



# The Baldwin-Collins Substitute Amendment:

## Not a “Fix” for the (Dis)Respect for Marriage Act

The so-called *Respect for Marriage Act* (H.R. 8404) would go much further than simply affirming “the status quo” by codifying same-sex marriage and repealing the bipartisan *Defense of Marriage Act* (1996).

It would also:

- Create a private right of action that will supercharge attacks on people and organizations that still believe in natural marriage, including people of faith who are already being attacked.
- Tacitly vilify millions of Americans who still believe in natural marriage by labeling that belief as “sex discrimination” and tantamount to racism.<sup>1</sup>
- Subject business owners to even more costly litigation.
- Threaten the tax-exempt status of faith-based nonprofits.

The Baldwin-Collins substitute amendment provides no meaningful, affirmative, or enforceable shield of protection to those people and entities already being attacked for their belief in natural marriage, protection that the Lee Amendment would provide from federal discrimination. The two new sections that purport to “fix” the religious liberty concerns actually do not. One or both will likely do more harm than good.

## Section 6

- The incredibly narrow protections afforded by this section are meaningless.
- Section 6(a) affirms that no pre-existing religious liberty or conscience rights protected in the Constitution or federal law are abrogated, but every person and organization that is already being attacked already has those protections.
  - People and entities who retain their belief in natural marriage already face years of litigious abuse. In a few instances, those years of litigation led to some semblance of justice, but the cost of those lost years can never be fully recovered.
    - The children, families, and mothers who suffered when Philadelphia stopped contracting with Catholic Charities cannot get those years back and did not receive justice from the U.S. Supreme Court when foster parents won their lawsuit against the city.
    - In some places, the loss was permanent: for example, Illinois kicked Catholic Charities out in 2011 and lost nearly 5,500 foster homes between 2012 and 2019.
  - Furthermore, stating that these protections still pertain may actually be harmful if seen as establishing the bad precedent that existing protections must be explicitly stated in future laws.
- Section 6(b) only protects those people or entities “whose principal purpose is the study, practice, or advancement of religion” and only from being forced to “solemniz[e] or celebrat[e] [...] a marriage.”
  - The First Amendment arguably already provides this protection; this language only muddies the legal water.
  - The situations in which people and entities are being attacked are significantly broader than clergy and religious institutions in the context of performing marriage rites.
    - Despite listing religious schools in the text, this clearly does not protect religious schools like [Yeshiva University](#), which is now being forced by the state of New York not to perform marriages but to recognize student clubs with charters contrary to the university’s expressed

Jewish character and history and despite protections for religious corporations in the New York law.

- It does not protect adoption and foster agencies that help place children in homes with a married mother and father.
- It does not protect civil servants like Kim Davis, business owners like Donald Vander Boon, or the myriad others represented by the few who have chosen litigation rather than silence.
- Even those who do, or should, fall within the very narrow protections of Section 6(b) could still be sued and have to prove themselves. They will still be subject to years, and sometimes decades, of government discrimination, harassment, and litigation.

## **Section 7**

- Section 7(a) falls woefully short of the needed protections.
  - It is just a rule of construction that can't adequately negate the national public policy on same sex marriage that the bill creates.
  - It applies only to federal tax and other government treatment and has no affirmative enforcement. For example, although this section may be intended as a protection against the removal of federal tax-exempt status from faith-based nonprofits, it could actually be interpreted to mean that the bill does not change or otherwise strengthen a defense that arises out of beliefs in natural marriage.
  - It ignores the fact that most adverse government action is currently taken at the state and local level, which will be supercharged by the bill's creation of a private right of action.
- Section 7(b) doesn't fully close the polygamy recognition loophole because it still leaves room for recognition of marriages between one person and multiple other people; because each marriage would only include "two people," the bill would require federal recognition of such an arrangement if a state recognized it first.

