

BACKGROUND

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Protecting Religious Liberty in the State Marriage Debate

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Abstract

For years, a central argument of those who favor same-sex marriage has been that all Americans should be free to live and love as they choose, but does that freedom require the government to coerce those who disagree into celebrating same-sex relationships? A growing number of incidents demonstrates that the redefinition of marriage and state policies on sexual orientation have created a climate of intolerance and intimidation for citizens who believe that marriage is the union of a man and a woman and that sexual relations are properly reserved for marriage. Now these same citizens are facing a new wave of government coercion and discrimination.

For years, a central argument of those in favor of same-sex marriage has been that all Americans should be free to live and love as they choose, but does that freedom require the government to coerce those who disagree into celebrating same-sex relationships? A growing number of incidents demonstrates that the redefinition of marriage and state policies on sexual orientation have created a climate of intolerance and intimidation for citizens who believe that marriage is the union of a man and a woman and that sexual relations are properly reserved for marriage.

Now these citizens are facing a new wave of government coercion and discrimination. State laws that create special privileges based on sexual orientation and gender identity are being used to trump fundamental civil liberties such as freedom of speech and the free exercise of religion.

KEY POINTS

- Government should respect those who stand for marriage as the union of a man and a woman.
- Even in jurisdictions that have redefined marriage, individuals and businesses that believe marriage is between a man and a woman should be free to live in accord with their moral and religious convictions.
- Congress should prohibit the government from discriminating in tax policy, employment, licensing, accreditation, or contracting against any individual or group, whether nonprofit or for-profit, based on their beliefs that marriage is the union of a man and woman or that sexual relations are reserved for marriage.
- The Marriage and Religious Freedom Act would prevent the federal government from taking adverse actions against groups that believe in the traditional definition of marriage.
- States must protect the rights of Americans and the associations they form—both nonprofit and for-profit—to speak and act in accordance with their beliefs.

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These laws add sexual orientation and gender identity (dubbed SOGI) to the list of protected classes such as race, sex, and national origin. Regrettably, these sexual orientation and gender laws have serious flaws.¹ Specifically, they frequently fail to protect the civil liberties of Americans, especially religious liberty. They tend to be vague and overly broad without clear definitions of what conduct can and cannot be penalized. Judgments can also be quite subjective: Boise and other cities in Idaho now prohibit even indirect acts that might make another person feel that he or she is being “treated as not welcome.”²

Under newer laws, family businesses—especially photographers, bakers, florists, and others involved in the wedding industry—have been hauled into court because they declined to provide services for a same-sex ceremony in violation of their religious beliefs. Although Americans are free to live as they choose, no one should demand that government coerce others into celebrating their relationship.

Protecting religious liberty and the rights of conscience does not infringe on anyone’s sexual freedoms. All Americans should remain free to believe and act in the public square based on their beliefs about marriage without fear of government penalty.

Wedding-Related Religious Liberty Violations

Elane Photography. The case of Elaine Huguenin and her husband, Jon, is perhaps the best-known example of violations of religious liberty.

The Huguenins run Elane Photography, a small photography business in Albuquerque, New Mexico. In 2006, the couple declined a request to photograph a same-sex commitment ceremony because, as Elaine explains, “the message a same-sex commitment ceremony communicates is not one I believe.”³ Elane Photography did not refuse to take pictures

of gay and lesbian individuals; they declined to photograph a ceremony that ran counter to the owners’ belief that marriage is the union of a man and a woman (something with which New Mexico law agreed). Other photographers in the Albuquerque area were more than happy to photograph the event.⁴

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In 2008, the New Mexico Human Rights Commission ruled that by declining to use its artistic and expressive skills to communicate what was said and what occurred at the ceremony, the Huguenins’ business had discriminated based on sexual orientation. As a result, the commission ordered them to pay \$6,637.94 in attorneys’ fees.⁵ The ruling cited New Mexico’s human rights law, which prohibits discrimination in “public accommodations” (“any establishment that provides or offers its services ... or goods to the public”) based on race, religion, and sexual orientation—among other protected classes.

