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Same-sex Marriage, States' Rights, and the Rule of Law

In the very near future, the U.S. Supreme Court is poised to release what could be a major landmark ruling on same-sex marriage. But it may be much more than that. The ruling may also address key questions of constitutional interpretation, state vs. federal authority, and the meaning of the term "rule of law."

The rule of law! A federal judge invokes the rule of law when she strikes down a provision of the Alabama Constitution. State Supreme Court Justices invoke the rule of law when they claim the federal judge's ruling is contrary to a higher law, the Constitution.

So what does the rule of law really mean?

The Rule of Law in History

Eight centuries ago in 1215 AD, the Norman King John tried to rule England as an absolute monarch and he claimed his command was the rule of law. But the leading church official in England, Archbishop Stephen Langton, disagreed. He gathered the barons, bishops, and knights of England, shared with them the Charter of Liberties signed by King Henry I (1100-1135 AD), and explained that the rule of law means the king rules with authority granted by God, but subject to the limitations of God's Law. Either by himself or with the help of others, Archbishop Langton drafted the Magna Carta, and on June 15, 1215 they met King John at Runnymeade and compelled him to sign the charter or be removed from office. John signed, and reluctantly submitted to this act of interposition.

Four centuries later, in 1649, King Charles I tried to rule England as an absolute monarch, claiming that the "divine right of kings" meant that his royal decrees were the Rule of Law and that those who resisted his rule were guilty of treason.

But the Puritan-led Parliament disagreed. They insisted that God had given the people authority to rule, that the members of Parliament were the people's elected representatives, and that when the King made war upon the Parliament, he was guilty of treason. Again, both sides claimed to represent the Rule of Law.

And in 1776, King George III tried to subjugate the American colonies to England's ironclad rule. In his view, the Rule of Law meant obedience to King of England.

But the chosen representatives of the people of the 13 colonies interposed, stating in the Declaration of Independence that the colonies are entitled to "the separate and equal station to which the Laws of Nature and of Nature's God entitle them," itemized their grievance against the King and his ministers, and declared that "A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people."

Again, both claimed to represent the rule of law. The King said the rule of law is the King's command. The Continental Congress said the rule of law must be that which conforms to the "Laws of Nature and of Nature's God."

So we see that in many cases people on opposite sides of an issue both invoke the "rule of law." So what is the rule of law? Is it simply a phrase people use to justify their own positions?

Certainly respect for authority is part of the rule of law. But that authority must be in submission to higher authority. If we follow a leader who is disobedient to higher authority, we are complicit in that leader's disobedience. In the United States of America, the highest human authority is the Constitution, but the highest Authority of all is God.

The Rule of Law in Crisis Today

Today we face a similar crisis. Since 2013, over 20 federal judges have struck down state laws prohibiting same-sex marriage. And the states' response? Many of them filed appeals and motions to stay the ruling, but other than that, they sat back and stoically accepted what they considered to be inevitable.

But then the issue came to Alabama.

On January 23, 2015, the Hon. Callie Granade, U.S. District Court Judge for the Southern District of Alabama, ruled in the case of *Searcy v. Strange* that Alabama's Sanctity of Marriage Amendment, approved by 81 percent of Alabama voters in 2006, violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment and is therefore invalid. Shortly thereafter, Alabama Supreme Court Chief Justice Roy Moore advised Alabama Governor Robert Bentley that Judge Granade's ruling was not binding on the probate judges of Alabama.

And then, unlike the other state courts, the Alabama Supreme Court entered the fray. On March 3, 2015, the Alabama Supreme Court handed down a ruling in Case No. 1140460, *Ex parte State of Alabama ex. rel. Alabama Policy Institute, Alabama Citizens Action Program, and John E. Enslen, in his official capacity as Judge of Probate for Elmore County*. The Court issued a writ of mandamus directing the probate judges of Alabama to obey the provision of the Alabama Constitution that forbids same-sex marriage and to refrain from issuing marriage licenses to same-sex couples or performing same-sex marriages. The Court stated concerning the order of Judge Granade,

> Although decisions of state courts on federal questions are ultimately subject to review by the United States Supreme Court, 28 U.S.C. § 1257(a), as are decisions of federal courts, neither "coordinate" system reviews the decisions of the other. As a result, state courts may interpret the United States Constitution independently from, and even contrary to, federal courts.... That is, a lower federal court, which has no appellate authority over any state court judge acting in a judicial capacity, has no authority or jurisdiction over a state court's rulings as to cases before that state court judge acting in his or her judicial capacity, including as to questions of law. (p. 72)

Six justices joined in this per curiam ruling, another concurred separately, and one dissented on jurisdictional grounds. Chief Justice Moore recused himself from the case.

