

The Church's Changing Legal Landscape

Converge Rocky Mountain
July 2021

Key Idea

How does our church “stay on mission” in an age of rapid transformation of public opinion and legal norms?

Mission

Churches together...transforming lives and communities in the Rocky Mountain West

Hill on Which to Die

Any hill on which Christ would die

Gary D. Friesen, JD, PhD
Vice President/General Counsel
frieseng@cmalliance.org
719-265-2068



THEALLIANCE

EMERGING ISSUES

Introduction

1. History

- 1920s – 1950's: culture dominated by strong Christian ethic. Even those who weren't Christians recognized a biblical moral standard
- 1960s: sexual revolution
- 1970s -1980s: The political and legal world shifted
- 1990s: parallel growth of Religious Liberty (freedom to practice religion of choice) and Sexual Liberty (freedom to practice sexual behavior of choice)
 - RFRA (Religious Freedom Reformation Act) & DOMA (Defense of Marriage Act)
 - Sodomy laws
- 2000s: Growing conflict between Religious Liberty and Sexual Liberty
 - 2013: in *Windsor*, Supreme Court declared DOMA unconstitutional
 - 2014: in *Hobby Lobby*, Supreme Court held that a closely held corporation has same rights to religious expression as an individual under RFRA
 - 2015: in *Obergefell*, Supreme Court found a constitutional right to same-sex marriage - now legal in every state
 - 2016: executive order mandating that public schools allow transgender students to use bathrooms that correspond with their gender identity
 - 2017: executive order issued directing the executive branch to vigorously enforce robust protections for religious freedom
 - Series of wedding vendor cases – *Masterpiece Cakeshop*, etc.
 - 2020: in *Bostock*, Supreme Court decided that the Civil Rights Act's use of the term "sex," in term of employment, includes sexual orientation and gender identity
 - Equality Act, the most anti-religious bill to get this far, passed the House and is now before the Senate.

- 2021: in *Fulton*, Supreme Court unanimously held that a Catholic agency could follow its religious beliefs and not serve same sex couples as foster parents
- Presidential effect: Clinton - Bush – Obama – Trump – Biden

2. Church Today

- “Public Accommodation” (a place open to the public that provides essential services – e.g. parks, museums, movie theatres, auditoriums, shops, restaurants, hotels)
 - Places of public accommodation must be accessible to the disabled and not discriminate based on "race, color, religion, or national origin." *Many states and most local jurisdictions also include sexual orientation and gender identity*
 - Churches have never been considered places of public accommodation - either constitutionally or historically – but now being challenged
 - Example: Iowa Civil Rights Commission –transgender bathroom access
 - Spaghetti dinners and “bona-fide religious activity”
- Shift in Cultural Values
 - Sexual freedom as basic human right

The new philosophy, which I term “Truth 2.0,” holds that certain fundamental truths do exist but equally holds that traditional Christianity is decidedly not one of them. Indeed, a basic tenet of “Truth 2.0” is that traditional Christianity is not only false but also harmful, if not evil. At base, the disciples of “Truth 2.0 will not tolerate traditional Christianity because its beliefs transgress their most fundamental truth: an individual’s sexual autonomy must be unhindered, even unquestioned, no matter what the cost to others’ liberty or even to others’ right to life. Its disciples demand that everyone must agree that abortion and sexual conduct outside of traditional marriage are not only acceptable but affirmatively good. (Kim Colby – Christian Legal Society)

The new invention of the modern age is a self-sufficing humanism that “accepts no final goals beyond human flourishing, nor any allegiance to

anything else beyond this flourishing. Of no previous society was this true. (Charles Taylor, *A Secular Age*) In other words, happiness is our only duty, self-betrayal our only sin.ⁱ

- Sexual liberty normalized in the younger generation

3. Diverging Social Views

ISSUE	TRADITIONAL CHRISTIAN VIEW	PROGRESSIVE VIEW
<i>Sexual Orientation</i>	Distinguished from conduct	Inseparable from conduct
<i>Sexual Conduct</i>	Exclusively within Biblical marriage	Between anyone who consents
<i>Marriage</i>	One man and one woman for life	Any two (or more) people until one person wants out
<i>Gender Identity</i>	Biological from conception	Fluid and chosen throughout life
<i>Life</i>	Always resolve doubt in favor of protecting life	Resolve doubt in favor of parental or societal interests
<i>Religion</i>	Public Moral right and wrong	Private Truth 2.0; Judging is arrogant

- Current sexual liberty challenges
 - Other types of intimate relationships logically protected
 - Single sex organizations and facilities
- *Gender* or *Sex*, what is the difference, and when is it okay to use either term?
- Competing rights:
 - non-discrimination, freedom of expression, define and express identity
 - vs.
 - freedom of association, artistic expression, free exercise of religion

WHAT NOW?

4. Clarify What You Believe

- What is/should be your relationship with your denomination?
- What is your theology of sexual orientation and gender identity?

When someone who experiences same-sex desires or struggles with gender identity seeks Truth...

- The message from the gay and transgender community is welcoming:
 - You are being true to yourself
 - Your behavior is an honest expression of who you are
 - You belong here
 - We respect and honor your inherent/chosen identity
- The message from the church has in the past too often been negative:
 - Silence and denial
 - You are a sinner
 - You have no value
 - You are not welcome unless you change your identity
- But the church has a better narrativeⁱⁱ, to join a faith community, marked by the following:
 - Humility
 - Compassion
 - Value singleness
 - Realistic biblical hope
 - Share in costly obedience
 - Value church family
 - Latitude in language
 - Create alternative storyline
- How much significance should a church place on issues of sexual orientation and gender identity?

5. Document What You Believe

- Specifically affirm Converge statements of beliefs, sexuality, and marriage
- Adopt *Christian Community Policy* (e.g. Facility Use) (Attachment A)

6. Act Consistently With What You Believe

- Membership
- Volunteer positions - *Does the position represent the authority or teachings of the church?*
- Communion/baptism
- Baby dedication
- Other?

FINAL WORDS

The inklings were about the business of reclaiming for contemporary life the ‘discarded image’ of a universe created, ordered, and shot through with meaning.

C.S. Lewis
The Fellowship

We must stand with conviction and with kindness, with truth and with grace. We must hold to our views and love those who hate us for them. We must not only speak Christian truths; we must speak with a Christian accent. We must say what Jesus has revealed, and we must say those things the way Jesus does—with mercy and with an invitation to new life.

Russell Moore, president
Ethics & Religious Liberty Commission

ⁱ Timothy Keller in *Making Sense of God* said, “Today, it is said, the only moral absolute should be freedom and the only sin should be intolerance or bigotry” (105).

ⁱⁱ Thanks to Mark Yarhouse, professor at Wheaton College, for the framework of this section.