



Written by [Joe Wolverton, II, J.D.](#) on June 18, 2015

Sen. Lee and Rep. Labrador Propose Protection for Religious Liberty

Senator Mike Lee (R-Utah) and Representative Raúl Labrador (R-Idaho), proposed legislation on June 17 to “clarify and strengthen religious liberty protections in federal law,” by protecting from government prosecution people and organizations who promote the traditional definition of marriage as the union of one man and one woman.

The First Amendment Defense Act (S. 1598, H.R. 2802) prohibits agents of the federal government from denying a tax exemption, grant, contract, license, or certification to an individual, association, or business based on their belief in traditional marriage. The bill specifically forbids the IRS from removing the tax exempt status of a church for refusing to perform or recognize same-sex weddings.



“There’s a reason the right to religious liberty appears first in our nation’s Bill of Rights,” said Senator Lee. “The freedom to live and to act in accordance with the dictates of one’s conscience and religious convictions is integral to human flourishing, serving as the foundation upon which America has produced the most diverse, tolerant, and stable society the world has ever known. The vast majority of Americans today still hold a robust view of religious liberty, yet across the country the right of conscience is threatened by state and local governments that coerce, intimidate, and penalize individuals, associations, and businesses who believe that marriage is a union between a man and a woman. The First Amendment Defense Act is necessary to ensure that this kind of government excess never occurs at the federal level.”

“Religious freedom is at the heart of what it means to be an American,” Labrador said. “America set the standard for upholding freedom of belief and worship in a diverse society. No American should ever doubt these protections enshrined in the First Amendment. Our bill ensures that the federal government does not penalize Americans for following their religious beliefs or moral convictions on traditional marriage. Our bill shields against federal intrusion without taking anything away from anyone. In a shifting landscape, it’s time that Congress proactively defend this sacred right.”

While Senator Lee’s and Representative Labrador’s efforts to protect the right of conscience from federal interference are praiseworthy, the fact remains that the authority to define marriage is not one of the enumerated powers granted by states to the federal government in the Constitution.

Therefore, the power to determine the definition of marriage is retained by the states and the people, as guaranteed by the 10th Amendment.



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Rather than rely solely on the federal government to enforce the boundaries of its own power, the people should remind state legislators of their authority and oath to protect the Constitution. Part of protecting our founding document is nullifying and considering void any unconstitutional act of the federal government, including the IRS, the Supreme Court, Congress, or the president.

Look at it this way: If the federal government was “the decider,” what purpose would the 10th Amendment serve? Even the most sanguine political observer would admit that the federal government could, would, and does rule that every act is constitutional.

Americans — in Congress and in the country — need to better understand that *each state is sovereign within its own state boundaries and they have never surrendered that sovereignty*. Accordingly, any one state or group of states may exercise that sovereignty by negating any unconstitutional act, regulation, or order of the general government — whether positively through acts of nullification or negatively through refusing to obey or enforce those acts.

In their support of the constitutionality of the application of the nullification doctrine by one state regardless of the posture of her sister states, the Kentucky and Virginia Resolutions are a “reaffirmation of the Spirit of 1776” as asserted by William J. Watkins in his book *Reclaiming the American Revolution*:

“Whether made by one or many, these declarations of constitutional interpretations, like the Declaration of Independence, are statements renouncing the overreaching of government and reasserting the original right of other sovereignties to express that right and to require the central government to restrain itself within the sphere of power constitutionally assigned to it.”

Watkins is right. It is important to recognize that the hand that wrote the Kentucky Resolutions also wrote the Declaration of Independence. Madison and Jefferson understood the wisdom of the proverb “Start as you mean to go on.” They likewise understood that even small and incremental deviations from the straight and narrow constitutional road would place this nation on a trajectory of tyranny — a path followed by so many of the formerly free governments of history.

Until state legislators and governors step up and stop federal aggression against the right of conscience, proposals such as those offered by Lee and Labrador will have to step into the breach and fulfill that role.

There are currently 18 cosponsors on the Senate bill and 57 cosponsors on the House companion bill. Senate cosponsors include Senators David Vitter (R-La.), Ted Cruz (R-Texas), Mike Crapo (R-Idaho), Marco Rubio (R-Fla.), Jim Inhofe (R-Okla.), Pat Roberts (R-Kan.), Mike Enzi (R-Wyo.), David Perdue (R-Ga.), Jeff Sessions (R-Ala.), Steve Daines (R-Mont.), Lindsey Graham (R-S.C.), Orrin Hatch (R-Utah), Tom Cotton (R-Ark.), Jim Risch (R-Idaho), Bill Cassidy (R-La.), Mike Rounds (R-S.D.), Roger Wicker (R-Miss.), and Ben Sasse (R-Neb.).

The U.S. Supreme Court is expected to rule in late June on whether gay “marriage” is a fundamental right protected by the Constitution.

To date, 13 states have passed laws or enacted constitutional amendments protecting the traditional definition of marriage as the union of one man and one woman. Many of those statutes, of course, would be considered “overturned” should the Supreme Court rule in favor of gay marriage.

All of the confusion and frustration would be obviated, of course, if state lawmakers would reassert their sovereignty and enforce the limits of federal power as set out in the Constitution — an act that



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would protect religious liberty and all the other unalienable rights retained by the people.



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