

# Exhibit G

## Drew Snyder

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**From:** Austin R. Nimocks <ANimocks@alliancedefendingfreedom.org>  
**Sent:** Wednesday, June 24, 2015 8:33 PM  
**To:** Drew Snyder  
**Cc:** Jim Campbell  
**Subject:** Governor Executive Order  
**Attachments:** Model Executive Order to Prevent Government Discrimination Based on Marr....pdf;  
Explanation of Executive Order on Marriage and Conscience.pdf

Drew,

I pray that this finds you well. We are working with organizations that have drafted the attached materials. The main document is a model executive order that would prevent state governments from discriminating against their citizens because of their views about or actions concerning marriage. It is a different approach to the very good Executive Order that Governor Jindal released a few weeks ago (which is available here - <http://www.doa.louisiana.gov/osr/other/bj15-8.htm>).

If you think that this is a worthy idea, feel free to share this with the Governor Bryant. It could provide an appropriate response to the upcoming Supreme Court decision on marriage (whatever that decision may be).

Thanks much,  
Austin



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### State Leadership to Prevent Discrimination Against People of Faith

The spread of court-imposed redefinitions of marriage through much of the country has opened the door to discrimination against persons and institutions who speak and act on the belief that marriage is a union of one man and one woman. Governors have the continuing duty to protect against these harms and can do so through carefully tailored action such as an executive order that addresses clear and present threats to free expression and religious liberty. For example:

- During Supreme Court oral arguments in *Obergefell v. Hodges*, the Obama administration's Solicitor General, Donald Verrilli, acknowledged the possibility of religious schools being stripped of their tax-exempt status for continuing to affirm marriage as the union of a man and a woman.<sup>1</sup>
- Faith-based adoption agencies in Massachusetts, Illinois, and Washington, D.C. have been forced to end foster care and adoption services rather than abandon their belief that every child deserves a married mother and father.<sup>2</sup>
- Gordon College, a Christian school, was scrutinized by its accrediting association because the school asks all members of the community to refrain from premarital and extramarital sexual relations.<sup>3</sup>
- A student at Eastern Michigan University was ejected from a master's program in counseling for referring same-sex couples to other counselors because of her religious convictions about marriage.<sup>4</sup>

State leadership to protect the rights of all citizens to live according to their beliefs about marriage without government coercion, discrimination, or penalty can address such challenges. Such protections would allow for peaceful coexistence and protect pluralism and diversity. While courts and a handful of legislatures have required states to treat same-sex relationships as marriages for various civil law purposes, they did not authorize state governments to coerce people of faith and good will into changing their views on such hotly disputed issues.

Governors can take the lead by instructing all agencies of state government never to punish a citizen, charity, school, student, family business, adoption agency, religious organization, shelter, or any other institution of civil society because they believe and act on their beliefs about marriage being a union of husband and wife. All Americans and the groups they form should be able to live their lives

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<sup>1</sup> Sarah Pulliam Bailey, *The Washington Post*, "Could religious institutions lose tax-exempt status over Supreme Court's gay marriage case?" April 28, 2015, at <http://www.washingtonpost.com/news/acts-of-faith/wp/2015/04/28/could-religious-institutions-lose-tax-exempt-status-over-supreme-courts-gay-marriage-case/>.

<sup>2</sup> Sarah Torre and Ryan T. Anderson, PhD, "Adoption, Foster Care and Conscience Protection," *The Heritage Foundation Backgrounder* No. 2869, January 15, 2014, at <http://www.heritage.org/research/reports/2014/01/adoption-foster-care-and-conscience-protection>.

<sup>3</sup> David French, *The National Review*, "Gordon College Keeps Its Faith and Its Accreditation," May 1, 2015, at <http://www.nationalreview.com/article/417788/gordon-college-keeps-its-faith-and-its-accreditation-david-french>.

<sup>4</sup> Mark Oppenheimer, *The New York Times*, "A Counselor's Convictions Put Her Profession on Trial," February 3, 2012, at [http://www.nytimes.com/2012/02/04/us/when-counseling-and-conviction-collide-beliefs.html?\\_r=0](http://www.nytimes.com/2012/02/04/us/when-counseling-and-conviction-collide-beliefs.html?_r=0)

without fear of losing government benefits, licenses, employment, tax-exempt status, certifications, contracts, or accreditation, simply because of what they believe. The American people support this: polling suggests that an overwhelming majority, 81%, believe that we should retain this freedom to live and work in accordance with the belief in marriage as between a man and a woman.<sup>5</sup> After all, 50 million Americans had voted in favor of this understanding of marriage before courts began to short-circuit the democratic process.