This ruling, like Chief Justice Moore's letter that preceded it, produced howls of outrage — Alabama has no respect for the rule of law! One writer quipped that the Supremacy Clause (Article VI, Section 2) must be deleted from Alabama versions of the U.S. Constitution.

Do Federal Court Decisions Constitute the Rule of Law?

But the plain fact is, the Chief Justice and the Alabama Supreme Court are right. Decisions of lower federal courts are not binding on state courts and have only such authority as the force of their arguments may command.

This is not just my opinion, not just Chief Justice Moore's opinion, not just the Alabama Supreme Court's opinion. The U.S. Supreme Court has stated emphatically that state courts are not bound by lower federal court decisions. Consider *Johnson v. Williams*, 568 U.S. ___ (2013), in which the Supreme Court addressed a difference of opinion between the California Supreme Court and the Ninth Circuit: Justice Alito wrote that "the views of the federal courts of appeals do not bind the California Supreme Court when it decides a federal constitutional question, and disagreeing with the lower federal courts is not the same as ignoring federal law." Seven other Justices joined in this opinion by Justice Alito; Justice Scalia concurred on other grounds.

Consider *Camreta v. Greene*, 563 U.S. ___ (2011), n. 7, in which Justice Kagan writing for the majority quoted 18 J. Moore et al, *Moore's Federal Practice* sec. 134.02[1][d], p. 134-26 (3rd. ed. 2011): "'A decision of a federal district court judge is not binding precedent in either a different judicial district, in the same judicial district, or even upon the same judge in a different case." 18 J. Moore et al. Consider *Asarco Inc. v. Kadish*, 490 U.S. 605, 617 (1989): "[State courts] possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law." Or *Lockhart v. Fretwell*, 506 U.S. 364, 375-76 (1993) (Thomas, J., concurring: "In our federal system, a state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located." Or *Steffel v. Thompson*, 415 U.S. 452, 482 n.3 (1974) (Rehnquist, J., concurring), noting that a state court "would not be compelled to follow" a lower federal court decision.

Or consider the Seventh Circuit's ruling in *United States ex rel. Lawrence v. Woods*, 432 F.2d 1072, 1075 (7th Cir. 1970) (quoting *State v. Coleman*, 46 N.J. 16, 36, 214 P.2d 393, 403 (1965)): "'In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court.'"

Or consider the previous holdings of the Alabama Supreme Court, as cited in *Ex parte State of Alabama* above:

> *Dolgencorp, Inc. v. Taylor*, 28 So. 3d 737, 744 n.5 (Ala. 2009) (noting that "United States district court decisions are not controlling authority in this Court"); *Ex parte Hale*, 6 So. 3d 452, 458 n. 5 (Ala. 2008), as modified on denial of reh'g ("[W]e are not bound by the decisions of the Eleventh Circuit."); *Ex parte Johnson*, 993 So. 2d 875, 886 (Ala. 2008) ("This Court is not bound by decisions of the United States Courts of Appeals or the United States District Courts…."); *Buist v. Time Domain Corp.*, 926 So. 2d 290, 297 (Ala. 2005) ("United States district court cases … can serve only as persuasive authority."); *Amerada Hess Corp. v. Owens-Corning Fiberglass Corp.*, 627 So. 2d 367, 373 n.1 (Ala. 1993) ("This Court is not bound by decisions of lower federal courts."); *Preferred Risk Mut. Ins. Co. v. Ryan*, 589 So. 2d 165, 167 n.2 (Ala. 1991) ("Decisions of federal courts other than the United States Supreme Court, though persuasive, are not binding authority on this Court.").

