Written by **Joe Wolverton, II, J.D.** on December 14, 2015

South Carolina Bill Blocks Enforcement of Same-Sex Marriage Ruling

A pair of South Carolina state representatives have filed a bill to stop application of the Supreme Court's same-sex marriage ruling at the state borders.

State Representatives Bill Chumley and Mike Burns will co-sponsor House Bill 4513 when the state legislature reconvenes in 2016.

In an effort to protect the traditional definition of marriage within South Carolina, the bill states that "It is the policy of the State of South Carolina to defend natural marriage as recognized by the people of this State in the Constitution and laws of the State of South Carolina."

Additionally, the proposal explicitly nullifies the recent ruling by the Supreme Court wherein marriage between two people of the same gender was declared a constitutionally protected right.

"Natural marriage between one man and one woman as recognized by the people of this State remains the law in South Carolina, regardless of any court decision to the contrary. A court decision purporting to strike down natural marriage, including *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015), is unauthoritative, void, and of no effect," the legislation reads.

And, in an apparent reaction to the case of the Rowan County, Kentucky, clerk who was arrested for refusing to issue a marriage license to a same-sex couple, the proposed South Carolina statute would protect the person and property of "any government official or individual who does not comply with any unlawful court order regarding natural marriage within South Carolina."

The execution of such a law would undoubtedly pit the Palmetto State 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.

The Supreme Court decision in the case of *Obergefell v. Hodges* purports to require states to permit homosexual couples to marry, despite the ofttimes overwhelming opposition to that policy expressed by the people.

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 South Carolina bill would take that state along this constitutionally sound course.

What Representatives Chumley and Burns seems 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.

His *Federalist Papers* co-author, Alexander Hamilton, added in *The Federalist,* No. 78, "There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

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.

Of course, neither the Supreme Court nor its congressional and presidential water carriers will accept nullification as an option available to states (they consider states subordinates, good for nothing more than carrying out federal fiats). They will parrot the old saw that the Supreme Court sets the boundaries of the Constitution.

In this case, the *Obergefell* ruling points to the 14th Amendment as the source of the "right" of same-sex couples to have their unions recognized by states, regardless of the will of the people or their representatives.

Setting aside the controversial history of the ratification of the 14th Amendment (and it's a doozy), the entire legal basis of the Supreme Court's equal-protection justification for its judgment is faulty.

As Selwyn Duke explained last year in a *New American* article on a similar subject:

> Asking if there is a right to an undefined thing is like asking if you want to play an undefined game, eat an undefined substance, or marry an undefined entity.
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> But what if "gay marriage" actually existed as a separate and legitimate species of marriage? What if it had its own special definition because it was its own particular thing? Even if that got you around the definitional problem, it isn't a legally sound argument or one that avoids the slippery slope [to polygamy and beyond]. This is for a simple reason: People have equality under the law.
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> Institutions don't.
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> The mere fact of existence cannot and does not confer legality upon an institution (slavery is a good example). To imply otherwise is to tacitly set a precedent whereby any conception of "marriage" under the sun would have to have its "equality" under the law. And note here that polygamy has infinitely more of a historical claim to institution status than does faux marriage.

Regardless of the reasoning of five judges and the deference it's given by the media and members of most state legislatures, lawmakers in South Carolina 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 nation 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, that "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.

But, before the progressives start praising 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.

Fortunately, Bill Chumley, Mike Burns, and several other state legislators across the country are stepping into the breach to restore the principles of federalism and limited government established by our Founding Fathers.