

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2802
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “First Amendment De-
3 fense Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) Leading legal scholars concur that conflicts
7 between same-sex marriage and religious liberty are
8 real and should be addressed through legislation.

9 (2) As the President stated in response to the
10 decision of the Supreme Court in *United States v.*
11 *Windsor*, 133 S. Ct. 2675 (2013), “Americans hold
12 a wide range of views” on the issue of same-sex
13 marriage, and “maintaining our Nation’s commit-
14 ment to religious freedom” is “vital”.

15 (3) Nevertheless, in 2015, when asked whether
16 a religious school could lose its tax-exempt status for
17 opposing same-sex marriage, the Solicitor General of
18 the United States represented to the United States

1 Supreme Court that “[i]t’s certainly going to be an
2 issue”.

3 (4) Protecting religious freedom from govern-
4 ment intrusion is a government interest of the high-
5 est order. Legislation advances this interest by reme-
6 dying, deterring, and preventing government inter-
7 ference with religious exercise in a way that com-
8 plements the protections mandated by the First
9 Amendment to the Constitution of the United
10 States.

11 (5) Laws that protect the free exercise of reli-
12 gious belief and moral conviction about marriage will
13 encourage private citizens and institutions to dem-
14 onstrate tolerance for those beliefs and convictions
15 and therefore contribute to a more respectful, di-
16 verse, and peaceful society.

17 (6) In a pluralistic society, in which people of
18 good faith hold more than one view of marriage, it
19 is possible for the government to recognize same-sex
20 marriage as required by the United States Supreme
21 Court without forcing a person with a sincerely held
22 religious belief or moral conviction to the contrary to
23 conform.

1 **SEC. 3. PROTECTION OF THE FREE EXERCISE OF RELI-**
2 **GIUS BELIEF AND MORAL CONVICTION.**

3 (a) **IN GENERAL.**—Notwithstanding any other provi-
4 sion of law, the Federal Government shall not take any
5 discriminatory action against a person, wholly or partially
6 on the basis that such person believes, speaks, or acts in
7 accordance with a sincerely held religious belief or moral
8 conviction that—

9 (1) marriage is or should be recognized as the
10 union of—

11 (A) two individuals of the opposite sex; or

12 (B) two individuals of the same sex; or

13 (2) extramarital relations are improper.

14 (b) **DISCRIMINATORY ACTION DEFINED.**—As used in
15 subsection (a), a discriminatory action means any action
16 taken by the Federal Government to—

17 (1) alter in any way the Federal tax treatment
18 of, or cause any tax, penalty, or payment to be as-
19 sessed against, or deny, delay, or revoke an exemp-
20 tion from taxation under section 501(a) of the Inter-
21 nal Revenue Code of 1986 of, any person referred to
22 in subsection (a);

23 (2) disallow a deduction for Federal tax pur-
24 poses of any charitable contribution made to or by
25 such person;

1 (3) withhold, reduce, exclude, terminate, or oth-
2 erwise make unavailable or deny any Federal grant,
3 contract, subcontract, cooperative agreement, guar-
4 antee, loan, scholarship, license, certification, accred-
5 itation, employment, or other similar position or sta-
6 tus from or to such person;

7 (4) withhold, reduce, exclude, terminate, or oth-
8 erwise make unavailable or deny any entitlement or
9 benefit under a Federal benefit program;

10 (5) deny admission to, equal treatment in, or
11 eligibility for a degree from an educational program,
12 from or to such person; or

13 (6) withhold, reduce, exclude, terminate or oth-
14 erwise make unavailable or deny access or an entitle-
15 ment to Federal property, facilities, educational in-
16 stitutions, speech fora (including traditional, limited,
17 and nonpublic fora), or charitable fundraising cam-
18 paigns from or to such person.

19 (c) ACCREDITATION; LICENSURE; CERTIFICATION.—
20 The Federal Government shall consider accredited, li-
21 censed, or certified for purposes of Federal law any person
22 that would be accredited, licensed, or certified, respec-
23 tively, for such purposes but for a determination against
24 such person wholly or partially on the basis that the per-
25 son believes, speaks, or acts in accordance with the sin-

1 cerely held religious belief or moral conviction described
2 in subsection (a).

