

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit certain discrimination or segregation by online retailers or providers of online services and social media platform providers, to protect the rights of small businesses to act in accordance with sincerely held religious beliefs or moral convictions, to amend the Internal Revenue Code of 1986 to provide that the determination of tax-exempt status under section 501(c)(3) of such Code shall be made without regard to religious beliefs, and to protect the rights of child welfare service providers to act in accordance with sincerely held religious beliefs or moral convictions.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

H. R. 8404

To repeal the Defense of Marriage Act and ensure respect for State regulation of marriage, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by

Viz:

1 At the appropriate place, insert the following:

1 **TITLE II—RELIGIOUS BELIEFS**
2 **AND MORAL CONVICTIONS**

3 **SEC. 201. PROHIBITION AGAINST DISCRIMINATION OR SEG-**
4 **REGATION IN PLACES OF PUBLIC ACCOMMO-**
5 **DATION.**

6 (a) PLACES OF PUBLIC ACCOMMODATION.—Section
7 201 of the Civil Rights Act of 1964 (42 U.S.C. 2000a)
8 is amended—

9 (1) in subsection (b)—

10 (A) in paragraph (3), by striking “and” at
11 the end;

12 (B) by redesignating paragraph (4) as
13 paragraph (6); and

14 (C) by inserting after paragraph (3) the
15 following:

16 “(4) any store, facility in a shopping center, or online
17 retailer or provider of online services that has 1 or more
18 employees in the current or preceding calendar year;

19 “(5) a social media platform provider; and”;

20 (2) in subsection (c)—

21 (A) in paragraph (1), by striking “para-
22 graph (1)” and inserting “paragraph (1) or
23 (5)”;

24 (B) in paragraph (3), by striking “and” at
25 the end;

1 (C) in paragraph (4), by striking “para-
2 graph (4)” and inserting “paragraph (6)”;

3 (D) by redesignating paragraph (4) as
4 paragraph (5); and

5 (E) by inserting after paragraph (3) the
6 following: “(4) in the case of an establishment
7 described in paragraph (4) of subsection (b), it
8 sells or offers to sell a product or service that
9 moves, or has moved, in commerce; and”; and
10 (3) by adding at the end the following:

11 “(f) The provisions of this title shall not apply to a
12 religious institution, including place of worship, religious
13 camp, or religious school.

14 “(g) For purposes of this title:

15 “(1) The term ‘online retailer or provider of on-
16 line services’ means a commercial business, acting
17 through a web page that invites the general public
18 to purchase a good or service by use of a credit card
19 or similar payment device over the internet, that
20 provides content for the web page. The term does
21 not mean a commercial business, acting through a
22 web page that gives information, including informa-
23 tion on quality, price, or availability, about a good
24 or service but does not permit such purchase directly
25 from the web page.

1 “(2) The term ‘social media platform provider’
2 means the provider of a public website or internet
3 application, including a mobile internet application,
4 social network, video sharing service, advertising
5 network, mobile operating system, search engine,
6 email service, or internet access service, that pro-
7 motes users posting content and others consuming
8 that content.”.

9 (b) EXCEPTION.—Title II of the Civil Rights Act of
10 1964 (42 U.S.C. 2000a et seq.) is amended by adding at
11 the end the following:

12 **“SEC. 208. EXCEPTION FOR SMALL BUSINESSES.**

13 “(a) DEFINITION.—In this section, the term ‘small
14 business’ means an employer who does not have 15 or
15 more employees for each working day in each of 20 or
16 more calendar weeks in the current or preceding calendar
17 year.

18 “(b) EXCEPTION.—No small business shall be re-
19 quired, under this title or any other Federal, State, or
20 local law, to provide a service related to a marriage of indi-
21 viduals of the same sex, if the small business declines to
22 provide the service in accordance with a sincerely held reli-
23 gious belief, or moral conviction, that marriage is or
24 should be recognized as a certain type of union. For pur-
25 poses of this subsection, services related to marriage in-

1 clude services for any ceremony or related celebration of
2 the marriage.”.

