July 26, 2022

The Honorable Mitch McConnell
Minority Leader
United States Senate
Room S-230, The Capitol
Washington, D.C. 20510

Dear Senate Minority Leader McConnell:

As the heads of national and state organizations leading the effort to protect life, religious liberty, free speech and the family, we write to denounce H.R. 8404, the so-called “Respect for Marriage Act,” in the strongest possible terms. The Act, which was suddenly rushed through the House without any public hearings or input, is an attack on millions of Americans, particularly people of faith, who believe marriage is between one man and one woman and that legitimate distinctions exist between men and women concerning family formation that should be recognized in the law.

The U.S. Supreme Court in Obergefell stated clearly that this view proceeds from “decent and honorable” premises that “long ha[ve] been held—and continue[] to be held—in good faith by reasonable and sincere people here and throughout the world.” But H.R. 8404 aims to shut down any disagreement, silencing those with the long-held conviction that marriage between one man and one woman is essential to human flourishing, a view that has existed from the dawn of time.

The truth is, while H.R. 8404 does nothing to change the status of, or benefits afforded to, same-sex marriage in light of Obergefell, it does much to endanger people of faith. Justice Alito was right when he predicted the Obergefell decision would “be used to vilify Americans who are unwilling to assent to the new orthodoxy.” We are seeing this play out more and more against those who decline to openly embrace extreme views regarding marriage and human sexuality. This legislation will only hasten and intensify hostility against them. As such, anyone who supports this measure is crossing a line into aiding and abetting the persecution of people of faith.

Moreover, the proposed Act goes far beyond merely codifying same-sex marriage in federal law. It is a startling expansion of what marriage means—and who may be sued if they disagree—that threatens the freedom of numerous “decent and honorable” Americans of different faiths, creeds, and walks of life who wish to live consistent with their deeply-held beliefs. For example:

2 Id. at 657.
3 Id. at 741 (Alito, J., dissenting).
H.R. 8404 would require federal recognition of any one state’s definition of marriage without any parameters whatsoever. This would include plural marriages, time-bound marriages, open marriages, marriages involving a minor or relative, platonic marriages, or any other new marriage definition that a state chooses to adopt, including through undemocratic imposition by a state Supreme Court. Such recognition impacts a myriad of federal laws and policies regarding marriage, its benefits, and rights of parents and children.

H.R. 8404 effectively deputizes activist groups to sue religious individuals, organizations, and businesses that operate according to their sincerely held religious belief that marriage is between one man and one woman and also act “under color of state law.” The U.S. Supreme Court has recognized this as a term that might apply where a private organization participates in a joint activity with a state, is performing a function traditionally performed by the government, or even when its operations are entwined with government policies. Activists will argue this includes (1) faith-based foster care providers who are alleged to be performing a state function through child placement services; (2) religious social service organizations that are heavily funded by and work jointly with the government to serve their communities; and (3) religious organizations and businesses that provide services under contract with the government. Although the issues to be litigated would be many, there is no question the proposed Act subjects religious people, businesses, and organizations to countless new lawsuits merely for practicing their faith.

The Internal Revenue Service could rely on this congressional declaration requiring full recognition of same-sex marriage to strip 501(c)(3) organizations of their tax-exempt status if they continue to adhere to their belief that marriage is only between one man and one woman. During the Supreme Court’s Obergefell oral argument, then-U.S. Solicitor General Donald Verrilli “candidly acknowledged” that if the Court created a constitutional right to same-sex marriage, “the tax exemptions of some religious institutions would be in question.” H.R. 8404 creates the foundation for fulfilling this warning by implicitly giving the IRS congressional support to punish religious non-profits.

In sum, the proposed Act is far more extreme than codifying Obergefell, just as the so-called “Women’s Health Protection Act” goes well beyond codifying Roe, and it is dishonest for its sponsors to claim otherwise. Through its sweeping language and creation of new and broad enforcement mechanisms, the bill multiplies the threats against tens of millions of Americans who in “good faith” proclaim a marriage view

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5 Obergefell, 576 U.S. at 711 (Roberts, C.J., dissenting).
with which the Act’s sponsors disagree, while laying the foundation for increased federal action and litigation against them.

We call on you to reject H.R. 8404 and to urge your colleagues to thoroughly abandon this harmful and unnecessary legislation. It has little to do with protecting rights; its text betrays an intent to stigmatize and take rights away—especially those belonging to people of faith.

