RESPECT FOR MARRIAGE ACT

Ms. LUMMIS. Mr. President, I rise today to underscore the crucial importance of the religious liberty provisions in the Respect for Marriage Act, which was just passed by the Senate, and to ensure the legislative intent behind these provisions is crystal clear.

As you know, the U.S. Supreme Court's decision in Obergefell v. Hodges from 2015 established a constitutional right to same-sex marriage.

When Obergefell was argued, then-Solicitor General Verrilli was asked whether recognizing a constitutional right to same-sex marriage would lead to churches, religious organizations, and other not-for-profits potentially having their tax-exempt status reconsidered in light of the Supreme Court's decision in Bob Jones University v. United States. Solicitor General Verrilli responded that ''it's certainly going to be an issue.''

In recognizing a constitutional right to same-sex marriage in 2015, the U.S. Supreme Court did not reconsider the Bob Jones University precedent, leaving this issue unresolved.

The Respect for Marriage Act, with the substitute amendment that I cosponsored with Senators SINEMA, COLLINS, BALDWIN, PORTMAN, and TILLIS, answers this question and a number of others, providing strong protections for religious liberty, especially when combined with the Religious Freedom Restoration Act.

I want to thank my friend, the Senator from Arizona, for her hard work on this bill and her willingness to address key questions around religious liberty in a thoughtful and bipartisan way.

It is my understanding that section 2 of the Respect for Marriage Act, in light of the Supreme Court's Bob Jones v. United States decision in 1983, would prevent the Internal Revenue Service from successfully arguing that the United States now has a ''national policy'' favoring same-sex marriage and would prevent the IRS from using this national policy argument to deny tax-exempt status to religious organizations.

I want to ask my friend, the Senator from Arizona, is this your understanding, as well?

Ms. SINEMA. I thank my friend, the Senator from Wyoming. Yes, this is my understanding. Section 2 of the bill states that a variety of reasonable views on the role of gender in marriage exists today, based on both decent and honorable religious and philosophical beliefs. The bill states that all views are due proper respect by the Federal Government.

Furthermore, section 2 of this bill states the Federal Government recognizes religious liberty as an integral component of our national policy regarding marriage. Section 2 of this bill was explicitly included to ensure that the provisions of the Bob Jones case relating to the tax-exempt status of organizations are not applicable to this bill.

Bob Jones University v. United States, decided in 1983 before Congress enacted the Religious Freedom Restoration Act, upheld the IRS's decision to rescind Bob Jones University's tax exemption on the basis of a ''firm and unyielding'' national policy against racial discrimination. Section 2 affirms that diverse beliefs about the role of gender in marriage are held by reasonable and sincere people based on decent and honorable religious or philosophical premises. This finding preempts an analogy between the Court's analysis in the Bob Jones University case about race and beliefs about marriage and is a statement of policy respecting diverse views about the role of gender in marriage.

I would like to discuss another provision which is central to this bill: section 4, which grants ''full faith and credit'' under article IV, section 1 of the U.S. Constitution to marriages performed in each of our States, strengthening federalism and making our constitutional structure work.

Section 4 of the bill states that no person ''acting under color of State law'' may deny full faith and credit to any ''public act, record, or judicial proceeding of any other State pertaining to a marriage between two individuals, on the basis of sex, race, ethnicity, or national origin of those individuals.'' The phrase ''acting under the color of State law'' is also used in our civil rights statutes to refer to the actions of State and local government officers and employees with respect to rights guaranteed by the U.S. Constitution and Federal law.

Senator, is it your understanding this phrase is intended to incorporate the U.S. Supreme Court's interpretation of the meaning of ''acting under color of State law''?

Ms. LUMMIS. Yes, it is my understanding that use of this phrase in section 4 of the bill is intended to incorporate the U.S. Supreme Court's interpretation of this term, including, but not limited to, the case Rendell-Baker v. Kohn and NCAA v. Tarkanian cases.

I would like to now turn to section 6 of the bill, which provides that no church or religious nonprofit will be forced to solemnize or conduct a marriage ceremony under this bill.

Is it your understanding that section 6(b) bars ''any civil claim or cause of action,'' without exception, relating to a church or religious organization's refusal to solemnize or celebrate a marriage under this section, and the text does not state that it can be overruled by a court in finding a ''compelling governmental interest''?

Ms. SINEMA. Yes, it is my understanding section 6(b) bars any civil claim or cause of action relating to a nonprofit religious organization's refusal under that section to solemnize or celebrate a marriage and that such a refusal cannot create a civil claim or cause of action.

The text of section 7 also makes no reference to ''compelling governmental interests.'' Section 7 provides nothing in this bill should be construed to deny or alter the benefit, status, or right of an otherwise eligible individual or legal entity in relation to tax-exempt status, tax treatment, contracts, loans, scholarships, licenses, and other agreements not arising from a marriage.

In conjunction with section 2 of this bill, which eliminates a successful analogy to the Bob Jones case, is it your understanding, Senator, that section 7 would prevent the Internal Revenue Service from using the Respect for Marriage Act to alter or remove the tax-exempt status of an entity for expressing beliefs in opposition or support of same-sex marriage?

Ms. LUMMIS. Yes, that is my understanding, as well, regarding the scope of section 7.

This bill is intended to enshrine a national policy of respect for all views surrounding marriage and to enact some of the strongest religious liberty protections since the Religious Freedom Restoration Act in 1993. This legislation also ensures that religious liberty will have more of a central role in future debates in our courts and in the Halls of Congress.

I would like to thank my friend from Arizona for her tireless work on these issues and her willingness to work together, as always.

The PRESIDING OFFICER. The Senator from New Mexico.

SAFEGUARD TRIBAL OBJECTS OF PATRIMONY ACT OF 2021

Mr. HEINRICH. Mr. President, I rise today to ask the Senate to send H.R. 2930, the Safeguard Tribal Objects of Patrimony Act, to the President's desk for his signature.

The need for this legislation is pretty straightforward.

In 2016, the Governor of the Pueblo of Acoma learned that a sacred ceremonial shield had been stolen and was about to be sold to the highest bidder in Paris. When Governor Riley informed me about this robbery of the Pueblo's cultural patrimony, I called on the State Department to take all possible action to halt the auction. Thankfully, intense public outcry and diplomatic pressure were enough to halt the illegal sale of a Tribe's cultural patrimony.

Finally, in November 2019, more than 3 years after the shield was put on the auction block, it was voluntarily returned to the Pueblo. However, this only happened because of intense public outcry and notoriety. In most cases like this, the item has been sold or simply disappears into a private collection.

Under current Federal law, it is a crime to sell certain protected Native American cultural objects, things like the Acoma shield, here in the United States. But there is still no Federal law prohibiting the export of stolen cultural items and requiring the cooperation of foreign governments in recovering them.