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President Lyndon C. Korhonen
Association of Free Lutheran Congregations
3110 E. Medicine Lake Blvd.
Plymouth, MN 55441

Dear President Korhonen:

Re: Recommendation Regarding Alliance Defending Freedom
Protestant Statement on Marriage, Gender and Sexuality

Introduction. Prior to the recent meeting of the AFLC Coordinating Committee, you asked me to review the protestant statement on Marriage, Gender and Sexuality prepared by the ADF. In response, I prepared a letter to you and the Coordinating Committee regarding the ADF statement and adaptation and implementation issues. Following the Coordinating Committee meeting, you asked whether I would allow you to disseminate my letter to all the pastors in the AFLC through your Pastor to Pastor letter. I requested time to adapt it for this purpose. Here is the adapted letter.

The SCOTUS *Obergefell* decision has been effective to awaken congregations throughout the United States that had not taken seriously their urgent need to review the governing documents (constitution, bylaws, policies, procedures etc.) and strengthen their statements of “strongly-held religious beliefs.”

Many organizations have come forward with their recommendation of a statement which, if adopted by the non-profit group or congregation will *hopefully* insulate it from liability stemming from a lawsuit brought by individuals or organizations who claim that their rights have been illegally infringed. The Alliance Defending Freedom (ADF) is one group among several who have crafted a statement. A copy of it is attached at the end of this letter for use or reference. The ADF statement itself is a portion of an ADF publication entitled, Protecting Your Ministry from Sexual Orientation Gender Identity Lawsuits, A Legal Guide for Churches, Christian Schools and Christian Ministries.

No Silver Bullet. In its introductory statement to its “Statement on Marriage, Gender and Sexuality” the ADF said, “*These samples are demonstrative only: there is no magic language that must be copied verbatim. Each organization should tailor the statement to suit the needs of its particular group and faith tradition....*”

The ADF Disclaimer states in part: “*The information contained in this document is general in nature and is not intended to provide, or be a substitute for, legal analysis, legal advice, or consultation with appropriate legal counsel. You should not act or rely on information contained in this document without seeking appropriate professional advice...*”

Unless the leadership of each AFLC congregation *reads* the ADF booklet carefully, they may not understand that the *Obergefell* decision will likely have broad-reaching legal ramifications into the future. The legal landscape for churches in *many* areas is undergoing change. Things that congregations once took for granted and didn’t give a second thought are now revealed to be vulnerable targets.

There will continue to be suits brought against individual pastors and individual congregations who hold strongly to religious beliefs that run contrary to the *Obergefell* decision. No provision that any congregation may adopt is *guaranteed* to effectively *prevent* suit from being filed. Further, no provision any congregation may adopt – is *guaranteed* to prevent a court from finding *against* a church despite it being well-crafted and duly adopted by the congregation. The battle will be joined and, in my opinion, will *likely* wind up before the Supreme Court with ADF or another such organization defending the religious liberty rights of the pastor and the church.

So, What is the Objective? First, to follow the dictate of Scripture in all things. We all know that “we must obey God rather than man.” (Acts 5:29.) So, we believe, teach and confess in accordance with Scripture and the teachings of the Lutheran Church. We will also do well to remember that we are increasingly amongst wolves. We need to be “wise as serpents and innocent as doves” (Matt 10:16) and recognize when it is time for the congregation/church to go underground or flee to another town (Matthew 10:23, Acts 9:25).

We also know that we “should do everything properly and in good order.” (1 Cor 14:40.) Some would contend that if a congregation’s statement of faith says “we believe that the Bible is the inerrant Word of God and we are going, by God’s grace, to live our life in accordance with it” that should be good enough. Others would say that “more is better” and that congregations should be exhaustive in their recitation of Scriptures to support each point that might be raised.

With the effect of the *Obergefell* decision, each congregation should attempt to craft a provision that will clearly express *its* strongly-held religious belief and *its* implementing procedures for those beliefs. If that is done well, the congregation has been prudent and vigilant. Having put on the armor, it must then *stand*.

Constitution. In this instance, I believe that there are a few distinct issues. I believe that they can be worked under a congregation's *constitution* (or *by-laws* if there is no constitution per se) as "strongly-held religious beliefs" which then reference(s) a "facility use policy". The portion that should be in the constitution as a strongly-held religious belief builds directly on the Word of God. These include: the congregation's interpretation of Biblical passages on marriage, divorce, remarriage, gender and sexuality. The Bible speaks very directly to each of these, but the way in which they are worked out in the by-laws and/or through the facility use policy may depend on a congregation's interpretation of the *theology*.