3 **SEC. 4. JUDICIAL RELIEF.**

4 (a) CAUSE OF ACTION.—A person may assert an ac-
5 tual or threatened violation of this Act as a claim or de-
6 fense in a judicial or administrative proceeding and obtain
7 compensatory damages, injunctive relief, declaratory re-
8 lief, or any other appropriate relief against the Federal
9 Government. Standing to assert a claim or defense under
10 this section shall be governed by the general rules of
11 standing under Article III of the Constitution.

12 (b) ADMINISTRATIVE REMEDIES NOT REQUIRED.—
13 Notwithstanding any other provision of law, an action
14 under this section may be commenced, and relief may be
15 granted, in a United States district court without regard
16 to whether the person commencing the action has sought
17 or exhausted available administrative remedies.

18 (c) ATTORNEYS' FEES.—Section 722(b) of the Re-
19 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-
20 ing “the First Amendment Defense Act,” after “the Reli-
21 gious Land Use and Institutionalized Persons Act of
22 2000,”.

23 (d) AUTHORITY OF UNITED STATES TO ENFORCE
24 THIS ACT.—The Attorney General may bring an action
25 for injunctive or declaratory relief against an independent

1 establishment described in section 104(1) of title 5, United
2 States Code, or an officer or employee of that independent
3 establishment, to enforce compliance with this Act. Noth-
4 ing in this subsection shall be construed to deny, impair,
5 or otherwise affect any right or authority of the Attorney
6 General, the United States, or any agency, officer, or em-
7 ployee of the United States, acting under any law other
8 than this subsection, to institute or intervene in any pro-
9 ceeding.

10 **SEC. 5. RULES OF CONSTRUCTION.**

11 (a) NO PREEMPTION, REPEAL OR NARROW CON-
12 STRUCTION.—Nothing in this Act shall be construed to
13 preempt State law, or repeal Federal law, that is equally
14 or more protective of free exercise of religious belief and
15 moral conviction. Nothing in this Act shall be construed
16 to narrow the meaning or application of any State or Fed-
17 eral law protecting free exercise of religious belief and
18 moral conviction. Nothing in this Act shall be construed
19 to prevent the Federal Government from providing, either
20 directly or through a person not seeking protection under
21 this Act, any benefit or service authorized under Federal
22 law.

23 (b) SEVERABILITY.—If any provision of this Act or
24 any application of such provision to any person or cir-
25 cumstance is held to be unconstitutional, the remainder

1 of this Act and the application of the provision to any
2 other person or circumstance shall not be affected.

3 **SEC. 6. DEFINITIONS.**

4 In this Act:

5 (1) **FEDERAL BENEFIT PROGRAM.**—The term
6 “Federal benefit program” has the meaning given
7 that term in section 552a of title 5, United States
8 Code.

9 (2) **FEDERAL; FEDERAL GOVERNMENT.**—The
10 terms “Federal” and “Federal Government” in-
11 clude—

12 (A) any department, commission, board, or
13 other agency of the Federal Government;

14 (B) any officer, employee, or agent of the
15 Federal Government; and

16 (C) the District of Columbia and all Fed-
17 eral territories and possessions.

18 (3) **PERSON.**—The term “person” means a per-
19 son as defined in section 1 of title 1, United States
20 Code, except that such term shall not include—

21 (A) a Federal employee acting within the
22 scope of employment;

23 (B) a Federal for-profit contractor acting
24 within the scope of the contract; or

1 (C) a hospital, clinic, hospice, nursing
2 home, or other medical or residential custodial
3 facility with respect to visitation, recognition of
4 a designated representative for health care deci-
5 sion-making, or refusal to provide medical
6 treatment necessary to cure an illness or injury.

7 (4) STATE.—The term “State” means each of
8 the several States, the District of Columbia, and
9 each commonwealth, territory or possession of the
10 United States.