At the end of 2013, the New Mexico Supreme Court upheld the Human Rights Commission’s ruling. It concluded that under the state’s sexual orientation and gender identify law, the First Amendment does not protect a photographer’s freedom to decline to take pictures of a same-sex commitment ceremony—even when doing so would violate the photographer’s religious beliefs. Justice Richard C. Bosson, in a concurring opinion, claimed that requiring the

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1. Ryan T. Anderson, “ENDA Threatens Fundamental Civil Liberties,” Heritage Foundation *Backgrounder* No. 2857, November 1, 2013, <http://www.heritage.org/research/reports/2013/11/enda-threatens-fundamental-civil-liberties>.
 2. Boise, Idaho, Public Anti-Discrimination Ordinance, § 6-2 (2012), <http://cityclerk.cityofboise.org/media/261939/0602.pdf> (accessed March 5, 2014).
 3. Ryan T. Anderson, “Same-Sex Marriage Trumps Religious Liberty in New Mexico,” The Heritage Foundation, *The Foundry*, August 22, 2013, <http://blog.heritage.org/2013/08/22/same-sex-marriage-trumps-religious-liberty-in-new-mexico/>.
 4. *Willcock v. Elane Photography*, Decision and Final Order before the Human Rights Commission of the State of New Mexico, HRD No. 06-12-20-0685, <http://www.volokh.com/files/willockopinoin.pdf> (accessed March 4, 2014), p. 8.
 5. *Ibid.*, p. 9.

Huguenins to relinquish their religious convictions was permissible as “the price of citizenship.”⁶

Elane Photography petitioned the U.S. Supreme Court for a review of its case on November 8, 2013.⁷ On April 7, 2014, the Supreme Court declined to review *Elane Photography v. Willock*. While neither affirming nor rejecting the lower court’s ruling, the Supreme Court’s denial of certiorari means the New Mexico Supreme Court decision against the Huguenins’ right to free expression will stand.

Sweet Cakes by Melissa. In early 2013, two women asked the Oregon bakery Sweet Cakes by Melissa to bake a wedding cake for their same-sex commitment ceremony. Although bakery owners Melissa and Aaron Klein consistently had served all customers on a regular basis, this request would have required them to facilitate and celebrate a same-sex relationship—violating their religious belief that marriage is the union of one man and one woman. Oregon law defines marriage in the same way.⁸

Soon afterward, the two women filed a complaint under the Oregon Equality Act of 2007, which prohibits discrimination based on sexual orientation. During an investigation of the Kleins by Oregon’s Bureau of Labor and Industries, bureau official Brad Avakian commented: “The goal is to rehabilitate. For those who do violate the law, we want them to learn from that experience and have a good, successful business

in Oregon.”⁹ In January 2014, the agency issued a ruling that the Kleins violated Oregon’s sexual orientation law when they declined to bake the cake.¹⁰

Melissa and Aaron Klein have also faced other pressure for their unwillingness to violate their beliefs. Sweet Cakes by Melissa reported being subjected to threats and violent protests, vicious telephone calls, and boycotts by activists.¹¹ The Kleins, who have five children, reportedly received hundreds of phone calls and letters—including death threats to the family.

Fearing for the safety of their family, the Kleins decided in September 2013 to close their small business.¹² Yet the Kleins still have to deal with the Labor Commission’s conclusion that they engaged in discrimination. The case is likely to proceed to an administrative law judge for further review.

Masterpiece Cakeshop. A similar wedding-cake scenario unfolded in Colorado—a state that in 2006 constitutionally defined marriage as the union of a man and a woman¹³—involving Jack Phillips, owner of Masterpiece Cakeshop.¹⁴

In 2012, a same-sex couple received a marriage license in Massachusetts and asked Phillips to bake a cake for a reception back home in Colorado. Phillips declined to create a wedding cake, citing his faith: “I don’t feel like I should participate in their wedding, and when I do a cake, I feel like I am par-

6. *Elane Photography v. Vanessa Willock*, In the Supreme Court of the State of New Mexico, No. 33,687, August 22, 2013, <http://www.adfmedia.org/files/ElanePhotoNMSCopinion.pdf> (accessed March 4, 2014).

7. *Elane Photography v. Vanessa Willock*, In the Supreme Court of the United States, Petition for a Writ of Certiorari to the New Mexico Supreme Court, <http://www.adfmedia.org/files/ElanePhotoCertPetition.pdf> (accessed March 4, 2014).

