



## Why Pastor Protection Acts Are Unnecessary and Might Actually be Harmful

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After *Obergefell v. Hodges*, states are now being required by the Supreme Court to issue licenses for same-sex marriages and recognize such licenses issued by other states. Public employees such as clerks and others are implicated by this licensing requirement. Pastors are not. While pastors and others still solemnize marriages, pastors decide what marriages they will and won't perform—they are *not required* to solemnize any marriages.

*Obergefell* is causing problems for religious liberty, but pastors are *not the most immediately threatened group* of those whose religious liberty is currently being suppressed.<sup>1</sup> If we currently focus on narrow laws that only protect pastors, other groups needing protections won't get them, and conceding those protections will in the long run make pastors even more vulnerable.

- Pastors are currently *not required* to marry any couple; they never have been, and *Obergefell* doesn't change that.
- Pastors *already enjoy* multiple constitutional and statutory protections that a narrow, pastor-focused law actually undermines.<sup>2</sup>
- A narrow, pastor-focused law will *waste time and political capital* on those with the strongest current protections, leaving the most vulnerable unprotected.
- A narrow, pastor-focused law will *tempt lawmakers to feel they've done enough*. Pastor-focused protections send a political signal that once pastors or houses of worship are protected, nothing else must be done as it relates to the conflict between same-sex marriage and religious liberty. This is not true. The freedom of religion, as protected by the First Amendment, is reserved not only for pastors and churches, but for all individuals—whether they are inside or outside the four walls of a church.
- Currently, the *most serious religious liberty threats* are to religious schools, nonprofits, entities working with the government through grants, contracts, or other means (including obtaining tax exemption from the government), public employees, private employees, and small business owners.
- These groups have been threatened or had their religious liberty taken away. Focusing legislative efforts on pastors takes the focus off these others who need more immediate help. Conversely, protecting these others now keeps the focus off pastors, in addition to shoring up the legal framework to protect pastors. If we neglect others now, things will only be more difficult for pastors in the long term. All those whose religious liberty is threatened will ultimately either stand together or fall together.<sup>3</sup>

Government should never discriminate against people based on their sincere belief that marriage is between one man and one woman. Congress is considering a law – the [First Amendment Defense Act](#) (FADA) – that would offer limited protections at the federal level, but states need to act now to protect people from state discrimination on the basis of their belief in natural marriage. For more information on how to protect both your ministry and those in your state who still believe in natural marriage, [contact](#) the Family Research Council.

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<sup>1</sup> This may change in the future. If and when pastors become most immediately threatened, it will be necessary to address that. But this is not the case now.

<sup>2</sup> These protections are more fully explained in Family Research Council’s publication “[Can Pastors and Churches Be Forced to Perform Same-Sex Marriages.](#)” If there are challenges to pastors, religious liberty legal groups are available and willing to represent pastors. There is significant value in litigating these cases to get favorable decisions from courts and bolster First Amendment protections for pastors (and potentially others). Asking for legislative protection where it is least needed undercuts our First Amendment arguments for everyone.

<sup>3</sup> Some pastor protection proposals may protect pastors along with some of the other individuals or groups listed here. These obviously contain necessary protections, while perhaps unnecessarily protecting pastors (in light of the protections they already have) at the same time. These proposals must be assessed on their individual merits.