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What houses of worship, faith-based organizations, and people of faith need to know—and do—about the Respect for Marriage Act

This explainer shows how the Respect for Marriage Act protects religious freedom even as it secures in federal law the right of same-sex marriage.

Note: *The Center for Public Justice and its Institutional Religious Freedom Alliance are committed to the biblical design for marriage: a life-long faithful union between one man and one woman. We believe that God’s design for marriage is best not only for the two adults but also for any children involved and for society at large. God’s design is good for all humans, not only for believers. We think it is best when a society’s convictions, social patterns, and laws follow God’s good design. It is always appropriate for Christians and for others who are committed to the traditional view of marriage to advocate for it to their neighbors and to government.*

Our laws, for various reasons, often depart from God’s good design. The U.S. marriage laws have long departed from the biblical design (for example, by permitting no-fault divorce). Regardless of the definitions our marriage laws encode, those laws ought to protect religious freedom—the freedom for people and organizations committed to biblical marriage to profess and live by God’s design.

For this reason, we commend Congress for building into the Respect for Marriage Act strong religious freedom protections. We were part of a coalition of religious organizations and pro-First Amendment LGBTQ advocates who advised Senators who desired to include religious freedom protections in the Respect for Marriage Act after the House of Representatives had passed a version without any such protections. However, the initiative to add such protections came from the Senators, and, ultimately, it was Congress that decided what religious freedom protections to include and what specific language would be used.

What you must know

[The Respect for Marriage Act](#) adds to the federal legal code important new protections for religious organizations professing traditional marriage, while it affirms a right for same-sex couples to marry—a right that already existed because of the Supreme Court’s *Obergefell* decision (2015). The Respect for Marriage Act assigns the duty to solemnize and recognize same-sex marriages to government officials, not private organizations.

The Respect for Marriage Act provides significant religious freedom protections. It explicitly provides that the duty of government to recognize same-sex marriage cannot be used to deny the tax-exempt status, accreditation, licenses, or government grants and contracts of non-governmental organizations that profess a traditional understanding of marriage. The Respect for Marriage Act extends to all religious nonprofit organizations the constitutional right held by houses of worship not to facilitate or celebrate same-sex weddings. The Act leaves untouched the circumstances of businesses committed to traditional marriage. However, it valuably reminds government officials and our society that professing God's design for marriage is not an expression of bigotry. This is a strong indication that the government has no compelling need to suppress belief in a biblical view of marriage nor to coerce the people and organizations with that religiously based belief.

Now that the Respect for Marriage Act has become law, what should faith-based organizations do?

Churches, faith-based charities, and all proponents of biblical marriage can applaud Congress for providing important religious freedom protections in the Respect for Marriage Act. Now that it is law, proponents of biblical marriage, just as they did before President Biden signed it, should strongly—with discernment—give witness to their convictions about marriage in what they say and in their policies and practices.

Passage of the law should also spur houses of worship and other faith-based organizations to review their policies, documents, and practices to ensure that these provide a solid foundation for religious freedom protections. Religious freedom protections apply to organizations and people who are acting consistently and deliberately on the basis of their religious convictions.

The religion-based practices of houses of worship are well-protected in the Constitution and in law because these are core religious organizations, as are seminaries, religious orders, and the like. However, if such organizations invite the public into their premises or routinely reach out into their neighborhoods to provide services to others, they should carefully evaluate their policies, documents, and practices, just as faith-based service organizations ought to do.

Review foundational documents. Faith-based service organizations and community-serving churches should take care to ensure that their foundational documents clearly state their religious character and their fundamental religious convictions, including beliefs and expectations concerning marriage and human sexuality.

Basic documents (bylaws, a mission statement, faith and conduct statements, etc.) should anchor the fundamental convictions in scripture, theological doctrines, or denominational statements. The documents should specify in sufficient detail what the organization believes the religious convictions entail. For example, organizations should state what they believe marriage to be and what conduct and attitudes they expect of employees, board members, and volunteers.

Assess policies and practices. Policy documents, such as an employee handbook, guidance for assessing whether to accept particular donations or government funds, and facility-use documents, should clearly set out requirements and expectations, articulating how these are grounded in the organization's foundational convictions. Job announcements, offers, contracts, and annual evaluations should specify expectations for religious beliefs, conduct, and activities.