In 2004 The Writing Center at Georgetown University Law Center published an article entitled *Which Court Is Binding? Mandatory vs. Persuasive Cases*. The article states in part:

> First, higher courts bind lower courts within their particular state or circuit.… Second, federal

courts usually bind only other federal courts, not state courts.... [See footnote No. [1 below.]]

At the end of the article is a chart to help the student understand what authority is binding in state or federal cases, depending on what court you are in and whether you have a state or federal issue. Under "Federal issue in state trial court," "Federal issue in state appeals court," and "Federal issue in state supreme court," the chart lists as "Binding Authority" only the U.S. Supreme Court. All federal district courts, all federal circuit courts, and state courts are listed as only "Persuasive Authority." (2)

Barbara Bintliff, professor of law and director of the Tarlton Law Library and the Jamail Center for Legal Research at the University of Texas, wrote in *Mandatory v. Persuasive Cases* that "Federal courts of appeals decisions are not binding on state courts" and "District court decisions are not binding on state courts." (3)

In case more authority is needed, I could cite Dr. John Eastman, law professor at Chapman University: "Decisions of the lower federal courts — what the Constitution calls 'inferior courts' — are not binding on the state courts. If the lower federal courts in a state interpret the Constitution in a way that conflicts with the interpretation adopted by the state courts, neither decision has binding effect on the other." (4)

And I could go on and on, but I think I've made my point. (5)

However, there was an opposite but similar fact pattern in Louisiana. On September 3, 2014, U.S. District Court Judge for the Eastern District of Louisiana Martin Feldman held in *Robicheaux v. Caldwell*, 2 F.Supp.3d 910 (2014), that Louisiana's prohibition against same-sex marriage does not violate the U.S. Constitution and is therefore valid. Just 19 days later, in *Costanza v. Caldwell*, 151 So.3d 612(2014), Louisiana 15th Judicial Circuit Judge Edward Rubin disregarded the federal *Robicheaux* ruling and held that the Louisiana same-sex marriage prohibition violates the Fourteenth Amendment to the U.S. Constitution.

If you haven't heard of these Louisiana cases, it's no wonder; the mainstream media largely ignored them. But where were the howls of outrage when a liberal Louisiana state judge refused to follow a conservative federal judge? Is it just my imagination, or does it appear that this selective indignation is reserved for conservative state judges who refuse to follow liberal federal judges?

So far we have limited our discussion to lower federal courts. What about the U.S. Supreme Court?

The Supreme Court's alleged power of judicial review (the authority to invalidate acts of Congress if they are contrary to the Constitution) is not expressly stated in the Constitution, but in *Marbury v. Madison*, 5 U.S. 137 (1803), Chief Justice John Marshall wrote that the power is implied from the Court's power to hear "Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties...." Marshall said of this provision, "*It is emphatically the* province and *duty of the judicial department* to say what the law is."

Please note, however, that the Chief Justice said interpreting the law is *emphatically* the province of the Court. He did not say it is *exclusively* the province of the Court. The other branches of government, and perhaps other levels of government as well, also have a role in constitutional interpretation.

President Andrew Jackson recognized this. When Congress renewed the national bank in 1832, President Jackson vetoed the legislation on the ground that it was unconstitutional, even though the Supreme Court had upheld the constitutionality of the bank in *McCulloch v. Maryland*, 17 U.S. 316 (1819). As Jackson explained in his veto message,

> It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States, the expressions of legislative, judicial, and executive opinions against the bank have been probably to those in its favor as 4 to 1. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me.
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> If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

The courts and legal academia have ignored Jackson's message, but it has considerable merit. In *The Federalist*, No. 78, Alexander Hamilton described the judiciary as the "least dangerous" branch of government, because the legislature exercises will, the executive exercises force, but the judiciary exercises only judgment. But if the Court can strike down acts of Congress or actions of the President, then it is no longer the least dangerous branch but rather the most dangerous branch.

And if the Court's power to interpret the Constitution is to be shared with the other two branches of the federal government, perhaps it is to be shared with other levels of government as well.

Human Rights — From Government, or From God?

The Constitution must be read hand in hand with the Declaration, which proclaims that we are entitled to be an independent nation by "the Laws of Nature and of Nature's God." In a February 12, 2015 CNN interview with host Chris Cuomo, Chief Justice Moore stated that our rights come from a Higher Source than man; our rights come from God. Cuomo responded condescendingly, "Our laws do not come from God, and you know that. They come from man.… Our rights do not come from God."