Respecting religious liberty and the rights of conscience does not infringe on anyone's sexual freedoms. As state government takes action to protect the rights of people of faith, it also remains free to provide benefits and services to everyone who seeks them in any way it sees fit, as it always has. It simply cannot shun or discriminate against religious people and institutions in the process.

Governors can lead in this balancing of interests. Instructing their state governments as described above would be an appropriate and effective response to growing threats.

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<sup>5</sup> WPA Opinion Research, Polling Memorandum: "The Majority of Americans Support Traditional Marriage and Freedom of Belief," February 20, 2015, p. 2, <http://downloads.frc.org/EF/EF15B71.pdf>.

To prevent discriminatory treatment of any religious entity on the basis of views concerning marriage.

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**EXECUTIVE ORDER NO.  
ORDER PREVENTING GOVERNMENT DISCRIMINATION AGAINST ANY  
RELIGIOUS ENTITY ON THE BASIS OF VIEWS CONCERNING MARRIAGE.**

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WHEREAS,

- (1) Leading legal scholars concur that government imposition of same-sex marriage will infringe on the right to religious liberty unless government acts to prevent or alleviate those infringements.
- (2) The United States has a long and honorable history of respecting the religious freedom rights of its people, dating from before the American Revolution to the present. For example, laws have protected the right of Quakers and other pacifists to serve the nation as non-combatants in time of war, the right of Jews and other Sabbath observers to dedicate their time to God and family instead of work on their Sabbath, and the right of religious organizations to employ persons of the same beliefs to more effectively provide charitable services to the public.
- (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 admitted to the United States Supreme Court that “it’s certainly going to be an issue”.
- (4) Protecting religious freedom from government intrusion is a state interest of the highest order. Government is obligated to take measures that advance 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 and [STATE CONSTITUTIONAL PROVISIONS].
- (5) This state has a tradition of cooperating with various charitable, religious, and private organizations in providing social services. Religious organizations and individuals, in particular, have a lengthy and distinguished history, which predates the state’s involvement, in providing critical social services. Religious organizations display particular excellence when providing these services and thus provide substantial benefit to the residents of this state.
- (6) Further, the Governor signed into law [STATE RFRA] in [YEAR], making clear that: Government shall not substantially burden a person’s exercise of religion, even if the burden results from a facially neutral rule of general applicability, unless it demonstrates that application of the burden to the person is both:

- (a) In furtherance of a compelling governmental interest; and
- (b) The least restrictive means of furthering that compelling governmental interest.

(7) Laws and government actions that protect the free exercise of religious beliefs and moral convictions 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.

NOW THEREFORE, I, [NAME], Governor of the [State/Commonwealth] of [NAME], by virtue of the authority vested by the Constitution and the laws of [STATE], do hereby order and direct as follows:

**SEC. 1. GENERAL PROTECTION OF THE FREE EXERCISE OF RELIGIOUS BELIEFS AND MORAL CONVICTIONS.**

(a) IN GENERAL.—Notwithstanding any Order to the contrary, the State Government is prohibited from taking any action inconsistent with the restrictions placed upon the State Government by the United States constitution, [or] the [STATE] constitution [or State RFRA], or any other state law, against a person wholly or partially on the basis that such person believes or sincerely acts in accordance with a religious belief or moral conviction that:

- (1) marriage is or should be recognized as the union of one man and one woman;
- (2) sexual relations are properly reserved to such a marriage; or
- (3) male (man) or female (woman) refer to an individual's immutable biological sex as objectively determined by anatomy and genetics by time of birth.

**SEC. 2. SPECIFIC PROTECTIONS FOR PERSONS, RELIGIOUS SOCIAL SERVICE ORGANIZATIONS, AND PRIVATE ASSOCIATIONS.**

(a) SPECIFIC PROTECTIONS FOR RELIGIOUS ORGANIZATIONS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a religious organization wholly or partially on the basis that such organization has declined or will decline to solemnize any marriage or to provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, celebration or recognition of any marriage, based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

(b) SPECIFIC PROTECTIONS FOR RELIGIOUS STAFFING.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a

religious organization, wholly or partially on the basis that such organization made or will make any employment-related decision based upon or consistent with a sincerely held religious belief or moral conviction described in in Section 1.

