



United States Conference of Catholic Bishops

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November 23, 2022

Dear Senator/Representative:

As Congress weighs further votes toward the potential passage of H.R. 8404, the misnamed “Respect for Marriage Act” (RMA), we write to reiterate our firm opposition to the bill, and to implore Congress to reverse course.

Tragically, Congress’s consideration of RMA now takes place in the wake of the horrific attack in Colorado Springs. We echo the [statement](#) of our brother Bishop Golka of Colorado Springs in condemnation of this senseless crime.

Our opposition to RMA by no means condones any hostility toward anyone who experiences same-sex attraction. Catholic teaching on marriage is inseparable from Catholic teaching on the inherent dignity and worth of every human being. To attack one is to attack the other. Congress must have the courage to defend both.

The Respect for Marriage Act’s rejection of timeless truths about marriage is evident on its face and in its purpose. It would also betray our country’s commitment to the fundamental right of religious liberty, as detailed in the explanation appended to this letter and in previous communications.

Unfortunately, a number of religious groups and senators are asserting that the amended text of RMA sufficiently protects religious freedom. From the perspective of the U.S. Conference of Catholic Bishops, whose bishops’ ministries comprise the largest non-governmental provider of social services in the United States, the provisions of the Act that relate to religious liberty are insufficient. If passed, the amended Act will put the ministries of the Catholic Church, people of faith, and other Americans who uphold a traditional meaning of marriage at greater risk of government discrimination.

This bill is needless and harmful and must be voted down. At the same time, Congress, and our nation as a whole, must resolve to foster a culture where every individual, as a child of God, is treated with respect and compassion.

Please know of our prayers for you as you deliberate over a just resolution of these issues so central to the wellbeing of our country.

Sincerely,

A handwritten signature in blue ink that reads "Tim. Card. Dolan".

His Eminence Timothy Cardinal Dolan
Archbishop of New York
Chairman, Committee for Religious Liberty

A handwritten signature in blue ink that reads "Robert Barron".

Most Reverend Robert E. Barron
Bishop of Winona-Rochester
Chairman, Committee on Laity, Marriage,
Family Life and Youth

USCCB Explanation of Religious Liberty Problems in the Respect for Marriage Act

November 23, 2022

We reiterate the longstanding Catholic teaching that, like anyone else, people whose experiences include being attracted to the same sex are to be “accepted with respect, compassion, and sensitivity,” and that “[e]very sign of unjust discrimination in their regard should be avoided.” (Catechism of the Catholic Church, no. 2358) This does not at all differ from, and is not reduced by, our concurrent responsibility to uphold the inherent meaning, complementary nature, and societal good of marriage, and the religious freedom to continue to do so.

Our core concern with the bill's impact on religious liberty is not the direct requirements the bill text would impose. Rather, the main problem is the harms the bill would inflict on religious liberty indirectly, through effects that the amended text fails to prevent.

Compelling governmental interest

First, the bill will be used to argue that the government has a compelling interest in forcing religious organizations and individuals to treat same-sex civil marriages as valid. In raising defenses under the First Amendment and the Religious Freedom Restoration Act (RFRA), one of the critical elements is whether the government has a compelling interest in forcing religious objectors to comply with the law in question. In *Fulton v. City of Philadelphia*, the Supreme Court said that the government's interest in forcing Catholic Social Services to comply with Philadelphia's sexual orientation nondiscrimination law was not compelling (it was "weighty"). But the bill will be cited as new evidence that there is now a compelling governmental interest in such compliance. Plaintiffs and governments seeking to enforce such compliance will be able to say that Congress has acted to protect legal rights to recognition of same-sex civil marriages. Some courts will say *Fulton's* analysis of the compelling governmental interest prong is obsolete. In the end, religious objectors are likelier to be denied exemptions under the First Amendment and RFRA in cases where they would have prevailed but for the passage of RMA.

Potential consequences

This reasoning would have a ripple effect that hurts religious freedom in every context where conflicts with same-sex marriage arise, not just in the context of compliance with RMA itself. Employment decisions, employees' spousal benefits, eligibility for grants or contracts, accreditation, tax exemptions - it runs the full gamut, even in religious liberty conflicts arising out of state or local laws. Potential consequences include:

- Faith-based foster and adoption care agencies could be forced to place children with same-sex couples
- Faith-based housing providers could be forced to treat same-sex couples as married for the purposes of housing placement
- Faith-based social service agencies serving immigrants could be forced to treat same-sex couples as married for the purposes of housing and other services
- Religious organizations could be forced to hire and retain staff who publicly repudiate the organizations' beliefs about marriage
- Wedding vendors (bakers, florists, website designers, etc.) could be forced to participate in same-sex weddings
- Faith-based groups could be shut out of working with HHS to provide foster care to unaccompanied alien children and unaccompanied refugee minors.

