



TEC Standing Commission on Liturgy and Music
Addressing General Convention Resolution C056, *Liturgies for Blessing*

Task Group on Canonical and Legal Issues
Memorandum

To: C056 Convocation Attendees
From: Task Group on Canonical and Legal Issues
Date: March 3, 2011
Re: Proposed Liturgical Resources for Same-Gender Blessings and the First Amendment

As we explore formal Church blessings for same gender couples, many may ask whether state laws restricting civil marriage to opposite gender couples present problems or risks for the Church, and for Episcopal clergy performing the blessing ceremonies. The Canonical and Legal Considerations Task Group has studied these issues and this Memorandum provides an overview of our findings. We conclude that the First Amendment to the U.S. Constitution forbids a state from enforcing a law prohibiting same gender blessings by an ordained person.

The First Amendment to the U.S. Constitution, which applies both the federal government and to the States, provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Some thirty-five states define marriage as between a man and a woman and expressly withhold recognition of a marriage of same gender persons obtained lawfully in another state or country. The Task Group has not completed its review of the marriage laws of all states, but believes that this legal scenario is common among the states that forbid and do not recognize same gender marriages. The statutory or constitutional language used varies, but the intended result is the same. Our research is leading to the conclusion that as long as clergy in these states are *blessing relationships*, rather than purporting to *solemnize civil marriages*, the Task Group anticipates no threat of successful state criminal prosecution or other adverse action against the member of the clergy or his or her church. The blessing of a relationship is an exercise of religious faith, whereas the solemnizing of a marriage is an official act as an agent of the state. The First Amendment will recognize the difference between the two and protect the former.

We note that the Book of Common Prayer, and Canon I.18.1, require Episcopal clergy to conform to the laws of their state governing the creation of a civil marriage, so there are disciplinary consequences for an Episcopal clergy member who performs a civil marriage ceremony and signs a state marriage license for a couple not permitted to marry in that state; there could be civil law consequences as well. The Task Group believes that celebrating a same gender blessing ceremony using a Church trial liturgy, for example, would not be counter to the Canons or the Book of Common Prayer – assuming that the language of the liturgy does not use the marriage terminology

(including “husband and wife”) of the Book of Common Prayer or otherwise. Our conclusion also assumes, again that the member of the clergy is not also attempting to solemnize a marriage contrary to state law. Our conclusion and our assumptions also apply where the blessing ceremony is for a same gender couple who has been married (or joined in civil union) in a state where that is legal.

Some state laws not only forbid (or do not recognize) same gender marriage, but also any legal status between same gender couples that approaches or approximates the status of civil marriage (e.g., civil union status). The Task Group concludes that the above analysis and conclusions apply to these laws as well.

We have been developing a working list of related and other issues, questions and areas of research. These include – but will not be limited to, (i) a glossary of commonly used terms and definitions, (ii) issues that may be particular to parts of The Episcopal Church outside the United States and (iii) a survey of Diocesan Canons in this area. We solicit contributions to this working list, so please post to the GCO site your suggestions in this regard.

The Canonical and Legal Considerations Task Group is comprised of: Thomas Little, Esq., Chair (Chancellor, Vermont, I); Joan Geiszler-Ludlum, Esq., (Chancellor, East Carolina, IV); The Rev. Canon Greg Howe (Custodian of the Book of Common Prayer; Delaware, III); Larry Hitt, Esq., (Chancellor, Colorado, VI); and The Rt. Rev. Stacy Sauls (Lexington, IV).

Working Draft—Outline of Other Issues, Questions and Areas of Research

- I. Glossary of commonly used terms and definitions:
 - Civil union
 - Holy matrimony
 - Common law marriage
 - Defense of Marriage Act (DOMA)
 - Domestic partnership
 - Others?
- II. Are there issues particular to certain parts of The Episcopal Church outside the United States, e.g., Province IX, Taiwan, Micronesia, Convocation of Episcopal Churches in Europe, others?
- III. Should we research and develop surveys of:
 1. State marriage laws (incl. civil union, domestic partnership)
 - a. Who is eligible to marry?
 - b. Who is eligible to perform/solemnize marriage?
 - c. Other laws?
 2. Diocesan Canons re: marriage
 3. Current Diocesan/Bishop policies/guidance on marriage/blessings
- IV. Memo on process for amending (i) Canons, (ii) Constitution, (iii) Book of Common Prayer – if desirable or necessary. Are amendments needed?
- V. Do any Diocesan canons expressly prohibit same gender blessings?
- VI. Authority of Bishop to pastorally direct clergy to:
 - Not bless
 - To bless
- VII. What, if any, are the possible Title IV clergy disciplinary implications?