



Are Tennessee's Evangelical Pastors Licensing Same-Sex 'Marriages'?

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After the Supreme Court's 2015 decision in *Obergefell v. Hodges*, I couldn't help but think of the number of evangelical pastors who told me they would never solemnize a same-sex "marriage," because it was contrary to the Word of God. But it dawned on me last week that, if I were a minister, I might not even solemnize a marriage between a man and a woman.

This epiphany came when something my friend Jeff Shafer, a senior attorney with Alliance Defending Freedom, wrote jarred loose the narrow lens through which I'd been reading the *Obergefell* decision.

Shafer wrote:

The defining feature of the historic marriage community, after all, is the

sexual difference of its non-fungible constituents. To obliterate the sexual-difference feature of marriage is not a charitable expansion of its borders, but a radical repudiation . . . of its character

For all my harping over the years on the need for Christians to think in terms of antithesis—that if marriage is defined as X, it necessarily *excludes* marriage defined as Y—I had somehow missed the fact that if marriage can no longer be defined *legally* in terms of male and female, it must be defined *legally* in terms of something else.

It's same-sex 'marriage' now for everyone.

What I had not appreciated is that *Obergefell* redefined legal marriage for everyone who wants a marriage, at least one that the law will recognize.

After all, a couple doesn't ask the county clerk for the heterosexual license to marry, if a man and woman, or ask for the same-sex license if two women or two men. The license the man and woman *now* get from the state is no different from that of two men or two women. And that was the whole point of the *Obergefell* decision—everybody's marriage has to now be the same.

There is no other legal form of marriage in Tennessee other than that for which the sex of the parties is irrelevant.

So what does this have to do with

ministers?

Whether they recognize it or not, ministers are clearly *agents of the state* when it comes to *creating* this new kind of marriage. The [license \[https://factn.org/wp-content/uploads/2018/02/Forms-Marriage-License-Certificate.pdf\]](https://factn.org/wp-content/uploads/2018/02/Forms-Marriage-License-Certificate.pdf) the state issues to the couple, which must be presented to the minister, says, “You are *hereby authorized* to perform the rite of marriage.” But it also says what kind of marriage, that which is “according to the statutes of Tennessee.”

And ministers acknowledge these legal facts. At the end of the ceremony, the minister says something like, “By the power vested in me by the state of Tennessee, I hereby pronounce you husband and wife.” The power they are exercising at least with respect to the license the state has issued is a power given them by the state, not God.

The minister must also sign the license. The marriage ministers are licensed to sanction by their signature is defined by the state as one in which the sex of the parties is irrelevant, even if, in fact, the particular marriage being sanctioned is composed of two people of the opposite sex.

But the final evidence that ministers are *agents of the state* for this new form of legal marriage is the fact that the state will not issue a [certificate of marriage \[https://factn.org/wp-content/uploads/2018/02/Forms-Marriage-License-Certificate.pdf\]](https://factn.org/wp-content/uploads/2018/02/Forms-Marriage-License-Certificate.pdf) to anyone unless the minister “certifies” that the couple was “married by me” according to the law by signing the application for the certificate.

I'm sure ministers who sign the state's marriage license and application for a certificate of marriage don't think they are giving their imprimatur of approval to a form of *legal* marriage that is at odds with Scripture. That's probably because they are simultaneously blessing the covenant kind of marriage between a man and a woman. But the fact that two things are going on at the same time does not change the nature of the *legal proceeding* that is also taking place.

What would I do and why?

At this point¹, if I were a minister, I think I would conduct only the ceremony for the sacred marriage and have the couple go to another state-authorized officiant to create and sanction the government-approved androgynous type of marriage.

I know doing that sounds silly and seems like making mountains out of molehills, but I don't think God considers the nature of marriage and the kind of marriage His church sanctions and helps create to be a molehill. That's why I just don't think I could be party to legalizing for the state what God's law forbids.

NOTES

1. I would note that lawsuits I am handling on behalf of ministers argue that our state statutes still define marriage in a way that requires a male and female. The attorney general has argued that those statutes now must be interpreted so as not to require a male and female, and the executive branch and our county clerks are in agreement. For now, ministers could agree with me. But if the

attorney general's view prevails in court, then the overthrow of our male-female marriage law will be complete.

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David Fowler served in the Tennessee state Senate for 12 years before joining FACT as President in 2006. Read [David's complete bio](https://factn.org/about/david-fowler/) [https://factn.org/about/david-fowler].



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