

Congressional Testimony on the First Amendment Defense Act  
U.S. Senator Mike Lee  
July 12, 2016

\*Remarks as prepared for delivery\*

Chairman Chaffetz, Ranking Member Cummings, and members of the Committee: thank you for holding this hearing today and for inviting me to testify in support of the First Amendment Defense Act. It's an honor to be here and to participate with my fellow witnesses and all of you in this important discussion.

I would like to preface my statement today by issuing a challenge to all of those involved in this debate here on Capitol Hill and across the country – myself included. As we engage in dialogue with one another about this highly charged topic, let's commit to treating one another with respect and courtesy, as fellow citizens rather than as adversaries. Let's insist on hashing out our honest differences honestly. It's too easy to assume the worst in those with whom you disagree, to impugn their *motives* so you don't have to listen to their *arguments*. Let's be better than that today. We all came here to talk, but let's not forget also to listen.

And with that, I'll now spend a few more minutes talking.

The most important feature of the First Amendment Defense Act is its exceptionally narrow scope. If enacted, the bill would do one thing and one thing only: it would prevent the federal government from discriminating against particular disfavored religious beliefs.

There are other forms of discrimination in the world – for instance, the discrimination that may occur between two private parties. But these are entirely different issues, unrelated to the First Amendment Defense Act.

This bill deals exclusively with a most pernicious form of discrimination in which the federal government singles out certain religious beliefs for disfavored treatment. The bill is so narrowly focused because it is a targeted response to particular legal developments that have taken place in the past year.

In the wake of last year's decision by the Supreme Court in the same-sex marriage case, *Obergefell v. Hodges*, many millions of Americans were left wondering: What does this mean for me?

Many wondered what the Court's decision would mean for the countless institutions within our civil society – churches and synagogues, charities and adoption agencies, counseling services and religiously affiliated schools – that are made up of American citizens who believe marriage is the union of one man and one woman. For instance, now that the Supreme Court had discovered a constitutional right to same-sex marriage, would a school that holds the belief that marriage is the union between one man and one woman be in danger of losing its tax-exempt status?

More than one year after the *Obergefell* decision, these questions remain unanswered.

On the one hand, the Court’s majority opinion in the *Obergefell* case reiterated the meaning of religious liberty that has always been understood in America when it stated, “The First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.”

But on the other hand, there was the ominous exchange between Supreme Court Justice Samuel Alito and Solicitor General Donald Verrilli during oral arguments in the case that seemed to suggest that the Obama administration would be comfortable with the notion that the IRS could revoke the tax-exempt status of religious institutions – including schools – that maintain the traditional definition of marriage.

The First Amendment Defense Act is a very narrow and targeted legislative response to these still unanswered questions. The bill reaffirms the letter and spirit of the First Amendment, by stating unequivocally that the federal government may not revoke or deny a federal tax exemption, grant, contract, accreditation, license, or certification to an individual or institution based on a religious belief about marriage.

The First Amendment protects each of us from punishment or reprisal from the federal government for living in accordance with our deeply held religious or moral convictions. Adhering to these convictions should never disqualify an individual from receiving federal grants, contracts, or a tax status.

What an individual or organization believes about marriage is not – and should never be – a part of the government’s eligibility rubric in distributing licenses, accreditations, or grants. And the First Amendment Defense Act simply ensures that this will always be true in America – that federal bureaucrats will never have the authority to require those who believe in the traditional definition of marriage to choose between their living in accordance with those beliefs and maintaining their occupation, their tax status, or their eligibility to receive grants, licenses or contracts.

The First Amendment Defense Act is absolutely critical to the many charitable and service organizations in this country whose convictions about marriage are fundamental to their work and mission. Guaranteeing the full protection of these organizations’ First Amendment rights will ensure that faith-based adoption agencies are not forced to discontinue their foster care and adoption services on account of their belief that every child needs a married mother and father. It will protect religiously affiliated schools from losing their accreditation or being compelled to eliminate housing options for students. And it will protect individuals, regardless of their beliefs about marriage, from being deprived of eligibility for federal grants, licenses, and employment because of their deeply held convictions.

Now, you may hear tall tales – and some outright falsehoods – about this bill. Some may suggest that FADA would give private businesses a license to violate anti-discrimination laws with impunity. This is just not so. The bill does not preempt, negate or alter *any* anti-discrimination measures or civil-rights laws, state or federal. To be clear: this bill does not take anything away

from any individual or group, because it does not modify any of our existing civil-rights protections.

The First Amendment Defense Act does not allow federal workers or contractors to deny services or benefits to same-sex couples; and it does not allow hospitals to refuse medically necessary treatment or visitation rights to individuals in same-sex relationships.

I invite everyone to read the bill, so you can see in black and white that the First Amendment Defense Act does not do any of these things. It simply affirms all Americans' God-given, constitutionally-protected right to live according to their religious or moral convictions without fear of punishment by the government – especially when it comes to operating churches, schools, charities, or businesses. It recognizes that religious liberty in America has always meant that the government's job is not to tell people *what* to believe or *how* to discharge their religious duties, but to protect the space for *all* people of *all* faiths – and of no faith at all – to seek religious truth and to order their lives accordingly.

Questions surrounding marriage today are difficult, and reasonable people of good faith will reach different judgments about how best to protect religious liberty. But the First Amendment must remain our lodestar. And I believe any differences of opinion can be constructively worked out – even and especially as to particular provisions of this bill – if our shared concern remains preserving the American tradition of religious liberty. I hope it is.

Thank you.