

# United States Senate

WASHINGTON, DC 20510-0103

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Doug Mercer  
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Dear Doug:

The elections are behind us but the challenge of governing ourselves never ends, which is why I write today. I wish to discuss with you a piece of legislation called the Respect for Marriage Act.

I've listened carefully to individuals across our state to hear their views. Ultimately, I am guided by two things—my duty to uphold the Wyoming Constitution and my vow to ensure strong religious liberties for all under the Constitution.

As a Christian and a constitutional conservative, ensuring that the religious liberties of people in Wyoming are strongly protected and that no one be forced to perform a marriage ceremony or employ in a religious institution someone in a marriage that is not in line with their values is absolutely essential, as is ensuring that no non-profit organization loses tax-exempt status to a predatory Internal Revenue Service (IRS).

I've provided some in-depth thoughts on a few of the key issues below. As I hope you'll see, this bill contains some of the strongest protections for religious liberty ever enacted by Congress, and is markedly better than the status quo that has existed for the seven years since the United States Supreme Court recognized a constitutional right to same-sex marriage in *Obergefell v. Hodges*.

### **What the Respect for Marriage Act Means**

Many in Wyoming are concerned that the Respect for Marriage Act enacts a federal right for same-sex couples to marry, similar to the United States Supreme Court's decision in *Obergefell v. Hodges*. Whether or not you agree with the substance of *Obergefell* (and I think that case was wrongly decided since the United States Constitution says nothing about marriage in the constitutional text and marriage is a predominantly state issue), the Respect for Marriage Act does not enact a new federal right to same-sex couples to marry.

What the bill does do, however, is: (1) specify that a marriage that is valid in one state must be recognized by all other states; and (2) hold that an individual is to be considered married for federal tax purposes, benefits and similar programs if he or she has a marriage valid in any state. There is no federal right for same-sex couples to marry in this legislation—this bill does what our United States Constitution envisioned in 1787—it leaves laws around marriage up to the states and strengthens our federal system.

Article IV, section 1 of the United States Constitution says the following:

*Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other*

*State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.*

The similarities between the Full Faith and Credit Clause and the Respect for Marriage Act are striking in that each enables our federal system to work by requiring states to accept other states' records and decisions as valid. The Full Faith and Credit Clause is essential to Wyoming as a small state, because we could not drive in other states or get reciprocity for concealed carry without it, for example.

I agree with the United States Supreme Court's recent decision in *Dobbs v. Jackson's Women's Health Organization*, which overturned *Roe v. Wade*. Like abortion rights, marriage is an issue that is best left up to the decisions of individual states. From a constitutional perspective, it is difficult for me to see how supporters of *Dobbs* should fear the Respect for Marriage Act. Both *Dobbs* and the Respect for Marriage Act reaffirm the primary role of states in our abortion, marriage and family decisions—where they should be, since only our state is best positioned to determine what is best for Wyoming families.

If we want the right to drive in other states or exercise our Second Amendment rights, we have to grant respect to other states' decisions too—otherwise, the constitutional structure put in place by the Founders in 1787 will not work. That is the fundamental purpose of this legislation.

### **Protecting Religious Liberty**

I believe this bill, including an important amendment to ensure religious liberty that I have been working on with Senators Sinema, Tillis, Collins, Baldwin and Portman, enacts the strongest protections for freedom to worship and associate since the Religious Freedom Restoration Act in 1993. I am working with my colleagues to make these protections even stronger, and will continue to do so.

This amendment, which will be added to the Respect for Marriage Act before final passage in the Senate, provides the following iron-clad protections for religious liberty:

*Section 1* acknowledges that those Americans who believe same-sex marriage is morally wrong have sincere, reasonable and honorable beliefs that are worthy of respect by Congress and the Federal Government, preventing the scenario which occurred in the Bob Jones case (discussed below).