8. Leslie Ford, “Intolerance Burns Out Oregon Bakers,” The Heritage Foundation, *The Foundry*, September 5, 2013, <http://blog.heritage.org/2013/09/05/intolerance-burns-out-oregon-bakers/>.

9. Maxime Bernstein, “Lesbian Couple Refused Wedding Cake Files State Discrimination Complaint,” *Oregon Live*, August 14, 2013, http://www.oregonlive.com/gresham/index.ssf/2013/08/lesbian_couple_refused_wedding.html (accessed March 4, 2014).

10. Billy Hallowell, “‘We Still Stand by What We Believe’: Bakers Who Refused to Make a Gay Wedding Cake Doubled Down Despite Ruling They Violated Couple’s Civil Rights,” The Blaze, January 20, 2014, <http://www.theblaze.com/stories/2014/01/20/state-rules-oregon-bakery-that-refused-to-make-a-gay-wedding-cake-violated-lesbian-couples-civil-rights/> (accessed March 4, 2014).

11. Billy Hallowell, “‘Bible-thumping ... B**ch’: Bakers Who Refused to Make Gay Couple’s Wedding Cake Shut Down Their Shop Following Threats, Anger,” The Blaze, September 2, 2013, http://www.theblaze.com/stories/2013/09/02/bible-thumping-bch-bakery-that-refused-to-make-gay-couples-wedding-cake-is-shutting-down-its-shop-following-threats-anger/?utm_source=twitter&utm_medium=story&utm_campaign=Share%20Buttons (accessed March 4, 2014).

12. Todd Starnes, “Christian Bakery Closes After LGBT Threats, Protests,” Fox News, September 3, 2013, <http://www.foxnews.com/opinion/2013/09/03/todd-american-dispatch-christian-bakery-closes-after-lgbt-threats-protests/> (accessed March 4, 2014).

13. Kevin Simpson, “Colorado Amendment 43: Gay Marriage Banned; Domestic Partnerships Also Defeated,” *The Denver Post*, November 9, 2006, http://www.denverpost.com/ci_4627249 (accessed March 4, 2014).

14. Leslie Ford, “The Government Can Now Force You to Bake a Cake,” The Heritage Foundation, *The Foundry*, December 18, 2013, <http://blog.heritage.org/2013/12/18/colorado-baker-faces-fines-religious-beliefs/>.

ticipating in the ceremony or the event or the celebration that the cake is for.” The couple obtained a wedding cake with rainbow-colored filling (illustrating the expressive nature of event cake-baking) from another bakery.¹⁵

“We simply ask that the government not force us to abandon our faith or punish us for it.”

The American Civil Liberties Union (ACLU) filed a complaint against Masterpiece Cakeshop with the state, alleging violations of Colorado’s public accommodation law. Administrative Law Judge Robert N. Spencer ruled against the bakery on December 6, 2013, concluding that Phillips violated the law by declining service to the couple “because of their sexual orientation.”¹⁶

Phillips objected to this characterization and responded that he would happily sell the couple his baked goods for any number of occasions, but baking a wedding cake would force him to express something that he does not believe, thereby violating his freedom to run his business in accordance with his faith.¹⁷

Arlene’s Flowers. On March 1, 2013, longtime customers Robert Ingersoll and Curt Freed met with Arlene’s Flowers and Gifts owner Barronelle Stutzman to request that she arrange the flowers for their same-sex wedding ceremony. Washington State had redefined marriage the previous year. Stutzman

responded that she could not accept the job because of her “relationship with Jesus Christ” and her belief that marriage is between one man and one woman.¹⁸

Washington Attorney General Bob Ferguson filed suit against Stutzman, contending that she had violated the state’s sexual orientation law. Ferguson is seeking a \$2,000 fine and a court order forcing Stutzman to violate her conscience by using her artistic talents to celebrate a same-sex relationship.¹⁹ The matter is now pending before the trial court.