Thomas Jefferson didn't know that. He declared that "the God who gave us life gave us liberty at the same time. Can the liberties of a nation be secure when we have removed their only firm basis, a conviction that those liberties come from God?" On another occasion he wrote, "I tremble for my country when I reflect that God is just, and that He will not stay His justice forever."

Alexander Hamilton didn't know that. He affirmed, "The sacred rights of mankind are not to be

rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole *volume* of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power."

Samuel Adams, often called the Father of the American Revolution, didn't know that. He proclaimed that "The rights of the colonists as Christians … may be best understood by reading and carefully studying the institutes of the great Lawgiver and Head of the Christian Church which are to be found clearly written and promulgated in the New Testament."

And the signers of Declaration of Independence didn't know that. With one voice they affirmed that "All men are created equal," that they are "endowed by their Creator with certain unalienable rights," and that "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

The Supremacy Clause and the Rule of Law

But some will argue that the Supremacy Clause (Article VI, Section 2) is the federal government's trump card that enables the federal government to always triumph over the states. The Supremacy Clause reads:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

So what is the "supreme Law of the Land"?

• First, the Constitution.

• Second, "the Laws of the United States which shall be made in Pursuance thereof." And what does "thereof" refer back to? Obviously, the Constitution, because through the Constitution the people have delegated to Congress the power to make certain laws, and the Constitution also sets for the procedures by which these laws are enacted. Federal laws are the "supreme Law of the Land" only to the extent that they are authorized by the Constitution.

• Third, "all Treaties made, or which shall be made, under the Authority of the United States." Note the language, "under the Authority of the United States," not under the authority of the Constitution. Some have argued that this means treaties are superior to the Constitution, but in *Reid v. Covert*, 354 U.S. 1 (1957), the Supreme Court rejected this position. The probable reason the Framers used the language "under the Authority of the United States" is that they wanted to recognize the validity of treaties made before the Constitution was adopted.

But what part of the Constitution is the "supreme Law of the Land"? The obvious answer is, all of it. And that includes amendments, because Article V provides that amendments when ratified "shall be valid to all Intents and Purposes, as Part of this Constitution." The supreme law of the land therefore includes the Tenth Amendment, which states,

> The powers not delegated to the United States [federal government] by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

We therefore ask, Does any provision of the Constitution delegate power over marriage to the federal government? We can find none.

Does any provision of the Constitution prohibit the states from regulating marriage? Again, we can find none.

And so, because nothing in the Constitution delegates power over marriage to the federal government, and nothing in the Constitution prohibits the states from exercising this power, therefore, according to the Tenth Amendment, that power is reserved to the states or to the people, and that is the supreme law of the land.

Same-sex Marriage — Inevitable?

The U.S. Supreme Court is expected to decide a same-sex marriage case out of the Sixth Circuit by June 2015. I don't pretend to know what the Court will decide, but I don't think it is inevitable that the Court will impose same-sex marriage on the entire nation. Four Justices (Chief Justice Roberts and Justices Scalia, Thomas, and Alito) are thought to support traditional marriage laws, and four Justices (Justices Ginsberg, Breyer, Sotomayor, and Kagan) are thought to oppose them. (6) As in many other cases, Justice Kennedy is expected to cast the deciding vote. But Kennedy's language in *United States v. Windsor*, 123 S.Ct. 2675, 2691 (2013), suggests that he considers marriage laws to be a state matter: "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States." This suggests that regardless of what Justice Kennedy personally believes about same-sex marriage, he thinks the matter should be decided by the states, not by the federal courts.

Nor is same-sex marriage sweeping the entire world. While speaking for Advocates International's Asia Conference in Indonesia November 2014, I learned that not a single country in Asia has adopted same-sex marriage, not a single Arab nation, only one African nation (South Africa), about half-and-half among the nations of Central and South America, most of Western Europe but little of Eastern Europe, New Zealand but not Australia, have adopted same-sex marriage. It seems the drive for same-sex marriage is coming out of Western Europe and North America.

