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Congress Should Codify Same-Sex Marriage

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Since the U.S. Supreme Court established the right of same-sex couples to marry in *Obergefell v. Hodges* in 2015, more than 1.1 million gay and lesbian Americans have entered into legal marriages. Last month Justice Clarence Thomas wrote in *Dobbs v. Jackson Women's Health Organization* that the court should reconsider the 2015 *Obergefell* decision, among others.

Justice Thomas wrote only for himself, and the majority explained that *Dobbs* concerned “the constitutional right to abortion and no other right.” Nevertheless, the concurrence has ignited anxiety that same-sex couples will be vulnerable to legal and political challenges.

Congress should allay these concerns by enacting the Respect for Marriage Act. The Respect for Marriage Act has already been approved by a strong bipartisan majority in the House, and it should now be promptly passed by the Senate and sent to the president.

The act would codify recognition of same-sex marriages in the U.S. at the federal, state and local levels. It's unlikely that a subsequent Supreme Court decision would overturn *Obergefell*, but it would be foolhardy to take for granted that lower courts or future justices couldn't adopt similar views as those expressed in Justice Thomas's concurrence or attempt to weaken the rights that

accompany civil marriage.

Republican Sens. Susan Collins and Rob Portman as well as Democratic Sens. Dianne Feinstein and Tammy Baldwin have been championing the Respect for Marriage Act. It is incumbent on Congress to reaffirm that civil same-sex marriage is settled law and remove any uncertainty that gay and lesbian families could see their marriages delegitimized. The Senate must ensure that all Americans are treated fairly and equally under the law.

A measure to ensure American families are never torn asunder.

These families have relied on decisions affirming their right to marry and its accompanying protections: custody of children, health-care decisions, right of survivorship, tax status, immigration status and more. It would be cruel and unconscionable if these expectations and committed relationships were undermined or extinguished.

In the years since the 2015 *Obergefell* decision, public support for same-sex marriage has increased. More than 70% of Americans today favor it, including 55% of Republicans.

Support for civil marriage is consistent with American values. Strong families and lasting relationships strengthen communities, and

marriage is a fundamental freedom deeply rooted in the history and traditions of our country. As conservatives we should promote freedom and limited government. That includes supporting American citizens' freedom to marry the person they love.

Of course people of good faith can disagree on the extent to which the institution of marriage should be extended to persons of the same sex. But that freedom to disagree isn't changed by the Respect for Marriage Act.

Religious freedom will remain protected by the Religious Freedom Restoration Act, and the Respect for Marriage Act won't undermine the rights of conscience of individuals to refrain from participating in or endorsing any marriage based on religious conviction.

Millions of American citizens are building families, taking on the responsibilities and commitment associated with marriage, and caring for the one they love. Passing the Respect for Marriage Act wouldn't alter existing rights; it would remove harmful and destructive uncertainty about the future. It treats all American families as each of us would want to be treated if we were in their shoes.

Mr. Olson, a Washington lawyer, served as U.S. solicitor general, 2001-04. Mr. Mehlman, a New York businessman, was chairman of the Republican National Committee, 2005-07.