So-Called Gay Marriage

By David L. Miner
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I am going to address all the recent stories on television, on Facebook, and all over the Internet concerning so-called gay marriage. But first, I need to explain why I used the phrase "so-called gay marriage." I believe that there is no such thing as "gay marriage," and I am about to tell you why.

I also need to explain that I am not judging homosexuals as deserving hell, nor am I saying that they do not have a right to engage in homosexual activities. I am merely presenting the legal issues involved in the issue of marriage, and some of the court cases relative to the topic.

In addition, I cannot write this without also declaring that I am a conservative Christian. By that I mean that I follow the claims of Christ and the teachings of his followers as they are contained in the Bible. I believe that, contrary to what many people believe and some teach, the Bible does not condemn homosexuals to hell any more or less than it condemns liars and cheats and thieves to hell. The Bible does, however, condemn all homosexual activities, just like it does lying and cheating and stealing. In saying this, I realize that many would accuse me of judging, another activity that is condemned in the Bible. But there they would be wrong. I am not judging when I refer to teachings in the Bible; I am merely passing on what God has already decided and announced. And it is clear in Scripture that God has condemned all homosexual activities in the strongest words possible. If you have a problem with me saying this, your problem is not with me -- your problem is with God.

I believe that historically, spiritually, legally, and in every other important measure, marriage is a permanent relationship between a man and a woman intended for love and support and procreation (in that order). Therefore, any so-called marriage outside of that is not a marriage at all.

However, what I believe and what the spiritual leaders in the Bible say about homosexuality is totally outside the topic and content of this document. I have written this document to present the legal issues that involve what many describe as gay marriage, supported by some of the court cases on the issue, and not to condemn so-called gay marriage or criticize homosexuals.

There has been a lot of recent discussion on the latest US Supreme Court decision to not hear some lower court federal cases on so-called gay marriage. Some people claim this was a victory for gay marriages and the homosexual political agenda. Others say this was a setback for gay marriage because the Supreme Court has refused to issue a binding decision on gay marriage that would affect all 50 States.

I say they are both wrong.

I say the Constitution gives the federal government absolutely no authority or jurisdiction over marriage, and consequently the Supreme Court simply cannot render a definition of marriage that would or would not include so-called gay marriage. Perhaps the Supreme Court can ***affirm*** the classic definition of marriage, but no individual or group or agency within the federal government has the authority or jurisdiction to ***re-define*** marriage.

There are quite a number of US Supreme Court cases that address so-called gay marriages. But the Supreme Court has been quite consistent in its decisions, so I will address only a few of these cases in this document that are definitive to the issue.

Perhaps a short word on the authority and jurisdiction of the Supreme Court is in order here, since so few Americans understand our Constitution and the laws passed under its authority. Please accept my apologies to the people who actually understand these issues – this will be redundant for you. But most Americans do not understand these issues, and this includes most of our politicians.

And it is essential that we all have a clear and accurate understanding of the legal issues involved in this discussion, and also of the role of the federal government concerning these issues, or we will misunderstand the drama that is unfolding in our federal courts concerning so-called gay marriages, and the future of that drama.

The Constitution created America as a nation of independent and sovereign States. It's true that the physical existence of America was established by the eight long and horrible years of war between the Colonies here on the continent that was called America and the most powerful nation on the planet at that time. We fought, we won, and then we had to define who and what we were. So we wrote what many at that time called "the Great Document," which established exactly who and what we were as a nation. The Constitution created the central government, its structure and form, and especially its limitations. In doing so, the Constitution created a Republic, while leaving untouched the several sovereign States.

Most of us hear all the time that America is a Democracy. This is a destructive lie intentionally propagated by our politicians and our educational institutions for all sorts of wrong purposes that I will not get into here. Suffice it to say that the Constitution explicitly refers to America as a Republic, and NOT as a Democracy.

