



Written by [Selwyn Duke](#) on June 29, 2015

## States' Reaction to Same-sex "Marriage" Ruling: A Little Talk, Even Less Action

"To allow the policy question of same-sex marriage to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation."

So wrote Justice Antonin Scalia in his [dissent](#) in *Obergefell v. Hodges*, the case in which the Supreme Court declared Friday that faux marriage must be governmentally recognized throughout the nation. And, tragically, critics might say, virtually all American governors are ensuring that a lack of representation will be a reality.



Reacting to the Court ruling, most of the governors in the 13 states that still had operative faux-marriage bans registered notes of complete capitulation, with the exception of two governors who exhibited varying degrees of mild defiance. Yet even the best of that defiance is only a half measure. For example, Texas governor Greg Abbott [wrote](#) in a memorandum obtained by Breitbart Texas, "Texans of all faiths must be absolutely secure in the knowledge that their religious freedom is beyond the reach of government," as he alluded to his conviction that public officials should not be compelled to issue "marriage" licenses to same-sex couples. As *Politico* [writes](#), reporting on the Texas attorney general's explanation of the policy:

Attorney General Ken Paxton on Sunday stated that county clerks, judges and justices of peace can deny marriage licenses to same-sex couples for religious reasons, arguing that the Supreme Court did not abolish religious liberty.

Ken Paxton, in his nonbinding legal opinion, went on to add that "numerous lawyers" would be made available to defend public officials refusing to grant marriage licenses to same-sex couples, according to The Associated Press.

"This newly minted federal constitutional right to same-sex marriage can and should peaceably co-exist with longstanding constitutional and statutory rights, including the rights to free exercise of religion and freedom of speech," Paxton's [opinion states](#).

In other words, Texas is trying to find a middle ground so that the result is only "halfway unconstitutional," which is like being halfway pregnant.

Mississippi had a very different reaction to the court ruling — one that will please libertarians greatly. It's examining the possibility of getting the government out of the marriage business altogether. As *Newsweek* [writes](#):

As the state's governor and lieutenant governor condemned the court's decision, state House



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Judiciary Chairman Andy Gipson began studying ways to prevent gay marriage in Mississippi. Governor Phil Bryant said he would do all he can “to protect and defend the religious freedoms of Mississippi.” To Bryant’s point of doing “all” the state could do, Gipson, who is a Baptist minister, suggested removing marriage licenses entirely.

“One of the options that other states have looked at is removing the state marriage license requirement,” [Gipson told The Clarion-Ledger, a local newspaper](#). “We will be researching what options there are.”

Oklahoma is exploring a similar avenue, as “a bill there would allow notaries and religious leaders to sign marriage documents and strip the power from judges and clerks,” writes *Newsweek*. The news source reports that one Alabama county has already adopted this policy.

Yet surrender to the high court’s oligarchic behavior is the order of the day. Governor Bobby Jindal of Louisiana certainly voiced the discontent of many in [saying](#) Friday, “The Supreme Court decision today conveniently and not surprisingly follows public opinion polls, and tramples on states’ rights that were once protected by the 10th Amendment of the Constitution.” Yet while he pledged to forever fight “for religious liberty,” states’ rights are apparently a different matter. As he [said](#) on this past Sunday’s *Meet the Press* while explaining why his state will ultimately issue “marriage” licenses to same-sex couples, “We don’t have a choice. Our agencies will comply with the court order.”

Most other relevant governors also made a little noise about their disagreement with the unconstitutional ruling, but were even more submissive. North Dakota governor Jack Dalrymple said, “The U.S. Supreme Court has ruled that same-sex marriage is legal throughout the nation and we will abide by this federal mandate.” Nebraska governor Pete Ricketts likewise opined that he would “respect the ruling outlined by the court.” Missouri’s Democrat governor Jay Nixon wholly supported *Obergefell*, calling it “a major victory for equality.” Arkansas governor Asa Hutchinson said that while the “decision goes against the expressed view of Arkansans and my personal beliefs and convictions,” “I will direct all state agencies to comply with the decision.” Tennessee governor Bill Haslam said that while his state recently “voted clearly on this issue ... the Supreme Court has overturned that vote ... [and] we will comply with the decision.” Ohio governor John Kasich stated that “our nation’s highest court has spoken and we must respect its decision.” And Michigan governor Rick Snyder paid lip service to the “strong feelings on both sides” and “diversity” and then said it was “important for everyone to respect the judicial process.”

Kentucky governor Steve Beshear had a unique spin, stating that the “fractured laws across the country concerning same-sex marriage had created an unsustainable and unbalanced legal environment, wherein citizens were treated differently depending on the state in which they resided” and that the Court’s opinion finally provided “clarity.” Of course, he didn’t point out that the laws were only as fractured as they were because the courts had unconstitutionally overturned a multitude of state faux-marriage bans to begin with. Moreover, the “fractured law” argument could be used as an excuse for federal involvement in most anything, as the very fact of having most powers delegated to the states, as the Constitution dictates, guarantees this “diversity” of law. Gun laws are a prime example, as they vary greatly from state to state.

South Dakota governor Dennis Daugaard tweeted, “We are a nation of laws, and [my] state will follow the law,” while Georgia governor Nathan Deal echoed this in saying he believes “in the rule of law.” But is this what’s at issue? Or is it the rule of lawyers?



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As Justice Scalia wrote in his [dissent](#), *Obergefell* is “lacking even a thin veneer of law” and for this reason is a “threat to American democracy.” Chief Justice John Roberts [said](#) that no one should “celebrate the Constitution” in the decision’s wake because the Constitution “had nothing to do with it.” What the decision did have to do with is five lawyers’ judgment that, as Roberts also wrote, “same-sex marriage is a good idea.”

This is why Thomas Jefferson [warned](#) in 1819 that if judicial review — the idea that courts have the final say on law’s meaning and that their determinations must constrain all three branches of government — ever became accepted, our Constitution will have become a suicide pact and our Supreme Court justices an “oligarchy.” And it’s why Jefferson also said that the “rightful remedy” for this judicial usurpation of the people’s power is nullification. This is the process whereby states simply declare that since a given federal action is unconstitutional, they will not abide by it.

There certainly is risk inherent in nullification, though not nearly as much as the Founding Fathers assumed when they forged our republic. If we’re not willing to accept that risk, we ought to admit it to ourselves and pray that our chains rest lightly upon us. But we shouldn’t entertain any delusive talk of “rule of law.” As Chief Justice Roberts said, *Obergefell* had nothing to do with that at all.

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