

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

**H. R. 8404**

To repeal the Defense of Marriage Act and ensure respect for State regulation of marriage, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEE (for himself, Mr. CRAPO, Mr. CRUZ, Mr. GRAHAM, Mr. HAWLEY, Mr. MARSHALL, Mr. PAUL, Mr. SASSE, Mr. TITUNE, Mr. WICKER, ~~and~~ Mr. RISCH)

Viz:

<sup>^</sup>Mr. Johnson, and Mr. Scott of Florida.

1 At the end, insert the following:

2 **TITLE II—RELIGIOUS BELIEFS**

3 **AND MORAL CONVICTIONS**

4 **SEC. 201. PROTECTION OF THE FREE EXERCISE OF RELI-**  
5 **GIUS BELIEFS AND MORAL CONVICTIONS.**

6 (a) IN GENERAL.—Notwithstanding section 7 of title  
7 1, United States Code, section 1738C of title 28, United  
8 States Code, or any other provision of law, the Federal  
9 Government shall not take any discriminatory action  
10 against a person, wholly or partially on the basis that such  
11 person speaks, or acts, in accordance with a sincerely held

1 religious belief, or moral conviction, that marriage is or  
2 should be recognized as a union of—

3 (1) one man and one woman; or

4 (2) two individuals as recognized under Federal  
5 law.

6 (b) DISCRIMINATORY ACTION DEFINED.—As used in  
7 subsection (a), a discriminatory action means any action  
8 taken by the Federal Government to—

9 (1) alter in any way the Federal tax treatment  
10 of, or cause any tax, penalty, or payment to be as-  
11 sessed against, or deny, delay, or revoke an exemp-  
12 tion from taxation under section 501(a) of the Inter-  
13 nal Revenue Code of 1986 of, any person referred to  
14 in subsection (a);

15 (2) disallow a deduction for Federal tax pur-  
16 poses of any charitable contribution made to or by  
17 such person;

18 (3) withhold, reduce the amount or funding for,  
19 exclude, terminate, or otherwise make unavailable or  
20 deny, any Federal grant, contract, subcontract, co-  
21 operative agreement, guarantee, loan, scholarship, li-  
22 cense, certification, accreditation, employment, or  
23 other similar position or status from or to such per-  
24 son;

1           (4) withhold, reduce, exclude, terminate, or oth-  
2           erwise make unavailable or deny, any entitlement or  
3           benefit under a Federal benefit program, including  
4           admission to, equal treatment in, or eligibility for a  
5           degree from an educational program, from or to  
6           such person; or

7           (5) withhold, reduce, exclude, terminate, or oth-  
8           erwise make unavailable or deny, access or an enti-  
9           tlement to Federal property, facilities, educational  
10          institutions, speech fora (including traditional, lim-  
11          ited, and nonpublic fora), or charitable fundraising  
12          campaigns from or to such person.

13          (c) ACCREDITATION; LICENSURE; CERTIFICATION.—  
14          The Federal Government shall consider accredited, li-  
15          censed, or certified for purposes of Federal law any person  
16          that would be accredited, licensed, or certified, respec-  
17          tively, for such purposes but for a determination against  
18          such person wholly or partially on the basis that the per-  
19          son speaks, or acts, in accordance with a sincerely held  
20          religious belief or moral conviction described in subsection  
21          (a).

22          **SEC. 202. JUDICIAL RELIEF.**

23          (a) CAUSE OF ACTION.—A person may assert an ac-  
24          tual or threatened violation of this title as a claim or de-  
25          fense in a judicial or administrative proceeding and obtain

1 compensatory damages, injunctive relief, declaratory re-  
2 lief, or any other appropriate relief against the Federal  
3 Government. Standing to assert a claim or defense under  
4 this section shall be governed by the general rules of  
5 standing under article III of the Constitution.

6 (b) ADMINISTRATIVE REMEDIES NOT REQUIRED.—  
7 Notwithstanding any other provision of law, an action  
8 under this section may be commenced, and relief may be  
9 granted, in a district court of the United States without  
10 regard to whether the person commencing the action has  
11 sought or exhausted available administrative remedies.

12 (c) ATTORNEYS' FEES.—Section 722(b) of the Re-  
13 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-  
14 ing “title II of the Respect for Marriage Act,” after “the  
15 Religious Land Use and Institutionalized Persons Act of  
16 2000,”.

17 (d) AUTHORITY OF UNITED STATES TO ENFORCE  
18 THIS TITLE.—The Attorney General may bring an action  
19 for injunctive or declaratory relief against an independent  
20 establishment described in section 104(1) of title 5, United  
21 States Code, or an officer or employee of that independent  
22 establishment, to enforce compliance with this title. Noth-  
23 ing in this subsection shall be construed to deny, impair,  
24 or otherwise affect any right or authority of the Attorney  
25 General, the United States, or any agency, officer, or em-

1 ployee of the United States, acting under any law other  
2 than this subsection, to institute or intervene in any pro-  
3 ceeding.

4 **SEC. 203. RULES OF CONSTRUCTION.**

5 (a) **NO PREEMPTION, REPEAL, OR NARROW CON-**  
6 **STRUCTION.**—Nothing in this title shall be construed to  
7 preempt State law, or repeal Federal law, that is equally  
8 or more protective of free exercise of religious beliefs and  
9 moral convictions. Nothing in this title shall be construed  
10 to narrow the meaning or application of any State or Fed-  
11 eral law protecting free exercise of religious beliefs and  
12 moral convictions.

13 (b) **NO PREVENTION OF PROVIDING BENEFITS OR**  
14 **SERVICES.**—Nothing in this title shall be construed to pre-  
15 vent the Federal Government from providing, either di-  
16 rectly or through a person not seeking protection under  
17 this title, any benefit or service authorized under Federal  
18 law.

19 (c) **NO AFFIRMATION OR ENDORSEMENT OF**  
20 **VIEWS.**—Nothing in this title shall be construed to affirm  
21 or otherwise endorse a person's belief, speech, or action  
22 about marriage.

23 (d) **SEVERABILITY.**—If any provision of this title or  
24 any application of such provision to any person or cir-  
25 cumstance is held to be unconstitutional, the remainder

1 of this title and the application of the provision to any  
2 other person or circumstance shall not be affected.

3 **SEC. 204. DEFINITIONS.**

4 In this title:

5 (1) **FEDERAL BENEFIT PROGRAM.**—The term  
6 “Federal benefit program” has the meaning given  
7 that term in section 552a of title 5, United States  
8 Code.

9 (2) **FEDERAL; FEDERAL GOVERNMENT.**—The  
10 terms “Federal” and “Federal Government” relate  
11 to and include—

12 (A) any department, commission, board, or  
13 other agency of the Federal Government;

14 (B) any officer, employee, or agent of the  
15 Federal Government; and

16 (C) the District of Columbia and all Fed-  
17 eral territories and possessions.

18 (3) **PERSON.**—The term “person” means a per-  
19 son as defined in section 1 of title 1, United States  
20 Code, except that such term shall not include—

21 (A) publicly traded for-profit entities;

22 (B) Federal employees acting within the  
23 scope of their employment;

24 (C) Federal for-profit contractors acting  
25 within the scope of their contract; or

1           (D) hospitals, clinics, hospices, nursing  
2 homes, or other medical or residential custodial  
3 facilities with respect to visitation, recognition  
4 of a designated representative for health care  
5 decisionmaking, or refusal to provide medical  
6 treatment necessary to cure an illness or injury.