Sincerely,

Michael P. Farris
President and CEO
Alliance Defending Freedom

Ryan T. Anderson, Ph.D.
President
The Ethics & Public Policy Center

Craig DeRoche
President and CEO
Family Policy Alliance

Franklin Graham
President and CEO
Samaritan’s Purse and the Billy Graham Evangelistic Association

John Stonestreet
President
Colson Center for Christian Worldview

Kelly Shackelford
President, CEO and Chief Counsel
First Liberty Institute

Rabbi Yoel Schonfeld
President
Coalition for Jewish Values

Kevin Roberts, Ph.D.
President
The Heritage Foundation

Tony Perkins
President
Family Research Council

Jim Daly
President
Focus on the Family

Penny Nance
CEO and President
Concerned Women for America

R. Albert Mohler, Jr.
President
The Southern Baptist Theological Seminary

David Nammo
Executive Director
Christian Legal Society

Mat Staver, Esq.
Founder and Chairman
Liberty Counsel
Terry Schilling  
President  
American Principles Project  

Brian Burch  
President  
CatholicVote  

Jeff Myers, Ph.D.  
President  
Summit Ministries  

Shannon Royce  
President  
Christian Employers Alliance  

Thomas Farr  
President  
Religious Freedom Institute  

Paul S. Teller, Ph.D.  
Executive Director  
Advancing American Freedom  

Steven W. Fitschen  
President  
National Legal Foundation  

Ed Corrigan  
President and CEO  
Conservative Partnership Institute  

John W. White, III  
President  
Lifeshape, Inc.  

Mike Sharrow  
CEO  
C12  

Katy Faust  
Founder & Director  
Them Before Us  

David S. Dockery  
President  
International Alliance for Christian Education  

Dr. Larry Taylor  
President  
Association of Christian Schools International  

Dr. Philip E. Dearborn  
President  
Association for Biblical Higher Education  

Dr. Mike Rouse  
President  
American Association of Christian Schools  

Cathi Herrod  
President  
Center for Arizona Policy  

Jim Minnery  
President  
Alaska Family Action  

Jonathan Keller  
President and CEO  
California Family Council  

Jerry Cox  
President  
Arkansas Family Council  

Peter Wolfgang  
Executive Director  
Family Institute of Connecticut
Nicole Theis  
President  
Delaware Family Policy Council

John Stemberger  
President  
Florida Family Policy Council

Cole Muzio  
President  
Frontline Policy Action (GA)

Eva Andrade  
President and CEO  
Hawaii Family Forum

Jim Hochberg  
President  
Hawaii Family Advocates

Bob Vander Plaats  
President and CEO  
The FAMiLY LEADER (IA)

Blaine Conzatti  
President  
Idaho Family Policy Center

David E. Smith  
Executive Director  
Illinois Family Institute

Ryan McCann  
Executive Director  
Indiana Family Institute

Jeff Bennett  
Executive Director  
Kansas Family Voice

David Walls  
Executive Director  
The Family Foundation (KY)

Gene Mills  
President  
Louisiana Family Forum

Andrew Beckwith  
President and General Counsel  
Massachusetts Family Institute

Carroll Conley  
Executive Director  
Christian Civic League of Maine

Jeff Hewson  
Executive Director  
Michigan Family Forum

John Helmberger  
Chief Executive Officer  
Minnesota Family Council

Jameson Taylor, Ph.D.  
President  
Center for Political Renewal (MS)

Jannique Stewart  
Executive Director  
Missouri Family Foundation

Jeff Laszloffy  
President  
Montana Family Foundation

John L. Rustin  
President  
North Carolina Family Policy Council
Tami L. Fitzgerald  
Executive Director  
NC Values Coalition

Karen Bowling  
Executive Director  
Nebraska Family Alliance

Karen England  
President  
Nevada Family Alliance  
Capitol Resource Institute

Shannon McGinley  
Executive Director  
Cornerstone Action of NH

Len Deo  
Founder  
Family Policy Alliance of New Jersey

Jodi Hendricks  
Executive Director  
New Mexico Family Action Movement

Jason J. McGuire  
Executive Director  
New Yorkers for Constitutional Freedoms

Aaron Baer  
President  
Center for Christian Virtue (OH)

Michael Geer  
President  
Pennsylvania Family Council

Dave Aucoin  
Executive Director  
Rhode Island Family Advocate

Dave Wilson  
President and Executive Director  
Palmetto Family Council (SC)

Norman Woods  
Executive Director  
Family Heritage Alliance (SD)

David Fowler, Esq.  
President  
The Family Action Council of Tennessee, Inc.

Jonathan Saenz  
President and Attorney  
Texas Values

Victoria Cobb  
President  
The Family Foundation of Virginia

James A. Davids, J.D., Ph.D.  
Chief Counsel  
Founding Freedoms Law Center (VA)

Caiden Cowger  
President  
The Family Policy Council of WV

Julaine K. Appling  
President  
Wisconsin Family Action

Nathan Winters  
Executive Director  
Family Policy Alliance of Wyoming

Dr. Robert M. Myers  
President  
Toccoa Falls College
Dr. Donald Sweeting
President
Colorado Christian University

Jeff Hunt
Director
Centennial Institute at Colorado Christian University

Dr. Kent J. Ingle
President
Southeastern University

Ben Merkle
President
New Saint Andrews College

Troy A. Shoemaker, Ed.D.
President
Pensacola Christian College

Barbara C. McMillin
President
Blue Mountain College

Jason K. Allen, Ph.D.
President
Midwestern Baptist Theological Seminary & Spurgeon College

Samuel W. “Dub” Oliver, Ph.D.
President
Union University

Glenn C. Arbery, Ph.D.
President
Wyoming Catholic College