- (c) SPECIFIC PROTECTIONS FOR RELIGIOUS HOUSING PROVIDERS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a religious organization wholly or partially on the basis that such organization lawfully made or will make any decision concerning the sale, rental, advertisement, terms and conditions, or occupancy of a dwelling or other housing under its control based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (d) SPECIFIC PROTECTIONS FOR SHELTERS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a religious organization that offers housing or related services for the prevention and non-emergency treatment of juvenile delinquency, substance abuse recovery, assistance to victims of crime or abuse, alleviation of homelessness, or for any charitable purpose, wholly or partially on the basis that such organization made or will make any decision concerning the admission, advertisement, terms and conditions, or occupancy of such housing or related services based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (e) SPECIFIC PROTECTIONS FOR RELIGIOUS ADOPTION AGENCIES.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a religious organization that advertises, provides, or facilitates adoption or foster care, wholly or partially on the basis that such organization has provided or declined to provide any adoption or foster care related service [under state law] based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (f) SPECIFIC PROTECTIONS FOR FOSTER AND ADOPTIVE PARENTS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a person granted custody by the state of a foster or adoptive child wholly or partially on the basis of that person guiding, directing, instructing, or raising a child based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (g) SPECIFIC PROTECTIONS FOR COUNSELING SERVICE PROVIDERS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a person engaged in the provision of psychological, psychiatric, fertility, marital,

child, or family counseling, treatment, or services, wholly or partially on the basis that the person has provided or declined to provide such counseling, treatment, or service based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

- (h) SPECIFIC PROTECTIONS FOR EDUCATORS AND STUDENTS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a person receiving or engaging in the provision of educational services, including but not limited to pre-k through university education, whether performed at a public or private school, remotely, or at a home, wholly or partially on the basis that such person has studied, treated, expressed opinions on, taught or will teach educational subjects based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (i) SPECIFIC PROTECTIONS FOR CLERKS AND MAGISTRATES.—Notwithstanding any Order to the contrary, a clerk, register of deeds, judge, or magistrate employed by or acting on behalf of the State Government may seek recusal from performing or licensing lawful marriages based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1. Such recusal shall be upon notice to [state agency] and the State Government shall not take any discriminatory action wholly or partially on the basis of such recusal.
- (j) SPECIFIC PROTECTIONS FOR STATE EMPLOYEE SPEECH.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a state employee wholly or partially on the basis that such employee lawfully speaks, acts, or declines to act based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1:
  - (1) in the workplace, or in the course of performing work duties, consistent with the time, place, manner, and frequency of any other non-harassing expression of a religious, political, or moral belief or conviction allowed by the State Government in the workplace or in the course of performing work duties; or
  - (2) outside the workplace, in the employee's personal capacity, and outside the course of performing work duties.
- (k) SPECIFIC PROTECTIONS FOR CERTAIN EXPRESSIVE ASSOCIATIONS.—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against non-profit expressive associations, including but not limited to, the Boy Scouts of America and similar organizations, youth clubs, fraternal organizations, civic



associations, student clubs at all educational levels, adult support groups, and affinity groups and clubs, wholly or partially on the basis that such associations made or will make any membership or leadership decision, involving paid positions or not, based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

- (l) **SPECIFIC PROTECTIONS FOR POLICIES CONCERNING INTIMATE FACILITIES AND SETTINGS.**—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a person wholly or partially on the basis that such person lawfully establishes sex-specific standards concerning employee, member, student, or customer dress or grooming, or access to restrooms, spas, baths, showers, dressing rooms or other intimate facilities, based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (m) **SPECIFIC PROTECTIONS FOR CERTAIN EXPRESSIVE BUSINESSES.**—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a closely-held business wholly or partially on the basis that it has lawfully provided or declined to provide:
- (1) photography, poetry, videography, DJ services, art, dress or clothes-making, wedding planning, printing or publishing, or similar products or services based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1; or
  - (2) floral arrangements, catering services, pastry or cake making, clothing or tailoring, limousine or car service or rentals, decorations, pastry or cake making, or similar products or services based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (n) **SPECIFIC PROTECTIONS FOR ASSEMBLY HALLS.**—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a closely-held business wholly or partially on the basis that it lawfully made or will make any decisions concerning the rental, advertisement, use, or terms and conditions of a pavilion, field, garden, farm, barn, dance or assembly hall, or similar facility based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.
- (o) **SPECIFIC PROTECTIONS FOR BED AND BREAKFASTS.**—Notwithstanding any Order to the contrary, the State Government shall not take any discriminatory action against a closely-held business engaged in the business of renting rooms at a bed and breakfast or similar-

sized facility wholly or partially on the basis that it lawfully made or will make any decisions concerning the rental, advertisement, occupancy, or terms and conditions of such facility based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

**SEC. 3. DISCRIMINATORY ACTION DEFINED.**

(a) **DISCRIMINATORY ACTION DEFINED.**—As used in this Order, discriminatory action means and includes any action taken by the State Government to:

