



## Respect for Marriage Act H.R. 8404

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### **BACKGROUND AND STATUS:**

On July 19, 2022, the House of Representatives passed the Respect for Marriage Act, a bill that would codify same-sex marriage into federal law and open the door for future modifications of marriage law as society's views on marriage continue to change beyond the traditional, biblical definition of a life-long union between one man and one woman. House Republican leadership chose not to whip members on the bill, resulting in 47 Republicans, including Congressional Committee Chairman Tom Emmer (MN-06) and Conference Chair Elise Stefanik (NY-21), joining all 220 Democrats in voting for the bill's passage. The bill passed in just eighteen hours from its introduction. Proponents ostensibly sold the bill as an urgent and necessary response to Justice Clarence Thomas's concurring opinion in *Dobbs v. Jackson Women's Health Organization*, which called on the Supreme Court to scrutinize cases in which it used the faulty legal logic of *Roe v. Wade* to justify other rights, such other "substantive due process rights," such as same-sex marriage in *Obergefell v. Hodges*.

The Respect for Marriage Act contains two key parts: first, it requires the federal government to recognize same-sex marriage as equal to traditional marriage; second, it requires states to recognize the marriages that are legalized in other states. Passage of the Respect for Marriage Act is a priority for Senate Majority Leader Chuck Schumer (D-NY), who has committed to voting on the bill once Congress returns from its August recess. Several Republicans have indicated their support of the bill, foreshadowing its passage in a tightly divided Senate.

### **WHY THE RESPECT FOR MARRIAGE ACT IS HARMFUL:**

The Respect for Marriage Act would repeal the 1996 Defense of Marriage Act (DOMA) and mandate reciprocity for other states' marriage laws in addition to legalizing same-sex marriage at the federal level. DOMA defined marriage as between a man and a woman and passed with broad bipartisan support in the House and the Senate. Since the Supreme Court ruled in *Obergefell v. Hodges* that states must recognize same-sex marriage, DOMA has been inoperable, but the Respect for Marriage Act would officially repeal it by codifying same-sex marriage. While proponents of the Respect for Marriage Act claim it is merely an innocuous reaffirmation of what the Supreme Court has already made the law of the land, it goes much further by giving same-sex marriage official government approval and opening the door to further degradations of marriage. Thus, the Respect for Marriage Act will cause lasting harm to children, families, and religious liberty by further expanding civil rights protections for a false view of marriage.

### **The Respect for Marriage Act Erodes Parental Rights:**

The Respect for Marriage Act will work to erode parental rights by enforcing a government-sanctioned view on marriage that is antithetical to the view still held "in good faith by reasonable and sincere people here and throughout the world," as Justice Anthony Kennedy stated in *Obergefell*.<sup>i</sup> The bill states:

No person acting under color of State law may deny—(1) full faith and credit to any public act, record, or judicial proceeding of any other State pertaining to a marriage between 2 individuals, on the basis of sex, race, ethnicity, or national origin of those individuals; or (2) a right or claim arising from such a marriage on the basis that such marriage would not be recognized under the law of that State on the basis of the sex, race, ethnicity, or national origin of those individuals.

This "under the cover of state law" language is concerning because it is a significant departure from the statutory language Congress has regularly used when enforcing the Full Faith and Credit Clause of the Constitution.<sup>ii</sup> It is not clear how courts would define a "person acting under color of State law" in this context, but based on existing case law, it is probable that it will include a number of private American citizens and institutions working in the public welfare and education space whose conscience or religious belief compel them to view marriage as a permanent

union between one man and one woman. Christian schools may run afoul of the law by holding to a biblical, traditional view of marriage and teaching the truth of that position before families and students. Additionally, the bill creates a private right of action that would spur frivolous lawsuits by those who will claim religious schools are operating as state actors. Not only will activists be directly empowered by the bill, they will also be able to use the bill's passage as evidence that religious schools are operating contrary to the public policy educational interests of the United States.

Since the bill explicitly protects marriages based on inordinate sexual identities, parental rights eventually will be also similarly affected. Recent years have shown how radical sexual ideology has served as a wedge between children and their parents, putting the government in the position of enforcing students' "right" to pursue an alternative sexual identity without a parent's consent. Some public schools have encouraged students to "socially transition" to the opposite sex at school without parents' knowledge, undermining parents' natural authority over their children. The Respect for Marriage Act does nothing to ameliorate this situation; instead, the bill teaches that those who disagree with the government on matters of human sexuality are bigoted actors operating outside federal law.

### **The Respect for Marriage Act Undermines School Choice:**

Religious schools account for three-quarters of all private schools that participate in school choice programs.<sup>iii</sup> Over the past few years, school choice has risen as a top priority issue to many Americans who want their children to get an education that aligns with their fundamental beliefs. Therefore, most school choice programs rightly protect the fundamental educational autonomy and religious liberties of religious schools. Yet recently, even after an explicit Supreme Court win, Christian schools have been targeted for holding biblical standards. On June 21, 2022, the Supreme Court ruled in *Carson v. Makin* that the state of Maine could not exclude religious schools and families from a school choice program simply because the schools that families chose were religious. Despite the clear indictment of the state's actions in the case, Maine doubled down on its attack of religious schools when Attorney General Aaron Frey issued a statement expressing his intention to ensure Christian schools could not participate in the program. Shortly following the Court's decision, he announced that he would "explore" legislative paths to "address the Court's decision and ensure public money is not used to promote discrimination, intolerance, and bigotry."

