Written by **Joe Wolverton, II, J.D.** on March 9, 2023

Iowa Bills Would Nullify SCOTUS Obergefell Same-Sex Ruling

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Two bills introduced this week in the Iowa state legislature would define marriage as the union of one man and one woman, nullifying the U.S. Supreme Court's 2015 *Obergefell v. Hodges* opinion in which the high court assumed the authority to legalize same-sex unions throughout the United States, regardless of pre-existing state laws to the contrary.

Here's a bit of the back story, as reported by the Oelwein (Iowa) *Daily Register*:

> According to House File 508, which was introduced by a group of Republican lawmakers including Clayton County's Anne Osmundson, marriages between one man and one woman, based on the principle of ensuring religious freedom, would further become the standard.
>
> In recognition of "the institution of marriage as a sacred religious sacrament that is inextricably and fundamentally bound with free exercise of that right," the bill explains, and, owing to "the deep historical and religious roots that uniformly defined and understood marriage to be the union between one male and female," the proposal states that "no resident of Iowa shall be compelled, coerced, or forced to recognize any same-sex unions or ceremonies as marriage, notwithstanding any laws to the contrary that may exist in other states, and no legal action, criminal or civil, shall be taken against citizens in Iowa for refusal or failure to recognize or participate in same-sex unions or ceremonies."

It seems the proposed statute is a simple expression of Iowa's sovereignty, as well as a straightforward rejection of federal overreach and cultural degeneration.

In fact, Iowa's proposed pushback against the tyranny of the federal judiciary is even more clearly set forth in the following excerpt from the text of the bill:

> The state of Iowa considers certain elements of the federal Respect for Marriage Act … relating to the definition of marriage to be null and void ab initio and to have no effect whatsoever in Iowa.

The belief that allowing the federal government to define marriage is a dangerous one. There are, of course, the moral ramifications, but there is a constitutional problem, too.

In this stand off between the states and the federal government, enter the 10th Amendment.

The 10th Amendment makes clear that if any power is "not delegated to the United States by the Constitution, nor prohibited by it to the states," that power is "reserved to the states respectively, or to the people."

The right of states to refuse to enforce unconstitutional federal acts is known as nullification.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the Constitution.

Nullification exists as a right of the states because the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

Constitutionally speaking, then, whenever the federal government — any branch of the federal government — passes any measure — whether judicial decision, executive order, or congressional act — not provided for in the limited roster of its enumerated powers, those acts are not awarded any sort of supremacy. Instead, they are "merely acts of usurpation" and do not qualify as the supreme law of the land. In fact, Supreme Court decisions are not listed among the items defined by the Constitution as the "supreme law of the land."

Hamilton put an even finer point on the issue when he wrote 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.

Finally, at least from a constitutional perspective, the Supreme Court does not have the authority to establish law in the United States. This is evident not only from the lack of such a grant of power in the U.S. Constitution, but from the fact that the high court's decisions are not included among those federal acts afforded the status of supreme law of the land, as stated above.

What is the legitimate constitutional authority of the Supreme Court (or any federal court, for that matter)? Here's how James Madison explained it:

> However true therefore it may be that the Judicial Department, is, in all questions submitted

> to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power, would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very constitution, which all were instituted to preserve.

Apart from the constitutional considerations, the fundamentally religious nature of marriage presages the tumbling down of a constitutional slippery slope where the federal government goes on to presume to have the power to redefine baptism, the Eucharist (the Lord's Supper), and any and all other facets of religious life.

One can foresee future "human rights" arguments laid out in federal lawsuits complaining, for example, that the exclusion of women from the priesthood is discriminatory and has the "effect to disparage and to injure" women, depriving them of their "personhood and dignity." In the wake of the Windsor ruling, this scenario is but a small step into the future of federal usurpation over faith.

As of 8 March, both House File 508 and House Joint Resolution 8 are currently pending before the Iowa House of Representatives' Judiciary Committee.

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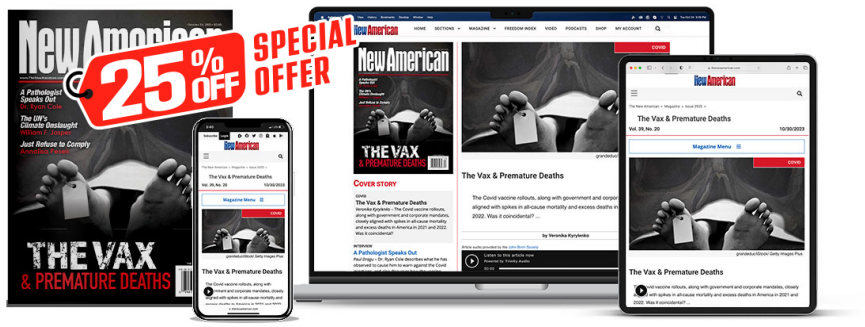

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