Consistency. Decisions should be made consistent with the policies and the underlying religious convictions, with exceptions documented and justified.

For further information on how faith-based organizations can adopt these practices, please see the [resources](#) provided by the Christian Legal Society for faith-based organizations and houses of worship, created following the *Obergefell* decision, and prepared in collaboration with CPJ's Institutional Religious Freedom Alliance.

Additionally, staff members from CPJ's [Institutional Religious Freedom Alliance](#) are available for consultation and education for boards and staff members. You can send an email to inquiries@cpjustice.org or call us at (202) 695-2667.

What is the Respect for Marriage Act?

[The Respect for Marriage Act](#) requires the federal government to acknowledge same-sex as well as opposite-sex marriages. It also requires every state to accept as valid same-sex marriages licensed in other states. These duties are already required by the Supreme Court's *Obergefell* decision (2015). However, although *Obergefell* requires every state to license same-sex marriages, the Respect for Marriage Act does not, so if *Obergefell* is overruled, a state may refuse to license same-sex marriages, although it will continue to have to acknowledge such marriages entered into in other states. Under the Respect for Marriage Act (and *Obergefell*), these duties concerning marriage are placed on government and government officials, not private organizations and persons.

For private organizations and persons, the Respect for Marriage Act has put into federal law a number of important religious freedom protections that did not exist before. These are detailed in the sections below. Of greatest importance, the Respect for Marriage Act is a declaration by Congress, on a bipartisan basis, that those who uphold biblical marriage are not engaged in acts of bigotry that must be suppressed. In our assessment, the freedom of organizations and people committed to biblical marriage is more strongly protected now that Congress has written into federal law religious protections intertwined with the requirement of marriage equality than it was before, when there was only the Supreme Court requirement that government must license same-sex marriages.

What is the background of the Respect for Marriage Act?

The longevity of the *Obergefell* decision was cast into doubt when Supreme Court Justice Clarence Thomas, in his concurring opinion in the *Dobbs* decision that overturned *Roe v. Wade* (June 24, 2022), suggested that certain other decisions, including *Obergefell*, also should be reexamined. While no other justice agreed, many LGBTQ activists were concerned about the solidity of the same-sex marriage right. Just a few weeks later, the House of Representatives passed the Respect for Marriage Act, with 47 Republicans joining all Democrats who voted.

The House's Respect for Marriage Act had no religious freedom protections at all. The Senate, divided 50/50, did not take up the House bill until after a bipartisan group of Senators proposed an amended version that included religious freedom protections. These Senators (Republicans Collins, Portman, Tillis, and Lummis; Democrats Baldwin and Sinema) proposed their revised Respect for Marriage Act on November 14, 2022. It was adopted by the Senate on November 29 on a bipartisan basis after a series of votes, then by the House (December 8), and then signed into law by President Joe Biden (December 13, 2022).

Doesn't the enactment of the Respect for Marriage Act symbolize the defeat of traditional marriage in our society?

No. The Respect for Marriage Act puts into the federal legal code a requirement that already existed due to the *Obergefell* decision, which has no prospect of being overturned: Government officials must recognize same-sex marriages. What is most significant about the Respect for Marriage Act for government and society is its other requirement: that government must respect and protect people and organizations committed to the biblical design for marriage. Congress has said: Yes, we will have marriage equality—but only when it is paired with protections for people and organizations who hold to the traditional view of marriage.

What are the Respect for Marriage Act's religious freedom protections?

Affirmation of religious freedom. Sec. 6 (a) instructs courts and government officials that the Respect for Marriage Act's provisions must not be interpreted in a way that would "diminish or abrogate a religious liberty or conscience protection" available to people and organizations under the U.S. Constitution or any federal law.¹ This affirmation is the exact opposite of a proposal such as the Equality Act, which specifies that the Religious Freedom Restoration Act cannot be used to challenge the protections it would offer for LGBTQ and reproductive rights.