Indeed, other examples show that religious schools are already being persecuted for teaching a biblical sexuality that is increasingly discredited by government. In Florida, a Christian school recently endured severe public backlash for reminding its community of the value of its biblical beliefs about human sexuality. Additionally, state courts in California<sup>iv</sup> and Maryland<sup>v</sup> have recently ruled that Christian schools must comply with the government's sexual orthodoxy if they are to maintain their tax-exempt status as nonprofit organizations. These schools are threatened with complying or losing their tax exemption, resulting in a financial hit to their institutions and, more importantly, in a blow against their perceived credibility in the wider culture. **Codifying same-sex marriage through this bill will send the subtle but undeniable message that those who still hold to traditional, biblical principles are discriminatory and do not deserve to fully engage in society.**

These harms against Christian schools will undermine school choice legislation across the country. From the recently enacted law in Arizona that gives universal school choice to its students to the narrowly tailored programs supporting low-income and disabled students in Wisconsin, the success of school choice relies on the genuine choice of parents to direct the education of their children. The Respect for Marriage Act will inevitably cast religious schools as discriminatory for proclaiming what is proven to be best for children and societies. In a time when school choice is a top election issue, passing the Respect for Marriage Act will deprive all those who prioritize religious belief or moral formation in the education of their children by seeking to punish schools that will not comply with the new federal orthodoxy on marriage.

### **The Respect for Marriage Act Harms Children:**

The Respect for Marriage Act will harm children by effectively giving official government sanction to relationships that deprive children of a mother and a father. The bill denies the truth—evident through observation, conscience,

and studies that show the benefit of a married mother and father to children’s flourishing and long-term success—that a primary purpose of marriage is to provide a safe and nurturing home for children.<sup>vi</sup> The Respect for Marriage Act instead asserts, without evidence, that same-sex marriage is equally beneficial for children and society as traditional marriage.

Further, the bill opens the door for future degradations of marriage. In a subtle but essential shift, the bill creates two different standards by which marriages must be recognized. The bill requires that the federal government recognize *any* marriage considered valid in *any* state while limiting state-to-state recognition of marriage only in cases where the marriage is between two individuals. Consequently, the bill strips any permanent meaning to marriage and makes it susceptible to the pull of future cultural whims and state-level legislation that seek to redefine any variety of relationships as valid marriage. While no state has recognized a union of more than two people as marriage, some localities have done so. For example, in Massachusetts, two localities have recognized polyamorous relationships as civil unions within the state. This expansion of state-sanctioned unions is especially concerning because Arlington, Massachusetts, had to procure approval by the state attorney general to change its law recognizing civil unions.<sup>vii</sup> Thus, some in society are already moving toward diminishing marriage by expanding it to include various relationships regardless of their support in history, nature, law, or proven benefit in family formation. The Respect for Marriage Act will only hasten that decline.

#### **LEGISLATIVE ASK TO CONGRESS:**

**Congress should oppose the Respect for Marriage Act.** Redefining marriage at the federal level and coercing states to recognize indefinite kinds of marriages will only harm children, depress family formation, and weaken the very bedrock of our society. Congress should take a courageous stand in defense of American families by upholding the time-honored and tested standard of traditional marriage that continues to create flourishing homes and citizens. **We urge Congress to defend parental rights, school choice, and religious liberty by voting “no” on the Respect for Marriage Act.**

To read the text of the Respect for Marriage Act and to find a list of cosponsors of the bill, go to <https://www.congress.gov/bill/117th-congress/house-bill/8404/text> or click [here](#).

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<sup>i</sup> Anthony Kennedy, Opinion of the Court, *Obergefell v. Hodges* (2015), <https://supreme.justia.com/cases/federal/us/576/14-556/case.pdf>.

<sup>ii</sup> The Respect for Marriage Act: H.R. 8404 Annotated Analysis, Alliance Defending Freedom.

<sup>iii</sup> School Choice in the United States: 2019, National Center for Education Statistics, <https://nces.ed.gov/programs/schoolchoice/summary.asp>.

<sup>iv</sup> “California Joins the Fray: Another Court Rules that Nonprofit Schools Are Subject to Title IX,” Fisher Phillips, July 28, 2022, <https://www.fisherphillips.com/news-insights/california-court-rules-nonprofit-schools-title-ix.html>.

<sup>v</sup> Brigid Harrington, “Federal Court Rules that Tax-Exempt Private Schools Must Comply with Title IX,” JD Supra, July 26, 2022, <https://www.jdsupra.com/legalnews/federal-court-rules-that-tax-exempt-2096539/?origin=CEG>.

<sup>vi</sup> Mark Regnerus, “New Research on Same-Sex Households Reveals Kids Do Best with Mom and Dad,” *Public Discourse*, February 10, 2015, <https://www.thepublicdiscourse.com/2015/02/14417/>.

<sup>vii</sup> Tom Joyce, “Massachusetts Attorney General’s Office Rules Towns Can Recognize Polyamorous Relationships,” *New Boston Post*, December 24, 2021, <https://newbostonpost.com/2021/12/24/massachusetts-attorney-generals-rules-towns-can-recognize-polyamorous-relationships/>.