Görts Haus Gallery. Betty and Dick Odgaard, a devout Mennonite couple in Iowa, run an art gallery in a 77-year-old church building. Among other things—running a lunch bistro, a flower shop, a gift shop, and a framing shop—they host weddings. Betty and Dick work with the couples who wed there on everything from flowers, food, and decorations to the wedding ceremony itself. On the day of every wedding, they oversee all of these details.²⁰

In 2013, the Odgaards declined a request to organize, facilitate, and host a same-sex ceremony because they believed that it conflicted with “the religious message they seek to convey through the Gallery, a message which includes the importance of living one’s faith in all aspects of life.”²¹ They now face punitive action before the Iowa Civil Rights Commission.²²

“We hire and serve gays and lesbians, and have close friends who are gays and lesbians,” said Betty Odgaard. “And we respect that good people disagree with our religious conviction against hosting a ceremony that violates our faith. We simply ask that the government not force us to abandon our faith or punish us for it.”²³

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15. Kristen Anderson, “Baker Says He’d Rather Go to Jail After Judge Orders Him to Bake Cakes for Gay Weddings,” *Life Site News*, December 11, 2013, <http://www.lifesitenews.com/news/baker-says-hed-rather-go-to-jail-after-judge-orders-him-to-bake-cakes-for-g> (accessed March 4, 2014).
 16. *Charlie Craig and David Mullins v. Masterpiece Cakeshop*, State of Colorado Office of Administrative Courts, CR 2013-0008, December 6, 2013, https://www.aclu.org/sites/default/files/assets/initial_decision_case_no_cr_2013-0008.pdf (accessed March 4, 2014).
 17. Anderson, “Baker Says He’d Rather Go to Jail After Judge Orders Him to Bake Cakes for Gay Weddings.”
 18. Andrew Walker, “Penalizing Religious Belief: No Bed of Roses,” The Heritage Foundation, *The Foundry*, April 17, 2013, <http://blog.heritage.org/2013/04/17/penalizing-religious-belief-no-bed-of-roses/>.
 19. *State of Washington v. Arlene’s Flowers, Inc.*, State of Washington Benton County Superior Court, April 9, 2013, <http://www.adfmedia.org/files/ArlenesFlowersAGcomplaint.pdf> (accessed March 5, 2014).
 20. *Betty Ann Odgaard and Richard Odgaard v. Iowa Civil Rights Commission*, <http://www.becketfund.org/wp-content/uploads/2013/10/Odgaard-Complaint.pdf> (accessed March 5, 2014).
 21. *Ibid.*, p. 14.
 22. *Ibid.*
 23. News release, “Iowa Agency Tries to Force Mennonite Couple to Host Controversial Religious Ceremony,” Becket Fund for Religious Liberty, October 8, 2013, <http://www.becketfund.org/iowa-agency-tries-to-force-mennonite-couple-to-host-controversial-religious-ceremony/> (accessed March 4, 2014).

The Odgaards have filed a lawsuit in Iowa district court seeking protection of their religious liberty.²⁴

Intolerance Against Adoption Providers

In addition to private family businesses affiliated with the wedding industry, organizations that serve children in the foster care system are also facing serious repercussions and intolerance.²⁵ Every year, the foster care system serves approximately 400,000 children, nearly a quarter of whom are waiting to be adopted.²⁶

Across the United States, there are more than 1,000 private, licensed foster care and adoption providers.²⁷ Many are faith-based organizations whose religious and moral beliefs motivate their care for some of the most vulnerable children in society.

In a number of states, sexual orientation and gender identity laws, coupled with the redefinition of marriage or the creation of same-sex civil unions, are threatening the freedom of private foster care and adoption providers who believe children should have a married mother and father. These providers should not be forced to abandon the very beliefs that motivate them to care for families and vulnerable children.

Boston Catholic Charities, Massachusetts. For more than 100 years, Catholic Charities in Boston, Massachusetts, had a successful record of connecting children to permanent families, placing

more children in adoptive homes than any other state-licensed agency.²⁸ Then, in 2003, following a decision by the Massachusetts Supreme Court, the state began to recognize same-sex unions as marriages.²⁹ This decision, coupled with an earlier state policy on sexual orientation, forced all state-licensed adoption providers to be willing to place children with same-sex couples.³⁰

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Rather than abandon Catholic teaching that marriage is between one man and one woman, as well as its conviction that the best place for a child is with a married mother and father, Catholic Charities of Boston was forced to end their foster care and adoption programs. In the two decades before it ended those services, the organization had helped

24. *Betty Ann Odgaard and Richard Odgaard v. Iowa Civil Rights Commission*.

