

## POLITICS &amp; POLICY

# Senator Lee Introduces a Bill to Protect Religious Liberty

By ALEXANDRA DESANCTIS | September 28, 2016 6:31 PM



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Sen. Mike Lee (Photo: Gage Skidmore/Flickr)

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Trump has promised to sign it, if he wins.

**I**n conjunction with his recent rollout of a Catholic advisory group, Donald Trump **articulated his dedication** to a number of issues of critical importance to American Catholics, including his hard-line defense of religious freedom. Among his many promises, Trump pledged to sign the First Amendment Defense Act (FADA) if Congress were to pass the legislation during his presidency. The bill — co-sponsored by Republican senator Mike

Lee of Utah and Representative Raul Labrador, an Idaho Republican — is narrowly tailored to protect from government discrimination those religious Americans who believe that marriage is a union between one man and one woman.

Lee told NATIONAL REVIEW ONLINE that Trump would be likely to protect religious freedom more effectively than Hillary Clinton would. Speaking of [Clinton's August op-ed](#) in Utah's *Deseret News*, Lee said: "The fact that [Clinton] uses that phrase, 'the right to worship' . . . You know, I'm not certain what she meant by it, but sometimes when people use that term instead of referring to religious liberty or religious freedom, they're referring to something narrower. That makes me nervous."

The Utah senator's comment references a common misrepresentation of religious freedom, and one that [Clinton has frequently advocated](#): the idea that religious liberty is merely the right to worship at church or at home and not the right to live out one's faith in the public square. "Given that [Clinton] has said some things like that, and Donald Trump hasn't, it seems he might be better on religious freedom," Lee added. Trump's pledge to sign FADA seems to corroborate that possibility, if his word is to be believed.

"Religious Americans understand that there's a lot more to being religious than attending a religious service," Lee explained. "The American people need to have some assurance that they won't be treated differently based on their religious beliefs. They need to be protected from retaliation by government against particular religious beliefs that the government chooses to disfavor."

In the case of FADA, that means protection against government retaliation in the realm of the marriage debate. While opponents of the bill claim that it provides cover for discrimination against LGBT individuals, in fact, the bill protects citizens only in situations that directly deal with marriage. The bill does not protect, for example, a business owner who denies service to an LGBT individual because of his sexual orientation; it is limited to situations that involve religious beliefs about *same-sex marriage*.

Furthermore, as Lee put it, the bill “doesn’t deal with relationships between private parties, between citizens and other citizens, or between citizens and a business, but rather the relationship between people and the federal government.” This means that the legislation would protect schools, private businesses, and individuals from being stripped of nonprofit tax-exempt status, grants, contracts, or accreditation, as the result of holding particular religious beliefs about the nature of marriage.

Clinton has frequently supported the notion that religious liberty is merely the right to worship at church or at home and not the right to live out one’s faith in the public square.

During a **July hearing on religious liberty before the Senate Judiciary Committee**, Lee clarified further: “This bill does not take away anything from any individual or any groups, because it does not modify any of our existing civil-rights protections.” He also explained in the hearing that FADA is a targeted response to recent legal developments showing the federal government’s willingness to coerce or punish those who disagree with the now-prevailing definition of marriage as open to same-sex couples. In this context, Lee cited **Solicitor General Donald Verilli’s response** to Supreme Court justice Samuel Alito’s question about whether colleges could lose their tax-exempt status if they espouse the traditional definition of marriage: “It’s certainly going to be an issue,” Verilli said. In other words, the government is prepared to wield its power against religious individuals and institutions in order to coerce them into violating deeply held religious beliefs about marriage.

Lee said that FADA is a pragmatic attempt to make the best of a bad Supreme Court decision. Rather than challenging wholesale the substance of the Court’s June 2015 ruling in *Obergefell v. Hodges*, FADA would be a practical step toward protecting religious Americans. “Absent a significant change in public opinion, I don’t see the *Obergefell* ruling being reversed,” Lee conceded. According to the senator, the only way to undo the decision is for the Court to reverse its ruling or for the country to pass a constitutional

amendment. “I don’t think there’s anyone looking at those two alternatives who would say that either one is likely to occur any time soon.”

Texas senator Ted Cruz, who endorsed Trump last Friday after months of refusing to do so, cited Trump’s revamped list of potential Supreme Court justices as one of the central reasons for his endorsement. Among the ten new names added to the list was a particularly familiar one: Senator Mike Lee. Cruz specifically noted Lee’s inclusion as an indication of Trump’s conservative commitments.

#related# For his part, Lee immediately stated that the updated list — and his inclusion on it — didn’t change his mind about Trump “in any way whatsoever,” according to his spokesperson Conn Carroll. Lee has continually opposed Trump because of the Republican nominee’s insufficient grasp of federalism and the separation of powers. “I am always eager to support any candidate willing to make those structural constitutional protections a priority,” **Lee said in a previous statement** on this year’s election. “In this race and in every other, I will continue to use the same criteria.”

The First Amendment Defense Act is currently awaiting a markup in the House; it has 37 co-sponsors in the Senate and 172 in the House. “We’ve got a really good product that held up under a hearing,” Lee said. “And I think deserves to move forward.” Whether or not it does will depend largely on how this year’s election plays out, both in the congressional and presidential races.



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