

**AN EDUCATIONAL UPDATE FROM  
THE SOUTHEAST LAW INSTITUTE™, INC.**

**To: Interested Persons**  
**Date: January 2023**  
**From: A. Eric Johnston**  
**RE: Respect for Marriage Act**

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President Joe Biden signed into law the “Respect for Marriage Act” (RMA) on December 13, 2022. In summary, this creates a federal law protecting same sex and interracial marriage. Those protections already exist pursuant to SCOTUS authority, but Democrats are used by the LGBTQ+ constituency to achieve further and different objectives. Interracial marriage has not been an issue for decades. It is not an issue now. The making of same sex marriage is more recent, by the *Obergefeld v. Hodges* court opinion in 2015. That case struck down all state laws respecting a man and a woman marriage. It is a U.S. Constitutional right.

LGBTQ+ advocates are using a comment by Justice Clarence Thomas in the *Dobbs* abortion case about privacy rights to suggest that same sex marriage is in danger. In *Dobbs*, SCOTUS found the right to privacy did not include the right to abortion because there was no history of abortion rights. To the 20<sup>th</sup> Century, all states had laws prohibiting abortion. The privacy basis of *Roe v. Wade* was false. *Roe* was struck down and, in the process, Justice Thomas suggested that other laws based on privacy, which include same sex marriage, should also be reconsidered. None of the other eight Justices joined him.

The LGBTQ+ movement used Thomas’ comments as a pretext for passing the RMA. They said their fear is that SCOTUS could reverse *Obergefeld*. That is highly unlikely and even Justices Gorsuch and Kavanaugh have both opined they have no problem with same sex marriage. RMA provides that states must give full faith and credit to same sex marriage and that a same sex marriage in any state that it is legal, is legal everywhere else. Because of *Obergefeld* that is already true. RMA enshrines a federal same sex marriage right. However, that is not the real goal. The church remains the only institution that does not favor the LGBTQ+ agenda including same sex marriage. If the criticism of the church is removed, then there are no others in the public square to speak against them. The goal of the RMA is to remove that criticism.

RMA provides for a private cause of action and a right for the U.S. Attorney General to enforce the law. A “cause of action” provides a legal basis for suing someone. Therefore, if someone does not respect the RMA, a lawsuit can be brought against the alleged discriminating person or entity in a civil action to enjoin the discrimination.

A small number of Republicans opposed the RMA and insisted on religious liberty protection. However, that protection is not sufficient. RMA says that churches, mosques, synagogues and other non-profit entities “whose principal purpose is to study, practice for advancement of religious” are protected. This is very limited wording. It does not protect organizations which have a religious endeavor, but do not fit within this quoted phrase. For example, in 2017 Alabama passed a law protecting religious oriented adoption agencies from being required to make placements in same sex marriages. While the organizations are religious in nature, their principal purpose is not the “advancement of religion.” Therefore, by RMA, they may be required to make same sex placements or otherwise suffer legal claims against them.

The law also does not protect individuals who have religious objections to same sex issues, such as the Colorado baker or Colorado web designer who did not wish to provide services that glorified the same sex unions. The baker case was decided favorably by SCOTUS in a limited opinion and the web designer case is before the court. And, what about Christian, but for profit, wedding venues. While RMA says it protects first amendment free exercise rights, it provides a pathway for persons to make claims that their same sex marriage rights are being discriminated against. It will make protection of individual and private business interest more difficult.

The IRS gives tax exempt status to non-profit organizations that carry on religious activities. However, while RMA says tax exempt status cannot be denied, it leaves open the question of whether this law will be considered strong enough public policy to require the IRS to examine an organization’s response to same sex marriage. For example, in 1983, Bob Jones University, a religious college which prohibited interracial dating, had its tax-exempt status revoked because it violated the United States policy to irradicate racism.

In the recent VCAP lawsuit, the Biden Department of Justice joined with private LGBTQ+ interests to sue the State of Alabama on the basis that the law which prohibits “sex change” operations to minors is unconstitutional. In that litigation, Eagle Forum of Alabama and SLI (who were not even parties) were attacked by the U.S. Department of Justice requesting all of their records, which was denied by the Judge. The point is, the Biden Administration has a radical agenda which it enforces through the largest law firm in the world. There is no reason to think that it will not pursue relief under the RMA against any and all persons and organizations that appear to discriminate against same sex marriage.