No requirement to conduct or celebrate same-sex weddings. Sec. 6 (b) provides that, throughout the United States, no religious nonprofit organization—no house of worship,

¹ Sec. 6 (a): "In General.--Nothing in this Act, or any amendment made by this Act, shall be construed to diminish or abrogate a religious liberty or conscience protection otherwise available to an individual or organization under the Constitution of the United States or Federal law."

no faith-based charity, no religious college or university, no seminary, no religious camp, or conference center—can be forced to provide facilities, goods, or services for the solemnization or celebration of any marriage to which they object.² The First Amendment ensures this protection to clergy and houses of worship; the Respect for Marriage Act has now extended the protection to every other nonprofit religious organization. Religious nonprofits may not be sued for declining to assist in same-sex weddings.

No loss of tax-exempt status or government benefits. Sec. 7 (a) specifies that the Respect for Marriage Act’s requirement that government officials recognize same-sex marriages must not be interpreted by federal agencies to diminish or deny any organization’s or person’s tax-exempt status, scholarships, grants, contracts, licenses, or accreditation.³ In short, the federal government may not punish or retaliate against a religious school, adoption agency, synagogue, licensed social worker, or marriage counselor because these persons or organizations profess the biblical view of marriage.

People and organizations are still subject to state and local sexual-orientation nondiscrimination requirements such that, in many places, they may not refuse to serve a gay person or same-sex married couple, unless their refusals are protected by religious freedom provisions offered in that state or locality. The Respect for Marriage Act has not worsened such challenges. To resolve them, additional legislation is needed that deals with various conflicts between nondiscrimination laws and religious freedom. But the Respect for Marriage Act models an important standard: When LGBTQ rights and religious freedom intersect, legislators should devise ways to protect both sets of rights, both sets of convictions about human sexuality and intimate relationships.

Honoring biblical marriage. In a “finding” or congressional declaration (Sec. 2 (2)), the Respect for Marriage Act paraphrases a statement from the *Obergefell* decision’s majority opinion, in which Justice Anthony Kennedy said that, while government officials must permit same-sex marriages, this requirement does not entail disparagement of those who have a different view about marriage. That was an important Court statement, but only a

² Sec. 6 (b): “Goods or Services.--Consistent with the First Amendment to the Constitution, nonprofit religious organizations, including churches, mosques, synagogues, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, religious educational institutions, and nonprofit entities whose principal purpose is the study, practice, or advancement of religion, and any employee of such an organization, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage. Any refusal under this subsection to provide such services, accommodations, advantages, facilities, goods, or privileges shall not create any civil claim or cause of action.”

³ Sec. 7 (a): “No Impact on Status and Benefits Not Arising From a Marriage.--Nothing in this Act, or any amendment made by this Act, shall be construed to deny or alter any benefit, status, or right of an otherwise eligible entity or person which does not arise from a marriage, including tax-exempt status, tax treatment, educational funding, or a grant, contract, agreement, guarantee, loan, scholarship, license, certification, accreditation, claim, or defense.” Under this subsection, a state that does not license same-sex marriages itself is required to provide every spousal tax and other benefit or status to the partner in a same-sex marriage contracted in another state.

statement. In the Respect for Marriage Act, the same view is expressed on a bipartisan basis by Congress, by our federal lawmakers. The Respect for Marriage Act says,

Diverse beliefs about the role of gender in marriage are held by reasonable and sincere people based on decent and honorable religious or philosophical premises. Therefore, Congress affirms that such people and their diverse beliefs are due proper respect.

The various specific protections in Sections 6 and 7 for religious freedom—that is, the protections for the conviction that God’s plan for marriage does not include same-sex marriages—put into specific legal form this congressional declaration that disagreeing with marriage equality is not bigotry.

Racist views were emphatically not treated in this way in the Respect for Marriage Act. Instead, the new law tells officials that they may not deny a union the status of marriage because it joins two people of different races.

Decades ago, when Bob Jones University, based upon its then-interpretation of the Bible, prohibited interracial dating, the IRS stripped it of its tax-exempt status and was backed by the Supreme Court and then by a federal law. The message was clear: In our society, with its national policy against racism, tax-exempt status cannot be extended to educational institutions that have racist policies, even if they claim a religious justification for those policies. Now, with the Respect for Marriage Act, Congress has loudly proclaimed that our national standards concerning marriage should accommodate, not suppress, the traditional view of marriage. Thus, the Respect for Marriage Act protects the tax-exempt status of organizations committed to traditional marriage by means of a specific provision (Sec. 7 (a)), a clear statement about honoring diverse views (a congressional finding), and by its very pattern and intention to protect simultaneously same-sex marriages and religious freedom as it applies to marriage.

