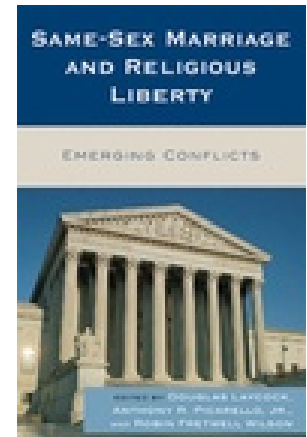


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Same-Sex Marriage and Religious Liberty: Emerging Conflicts

Edited by Douglas Laycock, Anthony R. Picarello, Jr., and Robin Fretwell Wilson

"A scholarly, thoughtful, and well-written collection of essays from leading thinkers in the field—a must for anyone interested in religious liberty, gay rights law, or both. Coeditor Doug Laycock, one of the top religious freedom scholars in the nation, characterizes the essays well in his afterword: they are an "oasis of reasoned discourse amidst all the conflict," and people on all sides of the same-sex marriage debate have much to learn from them."—Eugene Volokh, UCLA School of Law



Same-Sex Marriage and Religious Liberty explores the religious freedom implications of defining marriage to include same-sex couples. It represents the only comprehensive, scholarly appraisal to date of the church-state conflicts virtually certain to arise from the legal recognition of same-sex marriage.

It explores two principal questions. First, exactly what kind of religious freedom conflicts are likely to emerge if society embraces same-sex marriage? A redefinition of marriage would impact a host of laws where marital status affects legal rights—in housing, employment, health-care, education, public accommodations, and property, in addition to family law. These laws, in turn, regulate a host of religious institutions—schools, hospitals, and social service providers, to name a few—that often embrace a different definition of marriage. As a result, church-state conflicts will follow. This volume anticipates where and how these manifold disputes will arise.

Second, how might these conflicts be resolved? If the disputes spark litigation under the Free Speech, Free Exercise, or Establishment Clauses of the First Amendment, who will prevail and why? When, if ever, should claims of religious liberty prevail over claims of sexual liberty? Drawing on experience in analogous areas of law, the volume explores whether it is possible to avoid these constitutional conflicts by statutory accommodation, or by separating religious marriage from civil marriage.

List of Contributors

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Anthony R. Picarello, Jr. is general counsel for the United States Conference of Catholic Bishops in Washington, D.C. He organized the conference documented in this volume over the course of 2005 while serving as Vice President and General Counsel for the Becket Fund for Religious Liberty. He has lectured extensively on religious freedom law, and has published articles in the *First Amendment Law Review* and the *George Mason Law Review*. In January 2007, Anthony was named to *The American Lawyer* magazine's list of the top fifty litigators under age forty-five.

Robin Fretwell Wilson is the Law Alumni Faculty Fellow and professor of law at Washington & Lee University, where her scholarship focuses on family law, children and violence, and healthcare law. She is the editor of three recent books, including *Reconceiving the Family: Critical Reflections on the American Law Institute's Principle of the Law of Family Dissolution* (Cambridge University Press, 2006). Her work on family law and healthcare law has appeared in the *Cornell Law Review*, the *Emory Law Journal*, the *North Carolina Law Review*, the *San Diego Law Review*, and the *Washington & Lee Law Review*.

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Additional Reviews:

“Governments cannot be neutral in the coming clashes between those whose religious beliefs deem homosexual conduct immoral and those who believe that gay and lesbian people deserve to live openly and safely with the same regard and protections accorded others. The fair-minded authors in this volume identify emerging legal and policy choices as governments negotiate these clashes and in so doing, illuminate contrasting visions of liberty and equality embedded in current and potential legal doctrines. Each chapter and the judicious afterword by Douglas Laycock deserve close attention by policy-makers, advocates for religious communities, advocates for lesbian-gay-bi-sexual-transgender communities—and lovers of liberty anywhere.” —Martha Minow, Harvard Law School

“These smart and wise essays map and illustrate the main battle lines between two of our most cherished rights—the right to worship the God we fear and the right to marry the one we love. Drawing on the best constitutional, comparative, historical, and social science lore, the authors work hard to define the hard issues, to defuse the false charges, and to discern the best methods for bringing religious liberties and marital rights into greater concordance. Specialists and novices alike will learn much from these pages.” —John Witte, Jr., Emory University School of Law

“Will the recognition of same-sex marriage create serious burdens on the religious liberty of those who object to such marriages? Can those burdens be avoided by reasonable rules of law? This book offers the first sustained exploration of these important questions and reveals the diversity of views on how to balance these two powerful concerns.” —Andrew Koppelman, Northwestern University School of Law

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