25. See Sarah Torre and Ryan T. Anderson, "Adoption, Foster Care, and Conscience Protection," Heritage Foundation *Backgrounder* No. 2869, January 15, 2014, <http://www.heritage.org/research/reports/2014/01/adoption-foster-care-and-conscience-protection>.

26. U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, "Trends in Foster Care and Adoption: FY2002-FY2012," p. 1, http://www.acf.hhs.gov/sites/default/files/cb/trends_fostercare_adoption2012.pdf (accessed March 4, 2014), and U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, "Preliminary FY 2012 Estimates as of November 2013," *The AFCARS Report*, No. 20, p. 2, <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport20.pdf> (accessed March 4, 2014).

27. U.S. Department of Health and Human Services, Administration for Children and Families, Child Welfare Information Gateway, "National Foster Care & Adoption Directory Search," <https://www.childwelfare.gov/nfcad/> (accessed March 4, 2014).

28. Matthew W. Clark, "The Gospel According to the State: An Analysis of Massachusetts Adoption Law and the Closing of Catholic Charities Adoption Services," *Suffolk University Law Review*, Vol. XLI, No. 4 (2008), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/sufflr41&div=5&id=&page=> (accessed March 4, 2014).

29. *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003), http://www2.law.columbia.edu/faculty/franke/Gay_Marriage/Goodridge%20Decision%20edited%20Fundamental%20Right.pdf (accessed March 5, 2014).

30. Maggie Gallagher, "Banned in Boston: The Coming Conflict Between Same-Sex Marriage and Religious Liberty," *The Weekly Standard*, Vol. 11, No. 33 (May 15, 2006), <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/191kgwgh.asp> (accessed March 4, 2014).

approximately 720 children to find permanent adoptive homes.³¹

D.C. Catholic Charities, District of Columbia.

In 2010, the District of Columbia passed a law redefining marriage to include same-sex couples.³² The redefinition of marriage, coupled with the District's sexual orientation policy, would have required Catholic Charities' foster care and adoption services to place children with same-sex couples.³³

Pushing out faith-based foster care and adoption providers comes at a very high cost; these organizations provide real—and unique—services.

Despite requests by the Archdiocese of Washington that it protect private organizations' moral and religious beliefs, the D.C. government refused to grant an exemption. Because it would not violate its beliefs—the faith that had guided more than 80 years of service in the District—Catholic Charities was forced to transfer its foster care and adoption program to other providers.³⁴

Evangelical Child and Family Agency, Illinois.

For decades, the Evangelical Child and Family Agency (ECFA) had contracted with Illinois to provide foster care services. In 2011, however, a new state civil union law,³⁵ coupled with an existing sexual ori-

entation policy, effectively forced private agencies to license unmarried, cohabitating couples—including same-sex couples—as foster care parents in order to keep state contracts.

Because ECFA was convinced that children should have the unique benefits provided by a married mother and a father, the state would not renew its foster care contract.³⁶ As a result, ECFA was forced to transfer the cases of the foster children it served to different agencies and end the foster care program that had connected children with permanent families.

Pushing out faith-based foster care and adoption providers comes at a very high cost; these organizations provide real—and unique—services. “One of our main things we were looking for in an agency was one that shared our religious and faith beliefs,” explains John Shultz, who with his wife Tammy adopted four foster care children through ECFA. Without the support of ECFA, “I don’t think I could’ve weathered the storm of the foster care system,” Tammy remarked.³⁷

When combined with other private providers in Illinois, including numerous Catholic Charities affiliates,³⁸ ECFA and other faith-based organizations in the state were forced to stop serving over 2,000 children, transferring their cases to other providers.³⁹

American System of Civil Liberties

Part of the genius of the American system of government is its commitment to protecting the liberty and First Amendment freedoms of all citizens while