Doesn't the Respect for Marriage Act turn organizations committed to biblical marriage into targets for lawsuits?

No. Because the Respect for Marriage Act in various ways underscores the legitimacy and worthiness of traditional marriage, organizations committed to such marriages are now *less* rather than *more* vulnerable as targets for lawsuits.

Some defenders of traditional marriage are concerned that the Respect for Marriage Act will prompt activists to take to court every organization that does not accept same-sex marriages (for example, religious adoption agencies). The concern expressed by these defenders of traditional marriage is that the Respect for Marriage Act not only requires government officials to respect same-sex marriages but also gives people who consider themselves harmed because a same-sex marriage was not honored a “private right of action” to sue the violator.

But the new law's right to bring a lawsuit (Sec. 4, subsection (c)) does not put faith-based organizations or churches at risk. It is government officials, not private organizations or persons, that the Respect for Marriage Act says must acknowledge same-sex marriages. Thus, the private right of action allows a person to sue a city wedding clerk who refuses to license a same-sex wedding but not to sue the religious college that won't let its facility be used to celebrate that wedding. Moreover, this private right of action is already well-established in federal law (the federal civil rights provision called Section 1983). Even without the Respect for Marriage Act, a private person can sue a government official for violating the requirements of the *Obergefell* decision. Organizations that could not be sued because of their traditional marriage stance before the Respect for Marriage Act cannot be sued on that account now.

Doesn't the Respect for Marriage Act require most faith-based organizations to accept same-sex marriages because they receive government funds or statuses such as accreditation?

No. In establishing the requirement that governments must honor same-sex marriage, the Respect for Marriage Act's Section 4 (a) says that "no person acting under color of State law may refuse to give full legal effect to same-sex marriages. A "person [or organization] acting under color of State law" can be termed a "state actor." Some observers have expressed concern that this provision implicates the many faith-based organizations that partner with government by receiving government funds to provide a service the government specifies, such as child care, adoption services, or emergency shelter. The provision, they fear, might even ensnare other organizations simply because the government acknowledges their programs through accreditation or licensing.

But this is not the legal understanding of the concepts "acting under color of State law" or being a "state actor." A "state actor" is a government official or a private person or private organization that is controlled by government or carrying out government tasks in the way the government would. A private organization or person does not become subject to all of the requirements placed on government simply by accepting a government grant or contract or being licensed as a professional.

The Respect for Marriage Act protects, rather than threatens, private organizations that work with government. Sec. 7 (a) states that nothing that it commands officials to do concerning marriage recognition may be interpreted to require taking away from a private person or organization any benefit such as a government grant, contract, or accreditation. That is, the Respect for Marriage Act protects faith-based organizations committed to traditional marriage from any effort to strip them of government support for allegedly being "state actors." This strong protection means, for example, that faith-based organizations that have received federal dollars via grants and contracts to provide services, and religious colleges and universities whose students receive federal or state student aid, have not become state actors under the Respect for Marriage Act.

However, just as was the case before the Respect for Marriage Act became law, if a faith-based organization were to operate a private prison under the authority of government, then it would be a “state actor” and would be required to accept same-sex marriages. Similarly, a believer in biblical marriage who serves as a city or county marriage clerk is a “state actor” and cannot simply refuse to license same-sex marriages. A few states (North Carolina, Mississippi, and Utah) protect in their laws marriage clerks with conscience claims, while ensuring that no marriages are obstructed.⁴ The Respect for Marriage Act does not require such accommodation but its principles surely encourage it.

Will the Respect for Marriage Act force faith-based adoption and foster care providers to close their doors?

No. Faith-based providers have been challenged in court because of existing nondiscrimination laws combined with the *Obergefell* decision. The Respect for Marriage Act does not increase the risk of such lawsuits. And the Respect for Marriage Act has not turned such providers, due to their government funding or other connections with government, into “state actors” that are now required to act with respect to marriage as if they were government officials.

Will the Respect for Marriage Act force faith-based organizations to hire people in same-sex marriages?