- Religious organizations could be forced to treat employees' same-sex civil marriages as valid for the purposes of providing spousal benefits

Declaration of national policy

Second, the bill constitutes a declaration by Congress of a national policy of recognizing legally performed same-sex marriages. It will lead federal agencies to adopt that policy as their own. There is precedent for this – when Congress established a national policy of eradicating racial discrimination, the IRS revoked Bob Jones University's tax exemption on the grounds that its racially discriminatory admissions practices were contrary to established public policy. It is no small detail, therefore, that RMA's findings wrongly equate the right to interracial marriage with a right to same-sex marriage – which, to be frank, is offensive to the people that the bill calls, in the same breath, “reasonable and sincere.”

A few examples of how government policies mandating recognition of same-sex marriage in this manner could infringe religious liberty include:

- The IRS could revoke the tax exemptions of religious organizations that practice traditional beliefs about marriage
- Government agencies could exclude religious schools from eligibility for public benefits and programs like scholarships and school choice vouchers
- Government agencies could exclude religious organizations from access to or use of public facilities or property

Insufficiencies of the amendment

The provisions of the amendment offered by Sens. Baldwin, Sinema, Tillis, Collins, and Portman do not solve these problems.

Section 6(a) in the amended bill is a rule of construction preventing the bill from being interpreted to override religious liberty protections in the Constitution and other federal law. No statute can override the Constitution. And the primary federal statute at issue is RFRA, which can only be overridden by an explicit statement of intent to do so. No law passed by Congress has ever done that. So Section 6(a) emptily says that the bill will not do something that is (a) already impossible or (b) something unprecedented that it never claimed to do in the first place.

Section 6(b), to its credit, is an affirmative protection. However, the protection it offers is too narrow. It only applies to religious organizations in the solemnization or celebration of a marriage, not to religious individuals or to any entity in any other context. The phrase “whose principal purpose is the study, practice, or advancement of religion” might be construed to modify every item in the list that it follows, which would further narrow the scope of entities protected.

This is largely an empty concession for several reasons.

First - if, for example, a Catholic parish were sued today for not allowing its parish hall to be rented for a same-sex wedding, the parish would already be very likely to win. This provision affirms a freedom we are confident we already have.

Second, this provision does not look like it would be read to preclude a claim under any other statute – it is situated within wording that is specific to RMA, and does not say “notwithstanding any other provision

of law”. And it does not even seem that the bill could be construed to impose a requirement to provide goods or services for the solemnization or celebration of a marriage in the first place. So this provision only offers protection from a requirement that does not exist.

Third, it is not only religious organizations that are being sued to force them to provide goods and services for same-sex weddings – it is religious individuals who run small businesses that offer goods and services of that sort. *Masterpiece Cakeshop*, *Arlene’s Flowers*, *Klein v. Oregon*, *303 Creative* – these are all cases that fall outside of the scope of Section 6(b).

Last, as illustrated in examples above, conflicts between religious liberty and same-sex marriage arise in all sorts of contexts --indeed, predominantly -- outside of the actual solemnization or celebration of a marriage. For religious organizations, it is probably the *least* common context for these problems.

Regarding Section 7 – it is illustrative that, whereas Section 6(b) is written as an affirmative protection, Section 7 is written as a rule of construction. So it necessarily preserves the possibility that, under RMA, religious organizations could be stripped of their tax exemptions and eligibility for public benefits by the operation of **other** laws, regulations, or – especially, as noted above – agency policies. If the amendment hoped to provide meaningful protection in those regards, it should have been written in affirmative terms like Section 6(b). As written, even if limiting direct operation of the bill, it cannot prevent the bill from being used as evidence of a compelling government interest or national policy in forcing religious organizations or individuals to violate their beliefs about marriage.

Given all this – that the bill establishes an affirmative, enforceable, comprehensive right to federal and interstate recognition of same-sex marriages, but sets out religious liberty protections that are far from comprehensive, and are neither affirmative nor enforceable outside of the limited protections in Section 6(b) - it is fair to say that the amendment treats religious liberty as a second-class right. While we certainly appreciate that the bill says in its findings that our beliefs are decent and honorable, the *Obergefell* Court said that in dicta too, and it has not done us much good.

Sen. Lee’s stronger amendment demonstrates the insufficiency of RMA’s religious liberty provisions. Only comprehensive, affirmative, enforceable protections like those offered in Sen. Lee’s amendment can help keep RMA from infringing on the free exercise of religion.

Conclusion

We reiterate Cardinal Dolan’s November 17 [statement](#): “Senators supporting the Act must reverse course and consider the consequences of passing an unnecessary law that fails to provide affirmative protections for the many Americans who hold this view of marriage as both true and foundational to the common good.”

USCCB Statements and Resources on the Respect for Marriage Act:

- Cardinal Dolan’s [November 17 Statement](#) in Response to the Senate’s Vote
- Cardinal Dolan’s [November 15 article](#), “The ‘Respect for Marriage Act’ Stacks the Deck against Religious Freedom”
- Archbishop Cordileone’s [letter](#) to the House of Representatives and [letter](#) to the Senate.