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31. News release, “Catholic Charities of Boston to Discontinue Adoption Services,” Statement by Archbishop Sean O’Malley, Archdiocese of Boston, March 10, 2006, http://www.bostoncatholic.org/uploadedFiles/News_releases_2006_statement060310-1.pdf (accessed March 4, 2014).
 32. D.C. Code, § 46-401, <http://www.lexisnexis.com/hottopics/dccode/> (accessed March 4, 2014).
 33. Evangelical Child and Family Agency, *2012 Annual Report*, p. 2, <http://www.evancfa.org/downloads/ECFAAnnualReportFY2012.pdf> (accessed February 10, 2014); Karla Dial, “Illinois Christian Foster Care Group Loses State Contract,” CitizenLink, September 14, 2011, <http://www.citizenlink.com/2011/09/14/illinois-christian-foster-care-group-loses-state-contract/> (accessed February 10, 2014).
 34. United States Conference of Catholic Bishops, “Discrimination Against Catholic Adoption Services,” *Fact Sheet*, 2013, <http://www.usccb.org/issues-and-action/religious-liberty/fortnight-for-freedom/upload/Catholic-Adoption-Services.pdf> (accessed March 4, 2014).
 35. Illinois Religious Freedom Protection and Civil Union Act, Illinois Compiled Statutes, 750 ILCS 75/.
 36. Evangelical Child and Family Agency, *2012 Annual Report*, p. 2; Dial, “Illinois Christian Foster Care Group Loses State Contract.”
 37. Marriage Anti-Defamation Alliance, “Schulz, Craigen, Montague,” December 15, 2011, <http://marriageada.org/schulz-craigen-montague/> (accessed March 4, 2014).
 38. Sarah Torre, “Civil Union Law Forces Catholic Charities to Drop Adoption Service,” The Heritage Foundation, *The Foundry*, June 1, 2011, <http://blog.heritage.org/2011/06/01/civil-union-law-forces-catholic-charities-to-drop-adoption-service/>; Sarah Torre, “Charities Become Collateral Damage in the Debate Over Marriage,” The Heritage Foundation, *The Foundry*, July 14, 2011, <http://blog.heritage.org/2011/07/14/charities-become-collateral-damage-in-the-debate-over-marriage/>.
 39. Manya A. Brachear, “3 Dioceses Drop Foster Care Lawsuit,” *The Chicago Tribune*, November 15, 2011, http://articles.chicagotribune.com/2011-11-15/news/ct-met-catholic-charities-foster-care-20111115_1_civil-unions-act-catholic-charities-religious-freedom-protection (accessed March 4, 2014).

respecting their equality before the law. The government protects the freedom of citizens to seek the truth about God, to worship according to their conscience, and to live out their convictions in public life. Likewise, citizens are free to form contracts and other associations according to their own values.

While the government must treat everyone equally, private actors are left free to make reasonable judgments and distinctions—including reasonable moral judgments and distinctions—in their economic activities. Legislators should impose substantial burdens on sincere religious beliefs *only* when the government proves that imposing such a burden is necessary to advance a compelling government interest (and does so by the least intrusive or restrictive means). Not every florist need provide wedding arrangements for every ceremony. Not every photographer need capture every first kiss. Competitive markets can best harmonize a range of values that citizens hold, and there is no need for government to try to force every photographer and every florist to service every marriage-related event.

Those who make decisions based on moral and religious views may well pay a price in the market, perhaps losing customers and qualified employees, but such choices should remain lawful. Freedom of association and freedom of contract are two-way streets. They entail the freedom to choose with whom to associate, and when and on what terms, as well as with whom to contract and for what goods. Governmental mandates that force or prevent association violate these freedoms and should be pursued only for compelling reasons. Americans are free to live as they choose, but no one should demand that government coerce others into celebrating their relationship.

Many of the family businesses cited above understand their professions to be extensions of their faith-life. In this view, being a wedding photographer, for example, means not simply being another business offering services, but utilizing God-given talents to tell the story of a particular couple and their relationship. For them, celebrating a same-sex

relationship as a marriage affirms that relationship. It is understandable that some religious believers would not want the government to coerce them into doing that.

Legislators should impose substantial burdens on sincere religious beliefs *only* when the government proves that imposing such a burden is necessary to advance a compelling government interest (and does so by the least intrusive or restrictive means).

The government should not be in the position of determining who is right or wrong about baking cakes or taking photographs of same-sex ceremonies. There is no need to hold the same beliefs as the owners of Sweet Cakes or Elane Photography to recognize that both should have the freedom to run their businesses in accordance with their values—and without fear of reprisal from the government.

