

July 26, 2022

The Honorable Mitch McConnell
Minority Leader
United States Senate
Room S-230, The Capitol
Washington, D.C. 20510

Dear Senate Minority Leader McConnell:

As the heads of national and state organizations leading the effort to protect life, religious liberty, free speech and the family, we write to denounce H.R. 8404, the so-called “Respect for Marriage Act,” in the strongest possible terms. The Act, which was suddenly rushed through the House without any public hearings or input, is an attack on millions of Americans, particularly people of faith, who believe marriage is between one man and one woman and that legitimate distinctions exist between men and women concerning family formation that should be recognized in the law.

The U.S. Supreme Court in *Obergefell* stated clearly that this view proceeds from “decent and honorable”¹ premises that “long ha[ve] been held—and continue[] to be held—in good faith by reasonable and sincere people here and throughout the world.”² But H.R. 8404 aims to shut down any disagreement, silencing those with the long-held conviction that marriage between one man and one woman is essential to human flourishing, a view that has existed from the dawn of time.

The truth is, while H.R. 8404 does nothing to change the status of, or benefits afforded to, same-sex marriage in light of *Obergefell*, it does much to endanger people of faith. Justice Alito was right when he predicted the *Obergefell* decision would “be used to vilify Americans who are unwilling to assent to the new orthodoxy.”³ We are seeing this play out more and more against those who decline to openly embrace extreme views regarding marriage and human sexuality. This legislation will only hasten and intensify hostility against them. As such, anyone who supports this measure is crossing a line into aiding and abetting the persecution of people of faith.

Moreover, the proposed Act goes far beyond merely codifying same-sex marriage in federal law. It is a startling expansion of what marriage means—and who may be sued if they disagree—that threatens the freedom of numerous “decent and honorable” Americans of different faiths, creeds, and walks of life who wish to live consistent with their deeply-held beliefs. For example:

¹ *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015).

² *Id.* at 657.

³ *Id.* at 741 (Alito, J., dissenting).

- H.R. 8404 would require federal recognition of any one state's definition of marriage without any parameters whatsoever. This would include plural marriages, time-bound marriages, open marriages, marriages involving a minor or relative, platonic marriages, or any other new marriage definition that a state chooses to adopt, including through undemocratic imposition by a state Supreme Court. Such recognition impacts a myriad of federal laws and policies regarding marriage, its benefits, and rights of parents and children.
- H.R. 8404 effectively deputizes activist groups to sue religious individuals, organizations, and businesses that operate according to their sincerely held religious belief that marriage is between one man and one woman and also act "under color of state law." The U.S. Supreme Court has recognized this as a term that might apply where a private organization participates in a joint activity with a state, is performing a function traditionally performed by the government, or even when its operations are entwined with government policies.⁴ Activists will argue this includes (1) faith-based foster care providers who are alleged to be performing a state function through child placement services; (2) religious social service organizations that are heavily funded by and work jointly with the government to serve their communities; and (3) religious organizations and businesses that provide services under contract with the government. Although the issues to be litigated would be many, there is no question the proposed Act subjects religious people, businesses, and organizations to countless new lawsuits merely for practicing their faith.
- The Internal Revenue Service could rely on this congressional declaration requiring full recognition of same-sex marriage to strip 501(c)(3) organizations of their tax-exempt status if they continue to adhere to their belief that marriage is only between one man and one woman. During the Supreme Court's *Obergefell* oral argument, then-U.S. Solicitor General Donald Verrilli "candidly acknowledged" that if the Court created a constitutional right to same-sex marriage, "the tax exemptions of some religious institutions would be in question."⁵ H.R. 8404 creates the foundation for fulfilling this warning by implicitly giving the IRS congressional support to punish religious non-profits.

In sum, the proposed Act is far more extreme than codifying *Obergefell*, just as the so-called "Women's Health Protection Act" goes well beyond codifying *Roe*, and it is dishonest for its sponsors to claim otherwise. Through its sweeping language and creation of new and broad enforcement mechanisms, the bill multiplies the threats against tens of millions of Americans who in "good faith" proclaim a marriage view

⁴ *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296 (2001).

⁵ *Obergefell*, 576 U.S. at 711 (Roberts, C.J., dissenting).

with which the Act's sponsors disagree, while laying the foundation for increased federal action and litigation against them.

We call on you to reject H.R. 8404 and to urge your colleagues to thoroughly abandon this harmful and unnecessary legislation. It has little to do with protecting rights; its text betrays an intent to stigmatize and take rights away—especially those belonging to people of faith.

Sincerely,

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