



# Minnesota District Legislation Committee



## Report to the MN District Convention – June 14-16, 2016

### **Marriage – Obergefell Decision**

On June 26, 2015, the U.S. Supreme Court ruled in a 5-4 decision that the fundamental right to marry is guaranteed to same-sex couples by the Due Process Clause and the Equal Protection Clause of the Constitution's Fourteenth Amendment. The ruling requires all states to issue marriage licenses to same-sex couples and to recognize same-sex marriages validly performed in other jurisdictions. It legalized same-sex marriage throughout the United States. Prior to the decision, thirty-six states, the District of Columbia, and Guam already issued marriage licenses to same-sex couples.

The First Amendment to the U.S. Constitution still allows our churches and pastors to decide who they choose to marry. Churches and pastors are not required to perform marriage ceremonies or provide other services or facilities for same-sex couples.

### **Housing Allowance Tax Exemption for Ministers of the Gospel Challenged**

In 2013, federal district judge Barbara Crabb ruled that the income tax exemption of housing allowances paid to "ministers of the gospel" was unconstitutional. Her ruling only applied to pastors in Wisconsin, Illinois, and Indiana if upheld, but many were watching the case for its potential impact outside of her judicial district.

The Freedom From Religion Foundation challenged the clergy housing allowance because it provides "a benefit to religious persons and no one else, even though doing so is not necessary to alleviate a special burden on religious exercise." This benefit for about 45,000 ministers costs federal taxpayers approximately \$700 million per year.

The Seventh Circuit Court of Appeals overturned the Crabb decision on "standing," meaning that the Freedom From Religion Foundation had no right to sue because it did not seek an allowance for itself.

The Freedom From Religion Foundation has indicated it will continue to fight what they claim is "discriminatory, and clearly signals governmental preference and subsidy for the promulgation of religion over nonreligion."

It is important to note that the appeals court did not rule on the constitutionality of the exemption. In fact, some are suggesting that the court signaled an acknowledgement that the law may be discriminatory when it stated in its ruling that "the mere fact that discrimination is occurring is not enough to establish standing."

## **Church Defamation - Pfeil Decision**

La Vonne Pfeil sued her former church, St. Matthew Lutheran in Worthington, MN for defamation. She claims her former pastor defamed her and her late husband when he publicly made the case for excommunicating them.

The Nobles County District Court Judge, Gordon Moore, dismissed the lawsuit, determining that the ecclesiastical abstention doctrine barred the court from exercising subject-matter jurisdiction over the dispute.

The Court of Appeals and MN Supreme Court upheld the District Court decision on appeal. In their decisions, they concur that, "under the ecclesiastical abstention doctrine, courts lack subject-matter jurisdiction if the disputed topic is strictly and purely ecclesiastical in its character, a matter over which the civil courts exercise no jurisdiction, a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them."

So the court didn't rule on whether Pfeil was defamed. They conclude that their decision "does not excuse any defamatory behavior that may have occurred in a sacred setting; it merely honors the separation of church and state by avoiding secular intrusion into the heart of religious concerns: who may be a member of the church; what standards of behavior are required of them; and how and when members may be disciplined."

## **Lutheran Policy Network**

The Minnesota South District of the Lutheran Church Missouri Synod recently created a new position of Public Policy Advocate. Rev. Fredric Hinz currently serves in this position. So far, he has actively promoted specific public policies, proposed legislation, political rallies, and special interest groups. In his words, "the need for us to be intentionally and meaningfully engaged in these public policy matters has never been greater."

In addition to his work within the Missouri Synod, Rev. Hinz is building what he terms the "Lutheran Policy Network," made up of invited representatives of generally conservative Lutheran churches and organizations. Informational/organizational meetings have included representatives of LCMS, WELS, ELS, LCMC, NALC, and AFLC.

The two areas of potential benefit for participating in this group outside the framework of fellowship are:

- Information sharing between church bodies regarding compliance with civil laws in areas where government authority rightly applies.
- A network for identifying public policies that conflict with Scripture so we can educate our members about the doctrines that apply.

However, it's important that the church not step into the role God has reserved for civil government, even if the government attempts to infringe upon the church's role. The church has its own mission and the God-given means with which it is to carry it out. Neither include public policy advocacy. Churches should clearly preach and teach what God has to say about topical issues, but should encourage people to apply these teachings as they choose when exercising their rights in the realm of civil government.

Respectfully submitted,

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