



Written by [Bruce Walker](#) on September 28, 2011

ACLU Sues to Stop Clergy From Performing Marriages in Nevada

All that this law requires is that the clergyman performing the wedding provide proof that he is affiliated with a church or religious organization. The legal role allowed by Nevada law to a man of the cloth, however, is too much for the American Civil Liberties Union, which has filed suit in Clark County, contending that allowing priests, ministers, and rabbis to marry people in Nevada violates the so-called separation of church and state prohibitions in the Constitution.



On Monday, federal District Court Judge Philip Pro heard a motion to dismiss the ACLU's case, filed by counsel for Nevada Attorney General Catherine Cortez Masto, who asked that the Attorney General be dismissed from the case because that state officer has nothing to do with enforcing marriage laws; such enforcement is left up to the counties.

Michael Foley, Deputy District Attorney for Clark County — who does represent in this case the county and not the state — argued that the case should be dismissed because the religious test is required only for nongovernmental officials to conduct a wedding in Nevada. Nothing in that power requires that the couple being married adhere to the particular faith of the clergyman, or, in fact, that they profess any religious faith at all. "There is absolutely no statutory requirement that the ministers mention God or perform any religious rites during a ceremony," noted Foley, adding, "The only requirement is that the bride and groom declare in front of the witnesses that they take each other as husband and wife."

Foley also observed that the county has a legitimate interest in ensuring that marriages are performed properly, noting that requiring clergy to perform weddings in fact predates the Bill of Rights and the Constitution. This provides some safeguards in the marriage process, Foley pointed out: "If you allow every Elvis impersonator to go around marrying people, you're going to have some problems with paperwork and so forth."

ACLU attorney Allen Lichtenstein argued that Judge Pro should strike the religious requirement from the statute. The plaintiffs in the lawsuit, Raul Martinez and Michael Jacobson — both members of the American Humanist Association — claim they were denied certificates to perform marriages because they are not affiliated with a religious organization.

In his brief, Lichtenstein wrote that the state law in question does "advance religion by providing religiously affiliated individuals a certain degree of standing within the political community, while also



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sending a message to non-religiously affiliated individuals that they are outsiders from the political community, not worthy of privileges available to religious individuals.”

In this ACLU case in Clark County, Nevada, what is being questioned is not the right of a humanist to have a marriage ceremony legally performed; in fact, the legal right to have a [justice of the peace](#), who is not a religious official, perform the service seems to specifically embrace the rights of the godless to legally marry. What is being challenged is the right of two Catholics, two Jews, or two Protestants to have this milestone in life superintended by someone recognized by their faith.

The deconstruction of marriage as a solemn religious rite — believed by all branches of the Judeo-Christian tradition — is being directly assaulted. And the meaning of “clergy” is evolving almost into meaninglessness.



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