

Faith-based organizations could face increased discrimination

by Whitman H. Brisky

On Tuesday, the U.S. Supreme Court heard arguments on a case which will decide whether states can refuse to marry same-sex couples, and also whether states that do not marry same-sex couples must, nevertheless, recognize same-sex marriages contracted in states where such marriages are legal. The questioning demonstrated both a divided court and a struggle on the part of some justices to consider the consequences of establishing a single, constitutionally-based rule for all states and thus short-circuiting the political process. We will likely not know the result of this case until June, but those of us who live in Illinois, or other states in which same-sex marriage is legal, must already grapple with the legal consequences. If the court determines that same-sex marriage must be allowed everywhere, we will all need to be concerned.

One potential legal consequence that has garnered much attention is the use of anti-discrimination law to force traditional Christian lay people and clergy to act and speak, or refrain from speaking, in ways contrary to their consciences. We have all heard of the bakeries, photography studios and florists, who routinely and willingly serve gay customers, hit with huge legal penalties for asking a gay couple to go to another baker or photographer for their wedding. These penalties seem disproportionate, given the small size and family nature of the businesses, because the gay couple can rarely, if ever, demonstrate any real quantifiable damage from the claimed discrimination while the penalties are so large that they effectively drive the business to close. So far, these penalties have mostly been upheld by the courts. Whether Christian business people are exposed in any given location is dependent not only on the attitude of the courts, but also on whether the anti-discrimination laws of that locality cover discrimination against gays or have exceptions for religious conscience. In some states, even church-owned facilities, if open to the public for weddings and other events, must allow gay weddings to be conducted there.

Anti-discrimination laws in several states have already driven numerous Christian adoption services, even those affiliated with churches, out of adoption work because of the services' refusal to place children with gay couples. State

governments, and courts, have done this despite the ample evidence that children do better in homes with both a father and mother present. This only makes sense given that mothers and fathers are not interchangeable and provide different parenting skills and functions.

During oral argument on the gay marriage case the justices discussed the fact that in most states clergy perform a state function when they preside at weddings. If the denial of marriage to gay couples is a violation of equal protection law, those clergy will either be required to officiate gay weddings or require heterosexual couples they marry in a religious ceremony to also legalize that marriage in a secular ceremony.

Even more troubling, the government admitted in oral argument that, if the court finds a constitutional right to same-sex marriage, religious schools, faith-based ministries, and even churches themselves that affirm traditional marriage may lose their tax exempt status if they refuse to change their moral teaching to comply with government dictates. States could not even make statutory exceptions for good-faith, but unpopular, religious belief. Progressive anti-religion advocates have long sought to eliminate the tax exempt status of religious organizations and churches. An unfavorable decision by the court would go that one better, by eliminating the tax exempt status of only those faith-based organizations which affirm traditional marriage and are thus most likely to oppose the broader Progressive agenda, while those faith-based organizations which support the Progressive agenda can keep their exemptions.

Mauck & Baker, LLC is in the midst of the fight to provide space for traditional Christians to exercise their conscience free of discrimination. Others can help by participating in the political process, supporting legal provisions that protect that right of conscience, and, where appropriate, participating in litigation to uphold religious liberty. When you retain Mauck & Baker for your other legal work, you help support our work for religious liberty. ■