



Q & A: Hawaii's Proposed Marriage Equality Law and Religious Freedom

REFUSAL TO SOLEMNIZE

- **Will clergy be sued for refusing to marry gay couples if we have the freedom to marry in Hawaii?**

No. Religious freedom is a fundamental part of America, and Hawaii's proposed marriage equality law protects the right of clergy to decide which marriages they will solemnize, consistent with their faith. No lawsuit has ever been filed against clergy in any of the 13 states plus the District of Columbia where same-sex couples can marry (or in any of the states, including Hawaii, where same-sex couples can enter into civil unions).

In fact, the proposed marriage equality law is modeled after Hawaii's civil unions law, which provides that the clergy may refuse to perform a civil union for any reason. No clergy member in Hawaii has been punished or penalized in any way for such a refusal.

- **What if a same-sex couple wants a church to marry them, and the church objects?**

Consistent with both the federal and state constitutions, Hawaii's marriage bill protects the right of churches and other religious institutions to decide whom they will marry. Some churches will perform marriages for same-sex couples, and some will not, just as some houses of worship will perform interfaith marriages and some will not. The federal and state constitutions already protect those beliefs and practices. The proposed marriage bill will not, and cannot, change this.

EXEMPTION FOR RELIGIOUS FACILITIES

- **Will churches or other religious organizations have to rent their facilities for same-sex weddings?**

No. The proposed marriage equality law reflects our state's nondiscrimination laws, which only apply if a property is open to the general public for a profit. Any church or religious organization may adopt its own rules about which marriages it will host, subject to that general principle. For example, a religious organization may adopt a practice that its facilities are available for weddings of individuals who share its faith but no one else. This would comply with the state's nondiscrimination laws, and is expressly permitted under the marriage equality law.

A religious organization may still allow visitors and other non-members to come to its services, or enter the chapel or facility to take photographs, or operate a religious school without opening itself up to Hawaii's public accommodations law. If, however, a religious organization regularly rents its banquet hall out to the general public for weddings for profit, then it must follow Hawaii's public accommodations law – just like a private hotel or restaurant that's engaged in

the same kind of business. This has already been the law for years, and even if the proposed marriage equality law doesn't pass, this is still the law.

We are unaware of any case ever being brought against a religious organization for refusing to rent a church or place of worship itself for a marriage ceremony.

- **If a religious organization has a school, does that mean it is open to the public and will be required to allow same-sex couples to get married there?**

No. The proposed marriage equality law ensures that clergy and religious organizations may decide which weddings they will solemnize, no matter what they do, or who they choose to marry. It goes further, and also reaffirms that they may decide which weddings to allow on their premises, unless they offer the use of their facilities for weddings to the general public. If they do not allow anyone to rent their facility for weddings, the fact that another part of the organization is open to the public does not mean that they must allow gay couples to rent the space for weddings. That's because religious organizations have no obligation to allow people to get married on their premises. The marriage law won't change that.

- **If a religious organization allows its facilities to be used for community meetings or rents space on a contract basis to a provider like Kumon, does that mean it is open to the public and will be required to allow same-sex couples to marry there?**

No. Again, the proposed marriage equality law ensures that clergy and religious organizations may decide which weddings they will solemnize, no matter what they do, or who they choose to marry. They also may decide which weddings to allow on their premises, unless they offer the use of their facilities for weddings to the general public. If they allow their facilities to be used for other purposes like community meetings or rent their facilities under contract, for example to Kumon, but don't rent their facilities for weddings, there is no requirement that they allow gay couples to rent their space for weddings.

SCOPE OF RELIGIOUS EXEMPTIONS

- **Does Hawaii need to have broader religious exemptions?**

No. The proposed marriage equality law ensures that no clergy can be required to perform any marriage to which they object. This protects religious freedom. And the law goes further, by clarifying that churches or other religious organizations need not allow anyone to use their facilities for weddings, so long as those facilities aren't rented for weddings to the general public for a profit.

