Written by **Joe Wolverton, II, J.D.** on January 1, 2016

Journalist: State Reps "Homophobes" and "Bigots" for Attempt to Nullify Same-Sex Marriage Ruling

"If a nation expects to be ignorant & free, in a state of civilization, it expects what never was and never will be…."

— Thomas Jefferson to Charles Yancey, January 6, 1816.

Media mouthpieces are warning "gay rights" activists that certain state legislatures are likely to try to pass bills ignoring the Supreme Court decision declaring homosexual "marriage" to be a constitutional right.

One such story was published on December 30 by the *Nashville Scene*. In the article, Jeff Woods belittles and mocks a pair of Tennessee state lawmakers who have proposed a bill reaffirming the traditional definition of marriage within the borders of the Volunteer State.

Representatives Mark Pody and his cosponsor in the other house of the state legislature, Senator Mae Beavers, are the authors of the Tennessee Defense of Natural Marriage Act.

"Natural marriage between one (1) man and one (1) woman as recognized by the people of Tennessee remains the law in Tennessee, regardless of any court decision to the contrary," the bill states, adding that, "Any court decision purporting to strike down natural marriage, including (a recent U.S. Supreme Court decision), is unauthoritative, void, and of no effect,"

Of course, such a stance is unacceptable to progressive and the pro-gay lobby that are intent on imposing their radical sensibilities on the people of every state, regardless of the state's citizens' stance on the controversial issue. Woods' histrionic and historically inaccurate attack on the Tennessee bill is typical.

"Thanks to the U.S. Constitution and the Supremacy Clause, Rep. Mark Pody and his cosponsor, Sen. Mae Beavers, won't accomplish anything even if they manage to pass their Tennessee Defense of Natural Marriage Act," Woods writes.

"Fortunately, nullification is a thing only in the minds of people who don't understand our system of government," he adds.

To paraphrase Winston Churchill, never was so much wrong said in so few words.

First, Woods needs to be set straight regarding the intent and constitutionally correct application of the so-called Supremacy Clause.

The fact is the "Supremacy Clause" of Article VI does not declare that any and every law passed by the federal government is the supreme law of the land and trumps state law.

A more careful reading reveals that this oft-misinterpreted provision declares that the "laws of the

United States made in pursuance" of the Constitution are the supreme law of the land.

Federal laws made *"in pursuance thereof"* (meaning: of the Constitution), are supreme, not federal laws made in violation of that document.

In fact, if an act of Congress, the president, or the federal courts exceeds the scope of the "few and defined" enumerated powers given to the federal government in the Constitution, that act was not made in pursuance of the Constitution and therefore it is not only *not* the supreme law of the land, but it is not a valid law at all.

As Alexander Hamilton explained in *The Federalist*, No. 33:

> But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

In other words, all acts of any branch of the federal government (an entity created by the Constitution, not vice versa) not expressly authorized under the enumerated powers of the Constitution are "merely acts of usurpations" and deserve to be disregarded, ignored, and denied any legal effect.

Representative Pody and Senator Beavers apparently understand this fact. More state legislators need to learn this lesson, as well.

Familiarity with these facts is fundamental to a reclaiming of state authority and removing the threat to liberty posed by the centralization of power in the federal government.

Next, with all due respect to the bona fides of Mr. Woods as a constitutional expert, let's look at what other, perhaps weightier, writers had to say on the subject of the constitutionality of nullification.

In *The Federalist* No. 78, Alexander Hamilton explained the philosophy behind the principle:

> 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. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.

James Madison, also writing in the *Federalist Papers*, recommended that in order to prevent federal abridgment of fundamental liberties, states should refuse "to co-operate with the officers of the Union."

Then, despite the insistence by Woods that the Constitution places states in a subordinate position to the federal government, in the Virginia Resolution of 1798 Madison wrote regarding overreach by the federal government:

> That in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact [the Constitution], 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.

Comments by Daniel Webster made during the War of 1812 reflect a common and correct understanding by men of the Founding Era of the relationship between federal and state governments:

"It will be the solemn duty of the State governments to protect their own authority… and to interpose between their citizens and arbitrary power. These are among the objects for which the State

governments exist."

In the Kentucky Resolution of 1798, Thomas Jefferson wrote:

> That the several States … delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force.

Finally, it is ironical that in his article Mr. Woods blasts the possibility that a few "bigots who see themselves as holy warriors" could "stop gay marriage in this state." That very fact that there is a such thing as what he describes as a "Supreme Court ruling legalizing same-sex marriage" is because a few zealots on the Supreme Court took it upon themselves to overturn the express will of hundreds of thousands of Americans and their elected state representatives and force all people, regardless of their personal and political objections, to afford protected legal status to these same-sex unions.

Is intolerance and discrimination only "bigotry" when it is attempted by a few state legislators, but is praiseworthy and permanent when committed by nine oligarchs wearing black robes and issuing "rulings"?

Finally, in 1820, Thomas Jefferson called the practice of allowing the Supreme Court to be the final say on every subject "a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy."

And before Woods and the rest of the pro-gay press start praising judicial review, they should familiarize themselves with the origin of this pet principle of progressives.

The power to overturn state laws is not given to the Supreme Court in the Constitution. It was never proposed and passed by Congress, signed by a president, or voted on by the people.

Rather, the court in the *Marbury v. Madison* decision in 1803 declared that this is a power the Court *should* have, regardless of the clear intent of the drafters and ratifiers of the Constitution.

In other words, in 1803, 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. An oligarchy apparently appreciated by the advocates of same-sex "marriage" and a myriad of other policies opposed by the majority of Americans.

At the end of his piece, Woods quotes the head of the Tennessee Equality Project (a homosexual "rights" lobbying organization") as saying, "In order responsibly to deal with the attacks, we have to spend our time there [the state legislature]."

Americans wishing to deal with attacks on the Constitution and consent of the governed would be well advised to do likewise.