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Can ministers who make a living by conducting weddings be required to conduct same-sex weddings?



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By **Eugene Volokh** October 18 [Follow @volokhc](#)

Donald and Evelyn Knapp are apparently [ordained ministers](#) who run The Hitching Post, a chapel in Coeur d'Alene, Idaho, at which they conduct weddings. (This strikes me as quite similar to many ministers' practice of charging to officiate weddings when they are invited to do so at other venues.) Coeur d'Alene has an ordinance banning discrimination based on, among other things, sexual orientation in [places of public accommodation](#). Earlier this year, after a federal judge in Idaho held that Idaho had to recognize same-sex weddings, a City of Couer d'Alene deputy city attorney was quoted by [a local](#)

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[TV station \(KXLY\)](#) as saying,

“For profit wedding chapels are in a position now where last week the ban would have prevented them from performing gay marriages, this week gay marriages are legal, pending an appeal to the 9th Circuit,” Warren Wilson with the Coeur d’Alene City Attorney’s Office said....

“If you turn away a gay couple, refuse to provide services for them, then in theory you violated our code and you’re looking at a potential misdemeanor citation,” Wilson said.

A [newspaper article](#) carried a similar quote:

“I think that term is broad enough that it would capture (wedding) activity,” city attorney Warren Wilson said.

Similar laws have applied to florists, bakeries and photographers that have refused to work on same-sex weddings in other states, Wilson noted.

“Those have all been addressed in various states and run afoul of state prohibitions similar to this,” he said. “I would think that the Hitching Post would probably be considered a place of public accommodation that would be subject to the ordinance.”

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According to [the Knapps](#), the City Attorney’s office repeated this statement in telephone conversations with the Knapps.

Friday, the Knapps [moved for a temporary restraining order](#), arguing that applying the antidiscrimination ordinance to them would be unconstitutional and would also violate [Idaho’s Religious Freedom Restoration Act](#). I think that has to be right: compelling them to speak words in ceremonies that they think are immoral is an unconstitutional speech compulsion. Given that the Free Speech Clause bars the government from requiring public school students to say the pledge of allegiance, or even from requiring drivers to display a slogan on their license plates (*Wooley v. Maynard (1977)*), the government can’t require ministers — or other private citizens — to speak the words in a ceremony, on pain of either having to close their business or face fines and jail time. (If the minister is required to conduct a ceremony that contains religious language, that would violate the Establishment Clause as well.)

I think the Knapps are also entitled to an exemption under the Idaho RFRA. The Knapps allege that “sincerely held religious beliefs prohibit them from performing, officiating, or solemnizing a wedding ceremony between anyone other than one man and one woman”; I know of no reason to think they’re lying about their beliefs. Requiring them to violate their beliefs (or close their business) is a substantial burden on their religious

practice.

And I find it hard to see a compelling government interest in barring sexual orientation discrimination by ministers officiating in a chapel. Whatever interests there may be in equal access to jobs, to education, or even in most public accommodations, I don't see how there would be a "compelling" government interest in preventing discrimination in the provision of *ceremonies*, especially ceremonies conducted by ministers in chapels.

I was very pleased to have the officiants I had for my wedding. But if I had instead asked a rabbi, and he told me that he didn't want to preside over a wedding between my wife (who isn't ethnically Jewish) and me, I can't see how that sort of ethnic discrimination would create a harm that justifies trumping the rabbi's religious freedom rights and free speech rights. Perhaps some might feel offended by such a statement of religious rejection, but I don't think there can be a compelling government interest in shielding people from such rejections when it comes to the performance of ceremonies. The same, I think, is true when officiants refuse to perform ceremonies for interfaith couples, couples remarrying after a divorce (notwithstanding state laws that ban marital status discrimination), intercaste couples, or interracial couples — or same-sex couples.

Note that, if the law can be applied against the Knapps, public accommodation laws could also equally be applied

to ministers who provide freelance officiating services in exchange for money. The particular Coeur d’Alene ordinance might not apply there, since it covers only “place[s],” and that might be limited to brick-and-mortar establishments; but similar ordinances in other places cover any “establishment,” and if [a wedding photography service is an “establishment”](#) then a minister who routinely takes officiating commissions would be covered as well. And the logic of any rejection of the Knapp’s Free Speech Clause claims and Idaho RFRA claims would apply just as much to the itinerant officiant as to the one who has his own chapel.

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