Written by **Selwyn Duke** on April 22, 2017

States Fight Back: North Carolina Bill Would Nullify SCOTUS Same-sex Marriage Opinion

When the Supreme Court issued its unconstitutional faux (same-sex)-marriage opinion in 2015, it sought to rob states' power to formulate marriage law. Now some legislators in North Carolina are fighting back by introducing a bill that would nullify that *Obergefell v. Hodges* opinion.

Filed April 11 by four Republican lawmakers, House Bill 780, also known as the "Uphold Historical Marriage Act," states, "Marriages, whether created by common law, contracted, or performed outside of 34 North Carolina, between individuals of the same gender are not valid in North Carolina."

The bill correctly asserts that SCOTUS "overstepped its constitutional bounds" when ruling against NC's ban on government recognition of faux marriage. It states, "The General Assembly of the State of North Carolina declares that the *Obergefell v. Hodges* decision of the United States Supreme Court of 2015 is null and void in the State of North Carolina, and that the State of North Carolina shall henceforth uphold and enforce Section 6 of Article XIV of the North Carolina Constitution, the opinion and objection of the United States Supreme Court notwithstanding."

The four representatives floating the bill, Larry Pittman, Michael Speciale, Carl Ford, and Mike Clampitt, also note "that the U.S. Constitution does not give power to the federal government to create laws surrounding the institution of marriage, and that the issue is rather reserved to the states," writes *Christian News*.

Unsurprisingly, House Speaker Tim Moore, also a Republican, says he will not give the bill a hearing, stating, "There are strong constitutional concerns with this legislation given that the U.S. Supreme Court has firmly ruled on the issue," *Christian News* further relates. While this is a common view and a good cover for political cowardice, it reflects a misunderstanding of our Constitution.

The *Obergefell* opinion was a poor decision poorly reasoned, only matched in its intellectual poverty by the states' limp-wristed acquiescence to it.

First, it's not just that nullification is the "rightful remedy" for all federal usurpation of states' powers, as Thomas Jefferson instructed. It's that leftist claims that it's something radical are a ruse, only rolled out when the nullification contradicts the leftist agenda. After all, what do you think the more than 200 "sanctuary city" ("outlaw," actually) jurisdictions defying federal immigration law are engaging in?

Nullification.

In fact, whether federal immigration or drug law, liberal localities have been *doing this for years*. It's only when the nullification would be effected in the name of traditionalism that the Left shrieks, "Who

are you, Jefferson Davis?! You want to start another civil war?!"

That's not the only con evident here. Along with the false notion that federal law is always supreme (actually, the Constitution states that only *constitutional* federal laws are; moreover, courts don't make law) is the idea of judicial supremacy, that the courts' judgments on law's meaning must constrain the other two branches of government. But judicial supremacy isn't in the Constitution. As I explained in February:

> Rather, this "power" was declared by the courts themselves, most notably in the 1803 *Marbury v. Madison* decision.
>
> That's right: the Supreme Court gave the Supreme Court the supreme power to have the final say on laws' meaning.
>
> It's a great con if you can pull it off.

It's also dangerous. As I wrote April 5:

> Thomas Jefferson correctly warned that accepting judicial supremacy would make the Constitution a *felo de se*, an "act of suicide." He explained why in 1820, writing that "to consider the judges as the ultimate arbiters of all constitutional questions" is "a very dangerous doctrine indeed and one which would place us under the despotism of an Oligarchy."
>
> No doubt. Consider that James Madison, the "Father of the Constitution," once said that if the executive, legislative, and judicial powers were all in one entity's hands, you had tyranny. Well, as Dr. Alan Keyes explained in 2005, what do the courts possess today?
>
> They have their judicial power. If they can say what law means — in contravention of the legislators' original intent … and what lawmakers may even say at the moment — and if the legislature must abide by their decision, they have arrogated to themselves the legislative power. And if they can tell the president that he cannot enforce a given law or he must execute a certain action, then they've arrogated to themselves the executive power as well.
>
> Result: You have the executive, legislative, and judicial powers in the hands of one party — the courts. You have tyranny.

The reality is that the courts enjoy their extra-constitutional power at the other two branches' pleasure, and in particular only with the acquiescence of chief executives, the president and governors. As soon as the latter say, to paraphrase President Andrew Jackson, "The courts have made their decision; now let them enforce it," that power goes bye-bye.

In fact, while bills such as NC's HB 780 are a welcome pushback against judicial overreach, they wouldn't even be necessary in a saner time. *Obergefell* is not just unconstitutional but — as with every other court ruling — it isn't even law. It's called an "opinion" for a reason. And any dutiful president or governor would just ignore it based on what it is: a rogue opinion.

Why is this a matter of duty? Because presidents, governors, and legislators takes oaths to uphold the Constitution, just as judges do.

They do not take an oath to uphold court opinions.

Thus, if they abide by a court decision they consider unconstitutional, *they are violating their oath*.

As I've explained repeatedly, *Obergefell* was poorly reasoned and serves to "undefine" marriage. It also

was so patently unconstitutional that late Justice Antonin Scalia wrote in his dissenting *Obergefell* opinion that it lacked "even a thin veneer of law," as he called the Court a "threat to American democracy." If our elected officials won't even stand against this, their oaths were the utterances of liars.

Tragically, this is another instance where politicians are dispensing with constitutional principles in the face of cultural pressure. It's also an example of how conservatives are just that — *conservative* — as in defensive. While liberals happily nullify even constitutional laws they dislike, conservatives can't even muster the courage to oppose blatant violence done to the Constitution.

Of course, one difference is that conservatives talk much about respecting the rule of law. If only they could distinguish between that and the rule of lawyers.