Written by **Alex Newman** on February 10, 2015

Constitutional Crisis: Alabama Battles Feds to Protect Marriage

As federal courts engage in what Alabama Supreme Court Chief Justice Roy Moore (shown) described as "judicial tyranny" to "desecrate" marriage in violation of the state and U.S. Constitution, a constitutional showdown of historic proportions is currently underway in Alabama. At issue is whether federal courts have the constitutional authority to redefine the institution of marriage and impose their definition on unwilling states. Justice Moore insists they do not, and over the weekend issued an order prohibiting lower-court judges in Alabama from issuing "marriage" licenses to homosexual couples. A handful of probate judges in Alabama have defied Justice Moore's order, the state constitution, and the overwhelmingly expressed will of the people. However, most have refused to issue marriage licenses to homosexuals as the legal showdown plays out.

The battle in Alabama formally began last month when U.S. District Court Judge Callie Granade issued a ruling purporting to expand the definition of marriage to include same-sex couples. Shortly after the ruling, Justice Moore sent a letter to Alabama Governor Robert Bentley, a Republican, urging him and all state officials to uphold the state constitution, in which more than 80 percent of voters protected the biblical and historical definition of marriage as a "sacred covenant, solemnized between a man and a woman." In the powerful letter citing the U.S. and Alabama constitutions, the will of the people, the Founding Fathers, previous Alabama and U.S. Supreme Court rulings, and Bible Scripture, Moore noted that the federal judge's ruling aimed at "destruction" of the institution of marriage under "specious pretexts" was not valid.

Despite the clearly expressed will of voters and the U.S. Constitution's limitations on federal power — the 10th Amendment explicitly reserves all powers not delegated to Washington D.C. for the states or the people — dozens of state governments have already caved to lawless edicts on homosexual "marriage" from federal judges, at least for now. Alabama, though, which would become the 37th state to have a new definition of marriage imposed upon it, has offered firm resistance so far. Late on February 8, after the U.S. Supreme Court refused to intervene in Alabama's case and stay the lower-court judge's edict, Justice Moore reiterated his position that homosexual "marriage" licenses must not be issued in the state by any state official in violation of state law.

"Effectively immediately, no probate judge of the state of Alabama nor any agent or employee of any Alabama probate judge shall issue or recognize a marriage license that is inconsistent with Article 1,

Section 36.03, of the Alabama Constitution or [Paragraph] 30-1-19, Ala. Code 1975," stated Moore's order, which went out to all state judges on Sunday night. "Should any probate judge of this state fail to follow the Constitution and the statutes of Alabama as stated, it would be the responsibility of the chief executive officer of the state of Alabama, Gov. Robert Bentley, in whom the Constitution vests 'the supreme executive power of this state,' … to ensure the execution of the law." Any purported "marriage" between homosexuals "is invalid in this state," added Justice Moore.

According to blatantly biased news reports in the establishment press framing the protection of marriage as a "ban" on the "right" to homosexual marriage, probate judges in about two-thirds of the state's counties have so far refused to issue "marriage" licenses to same-sex couples. The governor, who originally stood firm and said he would protect marriage, voters, and the state constitution from the federal judge's assault, reiterated his disagreement with U.S. Judge Granade's ruling. However, he did not pledge to take action against state officials who defy the constitution and the will of voters. "We will follow the rule of law in Alabama, and allow the issue of same sex marriage to be worked out through the proper legal channels," he said in a statement, indicating that he would not take "any action" against probate judges either way.

Later this year, probably in the summer, the Supreme Court will issue a ruling that many experts expect will purport to impose a radical redefinition of marriage on all 50 states — especially because two justices with blatant and reportedly unlawful conflicts of interest on the issue have resisted growing grassroots calls for recusal in the case. While state courts are not obliged to comply with rulings made by federal district and appeals courts, the Supreme Court may be another matter. More than a few experts have urged states to nullify unconstitutional rulings by the Supreme Court on everything from abortion to a potential decision redefining marriage. However, with the battle lines only just being drawn, what may happen on the issue remains to be seen.

On February 9, the high court refused to stay Granade's decree purporting to overturn Alabama's constitution and the overwhelming will of Alabamans to protect traditional marriage. Two U.S. Supreme Court Justices, though, Antonin Scalia and Clarence Thomas, dissented, writing that "the court looks the other way as yet another federal district judge casts aside state laws without making any effort to preserve the status quo pending the court's resolution of a constitutional question it left open" in 2013. "This acquiescence may well be seen as a signal of the court's intended resolution of that question. This is not the proper way to discharge" the court's responsibilities, Thomas wrote, adding that he would have "shown the people of Alabama the respect they deserve" while the Supreme Court weighs in.

The pro-homosexual lobbying group Human Rights Campaign, which recently saw its founder arrested and charged for allegedly raping a child, was widely quoted lambasting Justice Moore and urging state officials to defy the law under the guise of the rule of law. "This is a pathetic, last-ditch attempt at judicial fiat by an Alabama Supreme Court justice — a man who should respect the rule of law rather than advance his personal beliefs," complained HRC legal director Sarah Warbelow in a statement urging probate judges to ignore Justice Moore, Alabama voters, and the state constitution by issuing marriage licenses to homosexual couples.

Senior Counsel John Eidsmoe with the Alabama-based Foundation for Moral Law, however, said Justice Moore is on solid legal ground. Among other evidence, he cited multiple Supreme Court decisions making clear that the decisions of lower federal courts do not bind state courts. In the 2013 case *Johnson v. Williams*, for example, the high court ruled that "the views of the federal courts of appeals do not bind the California Supreme Court when it decides a federal question." In a concurring opinion in

the 1993 case *Lockhart v. Fretwell*, meanwhile, Justice Thomas noted that "neither federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a [lower] federal court's interpretation."

Ironically, Eidsmoe also cited the U.S. Constitution's "Supremacy Clause," which states that the Constitution and constitutional federal laws supersede state law, to show that marriage is a question for states and not the federal courts. "Supremacy Clause Article 6 Section 2 means all of the Constitution is the supreme law of the land, including the Tenth Amendment, which reserves powers to the States," explained Eidsmoe. "Nothing in the Constitution delegates power over marriage to the federal government; therefore, authority over marriage is reserved to the States by the 10th Amendment which is the supreme law of the land."

Despite being popular in Alabama and legally correct, this is not the first time Justice Moore has come under attack from extremists for defying Washington, D.C., and usurpations of power by its court system. In 2000, the feds lawlessly ordered Moore to take down a Ten Commandments monument from the state's judicial building. He refused to comply with the decree, and so, in 2003, was removed from his post as chief justice on the high court. Outraged Alabama voters put him back on the job in 2012, sparking even more fury among federal supremacists and anti-Christian bigots. Extremist groups such as the Southern Poverty Law Center are once again taking aim at the justice over his support for the Constitution and the people of Alabama he is sworn to serve.

Still today, an overwhelming supermajority of Alabamans rejects changing the definition of marriage to include homosexuals. Justice Moore said that incest and polygamy could be next unless states put their foot down to protect real marriage. As the constitutional crisis surrounding the issue in Alabama continues to escalate, though, legal scholars who reject lawless federal court decrees purporting to overthrow state constitutions and the will of the people in defiance of the U.S. Constitution are developing strategies to fight back. If and when the Supreme Court attempts to redefine marriage nationwide in violation of the 10th Amendment, for example, more than a few experts and activists say it is time for states to dust off one powerful tool endorsed and used by the Founding Fathers that remains in states' arsenals: nullification of unconstitutional federal edicts in state capitals.

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