sex couples or resign. Sadly, that view has been perpetuated by some public officials, including Governor Cuomo.

But that view is not necessarily correct. It is true—and very disappointing—that the narrow religious exemptions enacted by the Legislature in the same-sex “marriage” bill do not contain any individual conscience protections. Indeed, it is disturbing that public officials have so blithely dismissed New Yorkers’ sincerely held beliefs even though millions of New Yorkers believe that marriage is only between a man and a woman. But New York law does protect an employee’s sincerely held religious beliefs. New York’s Human Rights Law requires employers to accommodate those beliefs, unless it places an undue hardship on the employer. And because New York law explicitly allows a municipality to delegate a clerk’s duties concerning marriage licenses to a deputy clerk or any other municipal employee, a city or town should have no reason to deny a clerk’s request for an accommodation. It should be a simple matter to delegate those duties to others who do not object to issuing and signing marriage licenses for same-sex couples.

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Thus, as explained below, municipal clerks who have a sincerely held religious belief that prevents them from issuing marriage licenses to same-sex couples have the right to request an accommodation from their governing bodies.

New York Law Requires Employers to Accommodate Sincerely held Religious Beliefs

New York law requires an employer to accommodate an employee's religious observance or practice, "unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice . . . without undue hardship." Executive Law § 296(10)(a). This law "represents a legislative expression of the high value that our State places on supporting and protecting [religious diversity] and in prohibiting invidious discrimination based on religious choice. The statute "ensures that no citizen will be required to choose between piety and gainful employment, unless the pragmatic realities of the work place make accommodation impossible." *New York City Transit Auth. v. State, Exec. Dept., Div. of Human Rights*, 89 N.Y.2d 79, 88 (N.Y. 1996).

As news reports indicate, issuing marriage licenses to same-sex couples would violate the sincerely held religious beliefs of many clerks. The abrupt but fundamental change in New York's definition of marriage caught many clerks by surprise, and it would be unfair for a municipality to force a clerk to choose between continued employment and his or her religious belief.

But municipalities should be able to easily accommodate clerks' religious beliefs, without forcing them into that dilemma, since New York law permits all of the clerk's duties in issuing marriage licenses to be delegated to a deputy clerk or other municipal employee.

Notwithstanding any other provisions of this article, the clerk of any city with the approval of the governing body of such city is hereby authorized to designate, in writing filed in the city clerk's office, a deputy clerk, if any, and/or other city employees in such office to receive applications for, examine applications, investigate and issue marriage licenses in the absence or inability of the clerk of said city to act, *and said deputy and/or employees so designated are hereby vested with all the powers and duties of said city clerk relative thereto.*

Domestic Relations Law § 15(3) (emphasis added). In light of this provision, a municipality's governing body would have little basis to refuse a clerk's request that his or her religious beliefs be accommodated by having a deputy clerk or other city employee issue marriage licenses to same-sex couples. Moreover, because the provision is very broad and allows *all* of a clerk's duties to be delegated, a clerk requesting an accommodation should be entirely removed from the process, including signing the licenses.



What Clerks Should Do To Request An Accommodation

Any clerk who wishes to request an accommodation of their sincerely held religious beliefs concerning issuing marriage licenses to same-sex couples should promptly make a formal request to their municipality's governing body for an accommodation. Your request does not need to be long, but you should cite Executive Law § 296, and the provision under Domestic Relations Law § 15(3) allowing all of a clerk's duties to be delegated. You should also clearly explain that issuing marriage licenses to same-sex couples would violate your sincerely held religious belief that marriage is only a union of a man and a woman. And you should say that an acceptable accommodation would be to delegate to a deputy clerk or other city employee all of the duties related to the issuance of marriage licenses to same-sex couples.

You should also ask for prompt action on your request, as is required by law. If a municipality refuses your request, you should immediately contact the Alliance Defense Fund, and we will review your situation and advise you on your right to pursue an accommodation through litigation at no charge to you. If you have any other questions, please contact us right away.

Here is a sample letter requesting an accommodation from the governing body of your municipality:

Dear Mayor and City Council:

As clerk of this municipality, my office is responsible for issuing marriage licenses within this jurisdiction. On July 24, 2011, New York will begin allowing same-sex couples to obtain state marriage licenses, which is a fundamental change in the definition of marriage in this state. This change puts me in a serious dilemma because I have a sincere and deeply-held religious belief that marriage is a union between a man and a woman. I recognize, of course, that I do not have the authority to change the law. But if I were forced to issue and/or sign a marriage license for a same-sex couple, it would violate my conscience and my sincerely held religious belief and observance.



Therefore, I am requesting that you accommodate my religious belief and observance regarding the issuance of marriage licenses to same-sex couples under Executive Law § 296(10)(a). As you are aware, this law requires that you accommodate my sincerely held religious observance, unless the accommodation would impose an undue hardship. *Id.*; see also *New York City Transit Auth. v. State, Exec. Dept., Div. of Human Rights*, 89 N.Y.2d 79, 88 (N.Y. 1996) (noting that Executive Law § 296(10) “ensures that no citizen will be required to choose between piety and gainful employment, unless the pragmatic realities of the work place make accommodation impossible.”)

The accommodation that I am requesting is already provided for in New York law and would therefore not cause undue hardship. Domestic Relations Law § 15(3) states:

Notwithstanding any other provisions of this article, the clerk of any city with the approval of the governing body of such city is hereby authorized to designate, in writing filed in the city clerk’s office, a deputy clerk, if any, and/or other city employees in such office to receive applications for, examine applications, investigate and issue marriage licenses in the absence or inability of the clerk of said city to act, and said deputy and/or employees so designated are hereby vested with all the powers and duties of said city clerk relative thereto.

I am therefore requesting that you authorize me to designate a deputy clerk or other city employee to issue and sign marriage licenses within this jurisdiction for same-sex couples. I am also requesting prompt action on this request, as



required by Executive Law § 296(10), given the impending change in the law on July 24, 2011.

Thank you very much in advance for accommodating my sincerely held religious belief. I am confident that this accommodation will not impede the work of my office or the rights of anyone within the jurisdiction to obtain a marriage license as provided by law.

Sincerely,

[Name]