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Written by **Alex Newman** on March 9, 2015

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States Urged to Defy: Lawless Marriage Edicts by U.S. Courts

AP Images

Later this year, probably around summertime, the U.S. Supreme Court will issue a ruling on homosexual "marriage." Experts and activists on all sides of the debate expect the high court to overturn state laws and constitutions protecting the traditional definition of marriage as being between one man and one woman. In other words, a sort of 21st-century version of *Roe v. Wade* imposing the court's views on all 50 states might be on the way. However, serious questions have been raised surrounding such a ruling: Would it be another example of federal judicial overreach? If so, what, if anything, can states do to resist?

As federal courts increasingly usurp broad powers never delegated to them or even the U.S. government in the U.S. Constitution, the movement to rein in at the state level what is being called "judicial tyranny" is growing fast. From popular pastors and grassroots citizen movements to lawmakers, judges, and presidential candidates, critics of the escalating assaults on state sovereignty from the federal bench say the time has come for state and local authorities to finally put their foot down and resist. Already, dozens of states have had homosexual "marriage" purportedly imposed on them by federal courts. Now, with the Supreme Court expected to deliver its decision on marriage this year, the pressure to resist is growing stronger than ever.

In more than a few states, legislators have responded to the wave of federal rulings purporting to redefine marriage with new efforts aimed at protecting marriage and the will of voters from the decrees of federal judges. In Oklahoma, South Carolina, and Texas, for example, lawmakers have already introduced legislation that would prohibit state or local officials from issuing "marriage licenses" to homosexuals. State judges, too, are considering ways to protect their state constitutions and the will of citizens from federal judicial assault.

As with the overturning of state efforts to protect the unborn from abortion beginning with *Roe v. Wade*, marriage is fast becoming a flashpoint in the battle between the Constitution, state sovereignty, and the will of voters on one side, and the edicts of federal courts on the other. However, the implications of the struggle against what critics call "judicial tyranny" will ultimately define what America becomes going forward. Whether efforts to stop lawless and anti-constitutional federal court rulings at the state border will succeed, however, remains to be seen.

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Ground Zero: Resistance in Alabama

Alabama is now at the heart of the battle. In a letter sent to Alabama Governor Robert Bentley in late January, Chief Justice Roy Moore of the Alabama Supreme Court encouraged the Republican governor and lower courts to defy "judicial tyranny" — specifically, a recent unconstitutional ruling by a federal judge purporting to overturn the state's constitutional protections for the "divine institution" of marriage. Quoting Scripture, the state constitution, and previous federal and state Supreme Court rulings, Chief Justice Moore argued that federal courts were using "specious" arguments aimed at "destroying" marriage, with far-reaching consequences for Alabama and beyond. Moore warned in the letter that issuing "marriage licenses" to homosexuals would be a violation of state law and Alabama's constitution. In an order to state judges issued later, Moore explicitly declared the issuance of licenses to homosexuals to be invalid. Most obeyed, but a handful of probate judges gave in and began "marrying" homosexuals.

The letter from Chief Justice Moore, the state's highest judicial official, came days after U.S. District Court Judge Callie Granade issued a ruling purporting to expand the definition of marriage to include homosexual couples. For Chief Justice Moore and other top Alabama officials, the federal order goes far beyond legitimate constitutional power. "As you know, nothing in the United States Constitution grants the federal government the authority to redefine the institution of marriage," Moore explained, adding that more than eight in 10 Alabama voters specifically recognized in the state constitution that a marriage is a "sacred covenant, solemnized between a man and a woman."

"As Chief Justice of the Alabama Supreme Court, I will continue to recognize the Alabama Constitution and the will of the people overwhelmingly expressed in the Sanctity of Marriage Amendment," Moore concluded. "I ask you to continue to uphold and support the Alabama Constitution with respect to marriage, both for the welfare of this state and for our posterity. Be advised that I stand with you to stop judicial tyranny and any unlawful opinions issued without constitutional authority."

In addition to the state constitution, the U.S. Constitution, and previous Alabama Supreme Court rulings protecting the institution of marriage, the chief justice also cited a ruling by the U.S. Supreme Court. "Even the United States Supreme Court has repeatedly recognized that the basic foundation of marriage and family upon which our Country rests is 'the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement,'" Moore explained, quoting *Murphy v. Ramsey*.

The laws of Alabama have "always recognized the Biblical admonition stated by our Lord," the chief justice added in the letter, citing Mark 10:6-9 from the Bible. The verses, as quoted in the letter, read: "But from the beginning of the creation God made them male and female. For this cause shall a man leave father and mother, and cleave to his wife; And they twain shall be one flesh; so then they are no more twain, but one flesh. What therefore God hath joined together, let no man put asunder."