3 **SEC. 202. DETERMINATION OF TAX-EXEMPT STATUS MADE**
4 **WITHOUT REGARD TO RELIGIOUS BELIEFS.**

5 Section 501(c)(3) of the Internal Revenue Code of
6 1986 is amended—

7 (1) by striking “Corporations” and inserting
8 the following:

9 “(A) IN GENERAL.—Corporations”, and

10 (2) by adding at the end the following new sub-
11 paragraph:

12 “(B) DETERMINATION MADE WITHOUT RE-
13 GARD TO RELIGIOUS BELIEFS.—

14 “(i) IN GENERAL.—Any determination
15 whether an organization is organized or
16 operated exclusively for religious, chari-
17 table, scientific, literary, or educational
18 purposes or complies with legal standards
19 of charity shall be made without regard to
20 the organization’s religious beliefs or prac-
21 tices concerning the validity of marriages
22 between individuals of the same sex.

23 “(ii) RELIGIOUS.—For purposes of
24 this paragraph, the term ‘religious’ in-
25 cludes all aspects of religious belief, observ-

1 ance, and practice, whether or not com-
2 pelled by, or central to, a system of reli-
3 gion.”.

4 **SEC. 203. CHILD WELFARE PROVIDER INCLUSION ACT.**

5 (a) **SHORT TITLE OF SECTION.**—This section may be
6 cited as the “Child Welfare Provider Inclusion Act of
7 2022”.

8 (b) **PURPOSES.**—The purposes of this section are as
9 follows:

10 (1) To prohibit governmental entities from dis-
11 criminating or taking an adverse action against a
12 child welfare service provider on the basis that the
13 provider declines to provide a child welfare service
14 that conflicts, or under circumstances that conflict,
15 with the sincerely held religious beliefs or moral con-
16 victions of the provider.

17 (2) To protect child welfare service providers’
18 exercise of religion and to ensure that governmental
19 entities will not be able to force those providers, ei-
20 ther directly or indirectly, to discontinue all or some
21 of their child welfare services because they decline to
22 provide a child welfare service that conflicts, or
23 under circumstances that conflict, with their sin-
24 cerely held religious beliefs or moral convictions.

1 (3) To provide relief to child welfare service
2 providers whose rights have been violated.

3 (c) DISCRIMINATION AND ADVERSE ACTIONS PRO-
4 HIBITED.—

5 (1) IN GENERAL.—The Federal Government,
6 and any State that receives Federal funding for any
7 program that provides child welfare services under
8 part B or E of title IV of the Social Security Act
9 (42 U.S.C. 621 et seq., 671 et seq.) (and any sub-
10 division, office or department of such State) shall
11 not discriminate or take an adverse action against a
12 child welfare service provider on the basis that the
13 provider has declined or will decline to provide, fa-
14 cilitate, or refer for a child welfare service that con-
15 flicts with, or under circumstances that conflict with,
16 the provider's sincerely held religious beliefs or
17 moral convictions.

18 (2) LIMITATION.—Paragraph (1) does not
19 apply to conduct forbidden by paragraph (18) of sec-
20 tion 471(a) of such Act (42 U.S.C. 671(a)(18)).

21 (d) FUNDS WITHHELD FOR VIOLATION.—The Sec-
22 retary of Health and Human Services shall withhold from
23 a State 15 percent of the Federal funds the State receives
24 for a program that provides child welfare services under
25 part B or E of title IV of the Social Security Act (42

1 U.S.C. 621 et seq., 671 et seq.) if the State violates sub-
2 section (c) when administering or disbursing funds under
3 such program.

4 (e) PRIVATE RIGHT OF ACTION.—

5 (1) IN GENERAL.—A child welfare service pro-
6 vider aggrieved by a violation of subsection (c) may
7 assert that violation as a claim or defense in a judi-
8 cial proceeding and obtain all appropriate relief, in-
9 cluding declaratory relief, injunctive relief, and com-
10 pensatory damages, with respect to that violation.

