

THE “FIRST AMENDMENT DEFENSE ACT” (H.R. 2802 / S. 1598) –

FIGHTING TO ALLOW DISCRIMINATION ACT

INDIANA ON STEROIDS: A DANGEROUS THREAT TO LGBT PEOPLE, WOMEN, AND OTHERS

The sponsors of the First Amendment Defense Act (FADA) claim this legislation is necessary to “prohibit the IRS from stripping a church of its tax exemption for refusing to officiate same-sex weddings.”¹ But in reality, this misguided and discriminatory legislation is not about protecting churches or clergy. It would permit discrimination against same-sex couples and their children, and open the door to harming many others, similar to the Religious Freedom Restoration Act that caused a national backlash this spring in Indiana.

What does FADA say?

- The operative language says: “Notwithstanding any other provision of law, the Federal Government shall not take any discriminatory action against a person, wholly or partially on the basis that such person believes or acts in accordance with a religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.”
- The bill goes on to define “a discriminatory action” extraordinarily broadly – it is any action to alter federal tax treatment; disallow a deduction for charitable tax contributions; deny any federal grant, contract, subcontract, cooperative agreement, loan, license, certification, accreditation, employment, or other similar position or status from or to such person; withhold or otherwise deny any benefit under a Federal benefit program; or “otherwise discriminate against such person.”

¹ <http://www.lee.senate.gov/public/index.cfm/press-releases?ID=e42a7e9d-294b-423e-ac90-208212c766d0>

- It also provides that the Federal Government “shall consider accredited, licensed, or certified for purposes of Federal law any person that would be accredited, licensed, or certified, respectively, for such purposes but for a determination against such person wholly or partially on the basis that the person believes or acts in accordance with a religious belief or moral conviction that marriage is or should be recognized as the union of one man and one woman, or that sexual relations are properly reserved to such a marriage.”
- It defines a person to include for-profit corporations, and allows anyone to assert “an actual or threatened violation of this Act as a claim or defense in a judicial or administrative proceeding”, and it awards attorneys’ fees.

What would FADA do?

This bill opens the door to unprecedented taxpayer-funded discrimination against LGBT people, single mothers, and unmarried couples. It would:

- permit government employees to discriminate against married same-sex couples and their families -- federal employees could refuse to process tax returns, visa applications or Social Security checks for all married same-sex couples;
- allow businesses to discriminate by refusing to let a gay or lesbian employee care for their sick spouse, in violation of family medical leave laws;
- allow federal contractors or grantees, including those that provide important social services like homeless shelters or drug treatment programs, to turn away LGBT people or anyone who has a sexual relationship outside of a marriage;
- let commercial landlords violate longstanding fair housing laws by refusing housing to a single mother based on the religious belief that sexual relations are properly reserved to marriage;

- permit a university to fire an unmarried female teacher for getting pregnant, and continue receiving federal financial assistance;
- impair the ability of federal agencies to enforce laws that offer protections to LGBT people from discrimination in education, employment or housing;
- prevent the government from refusing to employ an employee assistance counselor who lost their license or accreditation because of telling gay patients that their relationships are an abomination; and
- allow any of these individuals, businesses or groups, or anyone else who believes they may somehow be required by the federal government to do something that implicitly condones marriage for same-sex couples or sexual relationships outside of marriage, to file a lawsuit and potentially receive damages from taxpayer money.

What about churches and clergy?

Despite what some opponents of marriage for same-sex couples have claimed, the First Amendment already fully protects the rights of churches and clergy to decide which unions to solemnize within their faith traditions. Churches have made those decisions about who they will marry without government interference since the founding of our country, and that hasn't changed now that same-sex couples can marry.

What about the tax exempt status of religious schools?

Certain religious schools receive tax exempt status as charitable institutions. In light of our country's shameful history of race discrimination in education, the IRS and Supreme Court have recognized that schools that engage in race discrimination based on religious beliefs about interracial marriage cannot qualify for this government subsidy. Since then, the IRS has never made a similar determination about religious schools that discriminate based on beliefs about marriage for same-sex couples, or beliefs rejecting interfaith marriage, or regarding remarriage after divorce, even though interfaith couples and previously divorced people have the same constitutional right to marry

that the Supreme Court extended to same-sex couples in *Obergefell v. Hodges*. There is no reason to think the IRS will act differently now that same-sex couples have a constitutional right to marry.

What does the public think about this?

Indiana, a conservative state, provides an instructive example. Indiana Gov. Mike Pence's approval ratings plunged from 62-66 percent before signing the bill, to 45 percent immediately after signing the bill, and hit a new low of 34 percent in June. Meanwhile, the June poll found that 54 percent support expanding Indiana's civil rights law to include protections based on sexual orientation and gender identity. Only a third of Hoosiers (32 percent) oppose legal protections for LGBT people.

Nationally, poll after poll continues to show support for the LGBT community and opposition to discriminatory religious exemptions:

- Sixty percent of Americans support the freedom to marry, as recently reported by [Gallup](#).
- An even stronger majority, nearly 70 percent, [support protecting LGBT people](#) from discrimination in employment, housing and public accommodations.
- [Two-thirds of small business owners](#) (66 percent) don't believe businesses should be able to deny LGBT people goods or services based on religious beliefs.
- Only one-third of voters (33 percent) believe that [state and local officials should resist](#) letting same-sex marriages proceed.