## **Examples of People and Entities Not Protected by the Baldwin-Collins Substitute Amendment**

- The Baldwin-Collins substitute amendment would not protect religious nonprofits outside the extremely narrow context of “solemnizing or celebrating marriages.” Even then, only those deemed religious enough would be protected, and their licensure, accreditation, tax-exempt status, and eligibility for federal contracts to continue serving underserved communities could all still be threatened.
  - [Catholic Social Services in Philadelphia](#) (CSS), a religious nonprofit foster care agency, was denied renewal of its contract with the City of Philadelphia within days of an emergency call for foster families. The denial was based solely on the organization’s religious character and beliefs and left children and families hurting and in need.
  - [St. Vincent Catholic Charities](#), a religious adoption agency in Michigan, was targeted for a lawsuit by a lesbian couple (who passed by several other agencies to target St. Vincent’s) because of the agency’s sincerely held religious beliefs.
  - [Catholic Charities of Omaha](#) stopped providing its behavioral health services because of financial and religious liberty concerns. The organization relied heavily upon federal funding and felt that the regulations it would be mandated to follow would violate its faith by preventing employees from talking about their faith and requiring affirmation of same-sex marriages and transgenderism, both of which the Catholic Church opposes.
  - The CEO of Lifeline, the largest evangelical adoption agency in the United States, urges strong opposition to the bill. Herbert Newell writes that “practicing Christians are over twice as likely to adopt, compared to the general population, with Catholics three times as likely, and evangelicals five times as likely. People of faith and faith-based agencies have a vital role in child protection, child welfare, and the flourishing of families.”

- It is unclear whether the substitute amendment would even protect houses of worship outside of the extremely narrow context of “solemnizing or celebrating marriages” of their parishioners.
  - The [Ocean Grove Camp Meeting Association](#), a Methodist congregation in New Jersey, ceased making a pavilion on church-owned property available for weddings after the New Jersey Division on Civil Rights held that the church was required to host civil unions.
- The substitute amendment would not provide any protection from state or local government discrimination, where the bulk of the coercion is occurring. Instead, it would embolden and supercharge litigious harassment through a sweeping new right of private action.
  - To date, [at least eight states and localities have taken hostile action](#) toward adoption and foster-care agencies and foster families on the basis of sincerely held religious beliefs or moral convictions that marriage is between a man and a woman. State and local governments are already targeting faith-based organizations for their beliefs about marriage. In some cases, it does not even require an organization to “deny services” to a same-sex couple (*e.g.*, [Fulton v. City of Philadelphia](#)).
  - Hostility toward faith-based adoption and foster care agencies has already had [devastating effects](#). Massachusetts shut down faith-based agencies and lost 2,000 foster families between 2014 and 2019. Illinois stopped working with faith-based agencies in 2011 and lost nearly 5,500 foster homes between 2012 and 2019.
- The substitute amendment would not protect wedding vendors.
  - [Barronelle Stutzman](#), the Washington state florist who was sued by the state because she could not in good conscience make custom floral arrangements for her long-time customer’s same-sex wedding. She would eventually be forced to sell her business in order to avoid government confiscation of all of her personal assets.
  - [Aaron and Melissa Klein](#), the owners of Sweetcakes by Melissa, who were sued by the state and fined \$135,000 for declining to bake a custom cake for a same-sex wedding.

- [Jack Phillips](#), the Colorado baker who has been to the U.S. Supreme Court to defend his First Amendment right not to make expressive cakes celebrating same-sex marriages. Despite his victory, he is now being sued again by the state because he cannot create a gender transition cake in good conscience.
- The substitute amendment would not protect civil servants.
  - [Kim Davis](#), the Kentucky clerk who declined to sign a same-sex couple's marriage license (as then required by state law). Although she was willing for her staff to sign the form, she is still under attack and trying to defend her religious liberty rights.
  - The (reportedly dozens) of [magistrates in North Carolina](#) that the attorney general forced to resign in 2014 for refusing to perform same-sex weddings. One [finally won her case in 2018](#) for \$300,000.
- The substitute amendment would not protect businesses.
  - [Donald Vander Boon](#), owner of the West Michigan Beef Company, was threatened with the closure of his business by the U.S. Department of Agriculture because he had faith-based pamphlets in his break room.
  - [Steve Tennes](#), owner of Country Mill Farms in Michigan, was excluded from the city farmer's market because of his religious beliefs and views about marriage. When the City of East Lansing saw his social media posts regarding natural marriage, it chose to exclude him even though he serves and employs LGBT-identifying individuals.

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<sup>1</sup> Justice Samuel Alito warned of the *Obergefell* decision: "It will be used to vilify Americans who are unwilling to assent to the new orthodoxy. In the course of its opinion, the majority compares traditional marriage laws to laws that denied equal treatment for African-Americans and women. The implications of this analogy will be exploited by those who are determined to stamp out every vestige of dissent."