Written by **Dave Bohon** on September 4, 2014

# First Federal Ruling Against Same-sex Marriage Since DOMA Repealed

For the first time since the U.S. Supreme Court overturned the federal Defense of Marriage Act (DOMA) in 2013, a federal judge has ruled against same-sex "marriage" and for the right of a state to define marriage as only between a man and a woman.

On September 3, U.S. District Judge Martin L.C. Feldman issued a 32-page ruling affirming Louisiana's voter-passed constitutional amendment protecting traditional marriage, in the process declaring that there is "simply no fundamental right, historically or traditionally, to same-sex marriage."

In his ruling in favor of Louisiana's 2004 amendment, passed by 78 percent of the state's voters, Feldman, a Reagan-era appointee, pointed out that same-sex marriage was "nonexistent and even inconceivable until very recently. The court is persuaded that a meaning of what is marriage that has endured in history for thousands of years, and prevails in a majority of states today, is not universally irrational on the constitutional grid."

Feldman wrote that the Louisiana case illustrated the conflict between "decisions reached by way of the democratic process" and "personal, genuine, and sincere lifestyle choices."

He noted that the state of Louisiana maintains "that marriage is a legitimate concern of state law and policy, that it may be rightly regulated because of what for centuries has been understood to be its role." By contrast, he wrote, the plaintiffs, who embrace same-sex marriage, argue that "if two people wish to enter into a bond of commitment and care and have that bond recognized by law as a marriage, they should be free to do so, and their choice should be recognized by law as a marriage; never mind the historic authority of the state or the democratic process. These are earnest and thoughtful disputes, but they may have become society's latest short fuse."

The *Los Angeles Times* reported that "Feldman's decision is important because it is the first [federal ruling] to buck the pro-gay-marriage trend, which has included at least two federal appeals courts upholding same-sex marriage in three states, as well as the decisions of more than 15 lower federal courts."

But Feldman's ruling is the second in two months for traditional marriage, following the decision in August by Tennessee State Judge Russell Simmons to uphold his state's marriage protection amendment. In his ruling Simmons cited the 1972 Supreme Court case *Baker v. Nelson*, which upheld a state's right to "establish its own laws on marriage."

However, reported LifeSiteNews.com, since the Supreme Court overturned a key part of the federal

DOMA statute, which defined marriage as between a man and a woman for purposes of federal business, "dozens of judges have struck down state constitutional marriage protection amendments." Feldman opined that those court rulings have been made by judges who "appear to have assumed the mantle of a legislative body."

By contrast, in his ruling Feldman said that the "State of Louisiana has a legitimate interest under a rational basis standard of review for addressing the meaning of marriage through the democratic process."

LifeSite reported that "despite allegations that [same-sex marriage] bans are motivated by hate, Judge Feldman said this case does not merit heightened scrutiny, in part because 'neither the Supreme Court nor the Fifth Circuit [Court of Appeals] has ever before defined sexual orientation as a protected class, despite opportunities to do so.'"

Feldman ruled that "in light of still-binding precedent, this court declines to fashion a new suspect class. To do so would distort precedent and demean the democratic process."

He also made it clear that his lonely decision in favor of traditional marriage is but one in a continuing legal battle. "It would no doubt be celebrated to be in the company of the near-unanimity of the many other federal courts that have spoken to this pressing issue, if this court were confident in the belief that those cases provide a correct guide," Feldman wrote. "Clearly, many other courts will have an opportunity to take up the issue of same-sex marriage; courts of appeals and, at some point, the U.S. Supreme Court. The decision of this court is but one studied decision among many."

Predictably, homosexual activists responded in anger over Feldman's refusal to follow other federal judges down the road to "marriage equality." Sarah Warbelow, a spokesperson for the pro-homosexual Human Rights Campaign, accused Feldman of putting up "a roadblock on a path constructed by twenty-one federal court rulings … that inevitably leads to nationwide marriage equality."

Similarly, Sarah Brady of the homosexual activist group Forum for Equality said in a statement that her group was "very disappointed in the ruling." She added, however that "we plan to move forward" with the aggressive campaign to force homosexual marriage on the nation. "Love is love no matter where you live, even in Louisiana," she said. "We look forward to continuing the fight and appealing."

Evan Wolfson of the pro-homosexual group Freedom to Marry complained that "we've won nearly all of the 40 state and federal marriage cases this year. Today's Louisiana loss is a reminder that we're not done. The loss is why couples should not have to fight state by state, case by case, year by year. It's time for the Supreme Court to rule nationwide."

As for the champions of marriage, they expressed their gratitude for the ruling in favor of traditional marriage, and predicted that similar decisions will happen in the days ahead. "This ruling confirms that the people of Louisiana — not the federal courts — have the … right to decide how marriage is defined in this state," said Gene Mills of the Louisiana Family Forum.

Tony Perkins of the Family Research Council, which has taken a lead role nationally in defending traditional marriage, called the ruling a particular victory for children, "each of whom need and desire a mom and dad, something our public policy should encourage."

Perkins also commended Feldman "for refraining from judicial activism and recognizing that Louisiana voters are free to uphold natural marriage in their state's public policy. He rightly declared that the courts "have no authority to unilaterally change the definition of our most fundamental social

institution."

Brian Brown of the National Organization for Marriage noted that Feldman's decision may reflect a change that is coming in how judges rule on the right of states to determine the future of marriage. "Here we see the house of cards collapsing that supported the myth that redefining marriage is inevitable," Brown said. "Overwhelmingly, voters have rejected redefining marriage, and we expect the U.S. Supreme Court to do so, as well."