AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2802
OFFERED BY M_.

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.
This Act may be cited as the “First Amendment Defense Act”.

SEC. 2. FINDINGS.
Congress finds the following:

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

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

(3) Nevertheless, in 2015, when asked whether a religious school could lose its tax-exempt status for opposing same-sex marriage, the Solicitor General of the United States represented to the United States
Supreme Court that “[i]t’s certainly going to be an issue”.

(4) Protecting religious freedom from government intrusion is a government interest of the highest order. Legislation advances this interest by remedying, deterring, and preventing government interference with religious exercise in a way that complements the protections mandated by the First Amendment to the Constitution of the United States.

(5) Laws that protect the free exercise of religious belief and moral conviction about marriage will encourage private citizens and institutions to demonstrate tolerance for those beliefs and convictions and therefore contribute to a more respectful, diverse, and peaceful society.

(6) In a pluralistic society, in which people of good faith hold more than one view of marriage, it is possible for the government to recognize same-sex marriage as required by the United States Supreme Court without forcing a person with a sincerely held religious belief or moral conviction to the contrary to conform.
SEC. 3. PROTECTION OF THE FREE EXERCISE OF RELIGIOUS BELIEF AND MORAL CONVICTION.

(a) In General.—Notwithstanding any other provision of law, the Federal Government shall not take any discriminatory action against a person, wholly or partially on the basis that such person believes, speaks, or acts in accordance with a sincerely held religious belief or moral conviction that—

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

(A) two individuals of the opposite sex; or

(B) two individuals of the same sex; or

(2) extramarital relations are improper.

(b) Discriminatory Action Defined.—As used in subsection (a), a discriminatory action means any action taken by the Federal Government to—

(1) alter in any way the Federal tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, or revoke an exemption from taxation under section 501(a) of the Internal Revenue Code of 1986 of, any person referred to in subsection (a);

(2) disallow a deduction for Federal tax purposes of any charitable contribution made to or by such person;
(3) withhold, reduce, exclude, terminate, or otherwise make unavailable or deny any Federal grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, license, certification, accreditation, employment, or other similar position or status from or to such person;

(4) withhold, reduce, exclude, terminate, or otherwise make unavailable or deny any entitlement or benefit under a Federal benefit program;

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

(6) withhold, reduce, exclude, terminate or otherwise make unavailable or deny access or an entitlement to Federal property, facilities, educational institutions, speech fora (including traditional, limited, and nonpublic fora), or charitable fundraising campaigns from or to such person.

(c) ACCREDITATION; LICENSURE; CERTIFICATION.—

The Federal Government shall consider accredited, licensed, or certified for purposes of Federal law any person that would be accredited, licensed, or certified, respectively, for such purposes but for a determination against such person wholly or partially on the basis that the person believes, speaks, or acts in accordance with the sin-
cereley held religious belief or moral conviction described
in subsection (a).

SEC. 4. JUDICIAL RELIEF.

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

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

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

(d) AUTHORITY OF UNITED STATES TO ENFORCE
THIS ACT.—The Attorney General may bring an action
for injunctive or declaratory relief against an independent
establishment described in section 104(1) of title 5, United States Code, or an officer or employee of that independent establishment, to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than this subsection, to institute or intervene in any proceeding.

SEC. 5. RULES OF CONSTRUCTION.

(a) NO PREEMPTION, REPEAL OR NARROW CONSTRUCTION.—Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally or more protective of free exercise of religious belief and moral conviction. Nothing in this Act shall be construed to narrow the meaning or application of any State or Federal law protecting free exercise of religious belief and moral conviction. Nothing in this Act shall be construed to prevent the Federal Government from providing, either directly or through a person not seeking protection under this Act, any benefit or service authorized under Federal law.

(b) SEVERABILITY.—If any provision of this Act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder
of this Act and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. DEFINITIONS.

In this Act:

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

(2) **Federal; Federal Government.**—The terms “Federal” and “Federal Government” include—

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

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

(C) the District of Columbia and all Federal territories and possessions.

(3) **Person.**—The term “person” means a person as defined in section 1 of title 1, United States Code, except that such term shall not include—

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

(B) a Federal for-profit contractor acting within the scope of the contract; or
(C) a hospital, clinic, hospice, nursing home, or other medical or residential custodial facility with respect to visitation, recognition of a designated representative for health care decision-making, or refusal to provide medical treatment necessary to cure an illness or injury.

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