11 (2) ATTORNEYS' FEES AND COSTS.—A child
12 welfare service provider that prevails in an action by
13 establishing a violation of subsection (c) is entitled
14 to recover reasonable attorneys' fees and costs.

15 (3) WAIVER OF SOVEREIGN IMMUNITY.—By ac-
16 cepting or expending Federal funds in connection
17 with a program that provides child welfare services
18 under part B or E of title IV of the Social Security
19 Act (42 U.S.C. 621 et seq., 671 et seq.), a State
20 waives its sovereign immunity for any claim or de-
21 fense that is raised under this subsection.

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

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

3 (g) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), this section shall take effect on the 1st
6 day of the 1st fiscal year beginning on or after the
7 date of the enactment of this section, and the with-
8 holding of funds authorized by subsection (d) shall
9 apply to payments under parts B and E of title IV
10 of the Social Security Act (42 U.S.C. 621 et seq.,
11 671 et seq.) for calendar quarters beginning on or
12 after such date.

13 (2) EXCEPTION.—If legislation (other than leg-
14 islation appropriating funds) is required for a gov-
15 ernmental entity to bring itself into compliance with
16 this section, the governmental entity shall not be re-
17 garded as violating this section before the 1st day of
18 the 1st calendar quarter beginning after the 1st reg-
19 ular session of the legislative body that begins after
20 the date of the enactment of this section. For pur-
21 poses of the preceding sentence, if the governmental
22 entity has a 2-year legislative session, each year of
23 the session is deemed to be a separate regular ses-
24 sion.

25 (h) DEFINITIONS.—In this section:

1 (1) CHILD WELFARE SERVICE PROVIDER.—The
2 term “child welfare service provider” includes orga-
3 nizations, corporations, groups, entities, or individ-
4 uals that provide or seek to provide, or that apply
5 for or receive a contract, subcontract, grant, or
6 subgrant for the provision of, child welfare services.
7 A provider need not be engaged exclusively in child
8 welfare services to be considered a child welfare
9 service provider for purposes of this section.

10 (2) CHILD WELFARE SERVICES.—The term
11 “child welfare services” means social services pro-
12 vided to or on behalf of children, including assisting
13 abused, neglected, or troubled children, counseling
14 children or parents, promoting foster parenting, pro-
15 viding foster homes or temporary group shelters for
16 children, recruiting foster parents, placing children
17 in foster homes, licensing foster homes, promoting
18 adoption, recruiting adoptive parents, assisting
19 adoptions, supporting adoptive families, assisting
20 kinship guardianships, assisting kinship caregivers,
21 providing family preservation services, providing
22 family support services, and providing time-limited
23 family reunification services.

24 (3) STATE.—The term “State” means each of
25 the 50 States, the District of Columbia, any com-

1 monwealth, territory or possession of the United
2 States, and any political subdivision thereof, and any
3 Indian tribe, tribal organization, or tribal consortium
4 that has a plan approved in accordance with section
5 479B of the Social Security Act (42 U.S.C. 679e) or
6 that has a cooperative agreement or contract with
7 one of the 50 States for the administration or pay-
8 ment of funds under part B or E of title IV of the
9 Social Security Act.

10 (4) FUNDING; FUNDED; FUNDS.—The terms
11 “funding”, “funded”, or “funds” include money paid
12 pursuant to a contract, grant, voucher, or similar
13 means.

14 (5) ADVERSE ACTION.—The term “adverse ac-
15 tion” includes, but is not limited to, denying a child
16 welfare service provider’s application for funding, re-
17 fusing to renew the provider’s funding, canceling the
18 provider’s funding, declining to enter into a contract
19 with the provider, refusing to renew a contract with
20 the provider, canceling a contract with the provider,
21 declining to issue a license to the provider, refusing
22 to renew the provider’s license, canceling the pro-
23 vider’s license, terminating the provider’s employ-
24 ment, or any other adverse action that materially al-

1 ters the terms or conditions of the provider's em-
2 ployment, funding, contract, or license.