"Today the destruction of that institution is upon us by the federal courts using specious pretexts based on Equal Protection, Due Process, and Full Faith and Credit Clauses of the United States Constitution," Moore continued, taking aim at the radical reinterpretation of the Constitution being used to redefine marriage. "As of this date, 44 federal courts have imposed by judicial fiat same-sex marriages in 21 states of the Union, overturning the express will of the people in those states. If we are to preserve that

'reverent morality which is our source of all beneficent progress in social and political improvement,' then we must act to oppose such tyranny!"

Moore also quoted an 1825 letter by Thomas Jefferson, among the most influential Founding Fathers and a strong proponent of state nullification, expressing the "deepest affliction" over the "usurpation" by federal courts of "all rights reserved to the states." The chief justice said that Jefferson's words "precisely express my sentiments on this occasion." Quoting the 10th Amendment to the U.S. Constitution, which reserves all powers to states and the people that were not specifically delegated to the federal government, Moore said that nothing in the Constitution grants authority to the feds to "desecrate" the institution of marriage. "Our State Constitution and our morality are under attack by a federal court decision that has no basis in the Constitution of the United States," he added.

Governor Robert Bentley, a Republican, at first released a statement suggesting that he was prepared to defend marriage from unconstitutional attacks by the federal courts. However, as pressure from federal supremacists, homosexual activists, and the establishment media grew stronger, he quickly waffled, declaring that he would take no action against judges who issue marriage licenses to homosexuals.

On the other side of the debate, homosexual activists were fuming. One homosexual Alabama lawmaker, Democrat Patricia Todd, even resorted to blackmail — a criminal offense — by threatening to expose alleged "extramarital affairs" among her colleagues if they keep discussing "family values" while speaking out against the federal court ruling. The pro-homosexual marriage group Human Rights Campaign, which late last year saw its founder arrested and charged for allegedly raping a 15-year-old boy, also lambasted Moore's letter in interviews with countless establishment media outlets.

Pastor Explains Duty to Resist

At least some pastors are already urging state and local officials to stand up for marriage and, if necessary, interpose between citizens and an out-of-control federal government. One of those ministers offered a powerful election sermon to Montana lawmakers at the legislature in January urging them to do their biblical duty by standing up to escalating federal tyranny. Citing the Constitution, Scripture, and what is known as the "doctrine of the lesser magistrate," Pastor Matt Trewhella told state legislators that they have more than just the right to protect citizens from growing lawlessness, tyranny, and wickedness in government — they have a moral and Christian obligation to do so.

The pastor, who wrote a book on the subject entitled *The Doctrine of the Lesser Magistrates*, introduced the doctrine, which addresses "the duty of lower magistrates in the face of tyranny," he said. The notion that lesser magistrates must defy evil or unjust actions by authorities was first articulated in its present form by John Calvin, who wrote that there are "popular magistrates" who have "been appointed to curb the tyranny of kings." Even before that, the pastor explained, Western Civilization had a firm grasp of the concept, as evidenced by John of Salisbury's 1159 work *Policraticus*, for example, among other works and writings.

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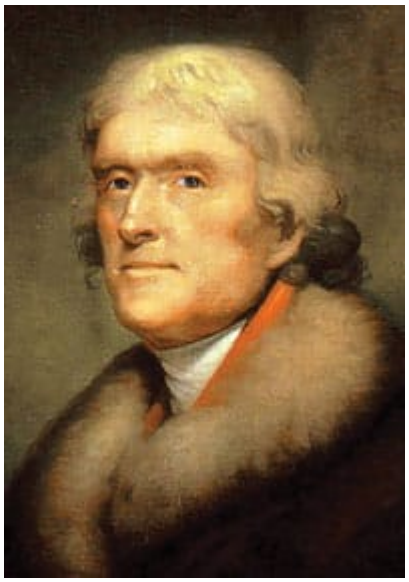

Remedy: President Thomas Jefferson was among the Founding Fathers who encouraged state nullification of unconstitutional federal actions. He also warned of the Supreme Court becoming a "despotic branch."

As Trewhella pointed out in his sermon, there are also numerous examples of the doctrine at work throughout the Bible. The pastor cited, among other cases, the midwives in the Book of Exodus who defied pharaoh's orders to murder all male Hebrew newborns. Israel's interposition on behalf of King Saul's son, Jonathan, who was set to be executed for violating a decree he was unaware of, was also discussed. Daniel, at the time a top government official, publicly defied King Darius' decree against praying. "Daniel took an open stand in defiance of this unjust law," Trewhella explained, citing Scripture to show that Daniel knew of the unjust decree yet openly violated it. "And your duty is no different in our day."