In simple terms, a Democracy is run on ***popular opinion***; whatever the majority of the people want on an issue is what the government must provide on that issue. More simply, Benjamin Franklin defined a Democracy as "three wolves and a sheep voting on what is for dinner." In several publications written and printed by the federal government in the first half of the 1900s, a Democracy was described as "mob rule," and it was doomed to short duration. This was before our government began its move

away from a Republic and toward a socialistic Democracy, and therefore suppressed its own publications on the topic.

On the other hand, a Republic is run on ***LAWS***. If 100% of the people want a particular event or outcome, but it is not allowed by law, then that event or outcome cannot and does not happen. This is often proclaimed by the phrase "the rule of law." A Republic has the rule of law – a Democracy cannot.

So, the Constitution created a national Republic with three branches – *three separate but equal branches* – of government. And it created a specific set of powers and responsibilities for each of the three branches within that Republic. None of the three branches could legislate or control or even debate anything that was not explicitly delegated to that branch. This principle was underscored by the words of the Tenth Amendment to that Constitution, where the Founding Fathers put into clear words that any power not specifically granted to one of the three respective branches of the federal government was specifically withheld from all the branches of the federal government because it belonged to the States or to We The People.

As I said, the Constitution created three branches of government: the Executive Branch (which included the president as Chief Executive Officer), the Legislative Branch (which included Congress and the authority to craft and pass laws), and the Judicial Branch (which included the courts and the authority to apply or strike those laws when circumstances made the laws confusing). To each of these three branches were delegated explicit responsibilities, along with the powers of those responsibilities. And all three branches were explicitly required in writing to remain within their responsibilities – if they operated outside their responsibilities, those actions were considered renegade and outside the limits of, and in violation of, the Constitution for the United States of America.

Because of the Constitution, ALL federal courts are courts of limited jurisdiction. A federal court must have jurisdiction over the subject matter involved (called "*subject matter jurisdiction*"), *and* over the persons involved (called "*persona jurisdiction*"), in a legal action before there can be a case brought before that particular federal court. This is why one of the first issues addressed in the paperwork of all cases filed in all federal courts is the issue of jurisdiction. All the way up to the Supreme Court, federal courts are courts of limited jurisdiction. This means that they cannot even HEAR a case that is outside of their jurisdiction, much render a judgment!

The federal courts have the responsibility to resolve whether or not a particular federal Statute *applied* in a specific set of circumstances, as well as exactly *how* the laws applied in those circumstances, along with the penalties for violating those laws. The Supreme Court has the ultimate authority on any and all issues that were still in conflict after the Lower Courts rendered their decisions. If the courts in several districts handed down different decisions on the same issue, then the Supreme Court might get involved to resolve "the truth" on that issue. But if the federal districts were handing down similar decisions, the Supreme Court will generally not accept an appeal from

those courts. And the Supreme Court was not ***required*** by the Constitution to hear any and all issues. The Court had the option to pick and choose the cases it would decide or judge based on the conflicts behind those cases, and the impact of them. So the Supreme Court had jurisdiction only over specific cases on specific issues for specific reasons. And many would claim the most important issue is where the case pivoted on the violation of a federal statute when that statute was alleged to exceed the authority of the federal government. In other words, can an individual violate a federal statute whose scope exceeds Constitutional limits?

A perfect example of a Statute going outside of authority and improperly stepping on the rights associated with marriage came from Connecticut. In the early 1960s, that State passed a criminal statute making it illegal for a married couple to use any kind of contraceptives. The case that made its way through the courts challenging the statute was *Grizwold v. Connecticut* (1965). The statute was well-written and clear enough, and it required a State policing agency to enforce the statute. And in 1965, that Statute was overturned by the US Supreme Court on the interesting grounds that the State, *"having authorized marriage, was without power to intrude upon the right of privacy inherent in the marital relationship."* Justice Douglas, author of the majority opinion, wrote that this criminal statute *"operates directly on an intimate relation of husband and wife,"* and that the very idea of its enforcement by the clear invasion of *"the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives is repulsive to the notions of privacy surrounding the marriage relationship."* This was the first US Supreme Court case concerning marriage and the limits placed on marriage that I have found, and it applied to a specific limitation placed by a specific statute in a specific State. The legal reasoning of the Supreme Court was the FACT that the State had no authority over the marriage bedroom, or the privacy inherent within the marriage bedroom.