*Section 6* specifies that no church, religious organization or individual will ever be required to perform a same-sex marriage. The United States Supreme Court's decision in *Obergefell v. Hodges* could be interpreted in the future to potentially require churches to perform same-sex marriages or imperil their tax-exempt status without action by Congress, and section 6 of the amendment to the Respect for Marriage Act closes this serious loophole forever.

*Section 7* states that nothing in the bill shall allow the Federal Government to alter or remove the tax status, government contracts, grants, loans, benefits or eligibility for other government programs with respect to non-profit organizations or individuals that oppose same-sex marriage. Section 7 is critical to my support of the legislation on final passage, and if it is not further amended I will participate in a colloquy to ensure that the intent of the language is in its permanent record.

I've heard concerns that this bill represents a "national policy" towards favoring same-sex marriage, and under the United States Supreme Court's decision under *Bob Jones University v. United States*, it could lead to a predatory IRS removing the tax exempt status of churches, religious organizations and other non-profits. This is an incorrect understanding of the law.

First, this bill does not establish a "national policy" in favor of same-sex marriage. It simply states that a marriage valid in one state is valid in another, and that for the purposes of the Federal Government, an individual is considered married if she or he has a valid marriage in any state.

Second, if anything, this bill explicitly establishes a “national policy” in the opposite direction—because section 7 enshrines religious liberty surrounding marriage in statute and also prevents other states from forcing their churches, religious organizations and non-profit groups to recognize same-sex marriage. Section 1 of this bill also states that the national policy of Congress is to accord respect to all beliefs on marriage, preventing the *Bob Jones* case from reoccurring here.

When *Obergefell* was argued, Chief Justice Roberts asked Solicitor General Don Verrilli whether recognizing a constitutional right to same-sex marriage would lead to churches, religious organizations and other not-for-profits potentially having their tax-exempt status reconsidered. Solicitor General Verrilli responded that it was a possibility. In recognizing a constitutional right to same-sex marriage in 2015, the United States Supreme Court left this possibility wide open and left people of faith unprotected.

Section 7 of the Respect for Marriage Act, for the first time, addresses the precise question left unanswered in *Obergefell* and takes the possibility of discrimination against people of faith off the table, while strengthening religious liberty protections in other states. Consequently, I firmly believe that the amendment to sections 6 and 7 of this bill is a landmark moment for religious liberty in our country that will stand the test of time.

Even with the important step forward this bill takes with respect to religious liberty, the decision to support this bill was one of the most difficult I have had to make in Congress. As a Christian, my faith teaches me that marriage is between a man and a woman. As a constitutional conservative, I recognize the importance of separation between church and state. Finding a balance that honors both of these beliefs has been a challenge, but one I believe the Respect for Marriage Act achieves.

### **Upholding the Wyoming Constitution**

Article I of the Wyoming Constitution says the following:

*Section 1. In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal.*

*Section 3. Since equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction.*

The language of our state’s founding document is broad and underscores our state’s motto as the “Equality State.” Starting with the Wyoming Territorial Legislature’s decision to grant women the right to vote in 1869, our state has long been committed to equal legal rights for all.

The language of the Wyoming Constitution which guarantees that “political rights and privileges of its citizens shall be without distinction of race, color, sex, or any circumstance or condition whatsoever...” is particularly striking. Additionally, the Wyoming Supreme Court has consistently stated that Section 2 grants everyone in Wyoming the “right to associate with one’s immediate family” and is “a fundamental liberty protected by the state and federal constitutions.”

Also instructive is Wyoming Statute 20-1-101, which defines marriage as between one man and one woman.

Wyoming people will continue to wrestle with secular definitions of marriage and the Biblical definition, but one thing is certain - The Respect for Marriage Act provides some protection for Wyoming’s religious institutions that adhere to the latter definition.

I recognize that people of good intentions can disagree strongly on this issue and I respect your deeply-held beliefs

and values.

Happy trails,



Cynthia Lummis  
United States Senator

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