Written by **Joe Wolverton, II, J.D.** on March 16, 2017

Arkansas Bill Would Nullify Supreme Court's Same-Sex "Marriage" Opinion

A bill introduced into the Arkansas state House of Representatives would restore the traditional definition as the law in the Natural State.

State Representative Stephen Meeks is the author of House Bill 2098, which reads, "Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void." Moreover, "It is the public policy of the State of Arkansas to recognize the marital union only of man and woman."

Meeks's measure enjoys the support of at least 19 co-sponsors (including one state senator) and, should it be enacted, the bill would block recognition of same-sex unions sanctioned in other states.

Several pseudo-constitutional experts have criticized the content of the bill, claiming that it violates the "Full Faith and Credit Clause" of Article IV, Section 1 of the U.S. Constitution, which reads:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

In this matter of fundamental constitutional importance, it is crucial to understand precisely what the Full Faith and Credit act was and was not intended to do.

First, as a matter of indisputable historical record, states have occasionally refused to acknowledge marriages legally entered into in other states. According to the Supreme Court's interpretation of the Full Faith and Credit Clause, states that have valid public policy exceptions to legal acts of other states do not have to recognize those acts.

Some argue that such exceptions would disrupt the smooth and unregulated movement of citizens from state to state without having to worry about whether or not they would have to re-marry if they moved from one state to another. This is an irrational fear for as the name of the qualification implies, the public policy exception is just that — an exception. The rule that a marriage entered into in one state would be valid in another would still apply, unless that marriage violated the declared public policy of the laws of the second state.

At various times in the history of our country states have refused to recognize marriages solemnized in sister states when those marriages violated community standards for reasons such as polygamy and consanguinity. Such refusals to legitimize all marriages entered into in other states have never, despite the fear-mongering of the homosexual lobby and its shills, restricted the free and frequent movement of Americans from one state to another.

There is an additional aspect of the Full Faith and Credit Clause that would protect states from being constitutionally forced to give legal effect to homosexual unions contracted in other states: the text of

the clause itself.

The exact wording of the Full Faith and Credit Clause requires that states give "full faith and credit" to the "public acts, records, and judicial proceedings of every other state."

Marriages, strictly speaking, are not judicial acts, they are licensed acts and as such they do not fall under the Full Faith and Credit umbrella, any more than a license to practice law in one state guarantees that same right in a neighboring state.

The Full Faith and Credit Clause, then, does not require one state to validate a same-sex unions entered into in another, but actually protects it from having to do so. All of this without the need of a constitutional amendment!

Understanding the Constitution, the Full Faith and Credit Clause, its intended purposes and limitations, removes the fear that the Full Faith and Credit Clause can be used legitimately as a tool for making homosexual "marriage" the law of the land. Such a use was never the intent of our Founding Fathers, and it violates two centuries of constitutional precedent and interpretation.

The Full Faith and Credit clause has generally worked smoothly and quietly and has not received the same level of judicial attention as more controversial provisions of the Constitution, such as the commerce clause, due process, equal protection, and the treaty-making power.

In a country whose climate is undeniably contrary to the Christian concept of the family, it will be equally undeniable that the Full Faith and Credit Clause will become the focus of more attention in the near future and indeed may, as the Commerce Clause before it, be twisted by a Supreme Court that habitually usurps power, legislates from the bench, and purposefully removes the fetters the Constitution places on its power.

If the Supreme Court takes this tack, it falls upon the Congress of the United States to exercise the authority given it in Article III of the Constitution to limit the jurisdiction of the courts to redefine marriage.

If history is any guide, however, Congress will once again fail to fulfill its constitutional duty and it will fall upon the states to stand as the ultimate barricade to "progress of the evil" of federal usurpation. Thus, Representative Meeks steps into the breach, fulfilling his constitutional duty.

Next, let's consider the argument forwarded by other enemies of the Meeks bill that it is *prima facie* void since it fails to recognize the "ruling" of the U.S. Supreme Court in *Obergefell v. Hodges*. Regardless of the reasoning of five judges and the deference it's given by the media and members of most state legislatures, lawmakers in Arkansas and her sister states are well within the boundaries of their retained authority to nullify Supreme Court attempts to define the terms of the contract we call the Constitution.

Our Founders understood this.

Thomas Jefferson wrote in 1819 that if a certain practice ever became status quo, our Constitution will have become a *felo de se* — a suicide pact. The practice he was warning about was judicial review — the idea that the courts have the final say on a law's meaning and that their determinations must constrain all three branches of government.

Undeniably, judicial review has become status quo.

Does this mean, then, that we as a country will commit suicide?

Jefferson explained the problem with judicial review, writing:

> For intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this [judicial review] opinion, to one of them alone, the right to prescribe rules for the government of the others, and to that one too, which is unelected by, and independent of the nation.… The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist, and shape into any form they please.

The author of the Declaration of Independence also pointed out, correctly: "Our judges are as honest as other men and not more so. They have with others the same passions for party, for power, and the privilege of their corps." Have we not seen this truth on full display the past week, with the Court repeatedly proving itself to be merely a rubber stamp for a radical leftist agenda?

Summing up the profound danger of judicial review in 1820, Jefferson minced no words in calling it "a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."

That oligarchy reigns.

Regarding the praise by "Progressives" of judicial review, it's appropriate to review the origin of this practice.

First, it's not in the Constitution. It was not passed by Congress, signed by a president, or voted on by the people. Rather, it was declared to be a power the Court should have in the 1803 *Marbury v. Madison* decision.

In other words, the Supreme Court gave the Supreme Court ultimate-arbiter power, and decade after decade, decision after decision, the Supreme Court has exalted itself into a de facto oligarchy.

The execution of such a law would undoubtedly pit Arkansas against the federal government, a fight where — for the last century or so — the fix is in. But it wasn't always this way. And the Constitution was certainly not intended to function in favor of the federal government.

States, as creators of the federal government, are the arbiters of the limits of the latter's power, and forcing them to accept the definition of "marriage" to include same-sex unions certainly falls outside those limits.

One way that states can continue simultaneously supporting the Constitution and their own sovereignty is by nullifying the federal court's extra-constitutional edict. The Arkansas bill would take that state along this constitutionally sound course.

What state Representative Meeks and his co-sponsors seem to understand is that all state legislators and other state officials (including attorneys general and governors) are duty-bound to refuse to enforce every act of the federal government that exceeds its constitutionally defined powers.

As James Madison explained in the Virginia Resolution of 1798:

> In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, 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.

Nullification recognizes that states retain the power to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

Finally, it is the duty of concerned Americans to hold the feet of Congress to the fire and seek out and elect men to state office committed to uphold the Constitution and preserve the moral bedrock upon which this country (and the whole of Western Civilization) is built — the family born of the union of one man and one woman.

Photo: Arkansas state house