The reasoning in *Grizwold* was carried over to the cases challenging the Defense of Marriage Act forty years later, which would overturn DOMA based on several issues, especially the government's lack of authority over the bedroom. The government would have to invade the bedroom in order to enforce DOMA, *and the Supreme Court had already ruled that government had no such authority.*

Another State case, this one concerning so-called gay marriage, soon captured national attention. The case was *Baker v. Nelson* (1972), where a gay couple was attempting to force the State of Minnesota to issue a marriage license to them. The couple's approach was to challenge the Minnesota law specifically because it prohibited the issue of a marriage license to gay couples on the basis that Minnesota believed only heterosexual couples could marry in that State. The couple alleged that discrimination based on sexual preference was unlawful. In reality, this couple was protesting and wanting to overturn Minnesota's version of DOMA. Further, the couple claimed that the State statute forbidding gay marriage was unconstitutional because they claimed they had a Constitutional right to marry, and to refuse them a marriage license was to deny them their Constitutional rights. The couple lost in the lower court and the appeals court, and appealed those losses to the Minnesota Supreme Court. The Minnesota Supreme Court declared the couple to be wrong, and affirmed the lower State courts in their

denial of so-called gay marriage licenses. The couple appealed to the US Supreme Court, hoping to have the Minnesota decision overturned. The US Supreme Court found that the couple made *"the assertion that the right to marry without regard to the sex of the parties is a fundamental right of all persons and that restricting marriage to only couples of the opposite sex is irrational and invidiously discriminatory. We are not independently persuaded by these contentions and do not find support for them in any decisions of the United States Supreme Court. The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis."*

In declaring the “fundamental right” and the "natural law" status of marriage, and in declaring that there is no inherent protection of marriage or the right to GET married in the Constitution, the US Supreme Court continued to hold that the issue was outside the jurisdiction of the Supreme Court. If marriage or the option to GET married was a right granted by the United States Constitution, then the Congress could modify that right and the Supreme Court could hear cases concerning the violation of that right. Absent any explicit inclusion in the Constitution, the Supreme Court had no jurisdiction over marriage, and no authority to hear the case much less render a decision on the issue of marriage.

A “fundamental right” and an issue of “natural law” was beyond the authority and jurisdiction inherent in statutory law, and the Supreme Court could not overturn what it considered “natural law.”

In ***Baker***, the Minnesota Supreme Court ruled that a State statute protecting the definition of marriage as between one man and one woman did not violate the U.S. Constitution: *“The institution of marriage as a union of man and woman, uniquely involving the procreation and rearing of children within a family, is as old as the book of Genesis,”* and in 1972, the US Supreme Court upheld ***Baker***.

And the Baker case became controlling law for all federal courts.

Last year, in *US v. Windsor* (2013) the United States Supreme Court struck down the federal statute known as "The Defense of Marriage Act." Conservative Christians all over this country have shouted that without DOMA, not only will so-called gay marriage become the norm all across America, but that no one could legally deny polygamy and all sorts of marital perversions. This is simply not true. Even the liberal *NY Times* caught the reason the Supreme Court struck down the law, when it stated: *“Justice Kennedy writes that the Defense of Marriage Act violates the principles of federalism, which allow states to largely chart their own course.”* The Times went on to quote Justice Kennedy as he added: *“The State’s power in defining the marital relation is of central relevance in this case quite apart from principles of federalism.”*

In other words, the majority opinion of the US Supreme Court is that marriage, and especially the ***definition*** of marriage, is not a federal issue. This was consistent with the ***Baker*** decision and the *Grizwald* decision before that. A “fundamental right” based

on “natural law” was outside the authority and jurisdiction of the government, and the Supreme Court had no *subject matter jurisdiction* allowing it to render a decision on the matter. Specifically, the Constitution grants the federal government absolutely no authority or jurisdiction over marriage. As such, Congress cannot pass a law regarding the definition of marriage. Maybe the States can, but the federal government cannot. As Kennedy claimed, this question goes far beyond federalism, the political doctrine of State's Rights.