Among the outrages already foisted on Americans by an unconstrained federal government are the "cold-blooded murder of the preborn," "the imposition of homosexual marriage upon our states," and "the phalanx of laws created by the State to invade our domestic affairs, disarm the people, seize our property, and harass our persons." All of it, Trewhella said, points to "the growing tyranny in America."

"Listen to me now — and this is important — by your act of interposition, when you as lower magistrates defy the higher authority, you remind the federal authorities that their authority has limits," he explained to the assembled state lawmakers. "They are not to be blithely obeyed.... You need to understand — you possess authority. You need to understand the authority you possess is delegated authority. Your authority as a legislator was delegated to you of God."

If the higher authority makes "unjust or immoral law," such as imposing homosexual marriage by judicial fiat, "you have a duty not to sustain his rebellion against God by obeying the unjust law," Trewhella said. "Rather, you have the duty to use your authority to resist his unjust or immoral law, and thus remind the higher authority in all their arrogance that their authority has limits."

In practice, Trewhella said, the doctrine means the duty of lesser magistrates is threefold. "First, they are to oppose and resist any laws or edicts from the higher authority that contravene the law or Word of God," he said. "Second, they are to protect the person, liberty, and property of those who reside within their jurisdiction from any unjust or immoral laws or actions by the higher authority. Third, they are not

to implement any laws or decrees made by the higher authority that violate the Constitution, and if necessary, resist them."

Especially important, Trewhella concluded, is to stop pretending that federal courts possess unlimited authority to trample on the U.S. Constitution and even God's law itself. He cited the purported re-definition of marriage by federal judges, as well as the purported legalization of abortion by the Supreme Court, as two of the most egregious examples that require interposition.

There is also what Trewhella described to The New American as a "huge" role for citizens to play in the fight. "They must prod their state, county, and local authorities to stand in defiance of federal tyranny, and then they must have their back when they do stand — offering their substance and very bodies for all that is needed both publicly and privately in support of them," he said.

Nullifying Judicial Tyranny

Writing in The New American online in January, constitutional attorney and nullification expert Joe Wolverton also highlighted the duty of states. "Accepting the decision of the Supreme Court as the final say on an issue that has been already decided by the people and their elected state representatives in several states is not the action of a constitutionalist," wrote Wolverton. "Furthermore, all state legislators and other state officials (including attorneys general and governors) are duty-bound to refuse to enforce any act of the federal government that exceeds its constitutionally defined powers."

Wolverton also quoted the writings of key architects of America's constitutional Republic debunking the notion that any and all edicts issued by the Supreme Court must be obeyed as the Supreme Law of the Land. James Madison, for instance, noted that when the federal government usurps powers not delegated by the Constitution, "the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them." Jefferson pointed out that "nothing in the Constitution" permits the Supreme Court to declare laws unconstitutional, and that such a position "would make the judiciary a despotic branch." In the *Federalist Papers*, Alexander Hamilton said unconstitutional "usurpations" should be treated as such.

"Regardless of how the Supreme Court rules on the issue of same-sex marriage, the states retain the authority to govern themselves and needn't be bound by actions of the federal government that exceed the boundaries placed by the Constitution around its very limited sphere of authority," Wolverton concluded. "Finally, there is absolutely no reason that conservatives and people of faith committed to the protection of traditional marriage should hang on the words of black-robed oligarchs who have no constitutional authority to set at naught the will of the people of the various states."

National Struggle

While nullification is a crucial remedy for anti-constitutional decrees coming from the Supreme Court, it is not the only one. In fact, under the U.S. Constitution, Congress has the power to stop the lawlessness by exercising its authority in defining the courts' jurisdiction. Starting in 2004, then-Representative Ron Paul introduced the "We The People Act" to do precisely that. The legislation would prohibit federal courts from adjudicating cases about state laws on religious freedom and "privacy," including sexual orientation and abortion. It would also punish any judges violating those limits by removing them from power.

"It is long past time that Congress exercises its authority to protect the republican government of the states from out-of-control federal judges," Representative Paul explained when introducing the bill in 2011. "The only way to resolve controversial social issues like abortion and school prayer is to restore respect for the right of state and local governments to adopt policies that reflect the beliefs of the citizens of those jurisdictions." The same applies to marriage.

As the federal government becomes increasingly extreme in usurping power, efforts to rein it in are growing and will undoubtedly continue to spread. From nullification by liberal and conservative states, to efforts such as Justice Moore's to protect state constitutions from radical federal judges, to Congress stepping in, there are multiple remedies. If America is to survive as a constitutional Republic with a limited federal government, state officials must take serious steps to put a constitutional leash back on Washington, D.C., and its courts. The alternative is literally, as Justice Moore put it, "judicial tyranny."

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