In the United States today, same-sex marriage is legal in roughly thirty-five states (I say "roughly" because in several states the status is not clear because of court appeals.). But in the majority of these states, same-sex marriage has been decreed by unelected federal judges rather than adopted by state legislatures or popular referenda. I question whether anyone, including any governmental agency, has the authority redefine an institute that God has established. But if the American people are moving toward full acceptance of same-sex marriage, at the very least that revolution should come from the bottom up, through the elected voices of the people at the local, state, and federal levels. It should not be imposed upon them from the top by the federal judiciary, especially in the absence of a clear constitutional provision requiring it.

Tolerance and Intolerance

If we stand for traditional marriage, some will call us mean-spirited, bigoted, and judgmental. Some might even say that is contrary to the Christian way of loving and forgiving others. But consider the woman taken in adultery (John 8:1-11). After Jesus dispersed the lynch-mob, He asked the woman, "Woman, where now are those thy accusers? hath no man condemned thee?" She answered, "No man, Lord." He then said, "Neither do I condemn thee; go, and sin no more."

Jesus loved and forgave this woman. He loved her so much that He died on a cross for her sins and for ours. But He still called her actions sin. He didn't say, "Go, and follow your own alternate lifestyle," or "Go, and do whatever you want." He said, "Go, and sin no more." Jesus didn't hesitate to call her

actions sinful; if they weren't sinful He wouldn't have died for them. He loves because love is one of His attributes; He forgives because our sin is paid for by the cross. But He does not compromise the divine standards of morality; sin is still sin, and He does not hesitate to say so.

Some try to draw a parallel between defenders of natural marriage and defenders of the bans on interracial marriage were struck down by the Supreme Court in *Loving v. Virginia*, 388 U.S. 1 (1967). But even at that time, no one denied that an interracial marriage was a marriage; it was simply an illegal form of marriage. By contrast, a union of two persons of the same gender is outside the very definition of marriage.

To make a point, Abraham Lincoln once asked a man, "How many legs does a dog have?" "Four" was the answer. "Now, if we call the tail a leg, then how many legs does a dog have." "Well, then he'd have five." "No," Lincoln answered, "he would still have four. Just calling a tail a leg doesn't make it a leg." (7)

Calling a same-sex union a "marriage" is like calling a tail a leg, or calling a rottweiler a horse, or calling a cornstalk a tree. It is an attempt to distort plain reality.

Certainly there are issues concerning tolerance that need to be worked out, but giving a same-sex union the hallowed status of marriage ignores the basic nature of marriage itself. And the goal of many gay rights activists is much more than just the legalization of same-sex behavior. Rather, their goal is force everyone to accept homosexuality as legitimate and good, regardless of any moral or religious convictions some may have to the contrary.

It is not tolerance when public school children are taught that same-sex unions and behavior are right and good, even though their parents' religious convictions may say otherwise.

It is not tolerance when Elane Huguenin of New Mexico was forced to pay huge attorney fees because she declined on religious conviction to take photographs at a same-sex wedding.

It is not tolerance when Baronelle Stutzman is sued by the Washington State Attorney General for declining on religious conviction to prepare a floral display for a same-sex wedding.

It is not tolerance when Blaine Adamson of Kentucky is sued for declining to produce T-shirts with a gay-pride message.

It is not tolerance when Robert & Cynthia Gifford of New York are fined for refusing to let a gay couple use their farm for a same-sex wedding.

It is not tolerance when Michael Swift begins his essay "The Homosexual Manifesto" in 1987 with the words,

> We shall sodomize your sons, emblems of your feeble masculinity, of your shallow dreams and vulgar lies. We shall seduce them in your schools, in your dormitories, in your gymnasiums in your seminaries, in your church groups, in your movie theater bathrooms, in your houses of Congress, wherever men meet with men. Your sons shall become our minions and do our bidding. They shall be recast in our image. [8]

Intolerance is found on both sides of this issue.

Same-sex Marriage and Civilization

Today we tend to think that what two or more people do with their personal lives affects no one but themselves. But transforming the institution of marriage might have long-range consequences for the

nation.