Federalism is the belief shared by the Founding Fathers that each of the States is a sovereign government with full authority and jurisdiction over each and every issue not explicitly delegated to the federal government. *Federalism* is summed up by the Tenth Amendment to the federal Constitution, which specifically claimed that any power not explicitly delegated to the federal government is explicitly reserved for the States or for We The People. Clearly, *Federalism* says the federal government does not have the authority BECAUSE the States have that authority, and because the States never delegated that authority to the federal government in the Constitution. The claim that the issue goes "far beyond federalism" says the States MIGHT have the authority but the central government DEFINITELY DOES NOT have the authority.

Recently, on November 6, 2014, the Sixth District Court of Appeals for federal cases rendered a very important decision on the issue of so-called gay marriage, by upholding the ban against so-called gay-marriages in several States within that district. The Sixth District stated they are constrained by the Supreme Court case in ***Baker***. *“The Court has yet to inform us that we are not, and we have no license to engage in a guessing game about whether the Court will change its mind or, more aggressively, to assume authority to overrule Baker ourselves.”* The 6th District Appeals Court went on to say: *"A dose of humility makes us hesitant to condemn as unconstitutionally irrational a view of marriage shared not long ago by every society in the world, shared by most, if not all, of our ancestors, and shared still today by a significant number of states."*

The Sixth District Court of Appeals is a federal court. Decisions by the 6th District Court of Appeals are the Law of the Land for only four States, and it controls only the *federal* courts below it. All their decisions control the federal courts in those four States unless and until the Supreme Court overrules their decisions. There are federal courts in forty-six other States that are not controlled by the Sixth District. And individual State Courts and State Legislatures are not bound by the decisions of the Sixth District. This is why the Sixth District Court of Appeals upheld the cases in the several States below it – the Sixth District had no authority or jurisdiction to overturn the cases of those States ***on this issue***.

Please understand, ALL federal courts are controlled by the US Supreme Court, and ***the Sixth District merely pointed out that the Supreme Court has already issued a decision on so-called gay marriage that is currently the Law Of The Land for America.*** But as you and I both know, some federal courts have rendered decisions on so-called gay marriage that are inconsistent with the controlling law on the issue.

And many people have complained that the Supreme Court has denied hearing the appeals of several lower court federal cases which have issued contrary decisions about so-called gay marriage. They claim that would leave in place different decisions on the legal status of gay marriage. But based on ***Grizwold*** and ***Baker***, cases that the Supreme Court already handed down, the issue has been settled. And the settled case law on this issue is binding on ALL federal courts. Those federal judges who handed down decisions contrary to the US Supreme Court have violated their Oaths of Office and their Bar pledges. The only reason these judges are still in office receiving a federal paycheck is because We The People have allowed it.

The US Supreme Court seems to be taking America in the proper direction. It has claimed that marriage is a "fundamental right" and not a Constitutional right. And it has claimed that a fundamental right is beyond – outside – the authority and jurisdiction of the federal government and the federal courts. This means the Supreme Court, if it remains true to its earlier decisions, has no option but to strike down all federal court decisions that allow for or mandate any so-called gay marriage rights.

It is true that this action will leave the issue to the States, but that is where the issue belongs. Further, all the States that allow for so-called gay marriage do so only because a federal court in that State either created a right for gays to marry, or else threw out the will of the people of that State, which was to outlaw the possibility of gay people to marry.

In other words, if the US Supreme Court strikes all federal court decisions that create or allow so-called gay marriage, there will be no so-called gay marriages in any State in America.

I believe you will see the US Supreme Court take on this issue and these court cases in the Summer of 2015. And I believe you will see the overturning of every federal case in America that grants or allows so-called gay marriage based on some alleged Constitutional right or “natural law” or “fundamental right” to get married.

Cases:

1. ***Grizwold v. Connecticut***, 381 US 479 (1965)
2. ***Baker v. Nelson,*** 409 U.S. 810 (1972)
3. ***U.S. v. Windsor,*** 133 S.Ct. 2675 (2013)