



Support H.R. 8404, the “Respect for Marriage Act”

Introduced by Judiciary Committee Chair Jerrold Nadler, the “Respect for Marriage Act,” would: (1) repeal the Defense of Marriage Act (DOMA), an odious 1996 law that discriminates against married same-sex couples; (2) enshrine marriage equality for federal law purposes; and (3) provide additional legal protections for marriage equality from those seeking to undermine it while acting under color of state law.

While marriage equality remains constitutionally protected, the Supreme Court’s reasoning in *Dobbs v. Jackson Women’s Health Organization* to justify overturning the right to abortion could be used in the future to threaten other fundamental rights secured under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. These rights include the right to marriage equality. In fact, in a concurring opinion in *Dobbs*, Justice Clarence Thomas explicitly called on the Court to reconsider its decisions protecting other fundamental rights, including the right to same-sex marriage recognized in *Obergefell v. Hodges*. And, although Justice Thomas did not mention the right to interracial marriage, that right relies on the same constitutional doctrines as the right to same-sex marriage and, therefore, could be vulnerable to a legal challenge.

Even if one accepts the Court’s assurance in *Dobbs* that its decision does not call into question the holding of *Obergefell*, Congress should provide additional reassurance that this is a matter of settled law. So many American families have come to rely on the rights and privileges secured by the constitutional guarantee of marriage equality. The Respect for Marriage Act cements respect for married couples, which all Americans should support and value. The legislation will provide additional stability for the lives that families have built upon the foundation of our fundamental rights. Congress must pass the Respect for Marriage Act to dispel any concern or uncertainty for families worried by the implications of the *Dobbs* decision.

The “Respect for Marriage Act” would:

- **Repeal DOMA.** The Supreme Court effectively rendered DOMA inoperative with its landmark decisions in *United States v. Windsor* and *Obergefell*. This unconstitutional and discriminatory law, however, still officially remains on the books. The bill would repeal this statute once and for all.
- **Enshrine Marriage Equality for Federal Law Purposes.** The bill requires, for federal law purposes, that an individual be considered married if the marriage was valid in the state where it was performed. This gives same-sex and interracial couples additional certainty that they will continue to enjoy equal treatment under federal law as all other married couples—as the Constitution requires.
- **Provide Additional Legal Protections from Individuals Seeking to Undermine Marriage Equality While Acting Under Color of State Law.** The bill prohibits any person acting under color of state law from denying full faith and credit to an out of state marriage based on the sex, race, ethnicity or national origin of the individuals in the marriage, provides the Attorney General with the authority to pursue enforcement actions, and creates a private right of action for any individual harmed by a violation of this provision.

Prepared by House Judiciary Committee Democratic Staff

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