Before taking the plunge and forcing same-sex marriage upon the entire nation, the courts consider words of warning from the not-too-distant past. Dr. J.D. Unwin (1895-1936), ethnologist and social anthropologist at Oxford University and Cambridge University, undertook an exhaustive study of eighty primitive tribes and six advanced civilization through 5,000 years of history. Those he studied included island people of Melanesia and Polynesia, tribes in Africa and Central America, Paleo-Siberians, Native Americans of the Northwest, the Plains, the Great Lakes, the South, and the Southeast, as well as the Babylonians, the Athenians, the Romans, the Anglo-Saxons, and the modern English. In 1934, he published his findings in a 619-page book entitled *Sex and Culture*. (9) Dr. Unwin concluded that the most successful societies, those which advanced most rapidly and retained their advanced state, were those which restrained sexual energy by heterosexual monogamous marriage. He wrote that "if the male as well as the female is compelled to confine himself to one sexual partner, the society begins to display some expansive energy. It bursts over the boundaries of its habitat, explores new countries, and conquers less energetic peoples." (10) He also noted, however, that "We must remember that no change in the sexual opportunity of a society produces its full effect until the third generation." (11)

Similarly, Dr. Carle E. Zimmerman, Professor of Sociology at Harvard University, studied various types of family structures throughout history: the trustee family in which the marital union is considered sacred, immortal, and absolute; the domestic family in which the marital union is strong but retains more freedom; and the atomistic family in which marriage is merely a contract for the parties' mutual benefit. Dr. Zimmerman compared societies of the ancient world, the medieval period, up to the modern period, and published his findings in *Family and Civilization*. (12) He concluded that there is a general regression from the trustee family to the domestic family to the atomistic family structure, and that when the atomistic family structure becomes prevalent, social cohesion suffers.

Such words of warning by eminent scholars should not be disregarded. Time must be given to see if their forecasts are accurate.

And a more recent study has focused on the more immediate consequences of same-sex unions. Dr. Paul Cameron, Ph.D., Kay Proctor, M.Ed., and Dr. Kirk Cameron, Ph.D. have formed the Family Research Institute (FRI). Working through the FRI, Drs. Cameron have conducted extensive scientific research on homosexuality and its effects on the individual, the family, and society. Drs. Cameron compiled data from nearly 20 scholarly sources each with its own focus ranging from academic success to sexual abuse. (13)

They concluded that the homosexual lifestyle has several very negative consequences. For example: the statistics of that case study show that homosexual parents, as compared to straight parents, were five times more likely to have harmed their children through neglect, seduction, emotional distress, or instability. (14)

The Cameron study is unique in that it represents an exhaustive effort to research appeals cases involving child custody because this data represents "the only study of homosexual parenting indexing testimony under oath, subject to the winnowing effects of cross-examination, opposition by an informed opponent, and supervision by a judge." (15) Drawing from perhaps the most legitimate pool of data on this particular issue, the cases studied by Drs. Cameron showed that "[h]omosexuals were held responsible for 111 (97%) of the 115 listed harms to children." (16)

Startling as they may be, the Camerons' conclusions are well-founded. Addressing the academic impact

of same-sex parenting, Drs. Cameron cite a study based on "large census samples from both the U.S. and Canada" which reported that children raised by homosexual parents were about 35 percent less likely to graduate from high school on time. (17) To further dispel any argument of bias, the Cameron case study also incorporated reports by parents themselves. According to the U.S. National Health Interview Survey (NHIS), children of same-sex parents "had poorer emotional health (17.4% [compared to] 7.4%) … had more learning problems … 19.3 [compared to] 10.2…[and received more] therapy or special education 17.8 [compared to] 10.4." (18) This is based on data collected from homosexual parents themselves. (19)

This certainly does not mean that every homosexual is a poor parent. But it does suggest that children brought up in homosexual families are much more likely to face serious mental, physical, and emotional challenges.