So, for *marriage*, for instance, the strongly-held religious belief may cover (i) marriage is ordained by God; (ii) marriage is the union of one man and one woman –using as the standard the gender viewed at birth; (iii) sexual purity before marriage and fidelity after marriage; (iv) permanence is God's standard for marriage; and (v) remarriage after divorce – which will certainly be one area among several where one AFLC congregation may differ *significantly* from even a *neighboring* AFLC congregation . Each congregation would then include supporting Scriptures for each of these aspects pertaining to marriage.

By-laws. With these areas now having been identified as "strongly-held religious beliefs" the congregation provides further detail in its by-laws *and/or* through policies or procedures. For example, the congregation may set out who will be allowed to use the congregation's facilities (i.e. both the bride and groom must be followers of Christ, or whether marriage of *non-members* will be allowed on congregation property etc.); who will be allowed to officiate or even participate in the service (marriage, funeral etc), and the content of the service, rigorous pre-marital counseling etc. Keep in mind that the by-laws should address *any use* of the facility - not just marriage ceremonies.

A related but distinct area a congregation must consider is that of the congregation prohibiting their pastor from performing or participating in various marriage/civil union ceremonies *even outside* of the congregation's facilities.

Because of the diversity within the AFLC, the introductory paragraph in ADF's piece is particularly important for AFLC congregations to understand - "...these are only descriptive examples: there is no magic language that must be copied verbatim. Each organization should tailor the statement to suit the needs of its particular group and faith tradition."

Two Final Principles. In closing, two additional principles apply: First, *any statement on marriage, gender and sexuality* – whether the ADF's or otherwise - is not standing in a vacuum. It is part of the *entirety* of *each* congregation's governing documents. If it is not in sync with other provisions within the congregation's governing documents or policies or procedures, or worse, *at odds* with such other provisions, then the congregation creates further troubles and has not done "everything properly and in good order"; second, congregations must *live by* their governing documents, and especially those confessional

items typically in Art II and all other strongly-held religious beliefs (including *but not limited to* Baptism, The Lord's Supper, and life issues).

Conclusion. The ADF Statement on Marriage, Gender, and Sexuality is succinct. It does address several of the key areas that will be impacted by the *Obergefell* decision. I believe, however, that each AFLC congregation would be prudent to address the additional areas noted above and to make use of the congregation's constitution, its by-laws, policies and procedures as appropriate to take a firm hold on the sanctioned uses of its facilities.

In this letter I have provided legal *information* and some of my recommendations. I offer professional legal *services* to any congregation to address these or other areas of concern if that would be helpful.

Thank you.

To strengthen the Bride of Christ,

/s/

John S. Talley
Attorney at Law

CC: Coordinating Committee

Alliance Defending Freedom
Statement on Marriage, Gender, and Sexuality

We believe that God wonderfully and immutably creates each person as male or female. These two distinct, complementary genders together reflect the image and nature of God. (Gen. 1:26-27.)

We believe that the term “marriage” has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture. (Gen 2:18-25.) We believe that God intends sexual intimacy to only occur between a man and woman who are married to each other. (1 Cor 6:18; 7:2-5; Heb 13:4.) We believe that God has commanded that no intimate sexual activity be engaged in outside of marriage between a man and a woman.

We believe that any form of sexual immorality (including adultery, fornication, homosexual behavior, bisexual conduct, bestiality, incest, and use of pornography) is sinful and offensive to God. (Matt 15:18-20; I Cor 6:9-10.)

We believe that in order to preserve the function and integrity of [the organization] as the local Body of Christ, and to provide a biblical role model to the [the organization] members and the community, it is imperative that all persons employed by [the organization] in any capacity, or who serve as volunteers, agree to and abide by this Statement on Marriage, Gender, and Sexuality. (Matt 5:16; Phil 2:14-16; 1 Thess 5:22.)

We believe that God offers redemption and restoration to all who confess and forsake their sin, seeking His mercy and forgiveness through Jesus Christ. (Acts 3:19-21; Rom 10:9-10; 1 Cor 6:9-11.)

We believe that every person must be afforded compassion, love, kindness, respect and dignity. (Mark 12:28-31; Luke 6:31.) Hateful and harassing behavior or attitudes directed toward any individual are to be repudiated and are not in accord with Scripture nor the doctrines of [the organization].