No. The Act specifies what government officials must do, not what faith-based employers must do. Religious employers, apart from this new Act, are sometimes challenged concerning their employment requirements. They have multiple defenses in law and under the Constitution. The Respect for Marriage Act does not place them at greater risk of lawsuits.

Does the Respect for Marriage Act protect wedding services companies?

Yes and no. Section 6 (b) protects houses of worship and other religious *nonprofits* from having to assist in conducting or celebrating same-sex marriages. It does not protect for-profit *businesses*. Congress for years has resisted acknowledging that commercial entities can be religious. But the Supreme Court has ruled that the practices of some companies are protected by the Religious Freedom Restoration Act (the *Hobby Lobby* case from 2014) and in a case this term may provide free speech protection to some wedding services companies (the *303 Creative LLC* case). But the Respect for Marriage Act does not address these issues one way or the other and thus has neither increased nor reduced protections for wedding-services businesses. However, it specifies as a guideline for the nation that religious freedom should be safeguarded when marriage is redefined. Importantly, it also specifically protects the applicability of the Religious Freedom Restoration Act to private entities, including companies, in federal cases (Sec. 6 (a)). It features a congressional finding that affirms organizations and individuals that hold to

⁴ <https://religiouslibertyinthestates.com/safeguard/marriage-weddings-recusal-of-public-officials/>

traditional views on marriage. And, notably, it provides all of these supports for traditional marriage in a bipartisan law that received very strong Democratic backing.

Why do people say that the Respect for Marriage Act is needed to protect not only same-sex marriage but also interracial marriage?

The two concepts are linked because of the worries of some that when Justice Clarence Thomas suggested that Supreme Court rulings in addition to *Roe v. Wade* ought to be revisited, he opened the door to reversing not only *Obergefell* but also *Loving v. Virginia* (1967), the case prohibiting bans on interracial marriage. Consequently, the Respect for Marriage Act protects interracial marriages as well as same-sex marriages. Unfortunately, in linking the two categories of marriage together, the mistaken impression is given that people who do not affirm marriage equality are probably also opponents of interracial marriage. That implication is not supported by facts.

If Congress had really intended the Respect for Marriage Act to protect religious freedom, why didn't its sponsors accept the religious freedom amendments offered by some Senators and Representatives?

Some Republicans offered religious freedom amendments very late in the legislative process, separately from the bipartisan discussions that had produced a Senate bill with important protections. The most comprehensive alternative set of provisions, from Senator Lee, was crafted several years ago, never receiving Democratic support, and never has received serious support by Republican legislators, who could have enacted it on their own when they held both the House and the Senate and could send the bill to President Trump. Its protections would have ranged beyond the scope of the Respect for Marriage Act's requirements, which is another reason it was not accepted.

The various proposed refinements and additions have merit. Yet what protects religious freedom is not the best set of concepts but rather those provisions that find enough support to be enacted. In the case of the Respect for Marriage Act, enactment required significant support from both parties, dooming proposed refinements that could not win Democratic votes.

Additional protections are needed--Fairness for All should be the next step

Biblical convictions about human sexuality and sexual identity require protections across a much broader set of issues than the Respect for Marriage Act's provisions, which are tailored to the circumstances of marriage redefinition. Religious freedom protections are needed in such important policy areas as employment law, public accommodations law, housing facilities, and prohibitions on sexual orientation and gender identity discrimination in the context of government funding. We believe the both-and approach called Fairness for All is the needed way forward. Fairness for All would at the same time put into federal law LGBTQ protections and corresponding strengthened religious freedom protections. In this way, federal law can protect citizens and organizations

committed to the biblical concept of sexuality while also ensuring fair treatment of LGBTQ people. The Center for Public Justice, its Institutional Religious Freedom Alliance, and other organizations that worked to ensure religious freedom protections in the Respect for Marriage Act have long [advocated](#) for this broader set of protections.

Additional Resources

[The Senate's Respect for Marriage Act Protects Churches and Faith-Based Service Organizations](#) - Article by IRFA's Stanley Carlson-Thies.

[1st Amendment Partnership's response to Roger Severino.](#)

[Letter](#) by leading religious liberty scholars who support the Senate amendment to the Respect for Marriage Act.

[Fairness for All, A Better Way Than the Equality Act](#) - Article by IRFA's Stanley Carlson Thies.