

# Religious Liberty Problems of the (Misnamed) Respect for Marriage Act

**The bill establishes a national policy on same-sex marriage that will be used to target people and institutions of faith, including schools.** It will be used to deny them:

- tax exempt status;
- government contracts, scholarships, and grants; and,
- licenses including for adoption, foster care, and counseling services.

**The bill doesn't provide a single benefit for civilly married same-sex couples not already granted by the *Obergefell* decision.** All it does is arm activists and bureaucrats, including at the IRS, with new grounds to harass or sue people who hold to the historic definition of marriage.

**Legally, Congress will be endorsing a compelling governmental interest in advancing same-sex marriage over and against religious freedom.** Even the *Obergefell* decision refused to go this far because whenever Congress or courts establish a “national policy” on anti-discrimination, religious freedom historically loses. Indeed, the Supreme Court in the 1980s upheld IRS revocation of tax-exempt status for a religious university based on a national policy of anti-discrimination.

The Supreme Court's decisions in *Fulton* and *Masterpiece Cakeshop* won't prevent targeting of faith-based organizations, including schools and adoption agencies, so long as government actors enact anti-discrimination policies without exceptions and avoid saying that they think people of faith are bigots.

**The bill acknowledges these religious liberty concerns but makes only empty gestures to address them.** The rules of construction in this bill do nothing to prevent any of the downstream harms identified above. The bill does not provide any religious liberty *affirmative defenses* which are the only things that would blunt the attacks the bill would unleash.

**If senators are serious about religious freedom, they should adopt Senator Lee's proposed amendment based on the First Amendment Defense Act.** The amendment has been thoroughly vetted by legal scholars and policy experts and would substantially limit the clear and present danger to religious liberty this gratuitous and vindictive bill represents.