Written by **Dave Bohon** on November 7, 2014

Federal Court Issues Bold Ruling for Traditional Marriage

A federal appeals court has issued a major ruling in favor of traditional marriage in four states, a decision that has given pro-family leaders hope in their ongoing battle against same-sex "marriage."

The 6th U.S. Court of Appeals ruled 2-1 on November 6 in favor of bans or restrictions to same-sex marriage in Ohio, Michigan, Kentucky, and Tennessee, with the majority opinion coming from Circuit Judge Jeffrey Sutton, a George W. Bush appointment whom *USA Today* called "one of the Republican Party's most esteemed legal thinkers and writers."

The latest federal decision contradicts more than 20 previous rulings in favor of same-sex marriage since the U.S. Supreme Court decision last year striking down a key portion of the federal Defense of Marriage Act, which defined marriage as only between a man and a woman.

Legal observers predict that the latest ruling for traditional marriage increases the likelihood that the U.S. Supreme Court will soon take up the issue and decide the future of marriage in America. "This is the circuit split that will almost surely produce a decision from the Supreme Court, and sooner rather than later," Dale Carpenter, a professor of constitutional law at the University of Minnesota, told the *New York Times*. "It's entirely possible that we could have oral arguments in coming months and a Supreme Court decision by next summer."

In his 42-page opinion, Judge Sutton wrote that a "dose of humility makes us hesitant to condemn as unconstitutionally irrational a view of marriage shared not long ago by every society in the world, shared by most, if not all, of our ancestors, and shared still today by a significant number of the States."

Continued Sutton: "No one here claims that the states' original definition of marriage was unconstitutional when enacted. The plaintiffs' claim is that the states have acted irrationally in standing by the traditional definition in the face of changing social mores." However, added Sutton, "how can we say that the voters acted irrationally for sticking with the seen benefits of thousands of years of adherence to the traditional definition of marriage in the face of one year of experience with a new definition of marriage?"

Sutton challenged the notion that marriage is based merely on the feelings two people have for one another, an argument that homosexual activists have used to justify the legalization of same-sex marriage. The definition of marriage embraced by homosexual activists, wrote Sutton, "does too much because it fails to account for the reality that no State in the country requires couples, whether gay or straight, to be in love." He added that such a definition "does too little because it fails to account for plural marriages, where there is no reason to think that three or four adults, whether gay, bisexual, or straight, lack the capacity to share love, affection, and commitment, or for that matter lack the capacity

to be capable (and more plentiful) parents to boot."

Continued Sutton: "If it is constitutionally irrational to stand by the man-woman definition of marriage, it must be constitutionally irrational to stand by the monogamous definition of marriage. [But] the predicament does not end there. No state is free of marriage policies that go too far in some directions and not far enough in others, making all of them vulnerable."

Sutton advised that the future of marriage must be determined by the people of the individual states, not by judges and courts. "When the courts do not let the people resolve new social issues like this one, they perpetuate the idea that the heroes in these change events are judges and lawyers," Sutton wrote. "Better in this instance, we think, to allow change through the customary political processes, in which the people, gay and straight alike, become the heroes of their own stories by meeting each other not as adversaries in a court system but as fellow citizens seeking to resolve a new social issue in a fair-minded way."

Judge Martha Craig Daughtrey, who provided the dissenting vote in the ruling, vehemently disagreed that the courts should not decide such issues for the people. "If we in the judiciary do not have the authority, and indeed the responsibility, to right fundamental wrongs left excused by a majority of the electorate," Daughtrey wrote in her 22-page dissent, "our whole intricate, constitutional system of checks and balances, as well as the oaths to which we swore, prove to be nothing but shams."

Pro-homosexual groups expressed their incredulity that a federal court would buck the recent trend and rule against same-sex marriage. Evan Wolfson of the pro-gay group Freedom to Marry said that the 6th Circuit Court's ruling was "out of step with the constitutional command as recognized by nearly every state and federal court in the past year, and out of step with the majority of the American people."

Similarly, Susan Sommer, director of constitutional litigation for the homosexual activist group Lambda Legal, said that she was "extremely disappointed for the families in these four states," adding that the decision "highlights the need for the U.S. Supreme Court to right this injustice."

And in a prepared statement the pro-gay-marriage group Equality Michigan lamented that the ruling means "many couples … will continue to be excluded from the protections and responsibilities that come with marriage."

On the flip side, conservative, pro-family leaders saw the ruling as a hopeful sign that courts — including, ultimately, the Supreme Court — would protect traditional marriage and families.

"The people of every state should remain free to affirm marriage as the union of a man and a woman in their laws," said Byron Babione of Alliance Defending Freedom, a key legal advocacy group defending traditional marriage. "As the Sixth Circuit rightly concluded, the Constitution does not demand that one irreversible view of marriage be judicially imposed on everyone."

Brian Brown of the National Organization for Marriage, another lead group defending marriage as only between a man and a woman, said that he had been waiting for a federal court to rule for traditional marriage, and welcomed it "not only as a tremendous victory, but as a common sense recognition that it is not for the federal courts to substitute their judgment about whether same-sex 'marriage' is a good idea or not, but to leave it to the people to make the decision about this fundamental institution."

As for the Supreme Court's inevitable ruling on same-sex marriage, liberal Justice Ruth Bader Ginsburg — who last year performed a homosexual wedding ceremony — suggested several weeks ago that a case like the one decided by the 6th Circuit Court could well spur the High Court to action. "So far, the

federal courts of appeals have answered the question the same way — holding unconstitutional the bans on same-sex marriage," Ginsburg told a Minnesota audience in September.

But referring to "a case now pending before the Court of Appeals for the Sixth Circuit," Ginsburg suggested that "if that court should disagree with the others, then there will be some urgency in the court taking the case. Sooner or later, yes, the question will come to the court."

Brian Brown said that he looked forward to the Supreme Court taking up the marriage issue, and challenged Ginsburg and the other justices to leave the decision of how marriage will be defined to the American people. "The justices of the Supreme Court were derelict in their duty when they refused to review the marriage cases previously before them," Brown said. "They now have no excuse. We call on the Supreme Court to stand for the proposition that men and women of good will across this land have the right under their constitution to preserve marriage in the law as it has always existed in reality, the union of one man and one woman."