The Cameron study also suggests that the homosexual lifestyle is unhealthy and not conducive to longevity. Drs. Cameron and Cameron compiled 1,388 consecutive obituaries of homosexuals who had at least one child, published in homosexual publications in the Washington, D.C., area over two periods, 1988-1992 and 1993-1994:

> The gay parents ranged in age at death from 30 to 69 with a median age of 48, while the lesbian parents ranged in age at death from 32 to 74 with a median of 44.5. A similar compilation of 1,552 homosexual obituaries from 2000-2014 in San Francisco after widespread introduction of HIV antiretroviral therapy (ART) yielded parents listed among 6% of 1,461 gay obituaries and 20% of 91 lesbian obituaries. Gay fathers ranged in age at death from 36 to 90 with median age of 60, while lesbian mothers ranged in age at death from 47 to 86 with median age of 70. [20]

In contrast, Drs. Cameron say, as of 2010, the Centers for Disease Control (CDC) estimated mean life expectancy at 76.2 years for men in general and 81 for women in general, and married men and women live even longer on the average.

Amicus presents these statistics, not out of any animus toward homosexuals, but out of concern that there may be unhealthy aspects of the homosexual lifestyle, both for adults and for their children, and consequently the states should be hesitant about sanctioning same-sex unions by giving them the official status of marriage.

And in the face of such statistics, *Amicus* suggests that the Court be cautious about redefining marriage for the nation, because the interests of children and adults will be directly affected.

And Where Will It End?

The full legal fall-out from decisions legalizing same-sex marriage cannot be fully measured. On August 27, 2014 U.S. District Judge Clark Waddoups finalized an earlier ruling declaring a portion of Utah's polygamy ban — a ban that Congress had required Utah to include in its state constitution as a pre-condition for statehood — unconstitutional. (21) It is of course too early to determine the final outcome of this case, but if the rationale for recognizing same-sex marriage as a constitutional right is accepted, a ban on polygamy (or other unions) may be difficult to defend.

And then what? Incestuous marriages between brother and sister (or brother and brother), or parent and child? Group marriages of a golf foursome, or a hockey team, or an army platoon? A person marrying a horse, or a parrot, or a caterpillar? (22)

All of this has the effect of cheapening marriage, reducing it from the holy institution God ordained and

degrading it into a mere contract for personal advantage, pleasure, convenience, or amusement.

Constitutionalism and States' Rights

Two issues of overwhelming importance converge upon us today. One is the rightness or wrongness of homosexual conduct and same-sex marriage. Another is the meaning of the Constitution; whether it is to be construed strictly according to the views of its Framers, or whether a new generation of unelected federal judges are free to read new meanings into this evolving or "Living" Constitution. And a third concerns federal versus state power.

States' rights is not just a slogan used by those who resist "progress," nor is it merely an academic division of government power. The Framers feared the all-too-human tendency to abuse and concentrate power, and they devised a Constitution that would guard against this danger. This Constitution delegated only certain limited powers to the federal government, with others reserved to the states and to the people. The Framers believed that the tension between federal power and states rights would curb the tendency of either toward abuse of power, and would thereby help to preserve freedom.

Resist or Resign?

To "interpose" means to stand between or place between. In the political sense, interposition is the duty of lesser magistrates to stand on behalf of the people under their care, and place themselves between those people and the tyranny of the higher magistrates who are acting like tyrants, and compel those higher magistrates to respect the rights of the people. That is precisely what the Alabama Supreme Court has done, placing itself between the unconstitutional order of an unelected federal judge and the people of Alabama.

Some have been suggested that if Chief Justice Moore wants to oppose same-sex marriage, he should resign his office and do so as a private citizen. I say that if he were to do so, he would betray the people of Alabama who elected him to support and defend the U.S. Constitution, the Alabama Constitution, and the rights of the people of Alabama. It is his duty, and that of all elected and appointed officials of the State of Alabama, to resist this unwarranted attempt by the federal judiciary to dictate marriage policy to this great state.

In 1215, King John said all must obey him. Archbishop Stephen Langton, together with the barons and the bishops, could have resigned in protest, but instead they interposed, and compelled him to sign the Magna Carta. I'm very thankful that they did.

n 1649, King Charles I claimed to rule by divine right. The Puritan members of Parliament could have resigned in protest, but instead they interposed on behalf of the people of England. I'm very thankful that they did.

In 1776 King George III said the American colonists must submit to his authority. The Continental Congress could have resigned in protest, but instead they interposed and declared independence. I'm very thankful that they did.

