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To ensure that the Federal Government shall not take any discriminatory action against a person, wholly or partially on the basis that such person speaks, or acts, in accordance with a sincerely held religious belief or moral conviction that marriage is or should be recognized as a union of one man and one woman, or two individuals as recognized under Federal law, or that sexual relations outside marriage are improper.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2018

Mr. LEE (for himself, Mr. RUBIO, Mr. CRAPO, Mr. HATCH, Mr. INHOFE, Mr. BLUNT, Mr. RISCH, Mr. WICKER, Mr. ENZI, Mr. JOHNSON, Mr. ROUNDS, Mr. BARRASSO, Mr. SASSE, Mr. HOEVEN, Mr. THUNE, Mr. PAUL, Mr. PERDUE, Mr. SCOTT, Mr. COTTON, Mr. BOOZMAN, Mr. CRUZ, and Mr. MORAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure that the Federal Government shall not take any discriminatory action against a person, wholly or partially on the basis that such person speaks, or acts, in accordance with a sincerely held religious belief or moral conviction that marriage is or should be recognized as a union of one man and one woman, or two individuals as recognized under Federal law, or that sexual relations outside marriage are improper.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “First Amendment De-
5 fense Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Leading legal scholars concur that conflicts
9 between same-sex marriage and religious liberty are
10 real and should be addressed through legislation.

11 (2) As President Obama stated in response to
12 the decision of the Supreme Court in *United States*
13 *v. Windsor*, 133 S. Ct. 2675 (2013), “Americans
14 hold a wide range of views” on the issue of same-
15 sex marriage, and “maintaining our Nation’s com-
16 mitment to religious freedom” is “vital”.

17 (3) Nevertheless, in 2015, when asked whether
18 a religious school could lose its tax-exempt status for
19 opposing same-sex marriage, the Solicitor General of
20 the United States Donald Verrilli represented to the
21 United States Supreme Court that “[i]t’s certainly
22 going to be an issue”.

23 (4) Protecting religious freedom from govern-
24 ment intrusion is a government interest of the high-
25 est order. Legislation advances this interest by rem-

1 edying, deterring, and preventing government inter-
 2 ference with religious exercise in a way that com-
 3 plements the protections mandated by the First
 4 Amendment to the Constitution of the United
 5 States.

6 (5) Laws that protect the free exercise of reli-
 7 gious beliefs and moral convictions about marriage
 8 will encourage private citizens and institutions to
 9 demonstrate tolerance for those beliefs and convic-
 10 tions and therefore contribute to a more respectful,
 11 diverse, and peaceful society.

12 (6) In a pluralistic society, in which people of
 13 good faith hold more than one view of marriage, it
 14 is possible for the government to recognize same-sex
 15 marriage as required by the United States Supreme
 16 Court without forcing persons with sincerely held re-
 17 ligious beliefs or moral convictions to the contrary to
 18 conform.

19 **SEC. 3. PROTECTION OF THE FREE EXERCISE OF RELI-**
 20 **GIOUS BELIEFS AND MORAL CONVICTIONS.**

21 (a) IN GENERAL.—Notwithstanding any other provi-
 22 sion of law, the Federal Government shall not take any
 23 discriminatory action against a person, wholly or partially
 24 on the basis that such person speaks, or acts, in accord-

1 ance with a sincerely held religious belief, or moral convic-
2 tion, that—

3 (1) marriage is or should be recognized as a
4 union of—

5 (A) one man and one woman; or

6 (B) two individuals as recognized under
7 Federal law; or

8 (2) sexual relations outside marriage are im-
9 proper.

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

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

19 (2) disallow a deduction for Federal tax pur-
20 poses of any charitable contribution made to or by
21 such person;

22 (3) withhold, reduce the amount or funding for,
23 exclude, terminate, or otherwise make unavailable or
24 deny, any Federal grant, contract, subcontract, co-
25 operative agreement, guarantee, loan, scholarship, li-

1 cense, certification, accreditation, employment, or
2 other similar position or status from or to such per-
3 son;

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

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

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

1 **SEC. 4. JUDICIAL RELIEF.**

2 (a) CAUSE OF ACTION.—A person may assert an ac-
3 tual or threatened violation of this Act as a claim or de-
4 fense in a judicial or administrative proceeding and obtain
5 compensatory damages, injunctive relief, declaratory re-
6 lief, or any other appropriate relief against the Federal
7 Government. Standing to assert a claim or defense under
8 this section shall be governed by the general rules of
9 standing under article III of the Constitution.

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

16 (c) ATTORNEYS' FEES.—Section 722(b) of the Re-
17 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-
18 ing “the First Amendment Defense Act,” after “the Reli-
19 gious Land Use and Institutionalized Persons Act of
20 2000,”.

21 (d) AUTHORITY OF UNITED STATES TO ENFORCE
22 THIS ACT.—The Attorney General may bring an action
23 for injunctive or declaratory relief against an independent
24 establishment described in section 104(1) of title 5, United
25 States Code, or an officer or employee of that independent
26 establishment, to enforce compliance with this Act. Noth-

1 ing in this subsection shall be construed to deny, impair,
2 or otherwise affect any right or authority of the Attorney
3 General, the United States, or any agency, officer, or em-
4 ployee of the United States, acting under any law other
5 than this subsection, to institute or intervene in any pro-
6 ceeding.

7 **SEC. 5. RULES OF CONSTRUCTION.**

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

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

22 (c) NO AFFIRMATION OR ENDORSEMENT OF
23 VIEWS.—Nothing in this Act shall be construed to affirm
24 or otherwise endorse a person’s belief, speech, or action
25 about marriage.

1 (d) NO IMPACT ON DEFINITION.—Nothing in this
 2 Act shall be construed to alter the definition of marriage
 3 for Federal or State purposes.

4 (e) SEVERABILITY.—If any provision of this Act or
 5 any application of such provision to any person or cir-
 6 cumstance is held to be unconstitutional, the remainder
 7 of this Act and the application of the provision to any
 8 other person or circumstance shall not be affected.

9 **SEC. 6. DEFINITIONS.**

10 In this Act:

11 (1) FEDERAL BENEFIT PROGRAM.—The term
 12 “Federal benefit program” has the meaning given
 13 that term in section 552a of title 5, United States
 14 Code.

15 (2) FEDERAL; FEDERAL GOVERNMENT.—The
 16 terms “Federal” and “Federal Government” in-
 17 clude—

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

20 (B) any officer, employee, or agent of the
 21 Federal Government; and

22 (C) the District of Columbia and all Fed-
 23 eral territories and possessions.

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

4 (A) publicly traded for-profit entities;

5 (B) Federal employees acting within the
6 scope of their employment;

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

9 (D) hospitals, clinics, hospices, nursing
10 homes, or other medical or residential custodial
11 facilities with respect to visitation, recognition
12 of a designated representative for health care
13 decisionmaking, or refusal to provide medical
14 treatment necessary to cure an illness or injury.

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