Government Should Respect Marriage and Religious Freedom

Government should respect those who stand for marriage as the union of a man and a woman.⁴⁰ Even in jurisdictions that have redefined marriage, individuals and businesses that believe marriage is between a man and a woman should be free to live in accord with their moral and religious convictions.⁴¹

When he “evolved” on the issue in 2012, President Barack Obama insisted that the debate about marriage was a legitimate one and that there were reasonable people of goodwill on both sides. Obama explained that supporters of marriage as the union of a man and woman “are not coming at it from a mean-spirited perspective. They’re coming at it because they care about families.” He added that “a bunch of ’em are friends of mine ... you know, people who I deeply respect.”⁴²

40. Sherif Girgis, Ryan T. Anderson, and Robert P. George, *What Is Marriage? Man and Woman: A Defense* (New York: Encounter Books, 2012).

41. Ryan T. Anderson, “Marriage: What It Is, Why It Matters, and the Consequences of Redefining It,” Heritage Foundation *Backgrounder* No. 2775, March 11, 2013, <http://www.heritage.org/research/reports/2013/03/marriage-what-it-is-why-it-matters-and-the-consequences-of-redefining-it>.

42. “Transcript: Robin Roberts ABC News Interview with President Obama,” ABC News, May 9, 2012, http://abcnews.go.com/Politics/transcript-robin-roberts-abc-news-interview-president-obama/story?id=16316043&singlePage=true#UdCMN4zD_cs (accessed March 4, 2014).

The examples cited above, however, reveal that in a growing number of incidents, government has not respected the beliefs of all Americans.⁴³

Respecting religious liberty for all of those in the marketplace is particularly important. After all, as first lady Michelle Obama put it, religious faith “isn’t just about showing up on Sunday for a good sermon and good music and a good meal. It’s about what we do Monday through Saturday as well.”⁴⁴

Protecting religious liberty and the rights of conscience fosters a more diverse civil sphere.

At the federal level, Congress has an opportunity to protect religious liberty and the rights of conscience. Policy should prohibit the government from discriminating against any individual or group, whether nonprofit or for-profit, based on their beliefs that marriage is the union of a man and woman or that sexual relations are reserved for marriage. The government should be prohibited from discriminating against such groups or individuals in tax policy, employment, licensing, accreditation, or contracting.

The Marriage and Religious Freedom Act—sponsored by Representative Raul Labrador (R-ID) in the House (H.R. 3133) with more than 100 co-sponsors of both parties⁴⁵ and sponsored by Senator Mike Lee (R-UT) in the Senate (S. 1808) with 17 co-sponsors⁴⁶—would prevent the federal government from taking such adverse actions. Protecting religious liberty and the rights of conscience fosters a more diverse civil sphere. Indeed, tolerance is essential to promoting peaceful coexistence even amid disagreement.

States need similar policy protections, starting with broad protections provided by state-level Religious Freedom Restoration Acts (RFRAs).⁴⁷ These laws prevent the imposition of substantial burdens on sincere religious beliefs unless the government proves that such a burden advances a compelling government interest that has been pursued through the least restrictive means possible.

States must protect the rights of Americans and the associations they form—both nonprofit and for-profit—to speak and act in the public square in accordance with their beliefs. The foregoing cases illustrate the growing conflict between religious liberty rights and state laws that grant special privileges based on sexual orientation and gender identity.⁴⁸ In a nation founded on religious freedom, government should not attempt to coerce any citizen, association, or business into celebrating same-sex relationships.

Americans also must work to see that marriage law reflects the truth about marriage. If marriage is redefined, pressure will mount to characterize the belief that virtually every human society has held about marriage—that it is the union of a man and a woman ordered to procreation and family life—as an irrational prejudice that ought to be driven to the margins of our culture. The consequences for religious believers are becoming apparent.

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43. Anderson, “Marriage: What It Is, Why It Matters, and the Consequences of Redefining It.”

44. Michelle Obama, “Remarks by the First Lady at the African Methodist Episcopal Church Conference Gaylord Opryland Resort, Nashville, Tennessee,” White House Press Office, June 28, 2012, <http://www.whitehouse.gov/the-press-office/2012/06/28/remarks-first-lady-african-methodist-episcopal-church-conference> (accessed March 4, 2014).

45. Marriage and Religious Freedom Act, H.R. 3133, 113th Cong. 1st Sess.

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