Chief Justice Moore has the duty under U.S. Constitution, under the Alabama Constitution, under the Law of God, and under authority granted to him by people of Alabama, to resist this unconstitutional and tyrannical federal attempt to usurp authority over Alabama's marriage laws. I thank God that he has done so, and I call on the governor, other state officials, legislators, probate judges, and all others, to join with him in defending the rule of law.

May we remember the Alabama State Motto: *Audemus Jura Nostra Defendere* (We Dare Defend Our Rights) — Unless a federal judge says we can't? Unless it might cost us a federal subsidy? No, We Dare Defend Our Rights, because those rights are the priceless gift of God, and they are the very essence of the rule of law.

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Footnotes:

(1) *Which Court Is Binding? Mandatory vs. Persuasive Case*, The Writing Center at Georgetown University Law Center (2004) p. 4.

(2) *Id*. p. 5. "Persuasive authority" is authority that a court is not required to follow but may decide to follow because the reasoning and evidence of that authority is (in the mind of the trial court) convincing.

(3) Barbara Bintliff, *Mandatory v. Persuasive Cases*, West Group (2001), http://faculty.law.lsu.edu/toddbruno/mandatory_v_persuasive.htm

(4) John Eastman, *Federal Court Precedent: A Defense of Judge Roy Moore and the Alabama Supreme Court*, March 16, 2015, The Witherspoon Institute, Public Discourse, www.thepublicdiscourse.com/2015/03/14627

(5) Please pardon me if I have engaged in "citational overkill" here. This wrong notion that federal courts may never be challenged is believed by many and needs to be thoroughly disproven.

(6) Two of these Justices, Ginsberg and Kagan, have personally performed same-sex marriage ceremonies, This clearly demonstrates a bias, and professional ethics would suggest that they should recuse themselves from this case.

(7) *Reminiscences of Abraham Lincoln by Distinguished Men of His Time*, ed. Allen Thorndyke Rice, (New York: Harper & Brothers Publishers, 1909). Some accounts say Lincoln used the example of calf rather than a dog.

(8) Michael Swift, *The Homosexual Manifesto*, Gay Community News 15-21 February 1987. Some say Swift wrote the Manifesto as a satire. I therefore urge readers to read the Manifesto (google Swift, The Homosexual Manifesto) and judge for yourselves. For an excellent discussion of the ways gay activists show intolerance toward those who disagree with them, please read *The Intolerance of Tolerance*, D.A. Carson (Eerdman 2012).

(9) J.D. Unwin, *Sex and Culture* (London: Oxford University Press 1934).

(10) *Id*. 428.

(11) *Id*. 429.

(12) Carle C. Zimmerman, *Family and Civilization* (New York: Harper 1947; Wilmington: ISI Books, 2007).

(13) Cameron, Paul Ph. D, *Gay Marriage Against Children's Interests*, 5, Family Research Institute (2015).

(14) Cameron, Paul Ph. D, *Gay Marriage Against Children's Interests*, 1, Family Research Institute (2015).

(15) *Id* at 1 (quoting Cameron & Cameron 1998; 1999; Cameron & Harris, 2003).**look to citation page

(16) *Id* (classifying "harms" as "[parental] neglect, seduction, emotional distress, or instability").

(17) See *id*. (citing Allen D (2013) High school graduation rates among children of same-sex households. Rev econ Household vol. 11 issue (4): 635-58 (explain that Children living with gay and lesbian families in 2006 were about 65% as likely to graduate compared to children living in opposite sex marriage families.")

(18) See Cameron, supra at 4 (citing Sullins DP, *Emotional problems among children with same-sex parents: difference by definition*, British Journal of Education, Society & Behavioral Science (2015)).

(19) Id.

(20) Cameron p. 2.

(21) *Brown et al. v. Herbert et. al*, Case 2:11-cv-00652-CW Memorandum Decision and Judgment filed 08/27/14.

(22) Before you say this is absurd, read *Woman who is celebrating a decade of marriage to her two pet CATS says she has never been happier (and has no plans to find a human husband)*, Ruth Styles for Mailonline, Daily Mail 6 January 2015, http://dailymail.co.uk/. And as though this weren't enough, read *Rock solid! The Australian woman who married a BRIDGE celebrates her one-year anniversary*, Lillian Radulova, Daily Mail 11 July 2014, http://www.dailymail.co.uk/.