- (1) negatively alter the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, or revoke an exemption from taxation under [state tax code or subsection] of, any person;
- (2) disallow a deduction for state tax purposes of any charitable contribution made to or by such person;
- (3) refuse to hire or promote, force to resign, fire, demote, sanction, discipline, materially alter the terms or conditions of employment, retaliate or take other adverse employment action against, a person employed or commissioned by the State Government.
- (4) withhold, reduce, exclude, terminate, deny, or materially alter the terms or conditions of, any state grant, contract, subcontract, cooperative agreement, or loan from or to any person;
- (5) withhold, reduce, exclude, terminate, deny, or materially alter the terms or conditions of, any benefit under a state benefit program from or to any person;
- (6) impose, levy, or assess, a monetary fine, fee, penalty or injunction not required by state statute; or
- (7) withhold, reduce, exclude, terminate, deny, or materially alter the terms or conditions of, any accreditation, licensing, custody award or agreement, diploma, grade, recognition, or certification from or to any person.

(A) For purposes of state law, the State Government shall consider accredited, licensed, or certified any person that would be accredited, licensed, or certified, respectively, for such purposes but for the person speaking, acting, or declining to act based upon or consistent with a sincerely held religious belief or moral conviction described in Section 1.

#### **SEC. 4. RELIEF.**

(a) ADMINISTRATIVE CLAIMS AND DEFENSES.—A person may assert an actual or threatened violation of this Order as a claim or defense in a proceeding before any department, commission, board, agency, school district, and/or political subdivision of the state and obtain compensatory damages, injunctive relief, declaratory relief, or any other appropriate relief against the state.

#### **SEC. 5. RULES OF CONSTRUCTION.**

(a) BROAD CONSTRUCTION.—This Order shall be construed in favor of a broad protection of free exercise of religious beliefs and moral convictions, to the maximum extent permitted by the terms of this Order and the United States and [STATE] constitutions.

(b) NO REPEAL OR NARROW CONSTRUCTION.—Nothing in this Order, including the enumeration of specific protections, shall be construed to narrow the meaning or application of any Order or State or Federal law protecting free exercise of religious beliefs or moral convictions. Nothing in this Order shall be construed to prevent the State Government from providing, either directly or through a person or entity not seeking protection under this Order, any benefit or service authorized under State law.

(c) RULE ON PREEMPTION.—For purposes of state law, this Order shall be construed to preempt any local or municipal ordinance or resolution to the extent such ordinance or resolution conflicts with any protection of free exercise of religious beliefs or moral convictions provided by this Order. Nothing in this Order shall be construed to preempt or repeal any Order that is equally or more protective of free exercise of religious beliefs or moral convictions.

(d) SEVERABILITY.—If any provision of this Order or any application of such provision to any religious entity or circumstance is held to be invalid under law, the remainder of this Order and the application of the provision to any other religious entity or circumstance shall not be affected.

#### **SEC. 6. DEFINITIONS.**

In this Order:

(a) STATE BENEFIT PROGRAM.—The term “state benefit program” has the meaning given that term in [applicable state code].

(b) STATE GOVERNMENT.—The term “State Government” includes any department, commission, board, agency, school district, political subdivision, and/or agent of the state or any person acting under color of state law.

(c) PERSON.—The term “person” means:

- (1) a natural person, in his or her individual capacity regardless of religious affiliation or lack thereof, or in his or her capacity as a member, officer, owner, volunteer, employee, manager, religious leader, clergy, or minister of any entity described in this Section;
- (2) a religious organization;
- (3) a closely held business or its owners, including sole proprietorships, companies, partnerships, ventures, associations, firms, corporations, cooperatives, trusts, and societies, operating with a sincerely held religious belief or moral conviction described in Section 1; or
- (4) cooperatives, ventures, or enterprises comprised of two or more individuals or entities described in this Section regardless of non-profit or for-profit status.

(d) RELIGIOUS ORGANIZATION.—The term “religious organization” means:

- (1) a religious group, corporation, association, educational institution, ministry, order, or society, and associated entities, regardless of whether its purposes and activities are deemed wholly or partly religious.
- (2) a house of worship, including but not limited to, churches, synagogues, shrines, mosques, and temples;
- (3) any individual member, officer, owner, volunteer, employee, manager, religious leader, clergy, or minister of an entity or organization described in the preceding subsections while acting within their scope of employment or duties of position or office.

**SEC. 7. SCOPE.**

(a) All departments, commissions, boards, agencies, school districts, political subdivisions, and agents of the state are authorized and directed to cooperate with the implementations of the provisions of this Order.

**SEC. 8. EFFECTIVE DATE.**

(a) This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of [STATE], at the Capitol, in the city of [CITY], on this [##]th day of [MONTH], 2015.

/s/ [NAME] \_\_\_\_\_

GOVERNOR OF [STATE]