- **Do all other states have broader religious exemptions than the proposed exemption in Hawaii?**

No. Delaware recently passed a marriage equality law with an exemption that is narrower than the proposed Hawaii language. California also has a narrower exemption. And in states like Massachusetts and Iowa, the legislatures have rejected efforts to add any exemption language. In other words, Hawaii's proposed marriage equality law gives more protections to churches and religious organizations than the laws of several other states. The exemption in the proposed marriage equality bill is consistent with Hawaii's tradition of treating everyone fairly, while protecting religious liberty.

In 2006, the Hawaii legislature rightfully extended our nondiscrimination laws to protect gay people. Same-sex couples shouldn't lose these important protections if they are allowed to enter into civil marriage. Allowing same-sex couples to marry promotes fairness while also protecting the religious beliefs of all people about marriage.

- **But don't some other states have broader religious exemptions than the proposed exemption in Hawaii? Why is this language right for Hawaii?**

Thirteen states and the District of Columbia already have the freedom to marry for same-sex couples. Some states have narrower exemptions, and some have broader special exemptions. The differences in exemptions largely reflect differences in existing state nondiscrimination protections. Religious freedom and a commitment to equal treatment coexist in all these states. The same will happen in Hawaii.

The proposed marriage equality law ensures that no clergy or religious institution will be required to perform any wedding. It also ensures that religious institutions that choose not to rent their facilities for weddings may continue to exclude anyone they wish. When the legislature extended our nondiscrimination laws to protect gay people in 2006, it determined, after due consideration of public testimony, that once a business or organization opens its doors to the public and operates for profit, it must treat everyone fairly, and no one should be turned away just because they are gay or lesbian. Allowing the freedom to marry is no reason to change these basic principles of fairness.

TAX EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS

- **Will churches or other religious organizations lose their tax exempt status if they refuse to perform same-sex marriages?**

No. Different faiths have different rules about who they will marry – and no church has lost its tax-exempt status for acting according to their faith. Nothing will change if gay couples can marry in Hawaii.

- **Didn't a church in New Jersey lose its tax exemption for not hosting a lesbian wedding?**

No. In 2007, a religious association that owns land in Ocean Grove, NJ, refused to let a lesbian couple rent its beach pavilion for their civil union ceremony, even though the pavilion was otherwise open to the public for rent for all kinds of events. The couple did not seek to hold their ceremony in a church, or to have the religious association perform the civil union. After the denial, the couple filed a complaint with the state human rights commission. The association subsequently decided to close the pavilion for public use, which meant it wasn't entitled to a state "public land" tax break. The association did not lose any religious group exemptions to which it was entitled, and the couple ultimately had their ceremony elsewhere.

BUSINESS OWNERS

- **What about business owners who object to providing services to gay couples?**

We are all entitled to our religious beliefs, but no belief is an excuse to break the law by discriminating against others. We may not all feel the same way about gay people, but we can agree that it is important to treat people fairly, with respect, and as we would want to be treated ourselves. That's why no state that allows same-sex to marry permits businesses to discriminate based on the religious beliefs of the owners.

- **Why can a church refuse to provide its facilities for all marriage ceremonies when private, for-profit businesses, such as photographers or bakers, cannot?**

Bakers, photographers, and other businesses offer their commercial services to everyone, and they are an important part of our community. These businesses are already subject to many laws: for example, restaurants have to follow health rules, hotels have to collect special taxes from visitors, and all businesses have to comply with Hawaii's nondiscrimination law. In determining whether a "business" must comply with the nondiscrimination law, the law looks to whether the "business" offers its services to the public for a profit (see H.R.S. § 489-2). Bakers, photographers, and other businesses qualify as a "place of public accommodation" within the meaning of H.R.S. § 489-2 because their "goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the general public as customers, clients, or visitors." In contrast, churches or other religious organizations that use their facilities primarily for religious purposes and do not rent it out to the general public for a profit are not subject to the nondiscrimination law in H.R.S. § 489-2.

- **Isn't there a lawsuit against a B&B already in Hawaii? Will marriage mean more lawsuits?**

There is an existing case against an inn that refused to rent a room to a gay couple. The couple won in the trial court and the case is on appeal. The case has nothing to do with marriage equality: it has to do with Hawaii's public accommodations law, which has been on the books for many years.